

ARIZONA PUBLIC SERVICE COMPANY

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
Emerging growth company

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

Indicate by check mark whether each registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

PINNACLE WEST CAPITAL CORPORATION Yes No
ARIZONA PUBLIC SERVICE COMPANY Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

PINNACLE WEST CAPITAL CORPORATION Number of shares of common stock, no par value, outstanding as of July 27, 2018: 111,974,139
ARIZONA PUBLIC SERVICE COMPANY Number of shares of common stock, \$2.50 par value, outstanding as of July 27, 2018: 71,264,947

Arizona Public Service Company meets the conditions set forth in General Instruction H(1)(a) and (b) of Form 10-Q and is therefore filing this form with the reduced disclosure format allowed under that General Instruction.

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This combined Form 10-Q is separately provided by Pinnacle West Capital Corporation ("Pinnacle West") and Arizona Public Service Company ("APS"). Any use of the words "Company," "we," and "our" refer to Pinnacle West. Each registrant is providing on its own behalf all of the information contained in this Form 10-Q that relates to such registrant and, where required, its subsidiaries. Except as stated in the preceding sentence, neither registrant is providing any information that does not relate to such registrant, and therefore makes no representation as to any such information. The information required with respect to each company is set forth within the applicable items. Item 1 of this report includes Condensed Consolidated Financial Statements of Pinnacle West and Condensed Consolidated Financial Statements of APS. Item 1 also includes Combined Notes to Condensed Consolidated Financial Statements.

FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements based on current expectations. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume," "project" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. In addition to the Risk Factors described in Part I, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2017 ("2017 Form 10-K"), Part II, Item 1A of this report and in Part I, Item 2 — "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this report, these factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental, economic and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;
- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission ("ACC") orders.

These and other factors are discussed in the Risk Factors described in Part I, Item 1A of our 2017 Form 10-K, in Part II, Item 1A of this report, and in Part I, Item 2 — "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this report, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

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PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(unaudited)
(dollars and shares in thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
OPERATING REVENUES	\$ 974,123	\$ 944,587	\$ 1,666,837	\$ 1,622,315
OPERATING EXPENSES				
Fuel and purchased power	257,087	254,611	454,197	467,006
Operations and maintenance	268,397	220,985	534,079	447,056
Depreciation and amortization	145,436	125,739	290,261	253,366
Taxes other than income taxes	53,607	44,289	107,207	88,125
Other expenses	7,434	1,706	7,597	2,094
Total	731,961	647,330	1,393,341	1,257,647
OPERATING INCOME	242,162	297,257	273,496	364,668
OTHER INCOME (DEDUCTIONS)				
Allowance for equity funds used during construction	13,073	10,456	27,152	19,938
Pension and other postretirement non-service credits - net	12,006	6,972	24,865	13,067
Other income (Note 9)	6,598	484	10,583	964
Other expense (Note 9)	(3,771)	(3,822)	(7,000)	(7,502)
Total	27,906	14,090	55,600	26,467
INTEREST EXPENSE				
Interest charges	60,708	54,969	119,662	106,833
Allowance for borrowed funds used during construction	(6,291)	(4,906)	(13,046)	(9,378)
Total	54,417	50,063	106,616	97,455
INCOME BEFORE INCOME TAXES	215,651	261,284	222,480	293,680
INCOME TAXES	44,039	88,967	42,774	93,178
NET INCOME	171,612	172,317	179,706	200,502
Less: Net income attributable to noncontrolling interests (Note 6)	4,874	4,874	9,747	9,747
NET INCOME ATTRIBUTABLE TO COMMON SHAREHOLDERS	\$ 166,738	\$ 167,443	\$ 169,959	\$ 190,755
WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING — BASIC	112,115	111,797	112,067	111,763
WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING — DILUTED	112,471	112,345	112,482	112,270
EARNINGS PER WEIGHTED-AVERAGE COMMON SHARE OUTSTANDING				
Net income attributable to common shareholders — basic	\$ 1.49	\$ 1.50	\$ 1.52	\$ 1.71
Net income attributable to common shareholders — diluted	\$ 1.48	\$ 1.49	\$ 1.51	\$ 1.70
DIVIDENDS DECLARED PER SHARE	\$ 1.39	\$ 1.31	\$ 1.39	\$ 1.31

The accompanying notes are an integral part of the financial statements.

PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited)
(dollars in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
NET INCOME	\$ 171,612	\$ 172,317	\$ 179,706	\$ 200,502
OTHER COMPREHENSIVE INCOME, NET OF TAX				
Derivative instruments:				
Net unrealized gain (loss), net of tax expense of \$0, \$4, \$96 and \$679 for the respective periods	—	7	(96)	(763)
Reclassification of net realized loss, net of tax expense (benefit) of (\$150), (\$348), (\$232) and \$8 for the respective periods	456	564	865	1,771
Pension and other postretirement benefits activity, net of tax benefit of \$1,558, \$823, \$1,115 and \$119 for the respective periods	(4,739)	(1,334)	(3,839)	(812)
Total other comprehensive income	(4,283)	(763)	(3,070)	196
COMPREHENSIVE INCOME	167,329	171,554	176,636	200,698
Less: Comprehensive income attributable to noncontrolling interests	4,874	4,874	9,747	9,747
COMPREHENSIVE INCOME ATTRIBUTABLE TO COMMON SHAREHOLDERS	\$ 162,455	\$ 166,680	\$ 166,889	\$ 190,951

The accompanying notes are an integral part of the financial statements.

PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(unaudited)
(dollars in thousands)

	June 30, 2018	December 31, 2017
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 3,839	\$ 13,892
Customer and other receivables	321,053	305,147
Accrued unbilled revenues	207,887	112,434
Allowance for doubtful accounts	(3,769)	(2,513)
Materials and supplies (at average cost)	263,370	264,012
Fossil fuel (at average cost)	47,591	25,258
Assets from risk management activities (Note 7)	3,316	1,931
Deferred fuel and purchased power regulatory asset (Note 4)	74,898	75,637
Other regulatory assets (Note 4)	154,661	172,451
Other current assets	45,865	48,039
Total current assets	<u>1,118,711</u>	<u>1,016,288</u>
INVESTMENTS AND OTHER ASSETS		
Nuclear decommissioning trust (Note 12)	873,643	871,000
Other special use funds (Note 12)	216,338	32,542
Other assets	59,137	52,040
Total investments and other assets	<u>1,149,118</u>	<u>955,582</u>
PROPERTY, PLANT AND EQUIPMENT		
Plant in service and held for future use	18,328,611	17,798,061
Accumulated depreciation and amortization	(6,245,809)	(6,128,535)
Net	<u>12,082,802</u>	<u>11,669,526</u>
Construction work in progress	1,140,611	1,291,498
Palo Verde sale leaseback, net of accumulated depreciation (Note 6)	107,710	109,645
Intangible assets, net of accumulated amortization	257,040	257,189
Nuclear fuel, net of accumulated amortization	119,256	117,408
Assets held for sale (Note 8)	95,364	—
Total property, plant and equipment	<u>13,802,783</u>	<u>13,445,266</u>
DEFERRED DEBITS		
Regulatory assets (Note 4)	1,233,062	1,202,302
Assets for other postretirement benefits (Note 5)	47,619	268,978
Other	140,880	130,666
Total deferred debits	<u>1,421,561</u>	<u>1,601,946</u>
TOTAL ASSETS	<u>\$ 17,492,173</u>	<u>\$ 17,019,082</u>

The accompanying notes are an integral part of the financial statements.

PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(unaudited)
(dollars in thousands)

	June 30, 2018	December 31, 2017
LIABILITIES AND EQUITY		
CURRENT LIABILITIES		
Accounts payable	\$ 260,285	\$ 256,442
Accrued taxes	156,362	148,946
Accrued interest	56,248	56,397
Common dividends payable	77,821	77,667
Short-term borrowings (Note 3)	616,249	95,400
Current maturities of long-term debt (Note 3)	600,000	82,000
Customer deposits	89,681	70,388
Liabilities from risk management activities (Note 7)	49,096	59,252
Liabilities for asset retirements	9,184	4,745
Regulatory liabilities (Note 4)	156,757	100,086
Other current liabilities	167,202	246,529
Total current liabilities	2,238,885	1,197,852
LONG-TERM DEBT LESS CURRENT MATURITIES (Note 3)	4,191,525	4,789,713
DEFERRED CREDITS AND OTHER		
Deferred income taxes	1,727,700	1,690,805
Regulatory liabilities (Note 4)	2,389,002	2,452,536
Liabilities for asset retirements	677,341	674,784
Liabilities for pension benefits (Note 5)	319,604	327,300
Liabilities from risk management activities (Note 7)	46,347	37,170
Customer advances	118,459	113,996
Coal mine reclamation	213,137	231,597
Deferred investment tax credit	202,797	205,575
Unrecognized tax benefits	13,416	13,115
Liabilities held for sale (Note 8)	26,457	—
Other	168,069	148,909
Total deferred credits and other	5,902,329	5,895,787
COMMITMENTS AND CONTINGENCIES (SEE NOTE 8)		
EQUITY		
Common stock, no par value; authorized 150,000,000 shares, 111,990,222 and 111,816,170 issued at respective dates	2,624,672	2,614,805
Treasury stock at cost; 17,633 and 64,463 shares at respective dates	(1,431)	(5,624)
Total common stock	2,623,241	2,609,181
Retained earnings	2,465,402	2,442,511
Accumulated other comprehensive loss	(56,624)	(45,002)
Total shareholders' equity	5,032,019	5,006,690
Noncontrolling interests (Note 6)	127,415	129,040
Total equity	5,159,434	5,135,730
TOTAL LIABILITIES AND EQUITY	\$ 17,492,173	\$ 17,019,082

The accompanying notes are an integral part of the financial statements.

PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(dollars in thousands)

	Six Months Ended June 30,	
	2018	2017
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 179,706	\$ 200,502
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization including nuclear fuel	325,550	291,285
Deferred fuel and purchased power	(50,112)	(21,993)
Deferred fuel and purchased power amortization	50,851	(13,663)
Allowance for equity funds used during construction	(27,152)	(19,938)
Deferred income taxes	33,711	94,365
Deferred investment tax credit	(2,778)	(3,194)
Change in derivative instruments fair value	—	(222)
Stock compensation	13,189	12,891
Changes in current assets and liabilities:		
Customer and other receivables	(18,672)	(62,624)
Accrued unbilled revenues	(95,453)	(105,754)
Materials, supplies and fossil fuel	(22,970)	(5,437)
Income tax receivable	—	(322)
Other current assets	11,069	(23,418)
Accounts payable	36,614	21,771
Accrued taxes	8,140	11,745
Other current liabilities	9,410	(44,778)
Change in margin and collateral accounts — assets	(920)	(71)
Change in margin and collateral accounts — liabilities	(1,082)	(4,700)
Change in other long-term assets	24,847	(49,162)
Change in other long-term liabilities	(78,146)	13,279
Net cash flow provided by operating activities	395,802	290,562
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(679,949)	(693,626)
Contributions in aid of construction	19,339	18,032
Allowance for borrowed funds used during construction	(13,046)	(9,378)
Proceeds from nuclear decommissioning trust sales and other special use funds	258,401	275,364
Investment in nuclear decommissioning trust and other special use funds	(259,542)	(276,505)
Other	(4,299)	(2,127)
Net cash flow used for investing activities	(679,096)	(688,240)
CASH FLOWS FROM FINANCING ACTIVITIES		
Issuance of long-term debt	—	251,635
Short-term borrowing and payments — net	500,849	287,800
Short-term debt borrowings under revolving credit facility	45,000	17,000
Short-term debt repayments under revolving credit facility	(25,000)	—
Dividends paid on common stock	(151,942)	(142,520)
Repayment of long-term debt	(82,000)	—
Common stock equity issuance - net of purchases	(2,294)	(8,792)
Distributions to noncontrolling interests	(11,372)	(11,372)
Other	—	(1)
Net cash flow provided by financing activities	273,241	393,750
NET DECREASE IN CASH AND CASH EQUIVALENTS	(10,053)	(3,928)

CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	13,892	8,881
CASH AND CASH EQUIVALENTS AT END OF PERIOD	<u>\$ 3,839</u>	<u>\$ 4,953</u>

The accompanying notes are an integral part of the financial statements.

PINNACLE WEST CAPITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(unaudited)
(dollars in thousands)

	Common Stock		Treasury Stock		Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	Total
	Shares	Amount	Shares	Amount				
Balance, January 1, 2017	111,392,053	\$ 2,596,030	(55,317)	\$ (4,133)	\$ 2,255,547	\$ (43,822)	\$ 132,290	\$ 4,935,912
Net income		—		—	190,755	—	9,747	200,502
Other comprehensive income		—		—	—	196	—	196
Dividends on common stock		—		—	(146,204)	—	—	(146,204)
Issuance of common stock	250,627	8,452		—	—	—	—	8,452
Purchase of treasury stock (a)		—	(156,172)	(12,430)	—	—	—	(12,430)
Reissuance of treasury stock for stock-based compensation and other		—	192,191	15,010	11	—	—	15,021
Capital activities by noncontrolling interests		—		—	—	—	(11,372)	(11,372)
Balance, June 30, 2017	111,642,680	\$ 2,604,482	(19,298)	\$ (1,553)	\$ 2,300,109	\$ (43,626)	\$ 130,665	\$ 4,990,077
Balance, January 1, 2018	111,816,170	\$ 2,614,805	(64,463)	\$ (5,624)	\$ 2,442,511	\$ (45,002)	\$ 129,040	\$ 5,135,730
Net income		—		—	169,959	—	9,747	179,706
Other comprehensive income		—		—	—	(3,070)	—	(3,070)
Dividends on common stock		—		—	(155,620)	—	—	(155,620)
Issuance of common stock	174,052	9,867		—	—	—	—	9,867
Purchase of treasury stock (a)		—	(81,177)	(6,277)	—	—	—	(6,277)
Reissuance of treasury stock for stock-based compensation and other		—	128,007	10,470	—	—	—	10,470
Capital activities by noncontrolling interests		—		—	—	—	(11,372)	(11,372)
Reclassification of income tax effects related to new tax reform (See Note 13)		—		—	8,552	(8,552)	—	—
Balance, June 30, 2018	111,990,222	\$ 2,624,672	(17,633)	\$ (1,431)	\$ 2,465,402	\$ (56,624)	\$ 127,415	\$ 5,159,434

(a) Primarily represents shares of common stock withheld from certain stock awards for tax purposes.

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(unaudited)
(dollars in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
OPERATING REVENUES	\$ 971,963	\$ 943,406	\$ 1,663,969	\$ 1,620,995
OPERATING EXPENSES				
Fuel and purchased power	270,138	259,892	472,148	476,995
Operations and maintenance	251,999	215,775	506,600	434,783
Depreciation and amortization	144,533	125,317	288,645	252,524
Taxes other than income taxes	53,269	44,016	106,511	87,580
Other expenses	434	1,706	597	2,142
Total	720,373	646,706	1,374,501	1,254,024
OPERATING INCOME	251,590	296,700	289,468	366,971
OTHER INCOME (DEDUCTIONS)				
Allowance for equity funds used during construction	13,073	10,456	27,152	19,938
Pension and other postretirement non-service credits - net	12,389	6,911	25,586	12,953
Other income (Note 9)	6,235	352	10,007	694
Other expense (Note 9)	(3,372)	(3,301)	(6,318)	(6,429)
Total	28,325	14,418	56,427	27,156
INTEREST EXPENSE				
Interest charges	57,731	53,517	113,889	104,313
Allowance for borrowed funds used during construction	(6,291)	(4,906)	(13,046)	(9,378)
Total	51,440	48,611	100,843	94,935
INCOME BEFORE INCOME TAXES	228,475	262,507	245,052	299,192
INCOME TAXES	45,776	88,525	47,882	97,175
NET INCOME	182,699	173,982	197,170	202,017
Less: Net income attributable to noncontrolling interests (Note 6)	4,874	4,874	9,747	9,747
NET INCOME ATTRIBUTABLE TO COMMON SHAREHOLDER	\$ 177,825	\$ 169,108	\$ 187,423	\$ 192,270

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited)
(dollars in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
NET INCOME	\$ 182,699	\$ 173,982	\$ 197,170	\$ 202,017
OTHER COMPREHENSIVE INCOME, NET OF TAX				
Derivative instruments:				
Net unrealized gain (loss), net of tax expense \$0, \$4, \$96 and \$679 for the respective periods	—	7	(96)	(763)
Reclassification of net realized loss, net of tax expense (benefit) of (\$150), (\$348), (\$232) and \$8 for the respective periods	456	564	865	1,771
Pension and other postretirement benefits activity, net of tax benefit of \$1,566, \$808, \$1,260 and \$218 for the respective periods	(4,764)	(1,308)	(3,907)	(697)
Total other comprehensive income	(4,308)	(737)	(3,138)	311
COMPREHENSIVE INCOME	178,391	173,245	194,032	202,328
Less: Comprehensive income attributable to noncontrolling interests	4,874	4,874	9,747	9,747
COMPREHENSIVE INCOME ATTRIBUTABLE TO COMMON SHAREHOLDER	\$ 173,517	\$ 168,371	\$ 184,285	\$ 192,581

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS
(unaudited)
(dollars in thousands)

	June 30, 2018	December 31, 2017
ASSETS		
PROPERTY, PLANT AND EQUIPMENT		
Plant in service and held for future use	\$ 18,325,124	\$ 17,654,078
Accumulated depreciation and amortization	(6,242,574)	(6,041,965)
Net	12,082,550	11,612,113
Construction work in progress	1,140,611	1,266,636
Palo Verde sale leaseback, net of accumulated depreciation (Note 6)	107,710	109,645
Intangible assets, net of accumulated amortization	256,885	257,028
Nuclear fuel, net of accumulated amortization	119,256	117,408
Total property, plant and equipment	13,707,012	13,362,830
INVESTMENTS AND OTHER ASSETS		
Nuclear decommissioning trust (Note 12)	873,643	871,000
Other special use funds (Note 12)	216,338	30,358
Other assets	40,868	36,796
Total investments and other assets	1,130,849	938,154
CURRENT ASSETS		
Cash and cash equivalents	3,760	13,851
Customer and other receivables	299,279	292,791
Accrued unbilled revenues	207,887	112,434
Allowance for doubtful accounts	(3,769)	(2,513)
Materials and supplies (at average cost)	263,370	262,630
Fossil fuel (at average cost)	47,591	25,258
Assets from risk management activities (Note 7)	3,316	1,931
Deferred fuel and purchased power regulatory asset (Note 4)	74,898	75,637
Other regulatory assets (Note 4)	154,661	172,451
Other current assets	42,463	41,055
Total current assets	1,093,456	995,525
DEFERRED DEBITS		
Regulatory assets (Note 4)	1,233,062	1,202,302
Assets for other postretirement benefits (Note 5)	43,911	265,139
Other	129,362	129,801
Total deferred debits	1,406,335	1,597,242
TOTAL ASSETS	\$ 17,337,652	\$ 16,893,751

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS
(unaudited)
(dollars in thousands)

	June 30, 2018	December 31, 2017
LIABILITIES AND EQUITY		
CAPITALIZATION		
Common stock	\$ 178,162	\$ 178,162
Additional paid-in capital	2,571,696	2,571,696
Retained earnings	2,570,816	2,533,954
Accumulated other comprehensive loss	(35,159)	(26,983)
Total shareholder equity	5,285,515	5,256,829
Noncontrolling interests (Note 6)	127,415	129,040
Total equity	5,412,930	5,385,869
Long-term debt less current maturities (Note 3)	3,893,042	4,491,292
Total capitalization	9,305,972	9,877,161
CURRENT LIABILITIES		
Short-term borrowings (Note 3)	499,949	—
Current maturities of long-term debt (Note 3)	600,000	82,000
Accounts payable	253,191	247,852
Accrued taxes	183,761	157,349
Accrued interest	55,383	55,533
Common dividends payable	77,800	77,700
Customer deposits	89,681	70,388
Liabilities from risk management activities (Note 7)	49,096	59,252
Liabilities for asset retirements	9,184	4,192
Regulatory liabilities (Note 4)	156,757	100,086
Other current liabilities	162,963	243,922
Total current liabilities	2,137,765	1,098,274
DEFERRED CREDITS AND OTHER		
Deferred income taxes	1,755,897	1,742,485
Regulatory liabilities (Note 4)	2,389,002	2,452,536
Liabilities for asset retirements	677,341	666,527
Liabilities for pension benefits (Note 5)	299,747	306,542
Liabilities from risk management activities (Note 7)	46,347	37,170
Customer advances	118,459	113,996
Coal mine reclamation	213,137	215,830
Deferred investment tax credit	202,797	205,575
Unrecognized tax benefits	44,177	43,876
Other	147,011	133,779
Total deferred credits and other	5,893,915	5,918,316
COMMITMENTS AND CONTINGENCIES (SEE NOTE 8)		
TOTAL LIABILITIES AND EQUITY	\$ 17,337,652	\$ 16,893,751

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(unaudited)
(dollars in thousands)

	Six Months Ended June 30,	
	2018	2017
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 197,170	\$ 202,017
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization including nuclear fuel	323,934	290,444
Deferred fuel and purchased power	(50,112)	(21,994)
Deferred fuel and purchased power amortization	50,851	(13,663)
Allowance for equity funds used during construction	(27,152)	(19,938)
Deferred income taxes	10,372	87,412
Deferred investment tax credit	(2,778)	(3,194)
Change in derivative instruments fair value	—	(222)
Changes in current assets and liabilities:		
Customer and other receivables	(9,254)	(41,422)
Accrued unbilled revenues	(95,453)	(105,754)
Materials, supplies and fossil fuel	(23,073)	(5,333)
Income tax receivable	—	11,174
Other current assets	7,552	(20,039)
Accounts payable	39,573	20,147
Accrued taxes	26,412	16,759
Other current liabilities	7,395	(33,408)
Change in margin and collateral accounts — assets	(920)	(71)
Change in margin and collateral accounts — liabilities	(1,082)	(4,700)
Change in other long-term assets	35,867	(45,420)
Change in other long-term liabilities	(83,561)	13,061
Net cash flow provided by operating activities	405,741	325,856
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(670,841)	(680,343)
Contributions in aid of construction	19,339	18,032
Allowance for borrowed funds used during construction	(13,046)	(9,378)
Proceeds from nuclear decommissioning trust sales and other special use funds	258,227	275,364
Investment in nuclear decommissioning trust and other special use funds	(259,367)	(276,505)
Other	(1,221)	(1,478)
Net cash flow used for investing activities	(666,909)	(674,308)
CASH FLOWS FROM FINANCING ACTIVITIES		
Issuance of long-term debt	—	251,635
Short-term borrowings and payments — net	499,949	250,200
Short-term debt borrowings under revolving credit facility	25,000	—
Short-term debt repayments under revolving credit facility	(25,000)	—
Repayment of long-term debt	(82,000)	—
Dividends paid on common stock	(155,500)	(146,000)
Distributions to noncontrolling interests	(11,372)	(11,372)
Net cash flow provided by financing activities	251,077	344,463
NET DECREASE IN CASH AND CASH EQUIVALENTS	(10,091)	(3,989)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	13,851	8,840
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 3,760	\$ 4,851
Supplemental disclosure of cash flow information		
Cash paid during the period for:		
Income taxes, net of refunds	\$ 24,689	\$ 1
Interest, net of amounts capitalized	\$ 98,478	\$ 92,334

Significant non-cash investing and financing activities:

Accrued capital expenditures	\$	65,995	\$	82,621
Dividends declared but not yet paid	\$	77,800	\$	73,100

The accompanying notes are an integral part of the financial statements.

ARIZONA PUBLIC SERVICE COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(unaudited)
(dollars in thousands)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	Total
	Shares	Amount					
Balance, January 1, 2017	71,264,947	\$ 178,162	\$ 2,421,696	\$ 2,331,245	\$ (25,423)	\$ 132,290	\$ 5,037,970
Net income		—	—	192,270	—	9,747	202,017
Other comprehensive income		—	—	—	311	—	311
Dividends on common stock		—	—	(146,200)	—	—	(146,200)
Net capital activities by noncontrolling interests		—	—	—	—	(11,372)	(11,372)
Balance, June 30, 2017	71,264,947	\$ 178,162	\$ 2,421,696	\$ 2,377,315	\$ (25,112)	\$ 130,665	\$ 5,082,726
Balance, January 1, 2018	71,264,947	\$ 178,162	\$ 2,571,696	\$ 2,533,954	\$ (26,983)	\$ 129,040	\$ 5,385,869
Net income		—	—	187,423	—	9,747	197,170
Other comprehensive income		—	—	—	(3,138)	—	(3,138)
Dividends on common stock		—	—	(155,599)	—	—	(155,599)
Reclassification of income tax effects related to new tax reform (See Note 13)		—	—	5,038	(5,038)	—	—
Net capital activities by noncontrolling interests		—	—	—	—	(11,372)	(11,372)
Balance, June 30, 2018	71,264,947	\$ 178,162	\$ 2,571,696	\$ 2,570,816	\$ (35,159)	\$ 127,415	\$ 5,412,930

The accompanying notes are an integral part of the financial statements.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Consolidation and Nature of Operations

The unaudited condensed consolidated financial statements include the accounts of Pinnacle West and our subsidiaries: APS, 4C Acquisition, LLC ("4CA"), Bright Canyon Energy Corporation ("BCE") and El Dorado Investment Company ("El Dorado"). See Note 8 for more information on 4CA matters. Intercompany accounts and transactions between the consolidated companies have been eliminated. The unaudited condensed consolidated financial statements for APS include the accounts of APS and the Palo Verde Nuclear Generating Station ("Palo Verde") sale leaseback variable interest entities ("VIEs") (see Note 6 for further discussion). Our accounting records are maintained in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Amounts reported in our interim Condensed Consolidated Statements of Income are not necessarily indicative of amounts expected for the respective annual periods, due to the effects of seasonal temperature variations on energy consumption, timing of maintenance on electric generating units, and other factors.

Our condensed consolidated financial statements reflect all adjustments (consisting only of normal recurring adjustments except as otherwise disclosed in the notes) that we believe are necessary for the fair presentation of our financial position, results of operations, and cash flows for the periods presented. Certain information and footnote disclosures normally included in financial statements prepared in conformity with GAAP have been condensed or omitted pursuant to such regulations, although we believe that the disclosures provided are adequate to make the interim information presented not misleading. The accompanying condensed consolidated financial statements and these notes should be read in conjunction with the audited consolidated financial statements and notes included in our 2017 Form 10-K.

These consolidated financial statements and notes have been prepared consistently, with the exception of the reclassification of certain prior year amounts on our Condensed Consolidated Statements of Income and APS's Condensed Consolidated Statements of Income. Beginning in the quarter ended March 31, 2018, APS changed the format of presentation of its Condensed Consolidated Statements of Income from a utility ratemaking format to a commercial format. Minor changes were made in the description of certain income statement line items and the amounts presented in the comparable prior period also changed by immaterial amounts due to the change from a utility to a non-utility format and also from the adoption of the new accounting guidance for net periodic pension cost and net periodic postretirement benefit cost. In addition, the prior year amounts were reclassified to conform to the current year presentation for the other special use funds in the investment and other assets section on the Condensed Consolidated Balance Sheets.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Supplemental Cash Flow Information

The following table summarizes supplemental Pinnacle West cash flow information (dollars in thousands):

	Six Months Ended June 30,	
	2018	2017
Cash paid during the period for:		
Income taxes, net of refunds	\$ 10,032	\$ 2,062
Interest, net of amounts capitalized	104,249	94,870
Significant non-cash investing and financing activities:		
Accrued capital expenditures	\$ 65,995	\$ 80,517
Dividends accrued but not yet paid	77,821	73,113

2. Revenue

Adoption of Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers

On January 1, 2018, we adopted new revenue guidance in ASU 2014-09 and related amendments. The new revenue guidance requires entities to recognize revenue when control of the promised good or service is transferred to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. We applied the new guidance using the modified retrospective method applied to contracts which were not completed as of January 1, 2018. The adoption of the new revenue guidance resulted in expanded disclosures but otherwise did not have a material impact on our financial statements. New revenue disclosures required by the standard are included below. See Note 13 for additional information regarding the new accounting standard.

Revenue Recognition and Sources of Revenue

Our revenues are primarily derived from sales of electricity to our regulated retail customers. Our retail electric services and tariff rates are regulated by the ACC. Revenues related to the sale of electric services are recognized when service is rendered or electricity is delivered to the customer. Electricity sales generally represent a single performance obligation delivered over time. We have elected to apply the invoice practical expedient and, as such, we recognize revenue based on the amount to which we have a right to invoice for services performed.

The following table provides detail of Pinnacle West's consolidated revenue disaggregated by revenue sources (dollars in thousands):

	Three Months Ended June 30,	Six Months Ended June 30,
	2018	2018
Retail residential electric service	\$ 500,247	\$ 816,922
Retail non-residential electric service	435,500	778,689
Wholesale energy sales	15,392	27,481
Transmission services for others	15,489	30,334
Other sources	7,495	13,411
Total operating revenues	\$ 974,123	\$ 1,666,837

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The billing of regulated retail electricity sales to individual customers is based on data obtained from the customer's meter. We obtain customers' meter data on a systematic basis throughout the month, and generally bill customers within a month from when service was provided. Customers are generally required to pay for services within 15 days of when the services are billed. We do not assess transactions for significant financing components when the period of time between when the goods or services are transferred to the customer and when the customer pays for those goods or services is less than one year.

Unbilled revenues are estimated by applying an average revenue per kilowatt-hour ("kWh") to the number of estimated kWhs delivered but not billed by customer class. Historically, differences between the actual and estimated unbilled revenues have been immaterial. We exclude sales tax and franchise fees on electric revenues from both revenue and taxes other than income taxes.

Revenues from wholesale energy sales and transmission services for others represent energy and transmission sales to wholesale customers. These activities primarily consist of managing fuel and purchased power risks in connection with the cost of serving our retail customers' energy requirements. We may also sell into the wholesale markets generation that is not needed for APS's retail load. Our wholesale activities and tariff rates are regulated by the United States Federal Energy Regulatory Commission ("FERC").

In the electricity business, some contracts to purchase energy are settled by netting against other contracts to sell electricity. This is referred to as a book-out, and usually occurs in contracts that have the same terms (product type, quantities, and delivery points) and for which power does not flow. We net these book-outs, which reduces both wholesale revenues and fuel and purchased power costs.

Revenue Activities

Our revenues are primarily derived from activities that are classified as revenues from contracts with customers. This includes sales of electricity to our regulated retail customers and wholesale and transmission activities. Our revenues from contracts with customers for the three and six months ended June 30, 2018 were \$954 million and \$1,640 million, respectively.

We have certain revenues that do not meet the specific accounting criteria to be classified as revenues from contracts with customers. For the three and six months ended June 30, 2018, our revenues that do not qualify as revenue from contracts with customers were \$20 million and \$27 million, respectively. This relates primarily to certain regulatory cost recovery mechanisms that are considered alternative revenue programs. We recognize revenue associated with alternative revenue programs when specific events permitting recognition are completed. Certain amounts associated with alternative revenue programs will subsequently be billed to customers; however, we do not reclassify billed amounts into revenue from contracts with customers. See Note 4 for a discussion of our regulatory cost recovery mechanisms.

Contract Assets and Liabilities from Contracts with Customers

There were no material contract assets, contract liabilities, or deferred contract costs recorded on the Condensed Consolidated Balance Sheet as of June 30, 2018.

3. Long-Term Debt and Liquidity Matters

Pinnacle West and APS maintain committed revolving credit facilities in order to enhance liquidity and provide credit support for their commercial paper programs, to refinance indebtedness, and for other general corporate purposes.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Pinnacle West

On July 12, 2018, Pinnacle West replaced its \$200 million revolving credit facility that would have matured in May 2021, with a new \$200 million facility that matures in July 2023. Pinnacle West has the option to increase the amount of the facility up to a maximum of \$300 million upon the satisfaction of certain conditions and with the consent of the lenders. At June 30, 2018, Pinnacle West had no outstanding borrowings under its credit facility, no letters of credit outstanding and \$30 million of commercial paper borrowings.

On June 28, 2018, Pinnacle West refinanced its 364 -day \$125 million unsecured revolving credit facility that would have matured on July 30, 2018 with a new 364 -day \$150 million credit facility that matures June 27, 2019. Borrowings under the facility bear interest at LIBOR plus 0.70% per annum. At June 30, 2018, Pinnacle West had \$86 million outstanding under the facility.

APS

On May 30, 2018, APS purchased all \$32 million of Maricopa County, Arizona Pollution Control Corporation Pollution Control Revenue Refunding Bonds, 2009 Series C, due 2029. These bonds were classified as current maturities of long-term debt on our Consolidated Balance Sheets at December 31, 2017.

On June 26, 2018, APS repaid at maturity APS's \$50 million term loan facility.

On July 12, 2018, APS replaced its \$500 million revolving credit facility that would have matured in May 2021, with a new \$500 million facility that matures in July 2023.

At June 30, 2018, APS had two revolving credit facilities totaling \$1 billion, including a \$500 million credit facility that matures in June 2022 and the above-mentioned \$500 million facility. APS may increase the amount of each facility up to a maximum of \$700 million, for a total of \$1.4 billion, upon the satisfaction of certain conditions and with the consent of the lenders. Interest rates are based on APS's senior unsecured debt credit ratings. These facilities are available to support APS's \$500 million commercial paper program, for bank borrowings or for issuances of letters of credit. At June 30, 2018, APS had \$500 million of commercial paper outstanding and no outstanding borrowings or letters of credit under its revolving credit facilities.

See "Financial Assurances" in Note 8 for a discussion of APS's other outstanding letters of credit.

Debt Fair Value

Our long-term debt fair value estimates are classified within Level 2 of the fair value hierarchy. The following table presents the estimated fair value of our long-term debt, including current maturities (dollars in thousands):

	As of June 30, 2018		As of December 31, 2017	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Pinnacle West	\$ 298,483	\$ 292,767	\$ 298,421	\$ 298,608
APS	4,493,042	4,660,281	4,573,292	5,006,348
Total	\$ 4,791,525	\$ 4,953,048	\$ 4,871,713	\$ 5,304,956

Debt Provisions

An existing ACC order requires APS to maintain a common equity ratio of at least 40% . As defined in the ACC order, the common equity ratio is total shareholder equity divided by the sum of total shareholder equity and long-term debt, including current maturities of long-term debt. At June 30, 2018 , APS was in compliance with this common equity ratio requirement. Its total shareholder equity was approximately \$5.3 billion , and total capitalization was approximately \$10.0 billion . APS would be prohibited from paying dividends if the payment would reduce its total shareholder equity below approximately \$4.0 billion , assuming APS's total capitalization remains the same.

4. Regulatory Matters

Retail Rate Case Filing with the Arizona Corporation Commission

On June 1, 2016, APS filed an application with the ACC for an annual increase in retail base rates of \$165.9 million . This amount excluded amounts that were then collected on customer bills through adjustor mechanisms. The application requested that some of the balances in these adjustor accounts (aggregating to approximately \$267.6 million as of December 31, 2015) be transferred into base rates through the ratemaking process. This transfer would not have had an incremental effect on average customer bills. The average annual customer bill impact of APS's request was an increase of 5.74% (the average annual bill impact for a typical APS residential customer was 7.96%) .

On March 27, 2017, a majority of the stakeholders in the general retail rate case, including the ACC Staff, the Residential Utility Consumer Office, limited income advocates and private rooftop solar organizations signed a settlement agreement (the "2017 Settlement Agreement") and filed it with the ACC. The 2017 Settlement Agreement provides for a net retail base rate increase of \$94.6 million , excluding the transfer of adjustor balances, consisting of: (1) a non-fuel, non-depreciation, base rate increase of \$87.2 million per year; (2) a base rate decrease of \$53.6 million attributable to reduced fuel and purchased power costs; and (3) a base rate increase of \$61.0 million due to changes in depreciation schedules. The average annual customer bill impact under the 2017 Settlement Agreement was calculated as an increase of 3.28% (the average annual bill impact for a typical APS residential customer was calculated as 4.54%) .

Other key provisions of the agreement include the following:

- an agreement by APS not to file another general retail rate case application before June 1, 2019;
- an authorized return on common equity of 10.0% ;
- a capital structure comprised of 44.2% debt and 55.8% common equity;
- a cost deferral order for potential future recovery in APS's next general retail rate case for the construction and operating costs APS incurs for its Ocotillo modernization project;
- a cost deferral and procedure to allow APS to request rate adjustments prior to its next general retail rate case related to its share of the construction costs associated with installing selective catalytic reduction ("SCR") equipment at the Four Corners Power Plant ("Four Corners");
- a deferral for future recovery (or credit to customers) of the Arizona property tax expense above or below a specified test year level caused by changes to the applicable Arizona property tax rate;
- an expansion of the Power Supply Adjustor ("PSA") to include certain environmental chemical costs and third-party battery storage costs;
- a new AZ Sun II program (now known as "APS Solar Communities") for utility-owned solar distributed generation with the purpose of expanding access to rooftop solar for low and moderate income

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Arizonans, recoverable through the Arizona Renewable Energy Standard and Tariff ("RES"), to be no less than \$10 million per year, and not more than \$15 million per year;

- an increase to the per kWh cap for the environmental improvement surcharge from \$0.00016 to \$0.00050 and the addition of a balancing account;
- rate design changes, including:
 - a change in the on-peak time of use period from noon - 7 p.m. to 3 p.m. - 8 p.m. Monday through Friday, excluding holidays;
 - non-grandfathered distributed generation ("DG") customers would be required to select a rate option that has time of use rates and either a new grid access charge or demand component;
 - a Resource Comparison Proxy ("RCP") for exported energy of 12.9 cents per kWh in year one; and
- an agreement by APS not to pursue any new self-build generation (with certain exceptions) having an in-service date prior to January 1, 2022 (extended to December 31, 2027 for combined-cycle generating units), unless expressly authorized by the ACC.

Through a separate agreement, APS, industry representatives, and solar advocates committed to stand by the 2017 Settlement Agreement and refrain from seeking to undermine it through ballot initiatives, legislation or advocacy at the ACC.

On August 15, 2017, the ACC approved (by a vote of 4-1), the 2017 Settlement Agreement without material modifications. On August 18, 2017, the ACC issued a final written Opinion and Order reflecting its decision in APS's general retail rate case (the "2017 Rate Case Decision"), which is subject to requests for rehearing and potential appeal. The new rates went into effect on August 19, 2017.

On October 17, 2017, Warren Woodward (an intervener in APS's general retail rate case) filed a Notice of Appeal in the Arizona Court of Appeals, Division One. The notice raises a single issue related to the application of certain rate schedules to new APS residential customers after May 1, 2018. Mr. Woodward filed a second notice of appeal on November 13, 2017 challenging APS's \$5 per month automated metering infrastructure opt-out program. Mr. Woodward's two appeals have been consolidated, and APS requested and was granted intervention. Mr. Woodward filed his opening brief on March 28, 2018. The ACC and APS filed responsive briefs on June 21, 2018. APS cannot predict the outcome of this consolidated appeal but does not believe it will have a material impact on our financial position, results of operations or cash flows.

On January 3, 2018, an APS customer filed a petition with the ACC that was determined by the ACC Staff to be a complaint filed pursuant to Arizona Revised Statute §40-246 (the "Complaint") and not a request for rehearing. Arizona Revised Statute §40-246 requires the ACC to hold a hearing regarding any complaint alleging that a public service corporation is in violation of any commission order or that the rates being charged are not just and reasonable if the complaint is signed by at least twenty-five customers of the public service corporation. The Complaint alleged that APS is "in violation of commission order" [sic]. On February 13, 2018, the complainant filed an amended Complaint alleging that the rates and charges in the 2017 Rate Case Decision are not just and reasonable. The complainant is requesting that the ACC hold a hearing on the amended Complaint to determine if the average bill impact on residential customers of the rates and charges approved in the 2017 Rate Case Decision is greater than 4.54% (the average annual bill impact for a typical APS residential customer estimated by APS) and, if so, what effect the alleged greater bill impact has on APS's revenues and the overall reasonableness and justness of APS's rates and charges, in order to determine if there is sufficient evidence to warrant a full-scale rate hearing. In April 2018, the judge set a procedural schedule for this matter and a hearing is scheduled for September 2018. APS cannot predict the outcome of this matter.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Prior Rate Case Filing with the Arizona Corporation Commission

On June 1, 2011, APS filed an application with the ACC for a net retail base rate increase of \$95.5 million . On January 6, 2012, APS and other parties to the general retail rate case entered into an agreement (the "2012 Settlement Agreement") detailing the terms upon which the parties agreed to settle the rate case. On May 15, 2012, the ACC approved the 2012 Settlement Agreement without material modifications.

Cost Recovery Mechanisms

APS has received regulatory decisions that allow for more timely recovery of certain costs outside of a general retail rate case through the following recovery mechanisms.

Renewable Energy Standard . In 2006, the ACC approved the RES. Under the RES, electric utilities that are regulated by the ACC must supply an increasing percentage of their retail electric energy sales from eligible renewable resources, including solar, wind, biomass, biogas and geothermal technologies. In order to achieve these requirements, the ACC allows APS to include a RES surcharge as part of customer bills to recover the approved amounts for use on renewable energy projects. Each year APS is required to file a five -year implementation plan with the ACC and seek approval for funding the upcoming year's RES budget.

In 2013, the ACC conducted a hearing to consider APS's proposal to establish compliance with distributed energy requirements by tracking and recording distributed energy, rather than acquiring and retiring renewable energy credits. On February 6, 2014, the ACC established a proceeding to modify the renewable energy rules to establish a process for compliance with the renewable energy requirement that is not based solely on the use of renewable energy credits. On September 9, 2014, the ACC authorized a rulemaking process to modify the RES rules. The proposed changes would permit the ACC to find that utilities have complied with the distributed energy requirement in light of all available information. The ACC adopted these changes on December 18, 2014. The revised rules went into effect on April 21, 2015.

In December 2014, the ACC voted that it had no objection to APS implementing an APS-owned rooftop solar research and development program aimed at learning how to efficiently enable the integration of rooftop solar and battery storage with the grid. The first stage of the program, called the "Solar Partner Program," placed 8 megawatts ("MW") of residential rooftop solar on strategically selected distribution feeders in an effort to maximize potential system benefits, as well as made systems available to limited-income customers who could not easily install solar through transactions with third parties. The second stage of the program, which included an additional 2 MW of rooftop solar and energy storage, placed two energy storage systems sized at 2 MW on two different high solar penetration feeders to test various grid-related operation improvements and system interoperability, and was in operation by the end of 2016. The costs for this program have been included in APS's rate base as part of the 2017 Rate Case Decision.

On July 1, 2016, APS filed its 2017 RES Implementation Plan and proposed a budget of approximately \$150 million . APS's budget request included additional funding to process the high volume of residential rooftop solar interconnection requests and also requested a permanent waiver of the residential distributed energy requirement for 2017 contained in the RES rules. On April 7, 2017, APS filed an amended 2017 RES Implementation Plan and updated budget request which included the revenue neutral transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement. On August 15, 2017, the ACC approved the 2017 RES Implementation Plan.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

On June 30, 2017, APS filed its 2018 RES Implementation Plan and proposed a budget of approximately \$90 million . APS's budget request supports existing approved projects and commitments and includes the anticipated transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement and also requests a permanent waiver of the residential distributed energy requirement for 2018 contained in the RES rules. APS's 2018 RES budget request is lower than the 2017 RES budget due in part to a certain portion of the RES being collected by APS in base rates rather than through the RES adjustor.

On November 20, 2017, APS filed an updated 2018 RES budget to include budget adjustments for APS Solar Communities (formerly known as AZ Sun II), which was approved as part of the 2017 Rate Case Decision. APS Solar Communities is a 3 -year program requiring APS to spend \$10 million to \$15 million in capital costs each year to install utility-owned DG systems for low to moderate income residential homes, buildings of non-profit entities, Title I schools and rural government facilities. The 2017 Rate Case Decision provided that all operations and maintenance expenses, property taxes, marketing and advertising expenses, and the capital carrying costs for this program will be recovered through the RES. On June 12, 2018, the ACC approved the 2018 RES Implementation Plan.

On June 29, 2018, APS filed its 2019 RES Implementation Plan and proposed a budget of approximately \$ 89.9 million . APS's budget request supports existing approved projects and commitments and includes the anticipated transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement and also requests a permanent waiver of the residential distributed energy requirement for 2019 contained in the RES rules.

In September 2016, the ACC initiated a proceeding which will examine the possible modernization and expansion of the RES. On January 30, 2018, ACC Commissioner Tobin proposed a plan in this proceeding which would broaden the RES to include a series of energy policies tied to clean energy sources (the "Energy Modernization Plan"). The Energy Modernization Plan includes replacing the current RES standard with a new standard called the Clean Resource Energy Standard and Tariff ("CREST"), which incorporates the proposals in the Energy Modernization Plan. A set of draft CREST rules for the ACC's consideration was issued by Commissioner Tobin's office on July 5, 2018. APS cannot predict the outcome of this proceeding.

Demand Side Management Adjustor Charge ("DSMAC") . The ACC Electric Energy Efficiency Standards require APS to submit a Demand Side Management Implementation Plan ("DSM Plan") annually for review by and approval of the ACC. On March 20, 2015, APS filed an application with the ACC requesting a budget of \$68.9 million for 2015 and minor modifications to its DSM portfolio going forward, including for the first time three resource savings projects which reflect energy savings on APS's system. The ACC approved APS's 2015 DSM budget on November 25, 2015. In its decision, the ACC also ruled that verified energy savings from APS's resource savings projects could be counted toward compliance with the Electric Energy Efficiency Standards; however, the ACC ruled that APS was not allowed to count savings from systems savings projects toward determination of the achievement of performance incentives, nor may APS include savings from conservation voltage reduction in the calculation of its Lost Fixed Cost Recovery Mechanism ("LFCR") mechanism.

On June 1, 2016, APS filed its 2017 DSM Plan, in which APS proposed programs and measures that specifically focus on reducing peak demand, shifting load to off-peak periods and educating customers about strategies to manage their energy and demand. The requested budget in the 2017 DSM Plan was \$62.6 million . On January 27, 2017, APS filed an updated and modified 2017 DSM Plan that incorporated the proposed Residential Demand Response, Energy Storage and Load Management Program and requested that the budget be increased to \$66.6 million . On August 15, 2017, the ACC approved the amended 2017 DSM Plan.

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On September 1, 2017, APS filed its 2018 DSM Plan, which proposes modifications to the demand side management portfolio to better meet system and customer needs by focusing on peak demand reductions, storage, load shifting and demand response programs in addition to traditional energy savings measures. The 2018 DSM Plan seeks a reduced requested budget of \$52.6 million and requests a waiver of the Electric Energy Efficiency Standard for 2018. On November 14, 2017, APS filed an amended 2018 DSM Plan, which revised the allocations between budget items to address customer participation levels, but kept the overall budget at \$52.6 million. The ACC has not yet ruled on the APS 2018 amended DSM Plan.

Power Supply Adjustor ("PSA") Mechanism and Balance. The PSA provides for the adjustment of retail rates to reflect variations primarily in retail fuel and purchased power costs. The following table shows the changes in the deferred fuel and purchased power regulatory asset (liability) for 2018 and 2017 (dollars in thousands):

	Six Months Ended June 30,	
	2018	2017
Beginning balance	\$ 75,637	\$ 12,465
Deferred fuel and purchased power costs — current period	50,112	21,994
Amounts refunded/(charged) to customers	(50,851)	13,663
Ending balance	\$ 74,898	\$ 48,122

The PSA rate for the PSA year beginning February 1, 2017 was \$(0.001348) per kWh, as compared to \$0.001678 per kWh for the prior year. This rate was comprised of a forward component of \$(0.001027) per kWh and a historical component of \$(0.000321) per kWh. On August 19, 2017 the PSA rate was revised to \$0.000555 per kWh as part of the 2017 Rate Case Decision. This new rate was comprised of a forward component of \$0.000876 per kWh and a historical component of \$(0.000321) per kWh.

The PSA rate for the PSA year beginning February 1, 2018 is \$0.004555 per kWh, consisting of a forward component of \$0.002009 per kWh and a historical component of \$0.002546 per kWh. This represented a \$0.004 per kWh increase over the August 19, 2017 PSA, the maximum permitted under the Plan of Administration for the PSA. This left \$16.4 million of 2017 fuel and purchased power costs above this annual cap. These costs will roll over until the following year and will be reflected in the 2019 reset of the PSA.

Transmission Rates, Transmission Cost Adjustor ("TCA") and Other Transmission Matters. In July 2008, FERC approved an Open Access Transmission Tariff for APS to move from fixed rates to a formula rate-setting methodology in order to more accurately reflect and recover the costs that APS incurs in providing transmission services. A large portion of the rate represents charges for transmission services to serve APS's retail customers ("Retail Transmission Charges"). In order to recover the Retail Transmission Charges, APS was previously required to file an application with, and obtain approval from, the ACC to reflect changes in Retail Transmission Charges through the TCA. Under the terms of the 2012 Settlement Agreement, however, an adjustment to rates to recover the Retail Transmission Charges will be made annually each June 1 and will go into effect automatically unless suspended by the ACC.

The formula rate is updated each year effective June 1 on the basis of APS's actual cost of service, as disclosed in APS's FERC Form 1 report for the previous fiscal year. Items to be updated include actual capital

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expenditures made as compared with previous projections, transmission revenue credits and other items. The resolution of proposed adjustments can result in significant volatility in the revenues to be collected. APS reviews the proposed formula rate filing amounts with the ACC Staff. Any items or adjustments which are not agreed to by APS and the ACC Staff can remain in dispute until settled or litigated at FERC. Settlement or litigated resolution of disputed issues could require an extended period of time and could have a significant effect on the Retail Transmission Charges because any adjustment, though applied prospectively, may be calculated to account for previously over- or under-collected amounts.

Effective June 1, 2017, APS's annual wholesale transmission rates for all users of its transmission system increased by approximately \$35.1 million for the twelve-month period beginning June 1, 2017 in accordance with the FERC-approved formula. An adjustment to APS's retail rates to recover FERC approved transmission charges went into effect automatically on June 1, 2017. Effective June 1, 2018, APS's annual wholesale transmission rates for all users of its transmission system decreased by approximately \$22.7 million for the twelve-month period beginning June 1, 2018 in accordance with the FERC-approved formula. An adjustment to APS's retail rates to recover FERC approved transmission charges went into effect automatically on June 1, 2018.

On January 31, 2017, APS made a filing with FERC to reduce the Post-Employment Benefits Other than Pension expense reflected in its FERC transmission formula rate calculation to recognize certain savings resulting from plan design changes to the other postretirement benefit plans. A transmission customer intervened and protested certain aspects of APS's filing. FERC initiated a proceeding under Section 206 of the Federal Power Act to evaluate the justness and reasonableness of the revised formula rate filing APS proposed. APS entered into a settlement agreement with the intervening transmission customer, which was filed with FERC for approval on September 26, 2017. FERC approved the settlement agreement without modification or condition on December 21, 2017.

On March 7, 2018, APS made a filing to make modifications to its annual transmission formula to provide transmission customers the benefit of the reduced federal corporate income tax rate resulting from the Tax Cuts and Jobs Act of 2017 (the "Tax Act") beginning in its 2018 annual transmission formula rate update filing. These modifications were approved by FERC on May 22, 2018 and reduced APS's transmission rates compared to the rate that would have gone into effect absent these changes.

Lost Fixed Cost Recovery Mechanism . The LFCR mechanism permits APS to recover on an after-the-fact basis a portion of its fixed costs that would otherwise have been collected by APS in the kWh sales lost due to APS energy efficiency programs and to DG such as rooftop solar arrays. The fixed costs recoverable by the LFCR mechanism were first established in the 2012 Settlement Agreement and amount to approximately 3.1 cents per residential kWh lost and 2.3 cents per non-residential kWh lost. These amounts were revised in the 2017 Settlement Agreement to 2.5 cents for both lost residential and non-residential kWh. The LFCR adjustment has a year-over-year cap of 1% of retail revenues. Any amounts left unrecovered in a particular year because of this cap can be carried over for recovery in a future year. The kWhs lost from energy efficiency are based on a third-party evaluation of APS's energy efficiency programs. DG sales losses are determined from the metered output from the DG units.

APS filed its 2016 annual LFCR adjustment on January 15, 2016, requesting an LFCR adjustment of \$46.4 million (a \$7.9 million annual increase). The ACC approved the 2016 annual LFCR effective beginning in May 2016. APS filed its 2017 LFCR adjustment on January 13, 2017 requesting an LFCR adjustment of \$63.7 million (a \$17.3 million per year increase over 2016 levels). On April 5, 2017, the ACC approved the 2017 annual LFCR adjustment as filed, effective with the first billing cycle of April 2017. On February 15, 2018, APS filed its LFCR Adjustment, requesting that effective May 1, 2018, the LFCR be adjusted to \$60.7

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million (a \$3 million per year decrease from 2017 levels). The ACC has not yet ruled on APS's 2018 LFCR adjustment request. Because the LFCR mechanism has a balancing account that trues up any under or over recoveries, a one or two month delay in implementation does not have an adverse effect on APS.

Tax Expense Adjustor Mechanism ("TEAM") and FERC Tax Filing. As part of the 2017 Settlement Agreement, the parties agreed to a rate adjustment mechanism to address potential federal income tax reform and enable the pass-through of certain income tax effects to customers. On December 22, 2017, the Tax Act was enacted. This legislation made significant changes to the federal income tax laws including a reduction in the corporate tax rate from 35% to 21% effective January 1, 2018.

On January 8, 2018, APS filed an application with the ACC requesting that the TEAM be implemented in two steps. The first addresses the change in the marginal federal tax rate from 35% to 21% resulting from the Tax Act and, if approved, would reduce rates by \$119.1 million annually through an equal cents per kWh credit. APS asked that this decrease become effective February 1, 2018. On February 22, 2018, the ACC approved the reduction of rates by \$119.1 million for the remainder of 2018 through an equal cents per kWh credit applied to all but a small subset of customers who are taking service under specially-approved tariffs. The rate reduction was effective for the first billing cycle in March 2018.

The amount of the benefit of the lower federal income tax rate is based on our quarterly pre-tax earnings pattern, while the reduction in revenues from lower customer rates through the TEAM is based on a per kWh sales credit which follows our seasonal kWh sales pattern and is not impacted by earnings of the Company.

The second step will address the amortization of excess deferred taxes previously collected from customers. APS is analyzing the final impact of the Tax Act provisions related to deferred taxes and intends to make a second TEAM filing in August 2018.

The TEAM expressly applies to APS's retail rates with the exception noted above. As discussed under "Transmission Rates, Transmission Cost Adjustor and Other Transmission Matters" above, FERC issued an order on May 22, 2018 authorizing APS to provide for the cost reductions resulting from the income tax changes in its wholesale transmission rates.

Net Metering

In 2015, the ACC voted to conduct a generic evidentiary hearing on the value and cost of DG to gather information that will inform the ACC on net metering issues and cost of service studies in upcoming utility rate cases. A hearing was held in April 2016. On October 7, 2016, the Administrative Law Judge issued a recommendation in the docket concerning the value and cost of DG solar installations. On December 20, 2016, the ACC completed its open meeting to consider the recommended opinion and order by the Administrative Law Judge. After making several amendments, the ACC approved the recommended decision by a 4-1 vote. As a result of the ACC's action, effective as of APS's 2017 Rate Case Decision, the net metering tariff that governs payments for energy exported to the grid from residential rooftop solar systems was replaced by a more formula-driven approach that utilizes inputs from historical wholesale solar power until an avoided cost methodology is developed by the ACC.

As amended, the decision provides that payments by utilities for energy exported to the grid from DG solar facilities will be determined using a RCP methodology, a method that is based on the price that APS pays for utility-scale solar projects on a five year rolling average, while a forecasted avoided cost methodology is being developed. The price established by this RCP method will be updated annually (between general retail

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rate cases) but will not be decreased by more than 10% per year. Once the avoided cost methodology is developed, the ACC will determine in APS's subsequent rate cases which method (or a combination of methods) is appropriate to determine the actual price to be paid by APS for exported distributed energy.

In addition, the ACC made the following determinations:

- Customers who have interconnected a DG system or submitted an application for interconnection for DG systems prior to August 19, 2017, the date new rates were effective based on APS's 2017 Rate Case Decision, will be grandfathered for a period of 20 years from the date the customer's interconnection application was accepted by the utility;
- Customers with DG solar systems are to be considered a separate class of customers for ratemaking purposes; and
- Once an export price is set for APS, no netting or banking of retail credits will be available for new DG customers, and the then-applicable export price will be guaranteed for new customers for a period of 10 years.

This decision of the ACC addresses policy determinations only. The decision states that its principles will be applied in future general retail rate cases, and the policy determinations themselves may be subject to future change, as are all ACC policies. A first-year export energy price of 12.9 cents per kWh is included in the 2017 Settlement Agreement and became effective on August 19, 2017.

In accordance with the 2017 Rate Case Decision, APS filed its request for a second-year export energy price of 11.6 cents per kWh on May 1, 2018. This price reflects the 10% annual reduction discussed above. APS has requested that the new tariff become effective on September 1, 2018.

On January 23, 2017, The Alliance for Solar Choice ("TASC") sought rehearing of the ACC's decision regarding the value and cost of DG. TASC asserted that the ACC improperly ignored the Administrative Procedure Act, failed to give adequate notice regarding the scope of the proceedings, and relied on information that was not submitted as evidence, among other alleged defects. TASC filed a Notice of Appeal in the Court of Appeals and filed a Complaint and Statutory Appeal in the Maricopa County Superior Court on March 10, 2017. As part of the 2017 Settlement Agreement described above, TASC agreed to withdraw these appeals when the ACC decision implementing the 2017 Settlement Agreement is no longer subject to appellate review.

Subpoena from Arizona Corporation Commissioner Robert Burns

On August 25, 2016, Commissioner Burns, individually and not by action of the ACC as a whole, served subpoenas in APS's then current retail rate proceeding on APS and Pinnacle West for the production of records and information relating to a range of expenditures from 2011 through 2016. The subpoenas requested information concerning marketing and advertising expenditures, charitable donations, lobbying expenses, contributions to 501(c)(3) and (c)(4) nonprofits and political contributions. The return date for the production of information was set as September 15, 2016. The subpoenas also sought testimony from Company personnel having knowledge of the material, including the Chief Executive Officer.

On September 9, 2016, APS filed with the ACC a motion to quash the subpoenas or, alternatively, to stay APS's obligations to comply with the subpoenas and decline to decide APS's motion pending court proceedings. Contemporaneously with the filing of this motion, APS and Pinnacle West filed a complaint for special action and declaratory judgment in the Superior Court of Arizona for Maricopa County, seeking a declaratory judgment that Commissioner Burns' subpoenas are contrary to law. On September 15, 2016, APS

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produced all non-confidential and responsive documents and offered to produce any remaining responsive documents that are confidential after an appropriate confidentiality agreement is signed.

On February 7, 2017, Commissioner Burns opened a new ACC docket and indicated that its purpose is to study and rectify problems with transparency and disclosure regarding financial contributions from regulated monopolies or other stakeholders who may appear before the ACC that may directly or indirectly benefit an ACC Commissioner, a candidate for ACC Commissioner, or key ACC Staff. As part of this docket, Commissioner Burns set March 24, 2017 as a deadline for the production of all information previously requested through the subpoenas. Neither APS nor Pinnacle West produced the information requested and instead objected to the subpoena. On March 10, 2017, Commissioner Burns filed suit against APS and Pinnacle West in the Superior Court of Arizona for Maricopa County in an effort to enforce his subpoenas. On March 30, 2017, APS filed a motion to dismiss Commissioner Burns' suit against APS and Pinnacle West. In response to the motion to dismiss, the court stayed the suit and ordered Commissioner Burns to file a motion to compel the production of the information sought by the subpoenas with the ACC. On June 20, 2017, the ACC denied the motion to compel.

On August 4, 2017, Commissioner Burns amended his complaint to add all of the ACC Commissioners and the ACC itself as defendants. All defendants moved to dismiss the amended complaint. On February 15, 2018, the Superior Court dismissed Commissioner Burns' amended complaint. On March 6, 2018, Burns filed an objection to the proposed final order from the Superior Court and a motion to further amend his complaint. The Superior Court permitted Commissioner Burns to amend his complaint to add a claim regarding his attempted investigation into whether his fellow commissioners should have been disqualified from voting on APS's 2017 rate case. Commissioner Burns has now served his second amended complaint, and responsive filings were due on June 25. All defendants filed responses opposing the second amended complaint and requested that it be dismissed. APS and Pinnacle West cannot predict the outcome of this matter.

Renewable Energy Ballot Initiative

On February 20, 2018, a renewable energy advocacy organization filed with the Arizona Secretary of State a ballot initiative for an Arizona constitutional amendment requiring Arizona public service corporations to procure 50% of their energy supply from renewable sources by 2030. For purposes of the proposed amendment, eligible renewable sources would not include nuclear generating facilities. The stated goal of the Clean Energy for a Healthy Arizona coalition ("Clean Energy") is to complete the necessary steps to allow the initiative to be placed on the November 2018 Arizona elections ballot. The coalition was required to present over 225,000 verifiable signatures to the Secretary of State by July 5, 2018 to meet that goal. On July 5, 2018, Clean Energy filed over 480,000 signatures with the Secretary of State. These signatures are being verified. A lawsuit was filed on July 19, 2018 challenging the validity of Clean Energy's July 5th submission to the Secretary of State, asserting that a majority of the signatures submitted were forged, collected from unregistered voters, and collected by unauthorized petitioners, among other items. We anticipate that the lawsuit and related legal proceedings will be fully resolved by late August or early September in time for ballots to be printed.

APS opposes the initiative. We estimate that the initiative would require APS to add over 5,500 MW of new resources above and beyond our 2017 Integrated Resource Plan estimates by 2030. This would equate to over \$10 billion in incremental capital investment by 2030. Further, APS would seek to recover costs associated with the forced early retirement of any existing facilities. At the time of a possible early retirement, the remaining book value and other certain costs associated with early shut down for Palo Verde and Four Corners could be \$1.9 billion and \$1.3 billion respectively. While we expect the initiative would significantly increase our rate base estimates, customer bills in 2030 would likely be double current bills.

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In March 2018, Arizona passed a law limiting penalties associated with violating this proposed constitutional amendment to no more than \$5,000 per violation. As with any legislation, an interested party could challenge the validity of this law. APS cannot predict the outcome of this matter.

Energy Modernization Plan

On January 30, 2018, ACC Commissioner Tobin proposed the Energy Modernization Plan, which consists of a series of energy policies tied to clean energy sources such as energy storage, biomass, energy efficiency, electric vehicles, and expanded energy planning through the integrated resource plans ("IRP") process. The Energy Modernization Plan includes replacing the current RES standard with a new standard called the CREST, which incorporates the proposals in the Energy Modernization Plan. The ACC has not yet initiated any formal proceedings with respect to Commissioner Tobin's proposal; however, on February 22, 2018, the ACC Staff filed a Notice of Inquiry to further examine the matter. As a part of this proposal, the ACC voted in March 2018 to direct utilities to develop a comprehensive biomass generation plan to be included in each utility's RES Implementation Plan. On July 5, 2018, Commissioner Tobin's office issued a set of draft CREST rules for the ACC's consideration. APS cannot predict the outcome of this matter.

Integrated Resource Planning

ACC rules require utilities to develop fifteen-year IRPs which describe how the utility plans to serve customer load in the plan timeframe. IRPs are filed with the ACC every even year, and are reviewed by ACC Staff to assess the adequacy of the plans. The ACC then determines if the IRP meets the requirements of the rule and, if so, acknowledges the IRP. In March of 2018, the ACC reviewed the 2017 IRPs of its jurisdictional utilities and voted to not acknowledge any plan. APS does not believe that this lack of acknowledgment will have a material impact on our financial position, results of operations or cash flows. APS's next IRP will be filed in 2020.

Four Corners

SCE-Related Matters. On December 30, 2013, APS purchased Southern California Edison Company's ("SCE's") 48% ownership interest in each of Units 4 and 5 of Four Corners. The 2012 Settlement Agreement includes a procedure to allow APS to request rate adjustments prior to its next general retail rate case related to APS's acquisition of the additional interests in Units 4 and 5 and the related closure of Units 1-3 of Four Corners. APS made its filing under this provision on December 30, 2013. On December 23, 2014, the ACC approved rate adjustments resulting in a revenue increase of \$57.1 million on an annual basis. This included the deferral for future recovery of all non-fuel operating costs for the acquired SCE interest in Four Corners, net of the non-fuel operating costs savings resulting from the closure of Units 1-3 from the date of closing of the purchase through its inclusion in rates. The 2012 Settlement Agreement also provided for deferral for future recovery of all unrecovered costs incurred in connection with the closure of Units 1-3. The deferral balance related to the acquisition of SCE's interest in Units 4 and 5 and the closure of Units 1-3 was \$52 million as of June 30, 2018 and is being amortized in rates over a total of 10 years. The ACC's rate adjustment decision was appealed and on September 26, 2017, the Court of Appeals affirmed the ACC's decision on the Four Corners rate adjustment.

As part of APS's acquisition of SCE's interest in Units 4 and 5, APS and SCE agreed, via a "Transmission Termination Agreement" that, upon closing of the acquisition, the companies would terminate an existing transmission agreement ("Transmission Agreement") between the parties that provides transmission capacity on a system (the "Arizona Transmission System") for SCE to transmit its portion of the output from

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Four Corners to California. APS previously submitted a request to FERC related to this termination, which resulted in a FERC order denying rate recovery of \$40 million that APS agreed to pay SCE associated with the termination. On December 22, 2015, APS and SCE agreed to terminate the Transmission Termination Agreement and allow for the Transmission Agreement to expire according to its terms, which includes settling obligations in accordance with the terms of the Transmission Agreement. APS established a regulatory asset of \$12 million in 2015 in connection with the payment required under the terms of the Transmission Agreement. On July 1, 2016, FERC issued an order denying APS's request to recover the regulatory asset through its FERC-jurisdictional rates. APS and SCE completed the termination of the Transmission Agreement on July 6, 2016. APS made the required payment to SCE and wrote-off the \$12 million regulatory asset and charged operating revenues to reflect the effects of this order in the second quarter of 2016. On July 29, 2016, APS filed a request for rehearing with FERC. In its order denying recovery, FERC also referred to its enforcement division a question of whether the agreement between APS and SCE relating to the settlement of obligations under the Transmission Agreement was a jurisdictional contract that should have been filed with FERC. On October 5, 2017, FERC issued an order denying APS's request for rehearing. FERC also upheld its prior determination that the agreement relating to the settlement was a jurisdictional contract and should have been filed with FERC. APS cannot predict whether or if the enforcement division will take any action. APS filed an appeal of FERC's July 1, 2016 and October 5, 2017 orders with the United States Court of Appeals for the Ninth Circuit on December 4, 2017. That proceeding is pending, and APS cannot predict the outcome of the proceeding.

SCR Cost Recovery. On December 29, 2017, in accordance with the 2017 Rate Case Decision, APS filed a Notice of Intent to file its SCR Rate Rider to permit recovery of costs associated with the installation of SCR equipment at Four Corners Units 4 and 5. APS filed the SCR Rate Rider in April 2018. Consistent with the 2017 Rate Case Decision, the rate rider filing was narrow in scope and addressed only costs associated with this specific environmental compliance equipment. Also, as provided for in the 2017 Rate Case Decision, APS requested that the rate rider become effective no later than January 1, 2019. The hearing for this matter is scheduled for September 2018.

Cholla

On September 11, 2014, APS announced that it would close Unit 2 of the Cholla Power Plant ("Cholla") and cease burning coal at the other APS-owned units (Units 1 and 3) at the plant by the mid-2020s, if the United States Environmental Protection Agency ("EPA") approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. APS closed Unit 2 on October 1, 2015. In early 2017, EPA approved a final rule incorporating APS's compromise proposal, which took effect on April 26, 2017.

Previously, APS estimated Cholla Unit 2's end of life to be 2033. APS has been recovering a return on and of the net book value of the unit in base rates. Pursuant to the 2017 Settlement Agreement described above, APS will be allowed continued recovery of the net book value of the unit and the unit's decommissioning and other retirement-related costs (\$97 million as of June 30, 2018), in addition to a return on its investment. In accordance with GAAP, in the third quarter of 2014, Unit 2's remaining net book value was reclassified from property, plant and equipment to a regulatory asset. The 2017 Settlement Agreement also shortened the depreciation lives of Cholla Units 1 and 3 to 2026.

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Navajo Plant

The co-owners of the Navajo Generating Station (the "Navajo Plant") and the Navajo Nation agreed that the Navajo Plant will remain in operation until December 2019 under the existing plant lease. The co-owners and the Navajo Nation executed a lease extension on November 29, 2017 that will allow for decommissioning activities to begin after the plant ceases operations in December 2019. Various stakeholders including regulators, tribal representatives, the plant's coal supplier and the U.S. Department of the Interior ("DOI") have been meeting to determine if an alternate solution can be reached that would permit continued operation of the plant beyond 2019. Although we cannot predict whether any alternate plans will be found that would be acceptable to all of the stakeholders and feasible to implement, we believe it is probable that the current owners of the Navajo Plant will cease operations in December 2019.

On February 14, 2017, the ACC opened a docket titled "ACC Investigation Concerning the Future of the Navajo Generating Station" with the stated goal of engaging stakeholders and negotiating a sustainable pathway for the Navajo Plant to continue operating in some form after December 2019. APS cannot predict the outcome of this proceeding.

APS is currently recovering depreciation and a return on the net book value of its interest in the Navajo Plant over its previously estimated life through 2026. APS will seek continued recovery in rates for the book value of its remaining investment in the plant (\$92 million as of June 30, 2018) plus a return on the net book value as well as other costs related to retirement and closure, which are still being assessed and may be material. APS believes it will be allowed recovery of the net book value, in addition to a return on its investment. In accordance with GAAP, in the second quarter of 2017, APS's remaining net book value of its interest in the Navajo Plant was reclassified from property, plant and equipment to a regulatory asset. If the ACC does not allow full recovery of the remaining net book value of this interest, all or a portion of the regulatory asset will be written off and APS's net income, cash flows, and financial position will be negatively impacted.

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Regulatory Assets and Liabilities

The detail of regulatory assets is as follows (dollars in thousands):

	Amortization Through	June 30, 2018		December 31, 2017	
		Current	Non-Current	Current	Non-Current
Pension	(a)	\$ —	\$ 604,556	\$ —	\$ 576,188
Retired power plant costs	2033	25,934	173,877	27,402	188,843
Income taxes — allowance for funds used during construction ("AFUDC") equity	2048	5,882	144,104	3,828	142,852
Deferred fuel and purchased power — mark-to-market (Note 7)	2022	42,684	45,047	52,100	34,845
Deferred fuel and purchased power (b) (d)	2019	74,898	—	75,637	—
Four Corners cost deferral	2024	8,077	44,267	8,077	48,305
Income taxes — investment tax credit basis adjustment	2046	1,066	25,850	1,066	26,218
Lost fixed cost recovery (b)	2019	48,484	—	59,844	—
Palo Verde VIEs (Note 6)	2046	—	19,705	—	19,395
Deferred compensation	2036	—	37,750	—	36,413
Deferred property taxes	2027	8,569	71,562	8,569	74,926
Loss on reacquired debt	2038	1,637	14,487	1,637	15,305
Tax expense of Medicare subsidy	2024	1,235	6,984	1,236	7,415
TCA balancing account (b)	2019	6,110	—	1,220	—
AG-1 deferral	2022	2,654	7,146	2,654	8,472
Mead-Phoenix transmission line CIAC	2050	332	10,210	332	10,376
Coal reclamation	2026	1,546	11,842	1,068	12,396
SCR deferral	N/A	—	9,482	—	353
Other	Various	451	6,193	3,418	—
Total regulatory assets (c)		\$ 229,559	\$ 1,233,062	\$ 248,088	\$ 1,202,302

(a) This asset represents the future recovery of pension benefit obligations through retail rates. If these costs are disallowed by the ACC, this regulatory asset would be charged to OCI and result in lower future revenues.

(b) See "Cost Recovery Mechanisms" discussion above.

(c) There are no regulatory assets for which the ACC has allowed recovery of costs, but not allowed a return by exclusion from rate base. FERC rates are set using a formula rate as described in "Transmission Rates, Transmission Cost Adjustor and Other Transmission Matters."

(d) Subject to a carrying charge.

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The detail of regulatory liabilities is as follows (dollars in thousands):

	Amortization Through	June 30, 2018		December 31, 2017	
		Current	Non-Current	Current	Non-Current
Excess deferred income taxes - ACC - Tax Cuts and Jobs Act	(a)	\$ —	\$ 1,265,229	\$ —	\$ 1,266,104
Excess deferred income taxes - FERC - Tax Cuts and Jobs Act	2058	6,246	245,594	—	254,170
Asset retirement obligations	2057	—	319,793	—	332,171
Removal costs	(b)	28,879	191,104	18,238	209,191
Other postretirement benefits	(d)	37,842	133,109	37,642	151,985
Income taxes — deferred investment tax credit	2046	2,137	51,784	2,164	52,497
Income taxes — change in rates	2046	2,799	72,790	2,573	70,537
Spent nuclear fuel	2027	6,617	59,873	6,924	62,132
Renewable energy standard (c)	2019	38,986	—	23,155	—
Demand side management (c)	2019	10,187	4,124	3,066	4,921
Sundance maintenance	2030	—	17,701	—	16,897
Deferred gains on utility property	2022	4,423	8,790	4,423	10,988
Four Corners coal reclamation	2038	1,858	18,296	1,858	18,921
Tax expense adjustor mechanism (c)	2018	13,865	—	—	—
Other	Various	2,918	815	43	2,022
Total regulatory liabilities		\$ 156,757	\$ 2,389,002	\$ 100,086	\$ 2,452,536

- (a) While the majority of the excess deferred tax balance shown is subject to special amortization rules under federal income tax laws, which require amortization of the balance over the remaining regulatory life of the related property, treatment of a portion of the liability, and the month in which pass-through of the excess deferred tax balance will begin is subject to regulatory approval. This approval will be sought through the Company's TEAM adjustor mechanism. As a result, the Company cannot estimate the amount of this regulatory liability which is expected to reverse within the next 12 months. See Note 15.
- (b) In accordance with regulatory accounting guidance, APS accrues for removal costs for its regulated assets, even if there is no legal obligation for removal.
- (c) See “Cost Recovery Mechanisms” discussion above.
- (d) See Note 5.

5. Retirement Plans and Other Postretirement Benefits

Pinnacle West sponsors a qualified defined benefit and account balance pension plan, a non-qualified supplemental excess benefit retirement plan, and an other postretirement benefit plan for the employees of Pinnacle West and our subsidiaries. Pinnacle West uses a December 31 measurement date for its pension and other postretirement benefit plans. The market-related value of our plan assets is their fair value at the measurement dates. Because of plan changes in September 2014, the Company sought IRS approval to move approximately \$186 million of other postretirement benefit trust assets into a new trust account to pay for active union employee medical costs. In December 2016, FERC approved a methodology for determining the amount of other postretirement benefit trust assets to transfer into a new trust account to pay for active union

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

employee medical costs. On January 2, 2018, these funds were moved to the new trust account which is included in the other special use funds on the Condensed Consolidated Balance Sheets. The Company negotiated a draft Closing Agreement granting tentative approval from the IRS prior to the transfer. Subsequent to the transfer, the Company submitted proof of the transfer to the IRS. The Company and the IRS executed a final Closing Agreement on March 2, 2018. Per the terms of an order from FERC, the Company must also make an informational filing with FERC. The Company made this FERC filing during February 2018. It is the Company's understanding that completion of these regulatory requirements permits access to approximately \$186 million for the sole purpose of paying active union employee medical benefits.

The following table provides details of the plans' net periodic benefit costs and the portion of these costs charged to expense (including administrative costs and excluding amounts capitalized as overhead construction or billed to electric plant participants) (dollars in thousands):

	Pension Benefits				Other Benefits			
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017	2018	2017	2018	2017
Service cost — benefits earned during the period	\$ 14,121	\$ 13,669	\$ 28,334	\$ 27,429	\$ 5,445	\$ 4,201	\$ 10,550	\$ 8,559
Non-service costs (credits):								
Interest cost on benefit obligation	31,338	32,177	62,345	64,878	6,973	7,415	14,074	14,980
Expected return on plan assets	(45,759)	(43,425)	(91,426)	(87,135)	(10,520)	(13,350)	(21,041)	(26,701)
Amortization of:								
Prior service cost (credit)	—	20	—	41	(9,461)	(9,461)	(18,921)	(18,921)
Net actuarial loss	8,259	11,460	16,041	23,950	—	1,104	—	2,559
Net periodic benefit cost (credit)	<u>\$ 7,959</u>	<u>\$ 13,901</u>	<u>\$ 15,294</u>	<u>\$ 29,163</u>	<u>\$ (7,563)</u>	<u>\$ (10,091)</u>	<u>\$ (15,338)</u>	<u>\$ (19,524)</u>
Portion of cost (credit) charged to expense	<u>\$ 2,769</u>	<u>\$ 6,894</u>	<u>\$ 5,011</u>	<u>\$ 14,461</u>	<u>\$ (5,119)</u>	<u>\$ (5,004)</u>	<u>\$ (10,724)</u>	<u>\$ (9,682)</u>

On January 1, 2018, we adopted new accounting standard ASU 2017-07, Compensation-Retirement Benefits: Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost. This new standard changed our income statement presentation of net periodic benefit cost/(credits) and allows only the service cost component of net periodic benefit cost to be eligible for capitalization. See Note 13 for additional information.

Contributions

We have made voluntary contributions of \$50 million to our pension plan year-to-date in 2018. The minimum required contributions for the pension plan are zero for the next three years. We expect to make voluntary contributions up to a total of \$250 million during the 2018-2020 period. We do not expect to make any contributions over the next three years to our other postretirement benefit plans. Year to date in 2018, the Company was reimbursed \$48 million for prior years retiree medical claims from the other postretirement benefit plan trust assets.

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6. Palo Verde Sale Leaseback Variable Interest Entities

In 1986, APS entered into agreements with three separate VIE lessor trust entities in order to sell and lease back interests in Palo Verde Unit 2 and related common facilities. APS will retain the assets through 2023 under one lease and 2033 under the other two leases. APS will be required to make payments relating to these leases of approximately \$23 million annually through 2023, and \$16 million annually for the period 2024 through 2033. At the end of the lease period, APS will have the option to purchase the leased assets at their fair market value, extend the leases for up to two years, or return the assets to the lessors.

The leases' terms give APS the ability to utilize the assets for a significant portion of the assets' economic life, and therefore provide APS with the power to direct activities of the VIEs that most significantly impact the VIEs' economic performance. Predominantly due to the lease terms, APS has been deemed the primary beneficiary of these VIEs and therefore consolidates the VIEs.

As a result of consolidation, we eliminate lease accounting and instead recognize depreciation expense, resulting in an increase in net income for the three and six months ended June 30, 2018 of \$ 5 million and \$ 10 million respectively, and for the three and six months ended June 30, 2017 of \$ 5 million and \$ 10 million, respectively, entirely attributable to the noncontrolling interests. Income attributable to Pinnacle West shareholders is not impacted by the consolidation.

Our Condensed Consolidated Balance Sheets at June 30, 2018 and December 31, 2017 include the following amounts relating to the VIEs (dollars in thousands):

	June 30, 2018	December 31, 2017
Palo Verde sale leaseback property plant and equipment, net of accumulated depreciation	\$ 107,710	\$ 109,645
Equity — Noncontrolling interests	127,415	129,040

Assets of the VIEs are restricted and may only be used for payment to the noncontrolling interest holders. These assets are reported on our condensed consolidated financial statements.

APS is exposed to losses relating to these VIEs upon the occurrence of certain events that APS does not consider to be reasonably likely to occur. Under certain circumstances (for example, the Nuclear Regulatory Commission ("NRC") issuing specified violation orders with respect to Palo Verde or the occurrence of specified nuclear events), APS would be required to make specified payments to the VIEs' noncontrolling equity participants and take title to the leased Unit 2 interests, which, if appropriate, may be required to be written down in value. If such an event were to occur during the lease periods, APS may be required to pay the noncontrolling equity participants approximately \$295 million beginning in 2018, and up to \$456 million over the lease terms.

For regulatory ratemaking purposes, the agreements continue to be treated as operating leases and, as a result, we have recorded a regulatory asset relating to the arrangements.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

7. Derivative Accounting

Derivative financial instruments are used to manage exposure to commodity price and transportation costs of electricity, natural gas, coal and emissions allowances, and in interest rates. Risks associated with market volatility are managed by utilizing various physical and financial derivative instruments, including futures, forwards, options and swaps. As part of our overall risk management program, we may use derivative instruments to hedge purchases and sales of electricity and fuels. Derivative instruments that meet certain hedge accounting criteria may be designated as cash flow hedges and are used to limit our exposure to cash flow variability on forecasted transactions. The changes in market value of such instruments have a high correlation to price changes in the hedged transactions. Derivative instruments are also entered into for economic hedging purposes. While economic hedges may mitigate exposure to fluctuations in commodity prices, these instruments have not been designated as accounting hedges. Contracts that have the same terms (quantities, delivery points and delivery periods) and for which power does not flow are netted, which reduces both revenues and fuel and purchased power costs in our Condensed Consolidated Statements of Income, but does not impact our financial condition, net income or cash flows.

Our derivative instruments, excluding those qualifying for a scope exception, are recorded on the balance sheet as an asset or liability and are measured at fair value. See Note 11 for a discussion of fair value measurements. Derivative instruments may qualify for the normal purchases and normal sales scope exception if they require physical delivery and the quantities represent those transacted in the normal course of business. Derivative instruments qualifying for the normal purchases and sales scope exception are accounted for under the accrual method of accounting and excluded from our derivative instrument discussion and disclosures below.

For its regulated operations, APS defers for future rate treatment 100% of the unrealized gains and losses on derivatives pursuant to the PSA mechanism that would otherwise be recognized in income. Realized gains and losses on derivatives are deferred in accordance with the PSA to the extent the amounts are above or below the Base Fuel Rate (see Note 4). Gains and losses from derivatives in the following tables represent the amounts reflected in income before the effect of PSA deferrals.

As of June 30, 2018 and December 31, 2017 , we had the following outstanding gross notional volume of derivatives, which represent both purchases and sales (does not reflect net position):

Commodity	Unit of Measure	Quantity	
		June 30, 2018	December 31, 2017
Power	GWh	1,371	583
Gas	Billion cubic feet	232	240

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Gains and Losses from Derivative Instruments

The following table provides information about gains and losses from derivative instruments in designated cash flow accounting hedging relationships during the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

Commodity Contracts	Financial Statement Location	Three Months Ended June 30,		Six Months Ended June 30,	
		2018	2017	2018	2017
Gain (Loss) Recognized in OCI on Derivative Instruments (Effective Portion)	OCI — derivative instruments	\$ —	\$ 11	\$ —	\$ (84)
Loss Reclassified from Accumulated OCI into Income (Effective Portion Realized) (a)	Fuel and purchased power (b)	(606)	(912)	(1,097)	(1,763)

(a) During the three and six months ended June 30, 2018 and 2017, we had no gains or losses reclassified from accumulated OCI to earnings due to the discontinuance of cash flow hedges where the forecasted transaction is not probable of occurring.

(b) Amounts are before the effect of PSA deferrals.

During the next twelve months, we estimate that a net loss of \$2 million before income taxes will be reclassified from accumulated OCI as an offset to the effect of market price changes for the related hedged transactions. In accordance with the PSA, these amounts will be recorded as either a regulatory asset or liability and have no immediate effect on earnings.

The following table provides information about gains and losses from derivative instruments not designated as accounting hedging instruments during the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

Commodity Contracts	Financial Statement Location	Three Months Ended June 30,		Six Months Ended June 30,	
		2018	2017	2018	2017
Net Loss Recognized in Income	Operating revenues	\$ (341)	\$ (58)	\$ (1,560)	\$ (346)
Net Gain (Loss) Recognized in Income	Fuel and purchased power (a)	3,384	(5,416)	(30,705)	(58,043)
Total		\$ 3,043	\$ (5,474)	\$ (32,265)	\$ (58,389)

(a) Amounts are before the effect of PSA deferrals.

Derivative Instruments in the Condensed Consolidated Balance Sheets

Our derivative transactions are typically executed under standardized or customized agreements, which include collateral requirements and, in the event of a default, would allow for the netting of positive and negative exposures associated with a single counterparty. Agreements that allow for the offsetting of positive and negative exposures associated with a single counterparty are considered master netting arrangements. Transactions with counterparties that have master netting arrangements are offset and reported net on the

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Condensed Consolidated Balance Sheets. Transactions that do not allow for offsetting of positive and negative positions are reported gross on the Condensed Consolidated Balance Sheets.

We do not offset a counterparty's current derivative contracts with the counterparty's non-current derivative contracts, although our master netting arrangements would allow current and non-current positions to be offset in the event of a default. Additionally, in the event of a default, our master netting arrangements would allow for the offsetting of all transactions executed under the master netting arrangement. These types of transactions may include non-derivative instruments, derivatives qualifying for scope exceptions, trade receivables and trade payables arising from settled positions, and other forms of non-cash collateral (such as letters of credit). These types of transactions are excluded from the offsetting tables presented below.

The following tables provide information about the fair value of our risk management activities reported on a gross basis, and the impacts of offsetting as of June 30, 2018 and December 31, 2017. These amounts relate to commodity contracts and are located in the assets and liabilities from risk management activities lines of our Condensed Consolidated Balance Sheets.

As of June 30, 2018: (dollars in thousands)	Gross Recognized Derivatives (a)	Amounts Offset (b)	Net Recognized Derivatives	Other (c)	Amount Reported on Balance Sheet
Current assets	\$ 6,916	\$ (4,821)	\$ 2,095	\$ 1,221	\$ 3,316
Investments and other assets	370	(370)	—	—	—
Total assets	7,286	(5,191)	2,095	1,221	3,316
Current liabilities	(51,478)	4,821	(46,657)	(2,439)	(49,096)
Deferred credits and other	(46,717)	370	(46,347)	—	(46,347)
Total liabilities	(98,195)	5,191	(93,004)	(2,439)	(95,443)
Total	\$ (90,909)	\$ —	\$ (90,909)	\$ (1,218)	\$ (92,127)

(a) All of our gross recognized derivative instruments were subject to master netting arrangements.

(b) No cash collateral has been provided to counterparties, or received from counterparties, that is subject to offsetting.

(c) Represents cash collateral and cash margin that are not subject to offsetting. Amounts relate to non-derivative instruments, derivatives qualifying for scope exceptions, or collateral and margin posted in excess of the recognized derivative instrument. Amounts include cash collateral received from counterparties of \$2,439 and cash margin provided to counterparties of \$1,221.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

As of December 31, 2017: (dollars in thousands)	Gross Recognized Derivatives (a)	Amounts Offset (b)	Net Recognized Derivatives	Other (c)	Amount Reported on Balance Sheet
Current assets	\$ 5,427	\$ (3,796)	\$ 1,631	\$ 300	\$ 1,931
Investments and other assets	1,292	(1,241)	51	—	51
Total assets	6,719	(5,037)	1,682	300	1,982
Current liabilities	(59,527)	3,796	(55,731)	(3,521)	(59,252)
Deferred credits and other	(38,411)	1,241	(37,170)	—	(37,170)
Total liabilities	(97,938)	5,037	(92,901)	(3,521)	(96,422)
Total	\$ (91,219)	\$ —	\$ (91,219)	\$ (3,221)	\$ (94,440)

- (a) All of our gross recognized derivative instruments were subject to master netting arrangements.
- (b) No cash collateral has been provided to counterparties, or received from counterparties, that is subject to offsetting.
- (c) Represents cash collateral and cash margin that is not subject to offsetting. Amounts relate to non-derivative instruments, derivatives qualifying for scope exceptions, or collateral and margin posted in excess of the recognized derivative instrument. Amounts include cash collateral received from counterparties of \$3,521 and cash margin provided to counterparties of \$300 .

Credit Risk and Credit Related Contingent Features

We are exposed to losses in the event of nonperformance or nonpayment by counterparties and have risk management contracts with many counterparties. As of June 30, 2018 , Pinnacle West has no counterparties with positive exposures of greater than 10% of risk management assets. Our risk management process assesses and monitors the financial exposure of all counterparties. Despite the fact that the great majority of our trading counterparties' debt is rated as investment grade by the credit rating agencies, there is still a possibility that one or more of these counterparties could default, resulting in a material impact on consolidated earnings for a given period. Counterparties in the portfolio consist principally of financial institutions, major energy companies, municipalities and local distribution companies. We maintain credit policies that we believe minimize overall credit risk to within acceptable limits. Determination of the credit quality of our counterparties is based upon a number of factors, including credit ratings and our evaluation of their financial condition. To manage credit risk, we employ collateral requirements and standardized agreements that allow for the netting of positive and negative exposures associated with a single counterparty. Valuation adjustments are established representing our estimated credit losses on our overall exposure to counterparties.

Certain of our derivative instrument contracts contain credit-risk-related contingent features including, among other things, investment grade credit rating provisions, credit-related cross-default provisions, and adequate assurance provisions. Adequate assurance provisions allow a counterparty with reasonable grounds for uncertainty to demand additional collateral based on subjective events and/or conditions. For those derivative instruments in a net liability position, with investment grade credit contingencies, the counterparties could demand additional collateral if our debt credit rating were to fall below investment grade (below BBB- for Standard & Poor's or Fitch or Baa3 for Moody's).

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following table provides information about our derivative instruments that have credit-risk-related contingent features at June 30, 2018 (dollars in thousands):

	June 30, 2018
Aggregate fair value of derivative instruments in a net liability position	\$ 98,195
Cash collateral posted	—
Additional cash collateral in the event credit-risk-related contingent features were fully triggered (a)	91,300

- (a) This amount is after counterparty netting and includes those contracts which qualify for scope exceptions, which are excluded from the derivative details above.

We also have energy-related non-derivative instrument contracts with investment grade credit-related contingent features, which could also require us to post additional collateral of approximately \$95 million if our debt credit ratings were to fall below investment grade.

8. Commitments and Contingencies

Palo Verde Generating Station

Spent Nuclear Fuel and Waste Disposal

On December 19, 2012, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a second breach of contract lawsuit against the United States Department of Energy ("DOE") in the United States Court of Federal Claims ("Court of Federal Claims"). The lawsuit sought to recover damages incurred due to DOE's breach of the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste ("Standard Contract") for failing to accept Palo Verde's spent nuclear fuel and high level waste from January 1, 2007 through June 30, 2011, as it was required to do pursuant to the terms of the Standard Contract and the Nuclear Waste Policy Act. On August 18, 2014, APS and DOE entered into a settlement agreement, stipulating to a dismissal of the lawsuit and payment of \$57.4 million by DOE to the Palo Verde owners for certain specified costs incurred by Palo Verde during the period January 1, 2007 through June 30, 2011. APS's share of this amount is \$16.7 million. Amounts recovered in the lawsuit and settlement were recorded as adjustments to a regulatory liability and had no impact on the amount of reported net income. In addition, the settlement agreement, as amended, provides APS with a method for submitting claims and getting recovery for costs incurred through December 31, 2019.

APS has submitted three claims pursuant to the terms of the August 18, 2014 settlement agreement, for three separate time periods during July 1, 2011 through June 30, 2016. The DOE has approved and paid \$65.2 million for these claims (APS's share is \$19 million). The amounts recovered were primarily recorded as adjustments to a regulatory liability and had no impact on reported net income. In accordance with the 2017 Rate Case Decision, this regulatory liability is being refunded to customers (see Note 4). APS's next claim pursuant to the terms of the August 18, 2014 settlement agreement was submitted to the DOE in the fourth quarter of 2017 in the amount of \$9 million (APS's share is \$2.6 million). In February 2018, the DOE approved this claim, and in March 2018, the DOE paid this claim. The amounts recovered were primarily recorded as adjustments to a regulatory liability and had no impact on reported net income.

Nuclear Insurance

Public liability for incidents at nuclear power plants is governed by the Price-Anderson Nuclear Industries Indemnity Act ("Price-Anderson Act"), which limits the liability of nuclear reactor owners to the amount of insurance available from both commercial sources and an industry-wide retrospective payment plan. In accordance with the Price-Anderson Act, the Palo Verde participants are insured against public liability for a nuclear incident up to approximately \$13.1 billion per occurrence. Palo Verde maintains the maximum available nuclear liability insurance in the amount of \$450 million, which is provided by American Nuclear Insurers ("ANI"). The remaining balance of approximately \$12.6 billion of liability coverage is provided through a mandatory industry-wide retrospective premium program. If losses at any nuclear power plant covered by the program exceed the accumulated funds, APS could be responsible for retrospective premiums. The maximum retrospective premium per reactor under the program for each nuclear liability incident is approximately \$127.3 million, subject to a maximum annual premium of \$19 million per incident. Based on APS's ownership interest in the three Palo Verde units, APS's maximum retrospective premium per incident for all three units is approximately \$111.1 million, with a maximum annual retrospective premium of approximately \$16.6 million.

The Palo Verde participants maintain insurance for property damage to, and decontamination of, property at Palo Verde in the aggregate amount of \$2.8 billion. APS has also secured accidental outage insurance for a sudden and unforeseen accidental outage of any of the three units. The property damage, decontamination, and accidental outage insurance are provided by Nuclear Electric Insurance Limited ("NEIL"). APS is subject to retrospective premium adjustments under all NEIL policies if NEIL's losses in any policy year exceed accumulated funds. The maximum amount APS could incur under the current NEIL policies totals approximately \$24.8 million for each retrospective premium assessment declared by NEIL's Board of Directors due to losses. In addition, NEIL policies contain rating triggers that would result in APS providing approximately \$71.2 million of collateral assurance within 20 business days of a rating downgrade to non-investment grade. The insurance coverage discussed in this and the previous paragraph is subject to certain policy conditions, sublimits and exclusions.

Contractual Obligations

During the second quarter of 2018, our fuel and purchased power commitments decreased approximately \$230 million primarily due to the amended and restated Four Corners 2016 Coal Supply Agreement. The majority of these changes relate to the years 2023 and thereafter.

Other than the items described above, there have been no material changes, as of June 30, 2018, outside the normal course of business in contractual obligations from the information provided in our 2017 Form 10-K. See Note 3 for discussion regarding changes in our long-term debt obligations.

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Superfund-Related Matters

The Comprehensive Environmental Response Compensation and Liability Act ("Superfund" or "CERCLA") establishes liability for the cleanup of hazardous substances found contaminating the soil, water or air. Those who generated, transported or disposed of hazardous substances at a contaminated site are among those who are potentially responsible parties ("PRPs"). PRPs may be strictly, and often are jointly and severally, liable for clean-up. On September 3, 2003, EPA advised APS that EPA considers APS to be a PRP in the Motorola 52nd Street Superfund Site, Operable Unit 3 ("OU3") in Phoenix, Arizona. APS has facilities that are within this Superfund site. APS and Pinnacle West have agreed with EPA to perform certain investigative activities of the APS facilities within OU3. In addition, on September 23, 2009, APS agreed with EPA and one other PRP to voluntarily assist with the funding and management of the site-wide groundwater remedial investigation and feasibility study ("RI/FS"). Based upon discussions between the OU3 working group parties and EPA, along with the results of recent technical analyses prepared by the OU3 working group to supplement the RI/FS, APS anticipates finalizing the RI/FS in the spring of 2019. We estimate that our costs related to this investigation and study will be approximately \$2 million. We anticipate incurring additional expenditures in the future, but because the overall investigation is not complete and ultimate remediation requirements are not yet finalized, at the present time expenditures related to this matter cannot be reasonably estimated.

On August 6, 2013, the Roosevelt Irrigation District ("RID") filed a lawsuit in Arizona District Court against APS and 24 other defendants, alleging that RID's groundwater wells were contaminated by the release of hazardous substances from facilities owned or operated by the defendants. The lawsuit also alleges that, under Superfund laws, the defendants are jointly and severally liable to RID. The allegations against APS arise out of APS's current and former ownership of facilities in and around OU3. As part of a state governmental investigation into groundwater contamination in this area, on January 25, 2015, the Arizona Department of Environmental Quality ("ADEQ") sent a letter to APS seeking information concerning the degree to which, if any, APS's current and former ownership of these facilities may have contributed to groundwater contamination in this area. APS responded to ADEQ on May 4, 2015. On December 16, 2016, two RID environmental and engineering contractors filed an ancillary lawsuit for recovery of costs against APS and the other defendants in the RID litigation. That same day, another RID service provider filed an additional ancillary CERCLA lawsuit against certain of the defendants in the main RID litigation, but excluded APS and certain other parties as named defendants. Because the ancillary lawsuits concern past costs allegedly incurred by these RID vendors, which were ruled unrecoverable directly by RID in November of 2016, the additional lawsuits do not increase APS's exposure or risk related to these matters.

On April 5, 2018, RID and the defendants in that particular litigation executed a settlement agreement, fully resolving RID's CERCLA claims concerning both past and future cost recovery. APS's share of this settlement was immaterial. In addition, the two environmental and engineering vendors voluntarily dismissed their lawsuit against APS and the other named defendants without prejudice. An order to this effect was entered on April 17, 2018. With this disposition of the case, the vendors may file their lawsuit again in the future. In addition, APS and certain other parties not named in the remaining RID service provider lawsuit may be brought into the litigation via third-party complaints filed by the current direct defendants. We are unable to predict the outcome of these matters; however, we do not expect the outcome to have a material impact on our financial position, results of operations or cash flows.

Environmental Matters

APS is subject to numerous environmental laws and regulations affecting many aspects of its present and future operations, including air emissions of both conventional pollutants and greenhouse gases, water quality, wastewater discharges, solid waste, hazardous waste, and coal combustion residuals ("CCRs"). These

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laws and regulations can change from time to time, imposing new obligations on APS resulting in increased capital, operating, and other costs. Associated capital expenditures or operating costs could be material. APS intends to seek recovery of any such environmental compliance costs through our rates, but cannot predict whether it will obtain such recovery. The following proposed and final rules involve material compliance costs to APS.

Regional Haze Rules. APS has received the final rulemaking imposing new pollution control requirements on Four Corners and the Navajo Plant. EPA will require these plants to install pollution control equipment that constitutes best available retrofit technology ("BART") to lessen the impacts of emissions on visibility surrounding the plants. In addition, EPA has issued a final rule for Regional Haze compliance at Cholla that does not involve the installation of new pollution controls and that will replace an earlier BART determination for this facility. See below for details of the Cholla BART approval.

Four Corners. Based on EPA's final standards, APS's 63% share of the cost of required controls for Four Corners Units 4 and 5 is approximately \$400 million. In addition, APS and El Paso Electric Company ("El Paso") entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in Four Corners Units 4 and 5. 4CA purchased the El Paso interest on July 6, 2016. Navajo Transitional Energy Company, LLC ("NTEC") purchased the interest from 4CA on July 3, 2018. See "Four Corners Coal Supply Agreement - 4CA Matter" below for a discussion of the NTEC purchase. The cost of the pollution controls related to the 7% interest is approximately \$45 million, which was assumed by NTEC through its purchase of the 7% interest.

Navajo Plant. APS estimates that its share of costs for upgrades at the Navajo Plant, based on EPA's Federal Implementation Plan ("FIP"), could be up to approximately \$200 million; however, given the future plans for the Navajo Plant, we do not expect to incur these costs. See "Navajo Plant" in Note 4 for information regarding future plans for the Navajo Plant.

Cholla. APS believed that EPA's original 2012 final rule establishing controls constituting BART for Cholla, which would require installation of SCR controls, was unsupported and that EPA had no basis for disapproving Arizona's State Implementation Plan ("SIP") and promulgating a FIP that was inconsistent with the state's considered BART determinations under the regional haze program. In September 2014, APS met with EPA to propose a compromise BART strategy. APS would permanently close Cholla Unit 2 and cease burning coal at Units 1 and 3 by the mid-2020s. (See Note 4 for details related to the resulting regulatory asset.) APS made the proposal with the understanding that additional emission control equipment is unlikely to be required in the future because retiring and/or converting the units as contemplated in the proposal is more cost effective than, and will result in increased visibility improvement over, the current BART requirements for NOx imposed on the Cholla units under EPA's BART FIP.

On October 16, 2015, ADEQ issued a revised operating permit for Cholla, which incorporates APS's proposal, and subsequently submitted a proposed revision to the SIP to EPA, which would incorporate the new permit terms. On June 30, 2016, EPA issued a proposed rule approving a revision to the Arizona SIP that incorporates APS's compromise approach for compliance with the Regional Haze program. In early 2017, EPA approved a final rule incorporating APS's compromise proposal, which took effect for Cholla on April 26, 2017.

Coal Combustion Waste. On December 19, 2014, EPA issued its final regulations governing the handling and disposal of CCR, such as fly ash and bottom ash. The rule regulates CCR as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act ("RCRA") and establishes national minimum criteria for existing and new CCR landfills and surface impoundments and all lateral expansions

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consisting of location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post closure care, and recordkeeping, notification, and internet posting requirements. The rule generally requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close, and further requires the closure of any CCR landfill or surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity.

On December 16, 2016, President Obama signed the Water Infrastructure Improvements for the Nation ("WIIN") Act into law, which contains a number of provisions requiring EPA to modify the self-implementing provisions of the Agency's current CCR rules under Subtitle D. Such modifications include new EPA authority to directly enforce the CCR rules through the use of administrative orders and providing states, like Arizona, where the Cholla facility is located, the option of developing CCR disposal unit permitting programs, subject to EPA approval. For facilities in states that do not develop state-specific permitting programs, EPA is required to develop a federal permit program, pending the availability of congressional appropriations. By contrast, for facilities located within the boundaries of Native American tribal reservations, such as the Navajo Nation, where the Navajo Plant and Four Corners facilities are located, EPA is required to develop a federal permit program regardless of appropriated funds.

ADEQ has initiated a process to evaluate how to develop a state CCR permitting program that would cover electric generating units ("EGUs"), including Cholla. While APS has been working with ADEQ on the development of this program, we are unable to predict when Arizona will be able to finalize and secure EPA approval for a state-specific CCR permitting program. With respect to the Navajo Nation, APS has sought clarification as to when and how EPA would be initiating permit proceedings for facilities on the reservation, including Four Corners. We are unable to predict at this time when EPA will be issuing CCR management permits for the facilities on the Navajo Nation. At this time, it remains unclear how the CCR provisions of the WIIN Act will affect APS and its management of CCR.

Based upon utility industry petitions for EPA to reconsider the RCRA Subtitle D regulations for CCR, which were premised in part on the CCR provisions of the 2016 WIIN Act, on September 13, 2017 EPA agreed to evaluate whether to revise these federal CCR regulations. On March 1, 2018, EPA issued a proposed rule that, among other things, seeks comment on potential changes to the federal CCR regulations, including allowances for greater flexibility in setting groundwater protection standards for certain regulated CCR constituents and with respect to implementing corrective action. On July 17, 2018, EPA finalized a revision to its RCRA Subtitle D regulations for CCR only addressing certain portions of EPA's March 2018 proposal, while deferring for further consideration the vast majority of the potential regulatory changes contemplated in the March 2018 proposal. For the final rule issued on July 17, 2018, EPA established nationwide health-based standards for certain constituents of CCR subject to groundwater corrective action and delayed the closure deadlines for certain unlined CCR surface impoundments by 18 months. These changes to the federal regulations governing CCR disposal are unlikely to have a material impact on APS. As for those aspects of the March 2018 rulemaking proposal for which EPA has yet to take final action, it remains unclear which specific provisions of the federal CCR rules will ultimately be modified, how they will be modified, or when such modification will occur.

Pursuant to a June 24, 2016 order by the D.C. Circuit Court of Appeals in the litigation by industry- and environmental-groups challenging EPA's CCR regulations, within the next 2 years EPA is required to complete a rulemaking proceeding concerning whether or not boron must be included on the list of groundwater constituents that might trigger corrective action under EPA's CCR rules. Simultaneously with the issuance of EPA's proposed modifications to the federal CCR rules in response to industry petitions, on March 1, 2018, EPA issued a proposed rule seeking comment as to whether or not boron should be included on this

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

list. EPA is not required to take final action approving the inclusion of boron. Should EPA take final action adding boron to the list of groundwater constituents that might trigger corrective action, any resulting corrective action measures may increase APS's costs of compliance with the CCR rule at our coal-fired generating facilities. At this time APS cannot predict the eventual results of this rulemaking proceeding concerning boron.

APS currently disposes of CCR in ash ponds and dry storage areas at Cholla and Four Corners. APS estimates that its share of incremental costs to comply with the CCR rule for Four Corners is approximately \$22 million and its share of incremental costs to comply with the CCR rule for Cholla is approximately \$20 million. The Navajo Plant currently disposes of CCR in a dry landfill storage area. APS estimates that its share of incremental costs to comply with the CCR rule for the Navajo Plant is approximately \$1 million. Additionally, the CCR rule requires ongoing, phased groundwater monitoring. By October 17, 2017, electric utility companies that own or operate CCR disposal units, such as APS, must have collected sufficient groundwater sampling data to initiate a detection monitoring program. To the extent that certain threshold constituents are identified through this initial detection monitoring at levels above the CCR rule's standards, the rule required the initiation of an assessment monitoring program by April 15, 2018. If this assessment monitoring program reveals concentrations of certain constituents above the CCR rule standards that trigger remedial obligations, a corrective measures evaluation must be completed by April 2019. Depending upon the results of such groundwater monitoring and data evaluations at each of Cholla, Four Corners and the Navajo Plant, we may be required to take corrective actions, including the closure of certain CCR disposal units, the costs of which we are unable to reasonably estimate at this time.

Clean Power Plan. On August 3, 2015, EPA finalized carbon pollution standards for EGUs. Shortly thereafter, a coalition of states, industry groups and electric utilities challenged the legality of these standards, including EPA's Clean Power Plan for existing EGUs, in the U.S. Court of Appeals for the D.C. Circuit. On February 9, 2016, the U.S. Supreme Court granted a stay of the Clean Power Plan pending judicial review of the rule, which temporarily delays compliance obligations under the Clean Power Plan. On March 28, 2017, President Trump issued an Executive Order that, among other things, instructs EPA to reevaluate Agency regulations concerning carbon emissions from EGUs and take appropriate action to suspend, revise or rescind the August 2015 carbon pollution standards for EGUs, including the Clean Power Plan. Also on March 28, 2017, the U.S. Department of Justice, on behalf of EPA, filed a motion with the U.S. Court of Appeals for the D.C. Circuit Court to hold the ongoing litigation over the Clean Power Plan in abeyance pending EPA action in accordance with the Executive Order. At this time, the D.C. Circuit Court proceedings evaluating the legality of the Clean Power Plan remain on hold.

Based upon EPA's reevaluation of the August 2015 carbon pollution standards and the legal basis for these regulations, on October 10, 2017, EPA issued a proposal to repeal the Clean Power Plan. That proposal relies on EPA's current view as to the Agency's legal authority under Clean Air Act Section 111(d), which (in contrast to the Clean Power Plan) would limit the scope of any future Section 111(d) regulations to measures undertaken exclusively at a power plant's source of greenhouse gas ("GHG") emissions. On December 18, 2017, EPA issued an Advanced Notice of Proposed Rulemaking through which EPA is soliciting comments as to potential replacements for the Clean Power Plan that would be consistent with EPA's current legal interpretation of the Clean Air Act.

We cannot predict the outcome of EPA's regulatory actions related to the August 2015 carbon pollution standards for EGU's, including any actions related to EPA's repeal proposal for the Clean Power Plan or additional rulemaking actions to develop regulations replacing the Clean Power Plan. In addition, we cannot predict whether the D.C. Circuit Court will continue to hold the litigation challenging the original Clean Power Plan in abeyance in light of EPA's repeal proposal.

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Other environmental rules that could involve material compliance costs include those related to effluent limitations, the ozone national ambient air quality standard and other rules or matters involving the Clean Air Act, Clean Water Act, Endangered Species Act, RCRA, Superfund, the Navajo Nation, and water supplies for our power plants. The financial impact of complying with current and future environmental rules could jeopardize the economic viability of our coal plants or the willingness or ability of power plant participants to fund any required equipment upgrades or continue their participation in these plants. The economics of continuing to own certain resources, particularly our coal plants, may deteriorate, warranting early retirement of those plants, which may result in asset impairments. APS would seek recovery in rates for the book value of any remaining investments in the plants as well as other costs related to early retirement, but cannot predict whether it would obtain such recovery.

Federal Agency Environmental Lawsuit Related to Four Corners

On April 20, 2016, several environmental groups filed a lawsuit against the Office of Surface Mining Reclamation and Enforcement ("OSM") and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the Endangered Species Act ("ESA") and the National Environmental Policy Act ("NEPA") in providing the federal approvals necessary to extend operations at the Four Corners Power Plant and the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016.

On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. On September 11, 2017, the Arizona District Court issued an order granting NTEC's motion, dismissing the litigation with prejudice, and terminating the proceedings. On November 9, 2017, the environmental group plaintiffs appealed the district court order dismissing their lawsuit. We cannot predict whether this appeal will be successful and, if it is successful, the outcome of further district court proceedings.

Four Corners National Pollutant Discharge Elimination System ("NPDES") Permit

On July 16, 2018, several environmental groups filed a petition for review before the EPA Environmental Appeals Board ("EAB") concerning the NPDES wastewater discharge permit for Four Corners, which was reissued on June 12, 2018. The environmental groups allege that the permit was reissued in contravention of several requirements under the Clean Water Act and did not contain required provisions concerning EPA's 2015 revised effluent limitation guidelines for steam-electric EGUs, 2014 existing-source regulations governing cooling-water intake structures, and effluent limits for surface seepage and subsurface discharges from coal-ash disposal facilities. These groups are seeking to have the permit remanded back to EPA for revision to address these allegations. At this time, we cannot predict whether this EAB permit appeal will be successful, and if so whether the results of those proceedings will have a material impact on our financial position, results of operations or cash flows.

Four Corners Coal Supply Agreement

Arbitration

On June 13, 2017, APS received a Demand for Arbitration from NTEC in connection with the Coal Supply Agreement, dated December 30, 2013, under which NTEC supplies coal to APS and the other Four Corners owners (collectively, the "Buyer") for use at the Four Corners Power Plant (the "2016 Coal Supply

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Agreement"). NTEC was originally seeking a declaratory judgment to support its interpretation of a provision regarding uncontrollable forces in the agreement that relates to annual minimum quantities of coal to be purchased by the Buyer. NTEC also alleged a shortfall in the Buyer's purchases for the initial contract year of approximately \$30 million. APS's share of this amount is approximately \$17 million. On September 20, 2017, NTEC amended its Demand for Arbitration, removing its request for a declaratory judgment and at such time was only seeking relief for the alleged shortfall in the Buyer's purchases for the initial contract year.

On June 29, 2018, the parties settled the dispute for \$45 million, which includes settlement for the initial contract year and the current contract year. APS's share of this amount is approximately \$34 million. In connection with the settlement, the parties amended the 2016 Coal Supply Agreement, including modifying the provisions that gave rise to this dispute. (See "4CA Matter" below for additional matters agreed to between 4CA and NTEC in the settlement arrangement.) The arbitration was dismissed on July 9, 2018.

Coal Advance Purchase

As part of the on-going discussions between the parties, on March 12, 2018, APS paid to NTEC approximately \$24 million as an advance payment for APS's share of coal under the 2016 Coal Supply Agreement. The coal inventory purchased represents an amount that APS expects to use for its plant operations within the next year.

4CA Matter

On July 6, 2016, 4CA purchased El Paso's 7% interest in Four Corners. NTEC had the option to purchase the 7% interest within a certain timeframe pursuant to an option granted to NTEC. On December 29, 2015, NTEC provided notice of its intent to exercise the option. The purchase did not occur during the originally contemplated timeframe. Concurrent with the settlement of the 2016 Coal Supply Agreement matter described above, NTEC and 4CA agreed to allow for the purchase by NTEC of the 7% interest, consistent with the option. On June 29, 2018, 4CA and NTEC entered into an asset purchase agreement providing for the sale to NTEC of 4CA's 7% interest in Four Corners. Completion of the sale was subject to the receipt of approval by FERC, which was received on July 2, 2018, and the sale transaction closed on July 3, 2018. NTEC purchased the 7% interest at 4CA's book value, approximately \$70 million, and will pay 4CA the purchase price over a period of four years pursuant to a secured interest-bearing promissory note. The related assets and liabilities are reported as held for sale on Pinnacle West's balance sheet at June 30, 2018. In connection with the sale, Pinnacle West guaranteed certain obligations that NTEC will have to the other owners of Four Corners, such as NTEC's 7% share of capital expenditures and operating and maintenance expenses. Pinnacle West's guarantee is secured by a portion of APS's payments to be owed to NTEC under the 2016 Coal Supply Agreement.

The 2016 Coal Supply Agreement contained alternate pricing terms for the 7% interest in the event NTEC did not purchase the interest. Until the time that NTEC purchased the 7% interest, the alternate pricing provisions were applicable to 4CA as the holder of the 7% interest. These terms included a formula under which NTEC must make certain payments to 4CA for reimbursement of operations and maintenance costs and a specified rate of return, offset by revenue generated by 4CA's power sales. Such payments are due to 4CA at the end of each calendar year. A \$10 million payment was due to 4CA at December 31, 2017, which NTEC satisfied by directing to 4CA a prepayment from APS of a portion of a future mine reclamation obligation. The balance of the amount under this formula at June 30, 2018 for the calendar year 2017 is approximately \$20 million, which is due to 4CA at December 31, 2018. The balance of the amount under this formula at June 30, 2018 for the calendar year 2018 (up to the date that NTEC purchased the 7% interest) is approximately \$10 million, which is due to 4CA at December 31, 2019.

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Financial Assurances

In the normal course of business, we obtain standby letters of credit and surety bonds from financial institutions and other third parties. These instruments guarantee our own future performance and provide third parties with financial and performance assurance in the event we do not perform. These instruments support commodity contract collateral obligations and other transactions. As of June 30, 2018, standby letters of credit totaled \$5 million and will expire in 2018 and 2019. As of June 30, 2018, surety bonds expiring through 2019 totaled \$36 million. The underlying liabilities insured by these instruments are reflected on our balance sheets, where applicable. Therefore, no additional liability is reflected for the letters of credit and surety bonds themselves.

We enter into agreements that include indemnification provisions relating to liabilities arising from or related to certain of our agreements. Most significantly, APS has agreed to indemnify the equity participants and other parties in the Palo Verde sale leaseback transactions with respect to certain tax matters. Generally, a maximum obligation is not explicitly stated in the indemnification provisions and, therefore, the overall maximum amount of the obligation under such indemnification provisions cannot be reasonably estimated. Based on historical experience and evaluation of the specific indemnities, we do not believe that any material loss related to such indemnification provisions is likely.

Pinnacle West has issued parental guarantees and has provided indemnification under certain surety bonds for APS which were not material at June 30, 2018. Since July 6, 2016, Pinnacle West has issued four parental guarantees for 4CA relating to payment obligations arising from 4CA's acquisition of El Paso's 7% interest in Four Corners, and pursuant to the Four Corners participation agreement payment obligations arising from 4CA's ownership interest in Four Corners, three of which will terminate in connection with the sale of 4CA's 7% interest to NTEC. (See "Four Corners Coal Supply Agreement - 4CA Matter" above for information related to this sale.)

In connection with the sale of 4CA's 7% interest to NTEC, Pinnacle West is guaranteeing certain obligations that NTEC will have to the other owners of Four Corners. (See "Four Corners Coal Supply Agreement - 4CA Matter" above for information related to this guarantee.) A maximum obligation is not explicitly stated in the guarantee and, therefore, the overall maximum amount of the obligation under such guarantee cannot be reasonably estimated; however, we consider the fair value of this guarantee to be immaterial.

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9. Other Income and Other Expense

The following table provides detail of Pinnacle West's Consolidated other income and other expense for the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Other income:				
Interest income	\$ 2,408	\$ 387	\$ 4,299	\$ 864
Debt return on Four Corners SCR deferral (Note 4)	4,188	—	6,280	—
Miscellaneous	2	97	4	100
Total other income	\$ 6,598	\$ 484	\$ 10,583	\$ 964
Other expense:				
Non-operating costs	\$ (3,278)	\$ (3,401)	\$ (4,924)	\$ (5,360)
Investment losses — net	(174)	(227)	(350)	(528)
Miscellaneous	(319)	(194)	(1,726)	(1,614)
Total other expense	\$ (3,771)	\$ (3,822)	\$ (7,000)	\$ (7,502)

The following table provides detail of APS's other income and other expense for the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Other income:				
Interest income	\$ 2,046	\$ 257	\$ 3,724	\$ 596
Debt return on Four Corners SCR deferral (Note 4)	4,188	—	6,280	—
Miscellaneous	1	95	3	98
Total other income	\$ 6,235	\$ 352	\$ 10,007	\$ 694
Other expense:				
Non-operating costs	\$ (3,057)	\$ (3,149)	\$ (4,596)	\$ (4,899)
Miscellaneous	(315)	(152)	(1,722)	(1,530)
Total other expense	\$ (3,372)	\$ (3,301)	\$ (6,318)	\$ (6,429)

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10 . Earnings Per Share

The following table presents the calculation of Pinnacle West's basic and diluted earnings per share for the three and six months ended June 30, 2018 and 2017 (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net income attributable to common shareholders	\$ 166,738	\$ 167,443	\$ 169,959	\$ 190,755
Weighted average common shares outstanding — basic	112,115	111,797	112,067	111,763
Net effect of dilutive securities:				
Contingently issuable performance shares and restricted stock units	356	548	415	507
Weighted average common shares outstanding — diluted	112,471	112,345	112,482	112,270
Earnings per weighted-average common share outstanding				
Net income attributable to common shareholders — basic	\$ 1.49	\$ 1.50	\$ 1.52	\$ 1.71
Net income attributable to common shareholders — diluted	\$ 1.48	\$ 1.49	\$ 1.51	\$ 1.70

11 . Fair Value Measurements

We classify our assets and liabilities that are carried at fair value within the fair value hierarchy. This hierarchy ranks the quality and reliability of the inputs used to determine fair values, which are then classified and disclosed in one of three categories. The three levels of the fair value hierarchy are:

Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 — Other significant observable inputs, including quoted prices in active markets for similar assets or liabilities; quoted prices in markets that are not active, and model-derived valuations whose inputs are observable (such as yield curves).

Level 3 — Valuation models with significant unobservable inputs that are supported by little or no market activity. Instruments in this category include long-dated derivative transactions where valuations are unobservable due to the length of the transaction, options, and transactions in locations where observable market data does not exist. The valuation models we employ utilize spot prices, forward prices, historical market data and other factors to forecast future prices.

Assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. Thus, a valuation may be classified in Level 3 even though the valuation may include significant inputs that are readily observable. We maximize the use of observable inputs and minimize the use of unobservable inputs. We rely primarily on the market approach of using prices and other market information for identical and/or comparable assets and liabilities. If market data is not readily available, inputs may reflect our own assumptions about the inputs market participants would use. Our assessment of the inputs and the significance of a particular input to the fair value measurement requires judgment and may affect the valuation of fair value assets and liabilities as well as their placement within the fair value hierarchy levels.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

We assess whether a market is active by obtaining observable broker quotes, reviewing actual market activity, and assessing the volume of transactions. We consider broker quotes observable inputs when the quote is binding on the broker, we can validate the quote with market activity, or we can determine that the inputs the broker used to arrive at the quoted price are observable.

Certain instruments have been valued using the concept of NAV, as a practical expedient. These instruments are typically structured as investment companies offering shares or units to multiple investors for the purpose of providing a return. These instruments are similar to mutual funds; however, their NAV is generally not published and publicly available, nor are these instruments traded on an exchange. Instruments valued using NAV, as a practical expedient are included in our fair value disclosures however, in accordance with GAAP are not classified within the fair value hierarchy levels.

Recurring Fair Value Measurements

We apply recurring fair value measurements to cash equivalents, derivative instruments, and investments held in the nuclear decommissioning trust and other special use funds. On an annual basis we apply fair value measurements to plan assets held in our retirement and other benefit plans. See Note 7 in the 2017 Form 10-K for fair value discussion of plan assets held in our retirement and other benefit plans.

Cash Equivalents

Cash equivalents represent certain investments in money market funds that are valued using quoted prices in active markets.

Risk Management Activities — Derivative Instruments

Exchange traded commodity contracts are valued using unadjusted quoted prices. For non-exchange traded commodity contracts, we calculate fair value based on the average of the bid and offer price, discounted to reflect net present value. We maintain certain valuation adjustments for a number of risks associated with the valuation of future commitments. These include valuation adjustments for liquidity and credit risks. The liquidity valuation adjustment represents the cost that would be incurred if all unmatched positions were closed out or hedged. The credit valuation adjustment represents estimated credit losses on our net exposure to counterparties, taking into account netting agreements, expected default experience for the credit rating of the counterparties and the overall diversification of the portfolio. We maintain credit policies that management believes minimize overall credit risk.

Certain non-exchange traded commodity contracts are valued based on unobservable inputs due to the long-term nature of contracts, characteristics of the product, or the unique location of the transactions. Our long-dated energy transactions consist of observable valuations for the near-term portion and unobservable valuations for the long-term portions of the transaction. We rely primarily on broker quotes to value these instruments. When our valuations utilize broker quotes, we perform various control procedures to ensure the quote has been developed consistent with fair value accounting guidance. These controls include assessing the quote for reasonableness by comparison against other broker quotes, reviewing historical price relationships, and assessing market activity. When broker quotes are not available, the primary valuation technique used to calculate the fair value is the extrapolation of forward pricing curves using observable market data for more liquid delivery points in the same region and actual transactions at more illiquid delivery points.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

When the unobservable portion is significant to the overall valuation of the transaction, the entire transaction is classified as Level 3. Our classification of instruments as Level 3 is primarily reflective of the long-term nature of our energy transactions.

Our energy risk management committee, consisting of officers and key management personnel, oversees our energy risk management activities to ensure compliance with our stated energy risk management policies. We have a risk control function that is responsible for valuing our derivative commodity instruments in accordance with established policies and procedures. The risk control function reports to the chief financial officer's organization.

Investments Held in Nuclear Decommissioning Trust and Other Special Use Funds

The nuclear decommissioning trust and other special use funds invest in fixed income and equity securities. Other special use funds include the coal reclamation escrow account and the active union medical trust. See Note 12 for additional discussion about our investment accounts.

We value investments in fixed income and equity securities using information provided by our trustees and escrow agent. Our trustees and escrow agent use pricing services that utilize the valuation methodologies described below to determine fair market value. We have internal control procedures designed to ensure this information is consistent with fair value accounting guidance. These procedures include assessing valuations using an independent pricing source, verifying that pricing can be supported by actual recent market transactions, assessing hierarchy classifications, comparing investment returns with benchmarks, and obtaining and reviewing independent audit reports on the trustees' and escrow agent's internal operating controls and valuation processes.

Fixed Income Securities

Fixed income securities issued by the U.S. Treasury are valued using quoted active market prices and are typically classified as Level 1. Fixed income securities issued by corporations, municipalities, and other agencies, including mortgage-backed instruments, are valued using quoted inactive market prices, quoted active market prices for similar securities, or by utilizing calculations which incorporate observable inputs such as yield curves and spreads relative to such yield curves. These fixed income instruments are classified as Level 2. Whenever possible, multiple market quotes are obtained which enables a cross-check validation. A primary price source is identified based on asset type, class, or issue of securities.

Fixed income securities may also include short-term investments in certificates of deposit, variable rate notes, time deposit accounts, U.S. Treasury and Agency obligations, U.S. Treasury repurchase agreements, commercial paper, and other short term instruments. These instruments are valued using active market prices or utilizing observable inputs described above.

Equity Securities

The nuclear decommissioning trust's equity security investments are held indirectly through commingled funds. The commingled funds are valued using the funds' NAV as a practical expedient. The funds' NAV is primarily derived from the quoted active market prices of the underlying equity securities held by the funds. We may transact in these commingled funds on a semi-monthly basis at the NAV. The commingled funds are maintained by a bank and hold investments in accordance with the stated objective of tracking the performance of the S&P 500 Index. Because the commingled funds' shares are offered to a limited

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

group of investors, they are not considered to be traded in an active market. As these instruments are valued using NAV, as a practical expedient, they have not been classified within the fair value hierarchy.

The nuclear decommissioning trust and other special use funds may also hold equity securities that include exchange traded mutual funds and money market accounts for short-term liquidity purposes. These short-term, highly-liquid, investments are valued using active market prices.

Fair Value Tables

The following table presents the fair value at June 30, 2018 of our assets and liabilities that are measured at fair value on a recurring basis (dollars in thousands):

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (a) (Level 3)	Other		Balance at June 30, 2018
Assets						
Risk management activities — derivative instruments:						
Commodity contracts	\$ —	\$ 5,215	\$ 2,071	\$ (3,970) (b)		\$ 3,316
Nuclear decommissioning trust:						
Equity securities	6,041	—	—	625 (c)		6,666
U.S. commingled equity funds	—	—	—	426,574 (d)		426,574
U.S. Treasury debt	137,960	—	—	—		137,960
Corporate debt	—	107,225	—	—		107,225
Mortgage-backed debt securities	—	107,008	—	—		107,008
Municipal bonds	—	79,195	—	—		79,195
Other fixed income	—	9,015	—	—		9,015
Subtotal nuclear decommissioning trust	<u>144,001</u>	<u>302,443</u>	<u>—</u>	<u>427,199</u>		<u>873,643</u>
Other special use funds:						
Equity securities	14,310	—	—	1,260 (c)		15,570
U.S. Treasury debt	178,160	—	—	—		178,160
Municipal bonds	—	24,810	—	—		24,810
Subtotal other special use funds (e)	<u>192,470</u>	<u>24,810</u>	<u>—</u>	<u>1,260</u>		<u>218,540</u>
Total Assets	<u>\$ 336,471</u>	<u>\$ 332,468</u>	<u>\$ 2,071</u>	<u>\$ 424,489</u>		<u>\$ 1,095,499</u>
Liabilities						
Risk management activities — derivative instruments:						
Commodity contracts	\$ —	\$ (86,766)	\$ (11,429)	\$ 2,752 (b)		\$ (95,443)

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

- (a) Primarily consists of long-dated electricity contracts.
- (b) Represents counterparty netting, margin and collateral. See Note 7 .
- (c) Represents net pending securities sales and purchases.
- (d) Valued using NAV as a practical expedient and, therefore, are not classified in the fair value hierarchy.
- (e) Other special use funds related to 4CA totaling approximately \$2 million were reclassified to Assets Held For Sale on the Condensed Consolidated Balance Sheet. See Note 8 for discussion on the 4CA Matter.

The following table presents the fair value at December 31, 2017 of our assets and liabilities that are measured at fair value on a recurring basis (dollars in thousands):

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (a) (Level 3)	Other		Balance at December 31, 2017
Assets						
Cash equivalents	\$ 10,630	\$ —	\$ —	\$ —		\$ 10,630
Risk management activities — derivative instruments:						
Commodity contracts	—	5,683	1,036	(4,737)	(b)	1,982
Nuclear decommissioning trust:						
Cash and cash equivalents	7,224	—	—	109	(d)	7,333
U.S. commingled equity funds	—	—	—	417,390	(e)	417,390
U.S. Treasury debt	127,662	—	—	—		127,662
Corporate debt	—	114,007	—	—		114,007
Mortgage-backed debt securities	—	111,874	—	—		111,874
Municipal bonds	—	79,049	—	—		79,049
Other fixed income	—	13,685	—	—		13,685
Subtotal nuclear decommissioning trust	<u>134,886</u>	<u>318,615</u>	<u>—</u>	<u>417,499</u>		<u>871,000</u>
Other special use funds (c):	455	31,562	—	525		32,542
Total Assets	<u>\$ 145,971</u>	<u>\$ 355,860</u>	<u>\$ 1,036</u>	<u>\$ 413,287</u>		<u>\$ 916,154</u>
Liabilities						
Risk management activities — derivative instruments:						
Commodity contracts	<u>\$ —</u>	<u>\$ (78,646)</u>	<u>\$ (19,292)</u>	<u>\$ 1,516</u>	(b)	<u>\$ (96,422)</u>

- (a) Primarily consists of long-dated electricity contracts.
- (b) Represents counterparty netting, margin, and collateral. See Note 7.
- (c) Primarily consists of fixed income municipal bonds. Presented as coal reclamation escrow in 2017.
- (d) Represents nuclear decommissioning trust net pending securities sales and purchases.
- (e) Valued using NAV as a practical expedient and, therefore, are not classified in the fair value hierarchy.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Fair Value Measurements Classified as Level 3

The significant unobservable inputs used in the fair value measurement of our energy derivative contracts include broker quotes that cannot be validated as an observable input primarily due to the long-term nature of the quote. Significant changes in these inputs in isolation would result in significantly higher or lower fair value measurements. Changes in our derivative contract fair values, including changes relating to unobservable inputs, typically will not impact net income due to regulatory accounting treatment (see Note 4).

Because our forward commodity contracts classified as Level 3 are currently in a net purchase position, we would expect price increases of the underlying commodity to result in increases in the net fair value of the related contracts. Conversely, if the price of the underlying commodity decreases, the net fair value of the related contracts would likely decrease.

Other unobservable valuation inputs include credit and liquidity reserves which do not have a material impact on our valuations; however, significant changes in these inputs could also result in higher or lower fair value measurements.

The following tables provide information regarding our significant unobservable inputs used to value our risk management derivative Level 3 instruments at June 30, 2018 and December 31, 2017 :

Commodity Contracts	June 30, 2018 Fair Value (thousands)		Valuation Technique	Significant Unobservable Input	Range	Weighted-Average
	Assets	Liabilities				
Electricity:						
Forward Contracts (a)	\$ —	\$ 1,928	Discounted cash flows	Electricity forward price (per MWh)	\$20.43 - \$63.14	\$ 60.68
Option Contracts (b)	1,410	203	Option model	Electricity price volatilities	93% - 110%	101%
Natural Gas:						
Forward Contracts (a)	661	9,298	Discounted cash flows	Natural gas forward price (per MMBtu)	\$1.65 - \$2.82	\$ 2.32
Total	<u>\$ 2,071</u>	<u>\$ 11,429</u>				

(a) Includes swaps and physical and financial contracts.

(b) Electricity price volatilities are estimated based on historical forward price movements due to lack of market quotes for implied volatilities.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Commodity Contracts	December 31, 2017 Fair Value (thousands)		Valuation Technique	Significant Unobservable Input	Range	Weighted- Average
	Assets	Liabilities				
Electricity:						
Forward Contracts (a)	\$ 21	\$ 15,485	Discounted cash flows	Electricity forward price (per MWh)	\$18.51 - \$38.75	\$ 27.89
Natural Gas:						
Forward Contracts (a)	1,015	3,807	Discounted cash flows	Natural gas forward price (per MMBtu)	\$2.33 - \$3.11	\$ 2.71
Total	\$ 1,036	\$ 19,292				

(a) Includes swaps and physical and financial contracts.

The following table shows the changes in fair value for our risk management activities' assets and liabilities that are measured at fair value on a recurring basis using Level 3 inputs for the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

Commodity Contracts	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net derivative balance at beginning of period	\$ (19,754)	\$ (41,685)	\$ (18,256)	\$ (47,406)
Total net gains (losses) realized/unrealized:				
Included in OCI	—	(6)	—	(6)
Deferred as a regulatory asset or liability	(989)	4,252	(3,311)	(7,503)
Settlements	494	1,699	1,276	3,122
Transfers into Level 3 from Level 2	(2,534)	(4,350)	(4,979)	(4,388)
Transfers from Level 3 into Level 2	13,425	3,845	15,912	19,936
Net derivative balance at end of period	\$ (9,358)	\$ (36,245)	\$ (9,358)	\$ (36,245)
Net unrealized gains included in earnings related to instruments still held at end of period	\$ —	\$ —	\$ —	\$ —

Transfers between levels in the fair value hierarchy shown in the table above reflect the fair market value at the beginning of the period and are triggered by a change in the lowest significant input as of the end of the period. We had no significant Level 1 transfers to or from any other hierarchy level. Transfers in or out of Level 3 are typically related to our long-dated energy transactions that extend beyond available quoted periods.

Financial Instruments Not Carried at Fair Value

The carrying value of our short-term borrowings approximate fair value and are classified within Level 2 of the fair value hierarchy. See Note 3 for our long-term debt fair values.

12. Investments in Nuclear Decommissioning Trusts and Other Special Use Funds

We have investments in debt and equity securities held in Nuclear Decommissioning Trusts, Coal Reclamation Escrow Accounts, and an Active Union Employee Medical Trust. Investments in debt securities are classified as available-for-sale securities. We record both debt and equity security investments at their fair value on our Condensed Consolidated Balance Sheets. See Note 11 for a discussion of how fair value is

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

determined and the classification of the investments within the fair value hierarchy. The investments in each trust or escrow account are restricted for use and are intended to fund specified costs and activities as further described for each fund below.

Nuclear Decommissioning Trusts - To fund the future costs APS expects to incur to decommission Palo Verde, APS established external decommissioning trusts in accordance with NRC regulations. Third-party investment managers are authorized to buy and sell securities per stated investment guidelines. The trust funds are invested in fixed income securities and equity securities. Earnings and proceeds from sales and maturities of securities are reinvested in the trusts. Because of the ability of APS to recover decommissioning costs in rates, and in accordance with the regulatory treatment, APS has deferred realized and unrealized gains and losses (including other-than-temporary impairments) in other regulatory liabilities.

Coal Reclamation Escrow Accounts - APS and 4CA have investments restricted for the future coal mine reclamation funding related to Four Corners. These escrow accounts are primarily invested in fixed income securities. Earnings and proceeds from sales of securities are reinvested in the escrow accounts. Because of the ability of APS to recover coal reclamation costs in rates, and in accordance with the regulatory treatment, APS has deferred realized and unrealized gains and losses (including other-than-temporary impairments) in other regulatory liabilities. Activities relating to APS coal reclamation escrow account investments are included within the other special use funds in the table below.

Active Union Employee Medical Trust - APS has investments restricted for paying active union employee medical costs. These investments were transferred from APS other postretirement benefit trust assets into the active union employee medical trust in January 2018 (see Note 7 in the 2017 Form 10-K). These investments may be used to pay active union employee medical costs incurred in the current period and in future periods. The trust fund is invested primarily in fixed income securities. In accordance with the ratemaking treatment, APS has deferred the unrealized gains and losses (including other-than-temporary impairments) in other regulatory assets. Activities relating to active union employee medical trust investments are included within the other special use funds in the table below.

APS

The following tables present the unrealized gains and losses based on the original cost of the investment and summarizes the fair value of APS's nuclear decommissioning trust and other special use fund assets at June 30, 2018 and December 31, 2017 (dollars in thousands):

Investment Type:	June 30, 2018					Total Unrealized Gains	Total Unrealized Losses
	Fair Value			Total			
	Nuclear Decommissioning Trusts	Other Special Use Funds	Total				
Equity securities	\$ 432,615	\$ 14,109	\$ 446,724		\$ 254,342	\$ (1)	
Available for sale-fixed income securities	440,403	200,997	641,400	(a)	6,896	(9,804)	
Other	625	1,232	1,857	(b)	—	—	
Total	\$ 873,643	\$ 216,338	\$ 1,089,981		\$ 261,238	\$ (9,805)	

(a) As of June 30, 2018, the amortized cost basis of these available-for-sale investments is \$639 million.

(b) Represents net pending securities sales and purchases.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Investment Type:	December 31, 2017				
	Fair Value			Total Unrealized Gains	Total Unrealized Losses
	Nuclear Decommissioning Trusts	Other Special Use Funds	Total		
Equity securities	\$ 424,614	\$ 430	\$ 425,044	\$ 248,623	\$ —
Available for sale-fixed income securities	446,277	29,439	475,716 (a)	11,537	(2,996)
Other	109	489	598 (b)	—	—
Total	\$ 871,000	\$ 30,358	\$ 901,358	\$ 260,160	\$ (2,996)

(a) As of December 31, 2017, the amortized cost basis of these available-for-sale investments is \$467 million .

(b) Represents net pending securities sales and purchases.

The following table sets forth APS's realized gains and losses relating to the sale and maturity of available-for-sale debt securities and equity securities, and the proceeds from the sale and maturity of these investment securities for the three and six months ended June 30, 2018 and June 30, 2017 (dollars in thousands):

	Three Months Ended June 30, 2018			Three Months Ended June 30, 2017		
	Nuclear Decommissioning Trusts	Other Special Use Funds	Total	Nuclear Decommissioning Trusts	Other Special Use Funds	Total
Realized gains	\$ 1,484	\$ —	\$ 1,484	\$ 939	\$ 17	\$ 956
Realized losses	(2,978)	—	(2,978)	(1,159)	(8)	(1,167)
Proceeds from the sale of securities (a)	122,790	2,426	125,216	124,238	1,572	125,810

(a) Proceeds are reinvested in the trust or escrow accounts.

	Six Months Ended June 30, 2018			Six Months Ended June 30, 2017		
	Nuclear Decommissioning Trusts	Other Special Use Funds	Total	Nuclear Decommissioning Trusts	Other Special Use Funds	Total
Realized gains	\$ 2,298	\$ 1	\$ 2,299	\$ 3,306	\$ 17	\$ 3,323
Realized losses	(5,025)	—	(5,025)	(3,612)	(9)	(3,621)
Proceeds from the sale of securities (a)	253,246	4,981	258,227	275,364	4,093	279,457

(a) Proceeds are reinvested in the trust or escrow accounts.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The fair value of APS's fixed income securities, summarized by contractual maturities, at June 30, 2018, is as follows (dollars in thousands):

	Nuclear Decommissioning Trusts (a)	Coal Reclamation Escrow Accounts	Active Union Medical Trust	Total
Less than one year	\$ 18,415	\$ —	\$ 30,441	\$ 48,856
1 year – 5 years	105,470	11,706	143,197	260,373
5 years – 10 years	127,599	2,715	—	130,314
Greater than 10 years	188,919	12,938	—	201,857
Total	\$ 440,403	\$ 27,359	\$ 173,638	\$ 641,400

(a) Includes certain fixed income investments that are not due at a single maturity date. These investments have been allocated within the table based on the final payment date of the instrument.

4CA

The fair value of 4CA coal reclamation escrow account investments were \$2 million as of June 30, 2018 and \$2 million as of December 31, 2017. The unrealized gains and losses, and realized activities for these investments were immaterial. In June 2018, the 4CA escrow account balance was moved from Other Special Use funds to Assets Held For Sale on the Condensed Consolidated Balance Sheet. See Note 8 for more information on the 4CA Matter.

13. New Accounting Standards

Standards Adopted during 2018

ASU 2014-09, Revenue from Contracts with Customers

In May 2014, a new revenue recognition accounting standard was issued. This standard provides a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most prior revenue recognition guidance. Since the issuance of the new revenue standard, additional guidance was issued to clarify certain aspects of the new revenue standard, including principal versus agent considerations, identifying performance obligations, and other narrow scope improvements. The new revenue standard, and related amendments, were effective for us on January 1, 2018. The standard may be adopted using a full retrospective application or a simplified transition method that allows entities to record a cumulative effect adjustment in retained earnings at the date of initial application.

We adopted this standard, and related amendments, on January 1, 2018, using the modified retrospective transition approach. The adoption of the new revenue guidance resulted in expanded disclosures, but otherwise did not have a material impact on our financial statements. See Note 2.

ASU 2016-01, Financial Instruments: Recognition and Measurement

In January 2016, a new accounting standard was issued relating to the recognition and measurement of financial instruments. The new guidance requires certain investments in equity securities to be measured at fair value with changes in fair value recognized in net income, and modifies the impairment assessment of

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

certain equity securities. The new standard was effective for us on January 1, 2018. The standard required modified retrospective application, with the exception of certain aspects of the standard that required prospective application. We adopted this standard on January 1, 2018, using primarily a retrospective approach. Due to regulatory accounting treatment, the adoption of this standard did not have a material impact on our financial statements. See Notes 11 and 12 for disclosures relating to our investments in debt and equity securities.

ASU 2016-15, Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments

In August 2016, a new accounting standard was issued that clarifies how entities should present certain specific cash flow activities on the statement of cash flows. The guidance is intended to eliminate diversity in practice in how entities classify these specific activities between cash flows from operating activities, investing activities and financing activities. The specific activities addressed include debt prepayments and extinguishment costs, proceeds from the settlement of insurance claims, proceeds from corporate owned life insurance policies, and other activities. The standard also addresses how entities should apply the predominance principle when a transaction includes separately identifiable cash flows. The new standard was effective for us, and was adopted on January 1, 2018 using a retrospective transition method. The adoption of this guidance did not have a significant impact on our financial statements, as either our statement of cash flow presentation is consistent with the new prescribed guidance or we do not have significant activities relating to the specific transactions that are addressed by the new standard.

ASU 2016-18, Statement of Cash Flows: Restricted Cash

In November 2016, a new accounting standard was issued that clarifies how restricted cash and restricted cash equivalents should be presented on the statement of cash flows. The new guidance requires entities to include restricted cash and restricted cash equivalents as a component of the beginning and ending cash and cash equivalent balances on the statement of cash flows. The new standard is effective for us, and was adopted on January 1, 2018 using a retrospective transition method. The adoption of this guidance did not impact our financial statements, as our holdings and activities designated as restricted cash and restricted cash equivalents at transition and in prior periods are insignificant.

ASU 2017-01, Business Combinations: Clarifying the Definition of a Business

In January 2017, a new accounting standard was issued that clarifies the definition of a business. This standard is intended to assist entities with evaluating whether a transaction should be accounted for as an acquisition (or disposal) of assets or a business. The definition of a business affects many areas of accounting including acquisitions, disposals, goodwill, and consolidation. The new standard was effective for us, and was adopted on January 1, 2018, using a prospective transition approach. This standard did not have an impact on our financial statements on the date of adoption.

ASU 2017-05, Other Income: Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets

In February 2017, a new accounting standard was issued that intended to clarify the scope of accounting guidance pertaining to gains and losses from the derecognition of nonfinancial assets, and to add guidance for partial sales of nonfinancial assets. The new standard was effective for us, and was adopted on January 1, 2018, using a modified retrospective transition approach. This standard did not have a significant impact on our financial statements on the date of adoption.

ASU 2017-07, Compensation-Retirement Benefits: Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost

In March 2017, a new accounting standard was issued that modifies how plan sponsors present net periodic pension cost and net periodic postretirement benefit cost (net benefit costs). The presentation changes require net benefit costs to be disaggregated on the income statement by the various components that comprise these costs. Specifically, only the service cost component is eligible for presentation as an operating income item, and all other cost components are now presented as non-operating items. This presentation change must be applied retrospectively. Furthermore, the new standard only allows the service cost component to be eligible for capitalization. The change in capitalization requirements must be applied prospectively. The new guidance was effective for us on January 1, 2018.

We adopted this new accounting standard on January 1, 2018. As a result of adopting this standard we have presented the non-service cost components of net benefits costs in other income instead of operating income. Prior year non-service costs components have also been reclassified to conform to this new presentation. We elected to apply the practical expedient guidance. As such, prior period costs have been estimated based on amounts previously disclosed in our pension and other postretirement benefit plan notes. The changes impacting capitalization have been adopted prospectively. As such, upon adoption, we are no longer capitalizing a portion of the non-service cost components of net benefit costs.

In 2018, because the non-service cost components are a reduction to total benefit costs, we estimate this change will result in the capitalization of an additional \$15 million of net benefit costs, with a corresponding increase to pretax income for the year. For the three and six months ended June 30, 2018, this change increased pre-tax income by approximately \$3 million and \$7 million, respectively. See Note 5.

ASU 2018-02, Income Statement-Reporting Comprehensive Income: Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income

In February 2018, new accounting guidance was issued that allows entities an optional election to reclassify the income tax effects of the 2017 Tax Cuts and Jobs Act legislation on items within accumulated other comprehensive income to retained earnings. Amounts eligible for reclassification must relate to the effects from the Tax Cuts and Jobs Act remaining in accumulated other comprehensive income. The new guidance also requires expanded disclosures. This guidance is effective for us on January 1, 2019 with early application permitted. The guidance should be applied either in the period of adoption or retrospectively to each period in which the effect of the Tax Cuts and Jobs Act was recognized.

We early adopted this guidance in the quarter ended March 31, 2018, and we have elected to reclassify the income tax effects of the Tax Cuts and Jobs Act related to other comprehensive income activities to retained earnings. As of June 30, 2018, on a consolidated basis our accumulated other comprehensive income decreased \$9 million, and APS's accumulated other comprehensive income decreased \$5 million, as a result of adopting this guidance. Amounts were reclassified from accumulated other comprehensive income to retained earnings, and related to tax rate changes. The adoption of this guidance did not impact our income from continuing operations. See Note 15.

Standards Pending Adoption

ASU 2016-02, Leases

In February 2016, a new lease accounting standard was issued. This new standard supersedes the existing lease accounting model, and modifies both lessee and lessor accounting. The new standard will require a lessee to reflect most operating lease arrangements on the balance sheet by recording a right-of-use asset and a lease liability that will initially be measured at the present value of lease payments. Among other changes, the new standard also modifies the definition of a lease, and requires expanded lease disclosures. Since the issuance of the new lease standard, additional lease related guidance has been issued relating to land easements and how entities may elect to account for these arrangements at transition, among other items. The new lease standard and related amendments will be effective for us on January 1, 2019, with early application permitted. The standard must be adopted using a modified retrospective approach with a cumulative-effect adjustment to the opening balance of retained earnings determined at either the date of adoption, or the earliest period presented in the financial statements. The standard includes various optional practical expedients provided to facilitate transition.

We plan on adopting this standard, and related amendments, on January 1, 2019, and are evaluating the transition method and practical expedients we may elect. Our evaluation of this new accounting standard and the impacts it will have on our financial statements is on-going. We expect the adoption of the new standard will result in the recognition of certain operating lease arrangements on our Consolidated Balance Sheets. We are currently evaluating the significance of the expected balance sheet impacts, and the impacts, if any, the lease guidance will have on our other financial statements. Our evaluation includes assessing leasing activities, implementing new processes and procedures, and preparing the expanded lease disclosures.

ASU 2016-13, Financial Instruments: Measurement of Credit Losses

In June 2016, a new accounting standard was issued that amends the measurement of credit losses on certain financial instruments. The new standard will require entities to use a current expected credit loss model to measure impairment of certain investments in debt securities, trade accounts receivables, and other financial instruments. The new standard is effective for us on January 1, 2020 and must be adopted using a modified retrospective approach for certain aspects of the standard, and a prospective approach for other aspects of the standard. We are currently evaluating this new accounting standard and the impacts it may have on our financial statements.

ASU 2017-12, Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities

In August 2017, a new accounting standard was issued that modifies hedge accounting guidance with the intent of simplifying the application of hedge accounting. The new standard is effective for us on January 1, 2019, with early application permitted. At transition the guidance requires the changes to be applied to hedging relationships existing on the date of adoption, with the effect of adoption reflected as of the beginning of the fiscal year of adoption using a cumulative effect adjustment approach. The presentation and disclosure changes may be applied prospectively. We are currently evaluating the new guidance, but at this time we do not expect the adoption of this guidance will have a significant impact on our financial statements, as we are currently not applying hedge accounting.

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

14 . Changes in Accumulated Other Comprehensive Loss

The following table shows the changes in Pinnacle West's consolidated accumulated other comprehensive loss, including reclassification adjustments, net of tax, by component for the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

	Pension and Other Postretirement Benefits	Derivative Instruments	Total
Three Months Ended June 30			
Balance March 31, 2018	\$ (49,494)	\$ (2,847)	\$ (52,341)
OCI (loss) before reclassifications	(5,928)	—	(5,928)
Amounts reclassified from accumulated other comprehensive loss	1,189 (a)	456 (b)	1,645
Balance June 30, 2018	<u>\$ (54,233)</u>	<u>\$ (2,391)</u>	<u>\$ (56,624)</u>
Balance March 31, 2017	\$ (38,548)	\$ (4,315)	\$ (42,863)
OCI (loss) before reclassifications	(2,157)	7	(2,150)
Amounts reclassified from accumulated other comprehensive loss	823 (a)	564 (b)	1,387
Balance June 30, 2017	<u>\$ (39,882)</u>	<u>\$ (3,744)</u>	<u>\$ (43,626)</u>

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

	Pension and Other Postretirement Benefits		Derivative Instruments		Total
Six Months Ended June 30					
Balance December 31, 2017	\$ (42,440)		\$ (2,562)		\$ (45,002)
OCI (loss) before reclassifications	(5,928)		(96)		(6,024)
Amounts reclassified from accumulated other comprehensive loss	2,089	(a)	865	(b)	2,954
Reclassification of income tax effect related to tax reform	(7,954)		(598)		(8,552)
Balance June 30, 2018	<u>\$ (54,233)</u>		<u>\$ (2,391)</u>		<u>\$ (56,624)</u>
Six Months Ended June 30					
Balance December 31, 2016	\$ (39,070)		\$ (4,752)		\$ (43,822)
OCI (loss) before reclassifications	(2,157)		(763)		(2,920)
Amounts reclassified from accumulated other comprehensive loss	1,345	(a)	1,771	(b)	3,116
Balance June 30, 2017	<u>\$ (39,882)</u>		<u>\$ (3,744)</u>		<u>\$ (43,626)</u>

(a) These amounts primarily represent amortization of actuarial loss, and are included in the computation of net periodic pension cost. See Note 5 .

(b) These amounts represent realized gains and losses and are included in the computation of fuel and purchased power costs and are subject to the PSA. See Note 7 .

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following table shows the changes in APS's consolidated accumulated other comprehensive loss, including reclassification adjustments, net of tax, by component for the three and six months ended June 30, 2018 and 2017 (dollars in thousands):

	Pension and Other Postretirement Benefits		Derivative Instruments		Total
Three Months Ended June 30					
Balance March 31, 2018	\$ (28,004)		\$ (2,847)		\$ (30,851)
OCI (loss) before reclassifications	(5,790)		—		(5,790)
Amounts reclassified from accumulated other comprehensive loss	1,026	(a)	456	(b)	1,482
Balance June 30, 2018	<u>\$ (32,768)</u>		<u>\$ (2,391)</u>		<u>\$ (35,159)</u>
Balance March 31, 2017					
Balance March 31, 2017	\$ (20,060)		\$ (4,315)		\$ (24,375)
OCI (loss) before reclassifications	(2,121)		7		(2,114)
Amounts reclassified from accumulated other comprehensive loss	813	(a)	564	(b)	1,377
Balance June 30, 2017	<u>\$ (21,368)</u>		<u>\$ (3,744)</u>		<u>\$ (25,112)</u>
Six Months Ended June 30					
Balance December 31, 2017	\$ (24,421)		\$ (2,562)		\$ (26,983)
OCI (loss) before reclassifications	(5,790)		(96)		(5,886)
Amounts reclassified from accumulated other comprehensive loss	1,883	(a)	865	(b)	2,748
Reclassification of income tax effect related to tax reform	(4,440)		(598)		(5,038)
Balance June 30, 2018	<u>\$ (32,768)</u>		<u>\$ (2,391)</u>		<u>\$ (35,159)</u>
Balance December 31, 2016	\$ (20,671)		\$ (4,752)		\$ (25,423)
OCI (loss) before reclassifications	(2,121)		(763)		(2,884)
Amounts reclassified from accumulated other comprehensive loss	1,424	(a)	1,771	(b)	3,195
Balance June 30, 2017	<u>\$ (21,368)</u>		<u>\$ (3,744)</u>		<u>\$ (25,112)</u>

(a) These amounts primarily represent amortization of actuarial loss and are included in the computation of net periodic pension cost. See Note 5 .

(b) These amounts represent realized gains and losses and are included in the computation of fuel and purchased power costs and are subject to the PSA. See Note 7 .

COMBINED NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

15. Income Taxes

On December 22, 2017, the Tax Cuts and Jobs Act was enacted. This legislation made significant changes to the federal income tax laws, including a reduction in the corporate tax rate to 21% effective January 1, 2018. As a result of this rate reduction, the Company recognized a \$1.14 billion reduction in its net deferred income tax liabilities as of December 31, 2017.

In accordance with accounting for regulated companies, the effect of this rate reduction is substantially offset by a net regulatory liability. As of December 31, 2017, to reflect the \$1.14 billion reduction in its net deferred income tax liabilities caused by the rate reduction, APS has recorded a net regulatory liability of \$1.52 billion and a new \$377 million net deferred tax asset. The Company will amortize the net regulatory liability in accordance with applicable federal income tax laws, which require the amortization of a majority of the balance over the remaining regulatory life of the related property. As a result of the modifications made to the annual transmission formula rate during the second quarter, the Company has recorded amortization of FERC jurisdictional net excess deferred tax liabilities, retroactive to January 1, 2018. See Note 4 for more details. The Company continues to work with the ACC on a plan to amortize the remaining net excess deferred tax liabilities subject to its jurisdiction.

Several sections of the Tax Cuts and Jobs Act contain technical ambiguities. Management has recognized tax positions which it believes are more likely than not to be sustained upon examination based upon its interpretation of this legislation. Clarifying guidance may be issued through additional legislation, Treasury regulations, or other technical guidance, prior to the Company filing its federal tax return for the year ended December 31, 2017, which may impact the income tax effects of the Act as recorded by the Company. As of June 30, 2018, the Company does not have a reasonable estimate of what the income tax effects of such clarifying guidance may be.

For the quarter ending March 31, 2018, the Company early adopted ASU 2018-02, Income Statement-Reporting Comprehensive Income: Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income and elected to reclassify the income tax effects of the 2017 Tax Cuts and Jobs Act legislation on items within accumulated other comprehensive income to retained earnings. See Note 13 for additional information.

Net income associated with the Palo Verde sale leaseback VIEs is not subject to tax (see Note 6). As a result, there is no income tax expense associated with the VIEs recorded on the Pinnacle West Condensed Consolidated and APS Condensed Consolidated Statements of Income.

As of the balance sheet date, the tax year ended December 31, 2014 and all subsequent tax years remain subject to examination by the IRS. With a few exceptions, we are no longer subject to state income tax examinations by tax authorities for years before 2013.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

INTRODUCTION

The following discussion should be read in conjunction with Pinnacle West's Condensed Consolidated Financial Statements and APS's Condensed Consolidated Financial Statements and the related Combined Notes that appear in Item 1 of this report. For information on factors that may cause our actual future results to differ from those we currently seek or anticipate, see "Forward-Looking Statements" at the front of this report and "Risk Factors" in Part 1, Item 1A of the 2017 Form 10-K.

OVERVIEW

Pinnacle West owns all of the outstanding common stock of APS. APS is a vertically-integrated electric utility that provides either retail or wholesale electric service to most of the state of Arizona, with the major exceptions of about one-half of the Phoenix metropolitan area, the Tucson metropolitan area and Mohave County in northwestern Arizona. APS currently accounts for essentially all of our revenues and earnings.

Areas of Business Focus

Operational Performance, Reliability and Recent Developments.

Nuclear. APS operates and is a joint owner of Palo Verde. Palo Verde experienced strong performance throughout the first half of 2018. The April 2018 scheduled refueling outage was completed in 28 days, 13 hours, the shortest duration refueling outage in Palo Verde history.

Coal and Related Environmental Matters and Transactions. APS is a joint owner of three coal-fired power plants and acts as operating agent for two of the plants. APS is focused on the impacts on its coal fleet that may result from increased regulation and potential legislation concerning GHG emissions. On August 3, 2015, EPA finalized a rule to limit carbon dioxide emissions from existing power plants (the "Clean Power Plan"). On October 10, 2017, EPA issued a proposal to repeal the Clean Power Plan. On December 18, 2017, EPA issued an Advanced Notice of Proposed Rulemaking through which EPA is soliciting comments as to potential replacements for the Clean Power Plan that would be consistent with EPA's current legal interpretation of the Clean Air Act. APS will monitor these proceedings to assess whether or how any future proposed regulations of carbon emissions from existing EGUs would affect APS. APS continually analyzes its long-range capital management plans to assess the potential effects of these changes, understanding that any resulting regulation and legislation could impact the economic viability of certain plants, as well as the willingness or ability of power plant participants to continue participation in such plants.

Cholla

On September 11, 2014, APS announced that it would close its 260 MW Unit 2 at Cholla and cease burning coal at the other APS-owned units (Units 1 and 3) at the plant by the mid-2020s, if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit, which was later addressed in the 2017 Settlement Agreement. (See Note 4 for details related to the resulting cost recovery.) APS believes that the environmental benefits of this proposal are greater in the long-term than the benefits that would have resulted from adding emissions control equipment. APS closed Unit 2 on October 1, 2015. In early 2017, EPA approved a final rule incorporating APS's compromise proposal, which took effect for Cholla on April 26, 2017.

Four Corners

Asset Purchase Agreement and Coal Supply Matters. On December 30, 2013, APS purchased SCE's 48% interest in each of Units 4 and 5 of Four Corners. The final purchase price for the interest was approximately \$182 million. In connection with APS's prior general retail rate case with the ACC, the ACC reserved the right to review the prudence of the Four Corners transaction for cost recovery purposes upon the closing of the transaction. On December 23, 2014, the ACC approved rate adjustments related to APS's acquisition of SCE's interest in Four Corners resulting in a revenue increase of \$57.1 million on an annual basis. This decision was appealed and, on September 26, 2017, the Court of Appeals affirmed the ACC's decision on the Four Corners rate adjustment.

Concurrently with the closing of the SCE transaction described above, BHP Billiton New Mexico Coal, Inc. ("BHP Billiton"), the parent company of BHP Navajo Coal Company ("BNCC"), the coal supplier and operator of the mine that served Four Corners, transferred its ownership of BNCC to NTEC, a company formed by the Navajo Nation to own the mine and develop other energy projects. Also occurring concurrently with the closing, the Four Corners' co-owners executed the 2016 Coal Supply Agreement for the supply of coal to Four Corners from July 2016 through 2031. El Paso, a 7% owner in Units 4 and 5 of Four Corners, did not sign the 2016 Coal Supply Agreement. Under the 2016 Coal Supply Agreement, APS agreed to assume the 7% shortfall obligation. (See Note 8 for a discussion of an arbitration related to the 2016 Coal Supply Agreement and an advance purchase of coal inventory made under the agreement.) On February 17, 2015, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in each of Units 4 and 5 of Four Corners. 4CA purchased the El Paso interest on July 6, 2016. The purchase price was immaterial in amount, and 4CA assumed El Paso's reclamation and decommissioning obligations associated with the 7% interest.

NTEC had the option to purchase the 7% interest within a certain timeframe pursuant to an option granted to NTEC. On December 29, 2015, NTEC provided notice of its intent to exercise the option. The purchase did not occur during the originally contemplated timeframe. Concurrent with the settlement of the 2016 Coal Supply Agreement matter described in Note 8, NTEC and 4CA agreed to allow for the purchase by NTEC of the 7% interest, consistent with the option. On June 29, 2018, 4CA and NTEC entered into an asset purchase agreement providing for the sale to NTEC of 4CA's 7% interest in Four Corners. Completion of the sale was subject to the receipt of approval by FERC, which was received on July 2, 2018, and the sale transaction closed on July 3, 2018. NTEC purchased the 7% interest at 4CA's book value, approximately \$70 million, and will pay 4CA the purchase price over a period of four years pursuant to a secured interest-bearing promissory note. The related assets and liabilities are reported as held for sale on Pinnacle West's balance sheet at June 30, 2018. In connection with the sale, Pinnacle West guaranteed certain obligations that NTEC will have to the other owners of Four Corners, such as NTEC's 7% share of capital expenditures and operating

and maintenance expenses. Pinnacle West's guarantee is secured by a portion of APS's payments to be owed to NTEC under the 2016 Coal Supply Agreement.

The 2016 Coal Supply Agreement contained alternate pricing terms for the 7% interest in the event NTEC did not purchase the interest. Until the time that NTEC purchased the 7% interest, the alternate pricing provisions were applicable to 4CA as the holder of the 7% interest. These terms included a formula under which NTEC must make certain payments to 4CA for reimbursement of operations and maintenance costs and a specified rate of return, offset by revenue generated by 4CA's power sales. Such payments are due to 4CA at the end of each calendar year. A \$10 million payment was due to 4CA at December 31, 2017, which NTEC satisfied by directing to 4CA a prepayment from APS of a portion of a future mine reclamation obligation. The balance of the amount under this formula at June 30, 2018 for the calendar year 2017 is approximately \$20 million, which is due to 4CA at December 31, 2018. The balance of the amount under this formula at June 30, 2018 for the calendar year 2018 (up to the date that NTEC purchased the 7% interest) is approximately \$10 million, which is due to 4CA at December 31, 2019.

Lease Extension. APS, on behalf of the Four Corners participants, negotiated amendments to an existing facility lease with the Navajo Nation, which extends the Four Corners leasehold interest from 2016 to 2041. The Navajo Nation approved these amendments in March 2011. The effectiveness of the amendments also required the approval of the DOI, as did a related federal rights-of-way grant. A federal environmental review was undertaken as part of the DOI review process, and culminated in the issuance by DOI of a record of decision on July 17, 2015 justifying the agency action extending the life of the plant and the adjacent mine.

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the ESA and NEPA in providing the federal approvals necessary to extend operations at the Four Corners Power Plant and the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016.

On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. On September 11, 2017, the Arizona District Court issued an order granting NTEC's motion, dismissing the litigation with prejudice, and terminating the proceedings. On November 9, 2017, the environmental group plaintiffs appealed the district court order dismissing their lawsuit. We cannot predict whether this appeal will be successful and, if it is successful, the outcome of further district court proceedings.

Wastewater Permit. On July 16, 2018, several environmental groups filed a petition for review before the EPA EAB concerning the NPDES wastewater discharge permit for Four Corners, which was reissued on June 12, 2018. The environmental groups allege that the permit was reissued in contravention of several requirements under the Clean Water Act and did not contain required provisions concerning EPA's 2015 revised effluent limitation guidelines for steam-electric EGUs, 2014 existing-source regulations governing cooling-water intake structures, and effluent limits for surface seepage and subsurface discharges from coal-ash disposal facilities. These groups are seeking to have the permit remanded back to EPA for revision to address these allegations. At this time, we cannot predict whether this EAB permit appeal will be successful, and if so whether the results of those proceedings will have a material impact on our financial position, results of operations or cash flows.

Navajo Plant

The co-owners of the Navajo Plant and the Navajo Nation agreed that the Navajo Plant will remain in operation until December 2019 under the existing plant lease. The co-owners and the Navajo Nation executed a lease extension on November 29, 2017 that will allow for decommissioning activities to begin after the plant ceases operations in December 2019. Various stakeholders including regulators, tribal representatives, the plant's coal supplier and the DOI have been meeting to determine if an alternate solution can be reached that would permit continued operation of the plant beyond 2019. Although we cannot predict whether any alternate plans will be found that would be acceptable to all of the stakeholders and feasible to implement, we believe it is probable that the current owners of the Navajo Plant will cease operations in December 2019.

APS is currently recovering depreciation and a return on the net book value of its interest in the Navajo Plant over its previously estimated life through 2026. APS will seek continued recovery in rates for the book value of its remaining investment in the plant (see Note 4 for details related to the resulting regulatory asset) plus a return on the net book value as well as other costs related to retirement and closure, which are still being assessed and may be material.

On February 14, 2017, the ACC opened a docket titled "ACC Investigation Concerning the Future of the Navajo Generating Station" with the stated goal of engaging stakeholders and negotiating a sustainable pathway for the Navajo Plant to continue operating in some form after December 2019. APS cannot predict the outcome of this proceeding.

Natural Gas. APS has six natural gas power plants located throughout Arizona, including Ocotillo. Ocotillo is a 330 MW 4-unit gas plant located in the metropolitan Phoenix area. In early 2014, APS announced a project to modernize the plant, which involves retiring two older 110 MW steam units, adding five 102 MW combustion turbines and maintaining two existing 55 MW combustion turbines. In total, this increases the capacity of the site by 290 MW, to 620 MW, with completion targeted by summer 2019. (See Note 4 for details of the rate recovery in our 2017 Rate Case Decision.)

Transmission and Delivery. APS is working closely with regulators to identify and plan for transmission needs that continue to support system reliability, access to markets and renewable energy development. The capital expenditures table presented in the "Liquidity and Capital Resources" section below includes new APS transmission projects, along with other transmission costs for upgrades and replacements. APS is also working to establish and expand advanced grid technologies throughout its service territory to provide long-term benefits both to APS and its customers. APS is strategically deploying a variety of technologies that are intended to allow customers to better manage their energy usage, minimize system outage durations and frequency, enable customer choice for new customer sited technologies, and facilitate greater cost savings to APS through improved reliability and the automation of certain distribution functions.

Energy Imbalance Market. In 2015, APS and the California Independent System Operator ("CAISO"), the operator for the majority of California's transmission grid, signed an agreement for APS to begin participation in the Energy Imbalance Market ("EIM"). APS's participation in the EIM began on October 1, 2016. The EIM allows for rebalancing supply and demand in 15-minute blocks with dispatching every five minutes before the energy is needed, instead of the traditional one hour blocks. APS expects that its participation in EIM will lower its fuel costs, improve visibility and situational awareness for system operations in the Western Interconnection power grid, and improve integration of APS's renewable resources.

Regulatory Matters

Rate Matters. APS needs timely recovery through rates of its capital and operating expenditures to maintain its financial health. APS's retail rates are regulated by the ACC and its wholesale electric rates (primarily for transmission) are regulated by FERC. See Note 4 for information on APS's FERC rates.

On June 1, 2016, APS filed an application with the ACC for an annual increase in retail base rates of \$165.9 million. This amount excluded amounts that were then collected on customer bills through adjustor mechanisms. The application requested that some of the balances in these adjustor accounts (aggregating to approximately \$267.6 million as of December 31, 2015) be transferred into base rates through the ratemaking process. This transfer would not have had an incremental effect on average customer bills. The average annual customer bill impact of APS's request was an increase of 5.74% (the average annual bill impact for a typical APS residential customer was 7.96%). See Note 4 for details regarding the principal provisions of APS's application.

On March 27, 2017, a majority of the stakeholders in the general retail rate case, including the ACC Staff, the Residential Utility Consumer Office, limited income advocates and private rooftop solar organizations signed the 2017 Settlement Agreement and filed it with the ACC. The average annual customer bill impact under the 2017 Settlement Agreement was calculated as an increase of 3.28% (the average annual bill impact for a typical APS residential customer was calculated as 4.54%). (See Note 4 for details of the 2017 Settlement Agreement.)

On August 15, 2017, the ACC approved (by a vote of 4-1), the 2017 Settlement Agreement without material modifications. On August 18, 2017, the ACC issued a final written Opinion and Order reflecting its decision in APS's general retail rate case (the "2017 Rate Case Decision"), which is subject to requests for rehearing and potential appeal. The new rates went into effect on August 19, 2017.

On October 17, 2017, Warren Woodward (an intervener in APS's general retail rate case) filed a Notice of Appeal in the Arizona Court of Appeals, Division One. The notice raises a single issue related to the application of certain rate schedules to new APS residential customers after May 1, 2018. Mr. Woodward filed a second notice of appeal on November 13, 2017 challenging APS's \$5 per month automated metering infrastructure opt-out program. Mr. Woodward's two appeals have been consolidated, and APS requested and was granted intervention. Mr. Woodward filed his opening brief on March 28, 2018. The ACC and APS filed responsive briefs on June 21, 2018. APS cannot predict the outcome of this consolidated appeal but does not believe it will have a material impact on our financial position, results of operations or cash flows.

On January 3, 2018, an APS customer filed a petition with the ACC that was determined by the ACC Staff to be a complaint filed pursuant to Arizona Revised Statute §40-246 and not a request for rehearing. Arizona Revised Statute §40-246 requires the ACC to hold a hearing regarding any complaint alleging that a public service corporation is in violation of any commission order or that the rates being charged are not just and reasonable if the complaint is signed by at least twenty-five customers of the public service corporation. The Complaint alleged that APS is "in violation of commission order" [sic]. On February 13, 2018, the complainant filed an amended Complaint alleging that the rates and charges in the 2017 Rate Case Decision are not just and reasonable. The complainant is requesting that the ACC hold a hearing on the amended Complaint to determine if the average bill impact on residential customers of the rates and charges approved in the 2017 Rate Case Decision is greater than 4.54% (the average annual bill impact for a typical APS residential customer estimated by APS) and, if so, what effect the alleged greater bill impact has on APS's revenues and the overall reasonableness and justness of APS's rates and charges, in order to determine if there is sufficient evidence to warrant a full-scale rate hearing. In April 2018, the judge set a procedural schedule for this matter and a hearing is scheduled for September 2018. APS cannot predict the outcome of this matter.

APS has several recovery mechanisms in place that provide more timely recovery to APS of its fuel and transmission costs, and costs associated with the promotion and implementation of its demand side management and renewable energy efforts and customer programs. These mechanisms are described more fully below and in Note 4.

SCR Cost Recovery . On December 29, 2017, in accordance with the 2017 Rate Case Decision, APS filed a Notice of Intent to file its SCR Rate Rider to permit recovery of costs associated with the installation of SCR equipment at Four Corners Units 4 and 5. APS filed the SCR Rate Rider in April 2018. Consistent with the 2017 Rate Case Decision, the rate rider filing was narrow in scope and addressed only costs associated with this specific environmental compliance equipment. Also, as provided for in the 2017 Rate Case Decision, APS requested that the rate rider become effective no later than January 1, 2019. The hearing for this matter is scheduled for September 2018.

Renewable Energy . The ACC approved the RES in 2006. The renewable energy requirement is 8% of retail electric sales in 2018 and increases annually until it reaches 15% in 2025. In APS's 2009 general retail rate case settlement agreement, APS agreed to exceed the RES standards, committing to use APS's best efforts to have 1,700 gigawatt-hours of new renewable resources in service by year-end 2015, in addition to its RES renewable resource commitments. APS met its settlement commitment and overall RES target for 2017. A component of the RES targets development of distributed energy systems.

On July 1, 2016, APS filed its 2017 RES Implementation Plan and proposed a budget of approximately \$150 million . APS's budget request included additional funding to process the high volume of residential rooftop solar interconnection requests and also requested a permanent waiver of the residential distributed energy requirement for 2017 contained in the RES rules. On April 7, 2017, APS filed an amended 2017 RES Implementation Plan and updated budget request which included the revenue neutral transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement. On August 15, 2017, the ACC approved the 2017 RES Implementation Plan.

On June 30, 2017, APS filed its 2018 RES Implementation Plan and proposed a budget of approximately \$90 million. APS's budget request supports existing approved projects and commitments and includes the anticipated transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement and also requests a permanent waiver of the residential distributed energy requirement for 2018 contained in the RES rules. APS's 2018 RES budget request is lower than the 2017 RES budget due in part to a certain portion of the RES being collected by APS in base rates rather than through the RES adjustor.

On November 20, 2017, APS filed an updated 2018 RES budget to include budget adjustments for APS Solar Communities (formerly known as AZ Sun II), which was approved as part of the 2017 Rate Case Decision. APS Solar Communities is a three-year program requiring APS to spend \$10 million - \$15 million in capital costs each year to install utility-owned DG systems for low to moderate income residential homes, buildings of non-profit entities, Title I schools and rural government facilities. The 2017 Rate Case Decision provided that all operations and maintenance expenses, property taxes, marketing and advertising expenses, and the capital carrying costs for this program will be recovered through the RES. On June 12, 2018, the ACC approved the 2018 RES Implementation Plan.

On June 29, 2018, APS filed its 2019 RES Implementation Plan and proposed a budget of approximately \$89.9 million. APS's budget request supports existing approved projects and commitments and includes the anticipated transfer of specific revenue requirements into base rates in accordance with the 2017 Settlement Agreement and also requests a permanent waiver of the residential distributed energy requirement for 2019 contained in the RES rules.

In September 2016, the ACC initiated a proceeding which will examine the possible modernization and expansion of the RES. On January 30, 2018, ACC Commissioner Tobin proposed a plan in this proceeding which would broaden the RES to include a series of energy policies tied to clean energy sources (the "Energy Modernization Plan"). The Energy Modernization Plan includes replacing the current RES standard with a new standard called the Clean Resource Energy Standard and Tariff ("CREST"), which incorporates the proposals in the Energy Modernization Plan. A set of draft CREST rules for the ACC's consideration was issued by Commissioner Tobin's office on July 5, 2018. See Note 4 for more information on the RES and the Energy Modernization Plan.

The following table summarizes renewable energy sources in APS's renewable portfolio that are in operation and under development as of June 30, 2018.

	Net Capacity in Operation (MW)	Net Capacity Planned / Under Development (MW)
Total APS Owned: Solar (a)	239	—
Purchased Power Agreements:		
Solar	310	50
Wind	289	—
Geothermal	10	—
Biomass	14	—
Biogas	6	—
Total Purchased Power Agreements	629	50
Total Distributed Energy: Solar (b)	790	46 (c)
Total Renewable Portfolio	1,658	96

- (a) Included in the 239 MW number is 170 MW of solar resources procured through APS's AZ Sun Program.
- (b) Includes rooftop solar facilities owned by third parties. Distributed generation is produced in DC and is converted to AC for reporting purposes.
- (c) Applications received by APS that are not yet installed and online.

APS has developed and owns solar resources through the ACC-approved AZ Sun Program. APS has invested approximately \$675 million in the AZ Sun Program.

Demand Side Management. In December 2009, Arizona regulators placed an increased focus on energy efficiency and other demand side management programs to encourage customers to conserve energy, while incentivizing utilities to aid in these efforts that ultimately reduce the demand for energy. The ACC initiated an Energy Efficiency rulemaking, with a proposed Electric Energy Efficiency Standard of 22% cumulative annual energy savings by 2020. The 22% figure represents the cumulative reduction in future energy usage through 2020 attributable to energy efficiency initiatives. This standard became effective on January 1, 2011.

On June 1, 2016, APS filed its 2017 DSM Implementation Plan, in which APS proposed programs and measures that specifically focus on reducing peak demand, shifting load to off-peak periods and educating customers about strategies to manage their energy and demand. The requested budget in the 2017 DSM Implementation Plan is \$62.6 million. On January 27, 2017, APS filed an updated and modified 2017 DSM Implementation Plan that incorporated the proposed \$4 million Residential Demand Response, Energy Storage and Load Management Program that was filed with the ACC on December 5, 2016 and requested that the

budget for the 2017 DSM Implementation Plan be increased to \$66.6 million. On August 15, 2017, the ACC approved the amended 2017 DSM Implementation Plan.

On September 1, 2017, APS filed its 2018 DSM Implementation Plan, which proposes modifications to the demand side management portfolio to better meet system and customer needs by focusing on peak demand reductions, storage, load shifting and demand response programs in addition to traditional energy savings measures. The 2018 DSM Implementation Plan seeks a reduced requested budget of \$52.6 million and requests a waiver of the Electric Energy Efficiency Standard for 2018. On November 14, 2017, APS filed an amended 2018 DSM Implementation Plan, which revised the allocations between budget items to address customer participation levels, but kept the overall budget at \$52.6 million. The ACC has not yet ruled on the APS 2018 amended DSM Plan. See Note 4 for more information on demand side management.

Tax Expense Adjustor Mechanism and FERC Tax Filing. As part of the 2017 Settlement Agreement, the parties agreed to a rate adjustment mechanism to address potential federal income tax reform and enable the pass-through of certain income tax effects to customers. On December 22, 2017, the Tax Act was enacted. This legislation made significant changes to the federal income tax laws including a reduction in the corporate tax rate from 35% to 21% effective January 1, 2018.

On January 8, 2018, APS filed an application with the ACC requesting that the TEAM be implemented in two steps. The first addresses the change in the marginal federal tax rate from 35% to 21% resulting from the Tax Act and, if approved, would reduce rates by \$119.1 million annually through an equal cents per kWh credit. APS asked that this decrease become effective February 1, 2018. On February 22, 2018, the ACC approved the reduction of rates by \$119.1 million for the remainder of 2018 through an equal cents per kWh credit applied to all but a small subset of customers who are taking service under specially-approved tariffs. The rate reduction was effective the first billing cycle in March 2018.

The amount of the benefit of the lower federal income tax rate is based on our quarterly pre-tax earnings pattern, while the reduction in revenues from lower customer rates through the TEAM is based on a per kWh sales credit which follows our seasonal kWh sales pattern and is not impacted by earnings of the Company.

The second step will address the amortization of excess deferred taxes previously collected from customers. APS is analyzing the final impact of the Tax Act provisions related to deferred taxes and intends to make a second TEAM filing later in August 2018.

The TEAM expressly applies to APS's retail rates with the exception noted above. As discussed in Note 4, FERC issued an order on May 22, 2018 authorizing APS to provide for the cost reductions resulting from the income tax changes in its wholesale transmission rates.

See Note 4 for additional details.

Net Metering. In 2015, the ACC voted to conduct a generic evidentiary hearing on the value and cost of DG to gather information that will inform the ACC on net metering issues and cost of service studies in upcoming utility rate cases. A hearing was held in April 2016. On October 7, 2016, an Administrative Law Judge issued a recommendation in the docket concerning the value and cost of DG solar installations. On December 20, 2016, the ACC completed its open meeting to consider the recommended opinion and order by the Administrative Law Judge. After making several amendments, the ACC approved the recommended opinion and order by a 4-1 vote. As a result of the ACC's action, effective as of APS's 2017 Rate Case Decision, the net metering tariff that governs payments for energy exported to the grid from residential rooftop solar systems was replaced by a more formula-driven approach that utilizes inputs from historical wholesale solar power until an avoided cost methodology is developed by the ACC.

As amended, the decision provides that payments by utilities for energy exported to the grid from DG solar facilities will be determined using a resource comparison proxy methodology, a method that is based on the price that APS pays for utility-scale solar projects on a five year rolling average, while a forecasted avoided cost methodology is being developed. The price established by this resource comparison proxy method will be updated annually (between general retail rate cases) but will not be decreased by more than 10% per year. Once the avoided cost methodology is developed, the ACC will determine in APS's subsequent general retail rate cases which method (or a combination of methods) is appropriate to determine the actual price to be paid by APS for exported distributed energy.

In addition, the ACC made the following determinations:

- Customers who have interconnected a DG system or submitted an application for interconnection for DG systems prior to August 19, 2017, the date new rates were effective based on APS's 2017 Rate Case Decision, will be grandfathered for a period of 20 years from the date the customer's interconnection application was accepted by the utility;
- Customers with DG solar systems are to be considered a separate class of customers for ratemaking purposes; and
- Once an export price is set for APS, no netting or banking of retail credits will be available for new DG customers, and the then-applicable export price will be guaranteed for new customers for a period of 10 years.

This decision of the ACC addresses policy determinations only. The decision states that its principles will be applied in future general retail rate cases, and the policy determinations themselves may be subject to future change, as are all ACC policies. A first-year export energy price of 12.9 cents per kWh is included in the 2017 Settlement Agreement and became effective on August 19, 2017.

In accordance with the 2017 Rate Case Decision, APS filed its request for a second-year export energy price of 11.6 cents per kWh on May 1, 2018. This price reflects the 10% annual reduction discussed above. APS has requested that the new tariff become effective on September 1, 2018.

On January 23, 2017, TASC sought rehearing of the ACC's decision regarding the value and cost of DG. TASC asserted that the ACC improperly ignored the Administrative Procedure Act, failed to give adequate notice regarding the scope of the proceedings, and relied on information that was not submitted as evidence, among other alleged defects. TASC filed a Notice of Appeal in the Court of Appeals and filed a Complaint and Statutory Appeal in the Maricopa County Superior Court on March 10, 2017. As part of the 2017 Settlement Agreement described above, TASC agreed to withdraw these appeals when the ACC decision implementing the 2017 Settlement Agreement is no longer subject to appellate review.

Subpoena from Arizona Corporation Commissioner Robert Burns. On August 25, 2016, Commissioner Burns, individually and not by action of the ACC as a whole, served subpoenas in APS's then current retail rate proceeding on APS and Pinnacle West for the production of records and information relating to a range of expenditures from 2011 through 2016. The subpoenas requested information concerning marketing and advertising expenditures, charitable donations, lobbying expenses, contributions to 501(c)(3) and (c)(4) nonprofits and political contributions. The return date for the production of information was set as September 15, 2016. The subpoenas also sought testimony from Company personnel having knowledge of the material, including the Chief Executive Officer.

On September 9, 2016, APS filed with the ACC a motion to quash the subpoenas or, alternatively, to stay APS's obligations to comply with the subpoenas and decline to decide APS's motion pending court proceedings. Contemporaneously with the filing of this motion, APS and Pinnacle West filed a complaint for

special action and declaratory judgment in the Superior Court of Arizona for Maricopa County, seeking a declaratory judgment that Commissioner Burns' subpoenas are contrary to law. On September 15, 2016, APS produced all non-confidential and responsive documents and offered to produce any remaining responsive documents that are confidential after an appropriate confidentiality agreement is signed.

On February 7, 2017, Commissioner Burns opened a new ACC docket and indicated that its purpose is to study and rectify problems with transparency and disclosure regarding financial contributions from regulated monopolies or other stakeholders who may appear before the ACC that may directly or indirectly benefit an ACC Commissioner, a candidate for ACC Commissioner, or key ACC Staff. As part of this docket, Commissioner Burns set March 24, 2017 as a deadline for the production of all information previously requested through the subpoenas. Neither APS nor Pinnacle West produced the information requested and instead objected to the subpoena. On March 10, 2017, Commissioner Burns filed suit against APS and Pinnacle West in the Superior Court of Arizona for Maricopa County in an effort to enforce his subpoenas. On March 30, 2017, APS filed a motion to dismiss Commissioner Burns' suit against APS and Pinnacle West. In response to the motion to dismiss, the court stayed the suit and ordered Commissioner Burns to file a motion to compel the production of the information sought by the subpoenas with the ACC. On June 20, 2017, the ACC denied the motion to compel.

On August 4, 2017, Commissioner Burns amended his complaint to add all of the ACC Commissioners and the ACC itself as defendants. All defendants moved to dismiss the amended complaint. On February 15, 2018, the Superior Court dismissed Commissioner Burns' amended complaint. On March 6, 2018, Burns filed an objection to the proposed final order from the Superior Court and a motion to further amend his complaint. The Superior Court permitted Commissioner Burns to amend his complaint to add a claim regarding his attempted investigation into whether his fellow commissioners should have been disqualified from voting on APS's 2017 rate case. Commissioner Burns has now served his second amended complaint, and responsive filings were due on June 25. All defendants filed responses opposing the second amended complaint and requested that it be dismissed. APS and Pinnacle West cannot predict the outcome of this matter.

Renewable Energy Ballot Initiative. On February 20, 2018, a renewable energy advocacy organization filed with the Arizona Secretary of State a ballot initiative for an Arizona constitutional amendment requiring Arizona public service corporations to procure 50% of their energy supply from renewable sources by 2030. For purposes of the proposed amendment, eligible renewable sources would not include nuclear generating facilities. The stated goal of the Clean Energy for a Healthy Arizona coalition ("Clean Energy") is to complete the necessary steps to allow the initiative to be placed on the November 2018 Arizona elections ballot. The coalition was required to present over 225,000 verifiable signatures to the Secretary of State by July 5, 2018 to meet that goal. On July 5, 2018, Clean Energy filed over 480,000 signatures with the Secretary of State. These signatures are being verified. A lawsuit was filed on July 19, 2018 challenging the validity of Clean Energy's July 5th submission to the Secretary of State, asserting that a majority of the signatures submitted were forged, collected from unregistered voters, and collected by unauthorized petitioners, among other items. We anticipate that the lawsuit and related legal proceedings will be fully resolved by late August or early September in time for ballots to be printed.

APS opposes the initiative. APS believes the initiative is irresponsible and would result in negative impacts to Arizona utility customers, the Arizona economy and APS. We estimate that the initiative would require APS to add over 5,500 MW of new resources above and beyond our 2017 Integrated Resource Plan estimates by 2030. This would equate to over \$10 billion in incremental capital investment by 2030. Further, APS would seek to recover costs associated with the forced early retirement of any existing facilities. At the time of a possible early retirement, the remaining book value and other certain costs associated with early shut down for Palo Verde and Four Corners could be \$1.9 billion and \$1.3 billion respectively. While we expect the initiative would significantly increase our rate base estimates, customer bills in 2030 would likely be double current bills.

In March 2018, Arizona passed a law limiting penalties associated with violating this proposed constitutional amendment to no more than \$5,000 per violation. As with any legislation, an interested party could challenge the validity of this law. APS cannot predict the outcome of this matter.

Energy Modernization Plan . On January 30, 2018, ACC Commissioner Tobin proposed the Energy Modernization Plan, which consists of a series of energy policies tied to clean energy sources such as energy storage, biomass, energy efficiency, electric vehicles, and expanded energy planning through the integrated resource plans ("IRP") process. The Energy Modernization Plan includes replacing the current RES standard with a new standard called the CREST, which incorporates the proposals in the Energy Modernization Plan. The ACC has not yet initiated any formal proceedings with respect to Commissioner Tobin's proposal; however, on February 22, 2018, the ACC Staff filed a Notice of Inquiry to further examine the matter. As a part of this proposal, the ACC voted in March 2018 to direct utilities to develop a comprehensive biomass generation plan to be included in each utility's RES Implementation Plan. On July 5, 2018, Commissioner Tobin's office issued a set of draft CREST rules for the ACC's consideration. APS cannot predict the outcome of this matter.

Integrated Resource Planning . ACC rules require utilities to develop fifteen-year IRPs which describe how the utility plans to serve customer load in the plan timeframe. IRPs are filed with the ACC every even year, and are reviewed by ACC Staff to assess the adequacy of the plans. The ACC then determines if the IRP meets the requirements of the rule and, if so, acknowledges the IRP. In March of 2018, the ACC reviewed the 2017 IRPs of its jurisdictional utilities and voted to not acknowledge any plan. APS does not believe that this lack of acknowledgment will have a material impact on our financial position, results of operations or cash flows. APS's next IRP will be filed in 2020.

FERC Matter. As part of APS's acquisition of SCE's interest in Four Corners Units 4 and 5, APS and SCE agreed, via a "Transmission Termination Agreement" that, upon closing of the acquisition, the companies would terminate an existing transmission agreement ("Transmission Agreement") between the parties that provides transmission capacity on a system (the "Arizona Transmission System") for SCE to transmit its portion of the output from Four Corners to California. APS previously submitted a request to FERC related to this termination, which resulted in a FERC order denying rate recovery of \$40 million that APS agreed to pay SCE associated with the termination. On December 22, 2015, APS and SCE agreed to terminate the Transmission Termination Agreement and allow for the Transmission Agreement to expire according to its terms, which includes settling obligations in accordance with the terms of the Transmission Agreement. APS established a regulatory asset of \$12 million in 2015 in connection with the payment required under the terms of the Transmission Agreement. On July 1, 2016, FERC issued an order denying APS's request to recover the regulatory asset through its FERC-jurisdictional rates. APS and SCE completed the termination of the Transmission Agreement on July 6, 2016. APS made the required payment to SCE and wrote-off the \$12 million regulatory asset and charged operating revenues to reflect the effects of this order in the second quarter of 2016. On July 29, 2016, APS filed for a rehearing with FERC. In its order denying recovery, FERC also referred to its enforcement division a question of whether the agreement between APS and SCE relating to the settlement of obligations under the Transmission Agreement was a jurisdictional contract that should have been filed with FERC. On October 5, 2017, FERC issued an order denying APS's request for rehearing. FERC also upheld its prior determination that the agreement relating to the settlement was a jurisdictional contract and should have been filed with FERC. APS cannot predict whether or if the enforcement division will take any action. APS filed an appeal of FERC's July 1, 2016 and October 5, 2017 orders with the United States Court of Appeals for the Ninth Circuit on December 4, 2017. That proceeding is pending and APS cannot predict the outcome of the proceeding.

Financial Strength and Flexibility

Pinnacle West and APS currently have ample borrowing capacity under their respective credit facilities, and may readily access these facilities ensuring adequate liquidity for each company. Capital expenditures will be funded with internally generated cash and external financings, which may include issuances of long-term debt and Pinnacle West common stock.

Other Subsidiaries

Bright Canyon Energy. On July 31, 2014, Pinnacle West announced its creation of a wholly-owned subsidiary, BCE. BCE's focus is on new growth opportunities that leverage the Company's core expertise in the electric energy industry. BCE's first initiative is a 50/50 joint venture with BHE U.S. Transmission LLC, a subsidiary of Berkshire Hathaway Energy Company. The joint venture, named TransCanyon, is pursuing independent transmission opportunities within the eleven states that comprise the Western Electricity Coordinating Council, excluding opportunities related to transmission service that would otherwise be provided under the tariffs of the retail service territories of the venture partners' utility affiliates. TransCanyon continues to pursue transmission development opportunities in the western United States consistent with its strategy.

On March 29, 2016, TransCanyon entered into a strategic alliance agreement with Pacific Gas and Electric Company ("PG&E") to jointly pursue competitive transmission opportunities solicited by the CAISO, the operator for the majority of California's transmission grid. TransCanyon and PG&E intend to jointly engage in the development of future transmission infrastructure and compete to develop, build, own and operate transmission projects approved by the CAISO.

El Dorado. The operations of El Dorado are not expected to have any material impact on our financial results, or to require any material amounts of capital, over the next three years.

4CA. See "Four Corners - Asset Purchase Agreement and Coal Supply Matters" above for information regarding 4CA.

Key Financial Drivers

In addition to the continuing impact of the matters described above, many factors influence our financial results and our future financial outlook, including those listed below. We closely monitor these factors to plan for the Company's current needs, and to adjust our expectations, financial budgets and forecasts appropriately.

Electric Operating Revenues. For the years 2015 through 2017, retail electric revenues comprised approximately 95% of our total electric operating revenues. Our electric operating revenues are affected by customer growth or decline, variations in weather from period to period, customer mix, average usage per customer and the impacts of energy efficiency programs, distributed energy additions, electricity rates and tariffs, the recovery of PSA deferrals and the operation of other recovery mechanisms. These revenue transactions are affected by the availability of excess generation or other energy resources and wholesale market conditions, including competition, demand and prices.

Actual and Projected Customer and Sales Growth. Retail customers in APS's service territory increased 1.6% for the six-month period ended June 30, 2018 compared with the prior-year period. For the three years 2015 through 2017, APS's customer growth averaged 1.5% per year. We currently project annual customer growth to be 1.5 - 2.5% for 2018 and to average in the range of 2 - 3% for 2018 through 2020 based on our assessment of modestly improving economic conditions in Arizona.

Retail electricity sales in kWh, adjusted to exclude the effects of weather variations, decreased 0.7% for the six-month period ended June 30, 2018 compared with the prior-year period. Improving economic conditions and customer growth were more than offset by energy savings driven by customer conservation, energy efficiency, and distributed renewable generation initiatives. For the three years 2015 through 2017, APS experienced annual increases in retail electricity sales averaging 0.2%, adjusted to exclude the effects of weather variations. We currently project that annual retail electricity sales in kWh will increase in the range of 0 - 1% for 2018 and increase on average in the range of 0.5 - 1.5% during 2018 through 2020, including the effects of customer conservation and energy efficiency and distributed renewable generation initiatives, but excluding the effects of weather variations. A slower recovery of the Arizona economy or acceleration of the expected effects of customer conservation, energy efficiency or distributed renewable generation initiatives could further impact these estimates.

Actual sales growth, excluding weather-related variations, may differ from our projections as a result of numerous factors, such as economic conditions, customer growth, usage patterns and energy conservation, impacts of energy efficiency programs and growth in DG, and responses to retail price changes. Based on past experience, a reasonable range of variation in our kWh sales projections attributable to such economic factors under normal business conditions can result in increases or decreases in annual net income of up to approximately \$10 million.

Weather. In forecasting the retail sales growth numbers provided above, we assume normal weather patterns based on historical data. Historically, extreme weather variations have resulted in annual variations in net income in excess of \$20 million. However, our experience indicates that the more typical variations from normal weather can result in increases or decreases in annual net income of up to \$10 million.

Fuel and Purchased Power Costs. Fuel and purchased power costs included on our Condensed Consolidated Statements of Income are impacted by our electricity sales volumes, existing contracts for purchased power and generation fuel, our power plant performance, transmission availability or constraints, prevailing market prices, new generating plants being placed in service in our market areas, changes in our generation resource allocation, our hedging program for managing such costs and PSA deferrals and the related amortization.

Operations and Maintenance Expenses . Operations and maintenance expenses are impacted by customer and sales growth, power plant operations, maintenance of utility plant (including generation, transmission, and distribution facilities), inflation, unplanned outages, planned outages (typically scheduled in the spring and fall), renewable energy and demand side management related expenses (which are offset by the same amount of operating revenues) and other factors. See Note 13 for discussion in new accounting guidance related to the presentation of net periodic pension and postretirement benefit costs.

Depreciation and Amortization Expenses. Depreciation and amortization expenses are impacted by net additions to utility plant and other property (such as new generation, transmission, and distribution facilities), and changes in depreciation and amortization rates. See "Liquidity and Capital Resources" below for information regarding the planned additions to our facilities and income tax impacts related to bonus depreciation.

Pension and other postretirement non-service credits - net . Pension and other postretirement non-service credits can be impacted by changes in our actuarial assumptions. The most relevant actuarial assumptions are the discount rate used to measure our net periodic costs/credit, the expected long-term rate of return on plan assets used to estimate earnings on invested funds over the long-term, the mortality assumptions and the assumed healthcare cost trend rates. We review these assumptions on an annual basis and adjust them

as necessary. See Note 13 for discussion of new accounting guidance related to the presentation of net periodic pension and postretirement benefit costs.

Property Taxes. Taxes other than income taxes consist primarily of property taxes, which are affected by the value of property in-service and under construction, assessment ratios, and tax rates. The average property tax rate in Arizona for APS, which owns essentially all of our property, was 11.2% of the assessed value for 2017, 11.2% for 2016 and 11.0% for 2015. We expect property taxes to increase as we add new generating units and continue with improvements and expansions to our existing generating units and transmission and distribution facilities.

Income Taxes . Income taxes are affected by the amount of pretax book income, income tax rates, certain deductions and non-taxable items, such as AFUDC. In addition, income taxes may also be affected by the settlement of issues with taxing authorities. On December 22, 2017, the Tax Cuts and Jobs Act was enacted and is generally effective on January 1, 2018. Changes which will impact the Company include a reduction in the corporate tax rate to 21%, revisions to the rules related to tax bonus depreciation, limitations on interest deductibility and an associated exception for certain public utilities, and requirements that certain excess deferred tax amounts of regulated utilities be normalized. (See Note 15 for details of the impacts on the Company as of December 31, 2017.) In APS's recent general retail rate case, the ACC approved a Tax Expense Adjustor Mechanism which will be used to pass through the income tax effects to retail customers of the Tax Cuts and Jobs Act. (See Note 4 for details of the TEAM.)

Interest Expense. Interest expense is affected by the amount of debt outstanding and the interest rates on that debt (see Note 3). The primary factors affecting borrowing levels are expected to be our capital expenditures, long-term debt maturities, equity issuances and internally generated cash flow. An allowance for borrowed funds used during construction offsets a portion of interest expense while capital projects are under construction. We stop accruing AFUDC on a project when it is placed in commercial operation.

RESULTS OF OPERATIONS

Pinnacle West's only reportable business segment is our regulated electricity segment, which consists of traditional regulated retail and wholesale electricity businesses (primarily electric service to Native Load customers) and related activities and includes electricity generation, transmission and distribution.

Operating Results — Three-month period ended June 30, 2018 compared with three-month period ended June 30, 2017 .

Our consolidated net income attributable to common shareholders for the three months ended June 30, 2018 was \$167 million, compared with consolidated net income attributable to common shareholders of \$167 million for the prior-year period. The results reflect a decrease of approximately \$2 million for the regulated electricity segment primarily due to higher operations and maintenance primarily due to higher planned outage costs, and higher depreciation and amortization primarily due to increased depreciation rates. These decreases were partially offset by higher revenue resulting from the retail regulatory settlement effective August 19, 2017.

The following table presents net income attributable to common shareholders by business segment compared with the prior-year period:

	Three Months Ended June 30,		Net Change
	2018	2017	
	(dollars in millions)		
Regulated Electricity Segment:			
Operating revenues less fuel and purchased power expenses	\$ 701	\$ 683	\$ 18
Operations and maintenance	(263)	(218)	(45)
Depreciation and amortization	(145)	(125)	(20)
Taxes other than income taxes	(53)	(44)	(9)
Pension and other postretirement non-service credits - net	12	7	5
All other income and expenses, net	16	6	10
Interest charges, net of allowance for borrowed funds used during construction	(54)	(50)	(4)
Income taxes	(45)	(88)	43
Less income related to noncontrolling interests (Note 6)	(5)	(5)	—
Regulated electricity segment income	164	166	(2)
All other	3	1	2
Net Income Attributable to Common Shareholders	\$ 167	\$ 167	\$ —

Operating revenues less fuel and purchased power expenses. Regulated electricity segment operating revenues less fuel and purchased power expenses were \$18 million higher for the three months ended June 30, 2018 compared with the prior-year period. The following table summarizes the major components of this change:

	Increase (Decrease)		
	Operating revenues	Fuel and purchased power expenses	Net change
(dollars in millions)			
Impacts of retail regulatory settlement effective August 19, 2017	\$ 43	\$ —	\$ 43
Higher renewable energy regulatory surcharges and lower purchased power, partially offset in operations and maintenance costs	6	(4)	10
Changes in net fuel and purchased power costs, including off-system sales margins and related deferrals	26	21	5
Higher transmission revenues (Note 4)	4	—	4
Refunds due to lower Federal corporate income tax rate (Note 4)	(30)	—	(30)
Effects of weather	(15)	(3)	(12)
Lower retail revenue due to the impacts of energy efficiency and distributed generation partially offset by higher customer growth	(6)	(2)	(4)
Miscellaneous items, net	(1)	(3)	2
Total	\$ 27	\$ 9	\$ 18

Operations and maintenance . Operations and maintenance expenses increased \$45 million for the three months ended June 30, 2018 compared with the prior-year period primarily because of:

- An increase of \$15 million in fossil generation costs primarily due to higher planned outage and operating costs;
- An increase of \$13 million primarily related to costs for renewable energy and similar regulatory programs, which are partially offset in operating revenues and purchased power;
- An increase of \$9 million related to public outreach primarily associated with the ballot initiative (see Note 4);
- An increase of \$6 million in transmission, distribution, and customer service costs primarily due to maintenance costs;
- An increase of \$3 million for costs related to information technology;

- A decrease of \$5 million related to the absence of the Navajo Plant capital projects canceled in 2017 due to expected plant retirement, which were deferred for regulatory recovery in depreciation; and
- An increase of \$4 million related to miscellaneous other factors.

Depreciation and amortization. Depreciation and amortization expenses were \$20 million higher for the three months ended June 30, 2018 compared with the prior-year period primarily related to increased depreciation and amortization rates, increased plant in service and the absence of the regulatory deferral of the canceled capital projects in 2017 associated with the expected Navajo Plant retirement of \$5 million.

Taxes other than income taxes. Taxes other than income taxes were \$9 million higher for the three months ended June 30, 2018 compared with the prior-year period primarily due to higher property values and the amortization of our property tax deferral regulatory asset.

Pension and other postretirement non-service credits, net. Pension and other postretirement non-service credits, net were \$5 million higher for the three months ended June 30, 2018 compared to the prior-year period primarily due to higher market returns and the adoption of new pension and other postretirement accounting guidance in 2018 (see Notes 5 and 13).

All other income and expenses, net. All other income and expenses, net were \$10 million higher for the three months ended June 30, 2018 compared with the prior-year period primarily due to the debt return on the Four Corners SCR deferrals (Note 4) and increased allowance for equity funds used during construction.

Income taxes. Income taxes were \$43 million lower for the three months ended June 30, 2018 compared with the prior-year period primarily due to the effects of the federal tax reform and lower pretax income in the current year period.

Operating Results — Six-month period ended June 30, 2018 compared with six-month period ended June 30, 2017 .

Our consolidated net income attributable to common shareholders for the six months ended June 30, 2018 was \$170 million, compared with consolidated net income attributable to common shareholders of \$191 million for the prior-year period. The results reflect a decrease of approximately \$19 million for the regulated electricity segment primarily due to higher operations and maintenance primarily due to higher planned outage costs, the effects of weather and higher depreciation and amortization primarily due to increased depreciation rates. These decreases were partially offset by higher revenue resulting from the retail regulatory settlement effective August 19, 2017 and higher transmission revenues.

The following table presents net income attributable to common shareholders by business segment compared with the prior-year period:

	Six Months Ended June 30,		Net Change
	2018	2017	
	(dollars in millions)		
Regulated Electricity Segment:			
Operating revenues less fuel and purchased power expenses	\$ 1,190	\$ 1,142	\$ 48
Operations and maintenance	(524)	(441)	(83)
Depreciation and amortization	(289)	(253)	(36)
Taxes other than income taxes	(106)	(88)	(18)
Pension and other postretirement non-service credits - net	25	13	12
All other income and expenses, net	33	14	19
Interest charges, net of allowance for borrowed funds used during construction	(107)	(97)	(10)
Income taxes	(43)	(92)	49
Less income related to noncontrolling interests (Note 6)	(10)	(10)	—
Regulated electricity segment income	169	188	(19)
All other	1	3	(2)
Net Income Attributable to Common Shareholders	\$ 170	\$ 191	\$ (21)

Operating revenues less fuel and purchased power expenses. Regulated electricity segment operating revenues less fuel and purchased power expenses were \$48 million higher for the six months ended June 30, 2018 compared with the prior-year period. The following table summarizes the major components of this change:

	Increase (Decrease)		
	Operating revenues	Fuel and purchased power expenses	Net change
	(dollars in millions)		
Impacts of retail regulatory settlement effective August 19, 2017	\$ 74	\$ —	\$ 74
Higher transmission revenues (Note 4)	19	—	19
Higher renewable energy regulatory surcharges and lower purchased power, partially offset in operations and maintenance costs	12	(7)	19
Changes in net fuel and purchased power costs, including off-system sales margins and related deferrals	29	21	8
Higher retail sales due to customer growth and changes in customer usage patterns and related pricing partially offset by the impacts of energy efficiency and distributed generation	4	(3)	7
Refunds due to lower Federal corporate income tax rate (Note 4)	(61)	—	(61)
Effects of weather	(36)	(10)	(26)
Miscellaneous items, net	2	(6)	8
Total	\$ 43	\$ (5)	\$ 48

Operations and maintenance . Operations and maintenance expenses increased \$83 million for the six months ended June 30, 2018 compared with the prior-year period primarily because of:

- An increase of \$29 million in fossil generation costs primarily due to higher planned outage and operating costs;
- An increase of \$26 million primarily related to costs for renewable energy and similar regulatory programs, which are partially offset in operating revenues and purchased power;
- An increase of \$11 million related to public outreach primarily associated with the ballot initiative (see Note 4);
- An increase of \$11 million in transmission, distribution, and customer service costs primarily due to maintenance costs;
- An increase of \$6 million for costs related to information technology;
- A decrease of \$5 million related to the absence of the Navajo Plant capital projects canceled in 2017 due to expected plant retirement, which were deferred for regulatory recovery in depreciation; and

- An increase of \$5 million related to miscellaneous other factors.

Depreciation and amortization. Depreciation and amortization expenses were \$36 million higher for the six months ended June 30, 2018 compared with the prior-year period primarily related to increased depreciation and amortization rates, increased plant in service and the absence of the regulatory deferral of the canceled capital projects in 2017 associated with the expected Navajo Plant retirement of \$5 million.

Taxes other than income taxes. Taxes other than income taxes were \$18 million higher for the six months ended June 30, 2018 compared with the prior-year period primarily due to higher property values and the amortization of our property tax deferral regulatory asset.

Pension and other postretirement non-service credits, net. Pension and other postretirement non-service credits, net were \$12 million higher for the six months ended June 30, 2018 compared to the prior-year period primarily due to higher market returns and the adoption of new pension and other postretirement accounting guidance in 2018 (see Notes 5 and 13).

All other income and expenses, net. All other income and expenses, net were \$19 million higher for the six months ended June 30, 2018 compared with the prior-year period primarily due to increased allowance for equity funds used during construction and the debt return on the Four Corners SCR deferrals (Note 4).

Interest charges, net of allowance for borrowed fund used during construction. Interest charges, net of allowance for borrowed fund used during construction were \$10 million higher for the six months ended June 30, 2018 compared with the prior-year period primarily due to higher debt balances in the current period.

Income taxes. Income taxes were \$49 million lower for the six months ended June 30, 2018 compared with the prior-year period primarily due to the effects of the federal tax reform and the effects of lower pretax income in the current year period.

LIQUIDITY AND CAPITAL RESOURCES

Overview

Pinnacle West's primary cash needs are for dividends to our shareholders and principal and interest payments on our indebtedness. The level of our common stock dividends and future dividend growth will be dependent on declaration by our Board of Directors and based on a number of factors, including our financial condition, payout ratio, free cash flow and other factors.

Our primary sources of cash are dividends from APS and external debt and equity issuances. An ACC order requires APS to maintain a common equity ratio of at least 40% . As defined in the related ACC order, the common equity ratio is defined as total shareholder equity divided by the sum of total shareholder equity and long-term debt, including current maturities of long-term debt. At June 30, 2018 , APS's common equity ratio, as defined, was 53% . Its total shareholder equity was approximately \$5.3 billion , and total capitalization was approximately \$10.0 billion . Under this order, APS would be prohibited from paying dividends if such payment would reduce its total shareholder equity below approximately \$4.0 billion , assuming APS's total capitalization remains the same. This restriction does not materially affect Pinnacle West's ability to meet its ongoing cash needs or ability to pay dividends to shareholders.

APS's capital requirements consist primarily of capital expenditures and maturities of long-term debt. APS funds its capital requirements with cash from operations and, to the extent necessary, external debt financing and equity infusions from Pinnacle West.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 was enacted. As a result of this legislation, bonus depreciation is no longer available for regulated public utility company property acquired, or that commenced construction, after September 27, 2017. The final legislative language contains a transition rule for property which was acquired, or under construction, prior to September 28, 2017 which would allow at least some part of APS's capital projects under construction at that time to continue to qualify for bonus depreciation under pre-Act rules. However, because of current ambiguities regarding the scope of this transition rule, it is unclear how much of APS's capital projects which were under construction prior to September 28, 2017, will qualify. The Company currently believes the continued availability of bonus depreciation for property under construction prior to September 28, 2017 will generate at least \$60 million - \$75 million of cash tax benefits over the next two years. These benefits may be higher if the current ambiguities in the legislative language are clarified in a manner which allows additional expenditures incurred after September 27, 2017, related to ongoing capital projects under construction as of that date, to qualify for bonus depreciation. The cash generated by bonus depreciation is an acceleration of the tax benefits that APS would have otherwise received over 20 years and reduces rate base for ratemaking purposes. At Pinnacle West Consolidated, when coupled with a lower 21 percent corporate tax rate, the continued availability of bonus depreciation to this transition period property is expected to delay full cash realization of approximately \$57 million of currently unrealized Investment Tax Credits and other tax credits until 2019. These unrealized tax credits are recorded as a deferred tax asset on the Condensed Consolidated Balance Sheet as of June 30, 2018.

Summary of Cash Flows

The following tables present net cash provided by (used for) operating, investing and financing activities for the six months ended June 30, 2018 and 2017 (dollars in millions):

Pinnacle West Consolidated

	Six Months Ended June 30,		Net Change
	2018	2017	
Net cash flow provided by operating activities	\$ 396	\$ 290	\$ 106
Net cash flow used for investing activities	(679)	(688)	9
Net cash flow provided by financing activities	273	394	(121)
Net increase (decrease) in cash and cash equivalents	<u>\$ (10)</u>	<u>\$ (4)</u>	<u>\$ (6)</u>

Arizona Public Service Company

	Six Months Ended June 30,		Net Change
	2018	2017	
Net cash flow provided by operating activities	\$ 406	\$ 326	\$ 80
Net cash flow used for investing activities	(667)	(674)	7
Net cash flow provided by financing activities	251	344	(93)
Net increase (decrease) in cash and cash equivalents	<u>\$ (10)</u>	<u>\$ (4)</u>	<u>\$ (6)</u>

Operating Cash Flows

Six-month period ended June 30, 2018 compared with six-month period ended June 30, 2017. Pinnacle West's consolidated net cash provided by operating activities was \$396 million in 2018 and \$290 million in 2017. The increase of \$106 million in net cash provided is primarily due to higher cash receipts from operating activities and lower payments for operations and maintenance, partially offset by higher other cash payments. The difference between APS and Pinnacle West's net cash provided by operating activities primarily relates to Pinnacle West cash payments for 4CA operating costs and differences in other operating cash payments.

Retirement plans and other postretirement benefits. Pinnacle West sponsors a qualified defined benefit pension plan and a non-qualified supplemental excess benefit retirement plan for the employees of Pinnacle West and our subsidiaries. The requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") require us to contribute a minimum amount to the qualified plan. We contribute at least the minimum amount required under ERISA regulations, but no more than the maximum tax-deductible amount. The minimum required funding takes into consideration the value of plan assets and our pension benefit obligations. Under ERISA, the qualified pension plan was 117% funded as of January 1, 2018 and 115% as of January 1, 2017. Under GAAP, the qualified pension plan was 95% funded as of January 1, 2018 and 88% funded as of January 1, 2017. See Note 5 for additional details. The assets in the plan are primarily comprised of fixed-income, equity, real estate, and short-term investments. Future year contribution amounts are dependent on plan asset performance and plan actuarial assumptions. We have made voluntary contributions of \$50 million to our pension plan year-to-date in 2018. The minimum required contributions for the pension plan are zero for the next three years. We expect to make voluntary contributions up to a total of \$250 million during the 2018-2020 period. We do not expect to make any contributions over the next three years to our other postretirement benefit plans. Year to date in 2018, the Company was reimbursed \$48 million for prior years retiree medical claims from the other postretirement benefit plan trust assets.

Investing Cash Flows

Six-month period ended June 30, 2018 compared with six-month period ended June 30, 2017. Pinnacle West's consolidated net cash used for investing activities was \$679 million in 2018, compared to \$688 million in 2017, a decrease of \$9 million in net cash used primarily related to decreased capital expenditures.

Capital Expenditures. The following table summarizes the estimated capital expenditures for the next three years:

Capital Expenditures
(dollars in millions)

	Estimated for the Year Ended December 31,		
	2018	2019	2020
APS			
Generation:			
Nuclear Fuel	\$ 72	\$ 64	\$ 64
Renewables	12	16	17
Environmental	83	22	36
New Gas Generation	120	10	—
Other Generation	214	204	171
Distribution	450	519	630
Transmission	148	203	176
Other (a)	82	115	117
Total APS	\$ 1,181	\$ 1,153	\$ 1,211

(a) Primarily information systems and facilities projects.

Generation capital expenditures are comprised of various improvements to APS's existing fossil, renewable and nuclear plants. Examples of the types of projects included in this category are additions, upgrades and capital replacements of various power plant equipment, such as turbines, boilers and environmental equipment. We are monitoring the status of certain environmental matters, which, depending on their final outcome, could require modification to our planned environmental expenditures.

On February 17, 2015, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in each of Units 4 and 5 of Four Corners. 4CA purchased the 7% interest from El Paso on July 6, 2016. NTEC purchased the 7% interest from 4CA on July 3, 2018. (See "Areas of Business Focus - Coal and Related Environmental Matters and Transactions - Four Corners" above for a discussion of the NTEC purchase.) The table above does not include capital expenditures related to the 7% interest in Four Corners Units 4 and 5 of approximately \$15 million in 2018, \$6 million in 2019 and \$7 million in 2020, which were assumed by NTEC through its purchase of the 7% interest.

Distribution and transmission capital expenditures are comprised of infrastructure additions and upgrades, capital replacements, and new customer construction. Examples of the types of projects included in the forecast include power lines, substations, and line extensions to new residential and commercial developments.

Capital expenditures will be funded with internally generated cash and external financings, which may include issuances of long-term debt and Pinnacle West common stock.

Financing Cash Flows and Liquidity

Six-month period ended June 30, 2018 compared with six-month period ended June 30, 2017. Pinnacle West's consolidated net cash provided by financing activities was \$273 million in 2018, compared to \$394 million of net cash provided in 2017, a decrease of \$121 million in net cash provided. The decrease in net cash provided by financing activities includes \$252 million lower issuances of long-term debt and higher long-term debt repayments of \$82 million through June 30, 2018, which are partially offset by \$216 million of higher net short-term borrowings. The difference between APS and Pinnacle West's net cash provided by financing activities primarily relates to short-term borrowings and repayments at Pinnacle West on behalf of 4CA.

Significant Financing Activities. On June 20, 2018, the Pinnacle West Board of Directors declared a dividend of \$0.695 per share of common stock, payable on September 4, 2018 to shareholders of record on August 1, 2018.

On May 30, 2018, APS purchased all \$32 million of Maricopa County, Arizona Pollution Control Corporation Pollution Control Revenue Refunding Bonds, 2009 Series C, due 2029. These bonds were classified as current maturities of long-term debt on our Consolidated Balance Sheets at December 31, 2017.

On June 26, 2018, APS repaid at maturity APS's \$50 million term loan facility.

Available Credit Facilities. Pinnacle West and APS maintain committed revolving credit facilities in order to enhance liquidity and provide credit support for their commercial paper programs.

On July 12, 2018, Pinnacle West replaced its \$200 million revolving credit facility that would have matured in May 2021, with a new \$200 million facility that matures in July 2023. Pinnacle West has the option to increase the amount of the facility up to a maximum of \$300 million upon the satisfaction of certain conditions and with the consent of the lenders. At June 30, 2018, Pinnacle West had no outstanding borrowings under its credit facility, no letters of credit outstanding and \$30 million of commercial paper borrowings.

On June 28, 2018, Pinnacle West refinanced its 364 -day \$125 million unsecured revolving credit facility that would have matured on July 30, 2018 with a new 364 -day \$150 million credit facility that matures June 27, 2019. Borrowings under the facility bear interest at LIBOR plus 0.70% per annum. At June 30, 2018, Pinnacle West had \$86 million outstanding under the facility.

On July 12, 2018, APS replaced its \$500 million revolving credit facility that would have matured in May 2021, with a new \$500 million facility that matures in July 2023.

At June 30, 2018, APS had two revolving credit facilities totaling \$1 billion, including a \$500 million credit facility that matures in June 2022 and the above-mentioned \$500 million facility. APS may increase the amount of each facility up to a maximum of \$700 million, for a total of \$1.4 billion, upon the satisfaction of certain conditions and with the consent of the lenders. Interest rates are based on APS's senior unsecured debt credit ratings. These facilities are available to support APS's \$500 million commercial paper program, for bank borrowings or for issuances of letters of credit. At June 30, 2018, APS had \$500 million of commercial paper outstanding and no outstanding borrowings or letters of credit under its revolving credit facilities.

See "Financial Assurances" in Note 8 for a discussion of APS's separate outstanding letters of credit and surety bonds.

Other Financing Matters. See Note 7 for information related to the change in our margin and collateral accounts.

Debt Provisions

Pinnacle West's and APS's debt covenants related to their respective bank financing arrangements include maximum debt to capitalization ratios. Pinnacle West and APS comply with this covenant. For both Pinnacle West and APS, this covenant requires that the ratio of consolidated debt to total consolidated capitalization not exceed 65%. At June 30, 2018, the ratio was approximately 52% for Pinnacle West and 49% for APS. Failure to comply with such covenant levels would result in an event of default which, generally speaking, would require the immediate repayment of the debt subject to the covenants and could "cross-default" other debt. See further discussion of "cross-default" provisions below.

Neither Pinnacle West's nor APS's financing agreements contain "rating triggers" that would result in an acceleration of the required interest and principal payments in the event of a rating downgrade. However, our bank credit agreements and term loan facility contain a pricing grid in which the interest rates we pay for borrowings thereunder are determined by our current credit ratings.

All of Pinnacle West's loan agreements contain "cross-default" provisions that would result in defaults and the potential acceleration of payment under these loan agreements if Pinnacle West or APS were to default under certain other material agreements. All of APS's bank agreements contain "cross-default" provisions that would result in defaults and the potential acceleration of payment under these bank agreements if APS were to default under certain other material agreements. Pinnacle West and APS do not have a material adverse change restriction for credit facility borrowings.

See Note 3 for further discussions of liquidity matters.

Credit Ratings

The ratings of securities of Pinnacle West and APS as of July 27, 2018 are shown below. We are disclosing these credit ratings to enhance understanding of our cost of short-term and long-term capital and our ability to access the markets for liquidity and long-term debt. The ratings reflect the respective views of the rating agencies, from which an explanation of the significance of their ratings may be obtained. There is no assurance that these ratings will continue for any given period of time. The ratings may be revised or withdrawn entirely by the rating agencies if, in their respective judgments, circumstances so warrant. Any downward revision or withdrawal may adversely affect the market price of Pinnacle West's or APS's securities and/or result in an increase in the cost of, or limit access to, capital. Such revisions may also result in substantial additional cash or other collateral requirements related to certain derivative instruments, insurance policies, natural gas transportation, fuel supply, and other energy-related contracts. At this time, we believe we have sufficient available liquidity resources to respond to a downward revision to our credit ratings.

	Moody's	Standard & Poor's	Fitch
Pinnacle West			
Corporate credit rating	A3	A-	A-
Senior unsecured	A3	BBB+	A-
Commercial paper	P-2	A-2	F2
Outlook	Stable	Stable	Stable
APS			
Corporate credit rating	A2	A-	A-
Senior unsecured	A2	A-	A
Commercial paper	P-1	A-2	F2
Outlook	Stable	Stable	Stable

Off-Balance Sheet Arrangements

See Note 6 for a discussion of the impacts on our financial statements of consolidating certain VIEs.

Contractual Obligations

During the second quarter of 2018 our fuel and purchased power commitments decreased approximately \$230 million primarily due to the amended and restated Four Corners 2016 Coal Supply Agreement. The majority of these changes relate to the years 2023 and thereafter.

Other than the items described above, there have been no material changes, as of June 30, 2018, outside the normal course of business in contractual obligations from the information provided in our 2017 Form 10-K. See Note 3 for discussion regarding changes in our long-term debt obligations.

CRITICAL ACCOUNTING POLICIES

In preparing the financial statements in accordance with GAAP, management must often make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures at the date of the financial statements and during the reporting period. Some of those judgments can be subjective and complex, and actual results could differ from those estimates. There have been no changes to our critical accounting policies since our 2017 Form 10-K except for the adoption of the new pension and other postretirement accounting guidance as noted below. See "Critical Accounting Policies" in Item 7 of the 2017 Form 10-K for further details about our critical accounting policies.

On January 1, 2018, we adopted new accounting standard ASU 2017-07, Compensation-Retirement Benefits: Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost. This new standard changed our income statement presentation of net periodic benefit cost and allows only the service cost component of periodic net benefit cost to be eligible for capitalization. (See Note 13 for additional information.)

OTHER ACCOUNTING MATTERS

We adopted the following new accounting standards on January 1, 2018:

- ASU 2014-09: Revenue from Contracts with Customers, and related amendments
- ASU 2016-01: Financial Instruments, Recognition and Measurement
- ASU 2016-15: Statement of Cash Flows, Classification of Certain Cash Receipts and Cash Payments
- ASU 2016-18: Statement of Cash Flows, Restricted Cash
- ASU 2017-01: Business Combinations, Clarifying the Definition of a Business
- ASU 2017-05: Other Income, Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets
- ASU 2017-07: Compensation-Retirement Benefits, Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost
- ASU 2018-02: Income Statement-Reporting Comprehensive Income, Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income

We are currently evaluating the impacts of the pending adoption of the following new accounting standards:

- ASU 2016-02: Leases, and related amendments, effective for us on January 1, 2019
- ASU 2016-13: Financial Instruments, Measurement of Credit Losses, effective for us on January 1, 2020
- ASU 2017-12: Derivatives and Hedging, Targeted Improvements to Accounting for Hedging Activities, effective for us on January 1, 2019

See Note 13 for additional information related to new accounting standards.

MARKET AND CREDIT RISKS

Market Risks

Our operations include managing market risks related to changes in interest rates, commodity prices, investments held by our nuclear decommissioning trust, other special use funds and benefit plan assets.

Interest Rate and Equity Risk

We have exposure to changing interest rates. Changing interest rates will affect interest paid on variable-rate debt and the market value of fixed income securities held by our nuclear decommissioning trust, other special use funds (see Note 11 and Note 12), and benefit plan assets. The nuclear decommissioning trust, other special use funds and benefit plan assets also have risks associated with the changing market value of their equity and other non-fixed income investments. Nuclear decommissioning and benefit plan costs are recovered in regulated electricity prices.

Commodity Price Risk

We are exposed to the impact of market fluctuations in the commodity price and transportation costs of electricity and natural gas. Our risk management committee, consisting of officers and key management personnel, oversees company-wide energy risk management activities to ensure compliance with our stated energy risk management policies. We manage risks associated with these market fluctuations by utilizing various commodity instruments that may qualify as derivatives, including futures, forwards, options and swaps. As part of our risk management program, we use such instruments to hedge purchases and sales of electricity and fuels. The changes in market value of such contracts have a high correlation to price changes in the hedged commodities.

The following table shows the net pretax changes in mark-to-market of our derivative positions for the six months ended June 30, 2018 and 2017 (dollars in millions):

	Six Months Ended June 30,	
	2018	2017
Mark-to-market of net positions at beginning of year	\$ (91)	\$ (49)
Decrease (Increase) in regulatory asset/liability	(1)	(48)
Recognized in OCI:		
Mark-to-market losses realized during the period	1	1
Change in valuation techniques	—	—
Mark-to-market of net positions at end of period	<u>\$ (91)</u>	<u>\$ (96)</u>

The table below shows the fair value of maturities of our derivative contracts (dollars in millions) at June 30, 2018 by maturities and by the type of valuation that is performed to calculate the fair values, classified in their entirety based on the lowest level of input that is significant to the fair value measurement. See Note 1, "Derivative Accounting" and "Fair Value Measurements," in Item 8 of our 2017 Form 10-K and Note 11 for more discussion of our valuation methods.

Source of Fair Value	2018	2019	2020	2021	2022	Total fair value
Observable prices provided by other external sources	\$ (28)	\$ (39)	\$ (9)	\$ (6)	\$ —	\$ (82)
Prices based on unobservable inputs	1	(3)	(4)	—	(3)	(9)
Total by maturity	\$ (27)	\$ (42)	\$ (13)	\$ (6)	\$ (3)	\$ (91)

The table below shows the impact that hypothetical price movements of 10% would have on the market value of our risk management assets and liabilities included on Pinnacle West's Condensed Consolidated Balance Sheets at June 30, 2018 and December 31, 2017 (dollars in millions):

	June 30, 2018		December 31, 2017	
	Gain (Loss)		Gain (Loss)	
	Price Up 10%	Price Down 10%	Price Up 10%	Price Down 10%
Mark-to-market changes reported in:				
Regulatory asset (liability) or OCI (a)				
Electricity	\$ 3	\$ (3)	\$ 1	\$ (1)
Natural gas	40	(40)	45	(45)
Total	\$ 43	\$ (43)	\$ 46	\$ (46)

- (a) These contracts are economic hedges of our forecasted purchases of natural gas and electricity. The impact of these hypothetical price movements would substantially offset the impact that these same price movements would have on the physical exposures being hedged. To the extent the amounts are eligible for inclusion in the PSA, the amounts are recorded as either a regulatory asset or liability.

Credit Risk

We are exposed to losses in the event of non-performance or non-payment by counterparties. See Note 7 for a discussion of our credit valuation adjustment policy.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

See "Key Financial Drivers" and "Market and Credit Risks" in Item 2 above for a discussion of quantitative and qualitative disclosures about market risks.

Item 4. CONTROLS AND PROCEDURES

(a) Disclosure Controls and Procedures

The term "disclosure controls and procedures" means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (15 U.S.C. 78a *et seq.*), is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to a company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Pinnacle West's management, with the participation of Pinnacle West's Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of Pinnacle West's disclosure controls and procedures as of June 30, 2018 . Based on that evaluation, Pinnacle West's Chief Executive Officer and Chief Financial Officer have concluded that, as of that date, Pinnacle West's disclosure controls and procedures were effective.

APS's management, with the participation of APS's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of APS's disclosure controls and procedures as of June 30, 2018 . Based on that evaluation, APS's Chief Executive Officer and Chief Financial Officer have concluded that, as of that date, APS's disclosure controls and procedures were effective.

(b) Changes in Internal Control Over Financial Reporting

The term "internal control over financial reporting" (defined in SEC Rule 13a-15(f)) refers to the process of a company that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

No change in Pinnacle West's or APS's internal control over financial reporting occurred during the fiscal quarter ended June 30, 2018 that materially affected, or is reasonably likely to materially affect, Pinnacle West's or APS's internal control over financial reporting.

PART II -- OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

See "Business of Arizona Public Service Company — Environmental Matters" in Item 1 of the 2017 Form 10-K with regard to pending or threatened litigation and other disputes.

See Note 4 for ACC and FERC-related matters.

See Note 8 for information regarding environmental matters and Superfund-related matters.

Item 1A. RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, Item 1A — Risk Factors in the 2017 Form 10-K, which could materially affect the business, financial condition, cash flows or future results of Pinnacle West and APS. The risks described in the 2017 Form 10-K are not the only risks facing Pinnacle West and APS. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect the business, financial condition, cash flows and/or operating results of Pinnacle West and APS.

Item 5. OTHER INFORMATION

Environmental Matters

Ozone National Ambient Air Quality Standards. On October 1, 2015, EPA finalized revisions to the primary ground-level ozone national ambient air quality standards ("NAAQS") at a level of 70 parts per billion ("ppb"). With ozone standards becoming more stringent, our fossil generation units will come under increasing pressure to reduce emissions of nitrogen oxides and volatile organic compounds, and to generate emission offsets for new projects or facility expansions located in ozone nonattainment areas. EPA was expected to designate attainment and nonattainment areas relative to the new 70 ppb standard by October 1, 2017. While EPA took action designating attainment and unclassifiable areas on November 6, 2017, the Agency's final action designating non-attainment areas was not issued until April 30, 2018. At that time, EPA designated the geographic areas containing Yuma and Phoenix, Arizona as in non-attainment with the 2015 70 ppb ozone NAAQS. The vast majority of APS's natural gas-fired EGUs are located in these jurisdictions. Areas of Arizona and the Navajo Nation where the remainder of APS's fossil-fuel fired EGU fleet is located were designated as in attainment. We anticipate that revisions to the SIPs and FIPs implementing required controls to achieve the new 70 ppb standard will be in place between 2020 and 2021. At this time, because proposed SIPs and FIPs implementing the revised ozone NAAQSs have yet to be released, APS is unable to predict what impact the adoption of these standards may have on the Company. APS will continue to monitor these standards as they are implemented within the jurisdictions affecting APS.

Water Supply

Gila River Adjudication. A summons served on APS in early 1986 required all water claimants in the Lower Gila River Watershed in Arizona to assert any claims to water on or before January 20, 1987, in an action pending in Arizona Superior Court. Palo Verde is located within the geographic area subject to the summons. APS's rights and the rights of the other Palo Verde participants to the use of groundwater and effluent at Palo Verde are potentially at issue in this adjudication. As operating agent of Palo Verde, APS filed claims that dispute the court's jurisdiction over the Palo Verde participants' groundwater rights and their contractual rights to effluent relating to Palo Verde. Alternatively, APS seeks confirmation of such rights. Several of APS's other power plants are also located within the geographic area subject to the summons,

including a number of gas-fired power plants located within Maricopa and Pinal Counties. In November 1999, the Arizona Supreme Court issued a decision confirming that certain groundwater rights may be available to the federal government and Indian tribes. In addition, in September 2000, the Arizona Supreme Court issued a decision affirming the lower court's criteria for resolving groundwater claims. Litigation on both of these issues has continued in the trial court. In December 2005, APS and other parties filed a petition with the Arizona Supreme Court requesting interlocutory review of a September 2005 trial court order regarding procedures for determining whether groundwater pumping is affecting surface water rights. The Arizona Supreme Court denied the petition in May 2007, and the trial court is now proceeding with implementation of its 2005 order. No trial date concerning APS's water rights claims has been set in this matter.

At this time, the lower court proceedings in the Gila River adjudication are in the process of determining the specific hydro-geologic testing protocols for determining which groundwater wells located outside of the subflow zone of the Gila River should be subject to the adjudication court's jurisdiction. A hearing to determine this jurisdictional test question was held in March of 2018 in front of a special master, and a draft decision based on the evidence heard during that hearing was issued on May 17, 2018. The draft decision of the special master, which is subject to further review by the trial court judge, accepts the proposed hydro-geologic testing protocols supported by APS and other industrial users of groundwater. Upon a final decision by the trial court judge in this matter, further proceedings thereafter will be dedicated to determining the specific hydro-geologic testing protocols for subflow depletion determinations. The determinations made in this final stage of the proceedings will ultimately govern the adjudication of rights for parties, such as APS, that rely on groundwater extraction to support their industrial operations. At this time, APS cannot predict the outcome of these proceedings.

Item 6. EXHIBITS

(a) Exhibits

Exhibit No.	Registrant(s)	Description
10.1	Pinnacle West	<u>364-day Credit Agreement dated as of June 28, 2018, among Pinnacle West, as Borrower, MUFG Bank, Ltd., as Agent and Issuing Bank, JPMorgan Chase Bank, N.A. and Bank of America, N.A., as Co-Syndication Agents</u>
10.2	Pinnacle West	<u>Purchase and Sale Agreement, dated June 29, 2018, by and between Navajo Transitional Energy Company, LLC and 4CA</u>
10.3	Pinnacle West	<u>Five-Year Credit Agreement dated as of July 12, 2018, among Pinnacle West, as Borrower, Barclays Bank PLC, as Agent and Issuing Bank, and the lenders and other parties thereto</u>
10.4	Pinnacle West APS	<u>Five-Year Credit Agreement dated as of July 12, 2018 among APS, as Borrower, Barclays Bank PLC, as Agent and Issuing Bank, and the lenders and other parties thereto</u>
10.7.4c	Pinnacle West APS	<u>Four Corners Project Co-Tenancy Agreement, conformed copy up through and including Amendment No. 11, dated June 30, 2018, among APS, Public Service Company of New Mexico, SRP, Tucson Electric Power Company and Navajo Transitional Energy Company, LLC</u>
10.11.4a	Pinnacle West APS	<u>Amendment No. 1, dated July 13, 2018, to Five-Year Credit Agreement dated as of June 29, 2017, among APS, as Borrower, Barclays Bank PLC, as Agent and Issuing Bank, and the lenders and other parties thereto</u>
12.1	Pinnacle West	<u>Ratio of Earnings to Fixed Charges</u>
12.2	APS	<u>Ratio of Earnings to Fixed Charges</u>
12.3	Pinnacle West	<u>Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividend Requirements</u>
31.1	Pinnacle West	<u>Certificate of Donald E. Brandt, Chief Executive Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended</u>
31.2	Pinnacle West	<u>Certificate of James R. Hatfield, Executive Vice President and Chief Financial Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended</u>
31.3	APS	<u>Certificate of Donald E. Brandt, Chief Executive Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended</u>
31.4	APS	<u>Certificate of James R. Hatfield, Executive Vice President and Chief Financial Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended</u>
32.1*	Pinnacle West	<u>Certification of Chief Executive Officer and Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>

32.2*	APS	Certification of Chief Executive Officer and Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	Pinnacle West APS	XBRL Instance Document
101.SCH	Pinnacle West APS	XBRL Taxonomy Extension Schema Document
101.CAL	Pinnacle West APS	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	Pinnacle West APS	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Pinnacle West APS	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	Pinnacle West APS	XBRL Taxonomy Definition Linkbase Document

*Furnished herewith as an Exhibit.

In addition, Pinnacle West and APS hereby incorporate the following Exhibits pursuant to Exchange Act Rule 12b-32 and Regulation §229.10(d) by reference to the filings set forth below:

<u>Exhibit No.</u>	<u>Registrant(s)</u>	<u>Description</u>	<u>Previously Filed as Exhibit(1)</u>	<u>Date Filed</u>
3.1	Pinnacle West	Pinnacle West Capital Corporation Bylaws, amended as of February 22, 2017	3.1 to Pinnacle West/APS February 28, 2017 Form 8-K Report, File Nos. 1-8962 and 1-4473	2/28/2017
3.2	Pinnacle West	Articles of Incorporation, restated as of May 21, 2008	3.1 to Pinnacle West/APS June 30, 2008 Form 10-Q Report, File Nos. 1-8962 and 1-4473	8/7/2008
3.3	APS	Articles of Incorporation, restated as of May 25, 1988	4.2 to APS's Form S-3 Registration Nos. 33-33910 and 33-55248 by means of September 24, 1993 Form 8-K Report, File No. 1-4473	9/29/1993
3.4	APS	Amendment to the Articles of Incorporation of Arizona Public Service Company, amended May 16, 2012	3.1 to Pinnacle West/APS May 22, 2012 Form 8-K Report, File Nos. 1-8962 and 1-4473	5/22/2012
3.5	APS	Arizona Public Service Company Bylaws, amended as of December 16, 2008	3.4 to Pinnacle West/APS December 31, 2008 Form 10-K, File Nos. 1-8962 and 1-4473	2/20/2009

(1) Reports filed under File Nos. 1-4473 and 1-8962 were filed in the office of the Securities and Exchange Commission located in Washington, D.C.

SIGNATURES

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

PINNACLE WEST CAPITAL CORPORATION
(Registrant)

Dated: August 3, 2018

By: /s/ James R. Hatfield
James R. Hatfield
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer and
Officer Duly Authorized to sign this Report)

ARIZONA PUBLIC SERVICE COMPANY
(Registrant)

Dated: August 3, 2018

By: /s/ James R. Hatfield
James R. Hatfield
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer and
Officer Duly Authorized to sign this Report)

U.S. \$150,000,000
364-DAY CREDIT AGREEMENT

Dated as of June 28, 2018

among

PINNACLE WEST CAPITAL CORPORATION,
as Borrower,

THE LENDERS PARTY HERETO,

MUFG BANK, LTD.,
as Agent and as Issuing Bank, and

JPMORGAN CHASE BANK, N.A.,
and
BANK OF AMERICA, N.A.,
as Co-Syndication Agents

MUFG BANK, LTD.,
JPMORGAN CHASE BANK, N.A.,
and
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arrangers and Joint Book Runners

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364-DAY CREDIT AGREEMENT

Dated as of June 28, 2018

PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation (the “Borrower”), the banks, financial institutions and other institutional lenders (the “Initial Lenders”) and the initial issuing bank (the “Initial Issuing Bank”) listed on the signature pages hereof, the other Lenders (as hereinafter defined), MUFG BANK, LTD. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as Agent for the Lenders, and JPMORGAN CHASE BANK, N.A. and BANK OF AMERICA, N.A., as Co-Syndication Agents, agree as follows:

The Borrower has requested that the Lenders provide a revolving credit facility for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“4C Sub” means 4C Acquisition, LLC, a Subsidiary of the Borrower formed to acquire from El Paso Electric Company and temporarily own the 7% Interest in Units 4 and 5 of the Four Corners Power Plant located near Farmington, New Mexico.

“7% Interest” means the 7% Interest in Units 4 and 5 of the Four Corners Power Plant located near Farmington, New Mexico and previously owned by El Paso Electric Company.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Agent.

“Advance” means a Revolving Advance or a Swingline Advance.

“Affected Lender” means any Lender, as reasonably determined by the Agent or if the Agent is the Affected Lender, by the Required Lenders, that (a) has failed to (i) fund all or any portion of any Revolving Advance within three (3) Business Days of the date such Revolving Advances were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, or (ii) pay to the Agent, any Issuing Bank, the Swingline Lender, if any, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit and funding obligations in respect of Swingline Advances) within three (3) Business Days of the date when due, (b) has notified the Borrower, the Agent, any Issuing Bank or any Lender in writing of its intention not to fund any

Revolving Advance or any of its other funding obligations under this Agreement, (c) has failed, within three Business Days after written request by the Agent, or if the Agent is the Affected Lender, by the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Revolving Advances and other funding obligations under this Agreement, (d) shall (or whose parent company shall) generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or shall have had any proceeding instituted by or against such Lender (or its parent company) seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 30 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for, it or for any substantial part of its property) shall occur, or shall take (or whose parent company shall take) any corporate action to authorize any of the actions set forth above in this subsection (d) or (e) has become the subject of a Bail-In Action, provided that a Lender shall not be deemed to be an Affected Lender solely by virtue of the ownership or acquisition of any equity interest in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“ Affiliate ” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

“ Agent ” means MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.) in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“ Agent’s Account ” means the account of the Agent designated on Schedule 8.02 under the heading “Agent’s Account” or such other account as the Agent may designate to the Lenders and the Borrower from time to time.

“ Agent’s Office ” means the Agent’s address and, as appropriate, the Agent’s Account, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

“ Anti-Corruption Laws ” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption or money laundering.

“ Applicable Lending Office ” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a Base Rate Advance and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Rate Advance.

“ Applicable Rate ” means, from time to time, (i) with respect to Eurodollar Rate Advances, 0.70% per annum, (ii) with respect to Base Rate Advances, 0.00% per annum, and (iii) with respect to commitment fees hereunder, 0.125% per annum.

“ Approved Fund ” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“ APS ” means Arizona Public Service Company, an Arizona corporation.

“ Arrangers ” means, collectively, MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), JPMorgan Chase Bank, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement).

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

“ Authorized Officer ” means the chairman of the board, chief executive officer, chief operating officer, chief financial officer, chief accounting officer, president, any vice president, treasurer, controller or any assistant treasurer of the Borrower.

“ Available Amount ” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

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

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

“ Base Rate ” means for any day a fluctuating rate per annum equal to the highest of:

- (a) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its “prime rate”;
- (b) the Federal Funds Rate plus 0.50%; and

(c) an amount equal to (i) the Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus (ii) 1%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Advance” means a Revolving Advance that bears interest as provided in Section 2.07(a)(i).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

“Borrower” has the meaning given to such term in the introductory paragraph hereof.

“Borrower Information” has the meaning specified in Section 8.08.

“Borrowing” means (a) a borrowing consisting of simultaneous Revolving Advances of the same Type made by each of the Lenders pursuant to Section 2.01(a) or (b) Swingline Advances.

“Business Day” means a day of the year on which banks are not required or authorized by Law to close in New York City or Phoenix, Arizona and, if the applicable Business Day relates to any Advance in which interest is calculated by reference to the Eurodollar Rate, on which dealings are carried on in the London interbank market.

“Capital Lease Obligations” means, subject to Section 1.03, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capital lease or a finance lease on the balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption of any Law, (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in

each case pursuant to Basel III, shall in each case be deemed a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“Commitment” means a Revolving Credit Commitment or a Letter of Credit Commitment.

“Consolidated” refers to the consolidation of accounts in accordance with GAAP.

“Consolidated Indebtedness” means, at any date, the Indebtedness of the Borrower and its Consolidated Subsidiaries determined on a Consolidated basis as of such date; provided, however, that so long as the creditors of the VIE Lessor Trusts have no recourse to the assets of APS, “Consolidated Indebtedness” shall not include any Indebtedness or other obligations of the VIE Lessor Trusts.

“Consolidated Net Worth” means, at any date, the sum as of such date of (a) the par value (or value stated on the books of the Borrower) of all classes of capital stock of the Borrower and its Subsidiaries, excluding the Borrower’s capital stock owned by the Borrower and/or its Subsidiaries, *plus* (or *minus* in the case of a surplus deficit) (b) the amount of the Consolidated surplus, whether capital or earned, of the Borrower, determined in accordance with GAAP as of the end of the most recent calendar month (excluding the effect on the Borrower’s accumulated other comprehensive income/loss of the ongoing application of Accounting Standards Codification Topic 815).

“Consolidated Subsidiary” means, at any date, any Subsidiary or other entity the accounts of which would be Consolidated with those of the Borrower on its Consolidated financial statements if such financial statements were prepared as of such date; provided that in no event will Consolidated Subsidiaries include the VIE Lessor Trusts.

“Controlled Affiliate” has the meaning specified in Section 4.01(n).

“Convert”, “Conversion” and “Converted” each refers to a conversion of Revolving Advances of one Type into Revolving Advances of the other Type pursuant to Section 2.08, Section 2.09 or Section 2.12.

“Credit Extension” means each of the following: (a) a Borrowing and (b) the issuance of a Letter of Credit.

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

“Default” means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

“Dollars” or “\$” means dollars of the United States of America.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

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

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

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

“Effective Date” has the meaning specified in Section 3.01.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 8.07(b)(iii) and Section 8.07(b)(v) (subject to such consents, if any, as may be required under Section 8.07(b)(iii)).

“Environmental Action” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment and relating to any Environmental Law, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any Governmental Authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“Environmental Law” means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, natural resources or, to the extent relating to exposure to Hazardous Materials, human health or safety, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

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

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

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

“ Eurodollar Lending Office ” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“ Eurodollar Rate ” means for any Interest Period as to any Eurodollar Rate Advance, (i) the rate per annum determined by the Agent to be the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the “ LIBO Rate ”) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period; provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; and provided, further, that if any such rate determined pursuant to this definition is below zero, the Eurodollar Rate will be deemed to be zero.

“ Eurodollar Rate Advance ” means a Revolving Advance that bears interest at a rate based on the Eurodollar Rate (other than a Base Rate Advance bearing interest at a rate based on the Eurodollar Rate).

“Events of Default” has the meaning specified in Section 6.01.

“Excluded Taxes” means, with respect to the Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the United States of America or the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or does business or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding Tax that is required by the Internal Revenue Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 2.14(e)(ii), (d) in the case of a Foreign Lender (other than as agreed to between any assignee and the Borrower pursuant to a request by the Borrower under Section 2.20), any United States of America withholding Tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Applicable Lending Office) or (ii) is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 2.14(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.14(a)(i) or (ii) and (v) any United States withholding Tax imposed by FATCA.

“Executive Order” has the meaning specified in Section 4.01(p).

“Existing Credit Agreement” means that certain 364-Day Credit Agreement, dated as of August 31, 2016 by and among the Borrower, the Lenders from time to time party thereto and the Agent, as amended by that certain Amendment No. 1 to 364-Day Credit Agreement, dated as of July 31, 2017, by and among the Borrower, the Lenders party thereto and the Agent.

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

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent, and (c) solely for purposes for determining the Money Market Rate, any such other publication or means of determining the rate for federal funds as agreed to between the Borrower and Swingline Lender; provided

further, that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“ Fee Letters ” means (a) the agent fee letter from MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as Agent, relating to certain fees payable by the Borrower to MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (including in its capacity as the Initial Issuing Bank) in respect of the transactions contemplated by this Agreement and (b) any letter between the Borrower and any Issuing Bank other than the Initial Issuing Bank relating to certain fees payable to such Issuing Bank in its capacity as such, each as amended, modified, restated or supplemented from time to time.

“ Foreign Lender ” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of an Issuing Bank or a Swingline Lender). For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“ Four Corners Acquisition ” means the acquisition by APS from Southern California Edison Company (“ SCE ”) of SCE’s interests in Units 4 and 5 of the Four Corners Power Plant near Farmington, New Mexico, pursuant to the Purchase and Sale Agreement, dated as of November 8, 2010, by and between SCE and APS.

“ Fund ” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“ GAAP ” has the meaning specified in Section 1.03.

“ Governmental Authority ” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“ Government Official ” shall mean (a) an executive, official, employee or agent of a governmental department, agency or instrumentality, (b) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (c) a political party or official thereof, or candidate for political office or (d) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank).

“ Guarantee ” means as to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, agreements to keep well,

to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hazardous Materials” means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“Hedge Agreement” means any interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract, commodity future or option contract, commodity forward contract or other similar agreement.

“Indebtedness” means as to any Person at any date (without duplication): (a) indebtedness created, issued, incurred or assumed by such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (b) all obligations of such Person to pay the deferred purchase price of property or services, excluding, however, trade accounts payable (other than for borrowed money) arising in, and accrued expenses incurred in, the ordinary course of business of such Person so long as such trade accounts payable are paid within 180 days (unless subject to a good faith dispute) of the date incurred; (c) all Indebtedness secured by a Lien on any asset of such Person, to the extent such Indebtedness has been assumed by, or is a recourse obligation of, such Person; (d) all Guarantees by such Person; (e) all Capital Lease Obligations of such Person; and (f) the amount of all reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments in support of Indebtedness; provided that Indebtedness, in accordance with Section 1.03, shall exclude any obligation or liability arising from the application or interpretation of ASC Topic 840 or 842 or any related, similar or successor pronouncement, guideline, publication or rule, or which is otherwise excluded in accordance with Section 1.03.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Ineligible Institution” means (a) a natural person, (b) an Affected Lender or any of its Subsidiaries, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

“Initial Issuing Bank” has the meaning given to such term in the introductory paragraph hereof.

“Initial Lenders” has the meaning given to such term in the introductory paragraph hereof.

“Interest Period” means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on (i) the date such Eurodollar Rate Advance is disbursed, (ii) the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance or (iii) the effective date of the most recent continuation of such Eurodollar Rate Advance, as the case may be, and ending on the last day of the period selected by the Borrower pursuant to the provisions

below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one week, or one, two, three or six months, as the Borrower may, upon notice received by the Agent not later than 12:00 noon on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“Interpolated Rate” means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between:

(a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of that Loan; and

(b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of that Loan,

each as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period of that Loan.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuing Bank” means the Initial Issuing Bank and any other Lender approved by the Borrower that may agree to issue Letters of Credit pursuant to an Assignment and Assumption or other agreement in form satisfactory to the Borrower and the Agent, so long as such Lender expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its

Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank or Lender, as the case may be, shall have a Letter of Credit Commitment.

“ L/C Advance ” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Ratable Share.

“ L/C Borrowing ” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made nor refinanced as a Base Rate Advance.

“ L/C Cash Deposit Account ” means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

“ L/C Obligations ” means, as at any date of determination, the aggregate Available Amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“ L/C Related Documents ” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower or in favor of any Issuing Bank and relating to such Letter of Credit.

“ Laws ” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“ Lenders ” means the Initial Lenders, each Issuing Bank, the Swingline Lender, if any, and each Person that shall become a party hereto pursuant to Section 8.07.

“ Letter of Credit ” has the meaning specified in Section 2.01(b).

“ Letter of Credit Application ” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any Issuing Bank.

“ Letter of Credit Commitment ” means, with respect to each Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower from time to time in an aggregate amount equal to (a) for the Initial Issuing Bank, \$25,000,000, and (b) for any other Issuing Bank, as separately agreed to by such Issuing Bank and the Borrower. The Letter of Credit Commitment is part of, and not in addition to, the Revolving Credit Commitments.

“Letter of Credit Expiration Date” means the day that is five Business Days prior to the Termination Date.

“LIBO Rate” has the meaning specified in the definition of “Eurodollar Rate.”

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge or other security interest or preferential arrangement that has the practical effect of creating a security interest, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property, and any capital lease having substantially the same economic effect as any of the foregoing.

“Loan Documents” mean this Agreement, each Note, each L/C Related Document and the Fee Letters.

“Material Adverse Effect” means a material adverse effect on (a) the financial condition, operations, business or property of the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under this Agreement or any Note or (c) the ability of the Borrower to perform its obligations under this Agreement or any Note.

“Material Subsidiary” means APS, at any time, and each other Subsidiary of the Borrower which as of such time meets the definition of a “significant subsidiary” included as of the date hereof in Regulation S-X of the Securities and Exchange Commission or whose assets at such time exceed 10% of the assets of the Borrower and the Subsidiaries (on a consolidated basis).

“Money Market Rate” means (a) the Federal Funds Rate plus (b) the Applicable Rate for Eurodollar Rate Advances.

“Money Market Rate Advance” means a Swingline Advance that bears interest at a rate based on the Money Market Rate.

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Note” means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto.

“Notice of Borrowing” has the meaning specified in Section 2.02(a).

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Revolving Advance, Swingline Advance or Letter of Credit, whether direct or indirect (including those acquired

by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue under any Loan Document after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means Office of Foreign Assets Control of the United States Department of the Treasury.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning specified in Section 8.07(d).

“Participant Register” has the meaning specified in Section 8.07(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended.

“PBGC” means the Pension Benefit Guaranty Corporation.

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

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Agent) or any similar release by the Federal Reserve Board (as determined by the Agent).

“Prohibited Person” means any Person (a) listed in the Annex to the Executive Order or identified pursuant to Section 1 of the Executive Order; (b) that is owned or controlled by, or acting

for or on behalf of, any Person listed in the Annex to the Executive Order or identified pursuant to the provisions of Section 1 of the Executive Order; (c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-laundering law, including the Executive Order; (d) who commits, threatens, conspires to commit, or support “terrorism” as defined in the Executive Order; (e) who is named as a “Specially designated national or blocked person” on the most current list published by the OFAC at its official website, at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> or any replacement website or other replacement official publication of such list; or (f) who is owned or controlled by a Person listed above in clause (c) or (e).

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

“Public Debt Rating” means, as of any date, the rating that has been most recently announced by either S&P or Moody’s, as the case may be, applicable to any outstanding class of non-credit enhanced long-term senior unsecured debt issued by, or, if no such senior unsecured debt is outstanding at the time of determination, such rating for bank credit facilities for, the Borrower or, if any such rating agency shall have issued more than one such rating, the lowest such rating issued by such rating agency.

“PVNGS” means the Palo Verde Nuclear Generating Station.

“Ratable Share” of any amount means, with respect to any Lender at any time but subject to the provisions of Section 2.19, the product of such amount times a fraction the numerator of which is the amount of such Lender’s Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, such Lender’s Revolving Credit Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Revolving Credit Commitments at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, the aggregate amount of all Revolving Credit Commitments as in effect immediately prior to such termination).

“Register” has the meaning specified in Section 8.07(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived under the final regulations issued under Section 4043, as in effect as of the date of this Agreement (the “Section 4043 Regulations”). Any changes made to the Section 4043 Regulations that become effective after the Effective Date shall have no impact on the definition of Reportable Event as used herein unless otherwise amended by the Borrower and the Required Lenders.

“Required Lenders” means, at any time, but subject to Section 2.19, Lenders holding in the aggregate more than 50% of (a) the Revolving Credit Commitments or (b) if the Revolving Credit Commitments have been terminated, the Total Outstandings.

“Revolving Advance” means an advance by a Lender to the Borrower as part of a Borrowing, including a Base Rate Advance made pursuant to Section 2.03(c), but excluding any L/C Advance made as part of an L/C Borrowing and any Swingline Advance, and refers to a Base Rate Advance or a Eurodollar Rate Advance (each of which shall be a Type of Revolving Advance).

“Revolving Credit Commitment” means, as to any Lender, its obligation to (a) make Revolving Advances to the Borrower pursuant to Section 2.01 and Section 2.03(c), (b) purchase participations in L/C Obligations and (c) make Revolving Advances pursuant to Section 2.03A(c) for the purpose of repaying Swingline Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01 under the column “Revolving Credit Commitment” or if such Lender has entered into any Assignment and Assumption, the amount set forth for such Lender in the Register, in each case as such amount may be reduced pursuant to Section 2.05.

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

“Sale Leaseback Obligation Bonds” means any bonds issued by or on behalf of the Borrower in connection with a sale/leaseback transaction and any refinancing or refunding of such obligations.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC and any similar economic or financial sanctions or trade embargoes of the type described in Section 4.01(n) through (q) and imposed, administered or enforced from time to time by the U.S. government, including the U.S. Department of State, or any other applicable Governmental Authority.

“SEC Reports” means the Borrower’s (i) Form 10-K Report for the year ended December 31, 2017, (ii) Form 10-Q Reports for the quarter ended March 31, 2018 and (iii) Form 8-K Reports filed on January 9, 2018, February 20, 2018, February 22, 2018 and May 22, 2018.

“Subsidiary” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding Voting Stock, (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries; provided that in no event will Subsidiaries include the VIE Lessor Trusts.

“Swingline Advance” means an advance made by the Swingline Lender, if any, to the Borrower pursuant to Section 2.03A.

“Swingline Eurodollar Rate Advance” means a Swingline Advance that bears interest at a rate equivalent to (a) clause (ii) under the definition of Eurodollar Rate, plus (b) the Applicable Rate for Eurodollar Rate Advances.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Advances outstanding at such time. The Swingline Exposure of any Lender shall be its Ratable Share of the total Swingline Exposure at such time.

“Swingline Lender” means, upon notice to the Agent by such Lender and the Borrower, any Lender approved by the Borrower and the Agent from time to time that may agree to fund Swingline Advances (as of the Effective Date there shall be no Swingline Lender).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earlier of (a) June 27, 2019 and (b) the date of termination in whole of the Commitments pursuant to Section 2.05 or Section 6.01.

“Total Outstandings” means the sum of (a) the aggregate principal amount of all Revolving Advances plus (b) all L/C Obligations outstanding plus (c) the aggregate Swingline Exposure.

“Type” means a Base Rate Advance or a Eurodollar Rate Advance.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“Unused Commitment” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all Revolving Advances made by such Lender (in its capacity as a Lender) and outstanding at such time and (ii) such Lender’s Ratable Share of the aggregate L/C Obligations and, other than for the purposes of calculation of the commitment fees, such Lender’s Ratable Share of the aggregate Swingline Exposure outstanding at such time.

“VIE Lessor Trusts” means the three (3) separate variable-interest entity lessor trusts that purchased from, and leased back to, APS certain interests in the PVNGS Unit 2 and related common facilities, as described in Note 6 of Combined Notes to Condensed Consolidated Financial Statements in Borrower’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018.

“Voting Stock” means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote

for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s permitted successors and permitted assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 Accounting Terms. Unless otherwise specified herein, and subject to the provision below, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with generally accepted accounting principles as in effect from time to time, applied on a basis consistent (except for changes concurred in by the Borrower’s independent

public accountants) with the most recent audited Consolidated financial statements of the Borrower delivered to the Agent (“GAAP”). If at any time any change in GAAP or in the interpretation thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or in the interpretation thereof (subject to the approval of the Required Lenders); provided that, unless and until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein. Notwithstanding the foregoing, (a) for purposes of all financial or covenant calculations made under this Agreement and for purposes of defining and calculating Capital Lease Obligations, Indebtedness and Consolidated Indebtedness hereunder for such purposes, all leases or other agreements of any Person deemed to be a lease or other obligation under GAAP (as in effect from time to time) (whether such lease or other agreement is existing as of the date hereof or hereafter entered into) that would not be characterized as (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, in each case, under this Agreement based on GAAP as in effect as of December 31, 2015, will not be deemed to be (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, respectively, as a result of any change in GAAP, or the interpretation or application thereof required or approved by such Person’s independent certified public accountants, occurring or coming into or taking effect after December 31, 2015, including ASC Topic 840 or 842 or any related, similar or successor pronouncement, guidance, publication or rule and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Person at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES AND LETTERS OF CREDIT

Section 2.01 The Revolving Advances and Letters of Credit.

(a) The Revolving Advances. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Revolving Advances in Dollars to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an amount not to exceed such Lender's Unused Commitment. Each Borrowing (other than a Swingline Advance) shall be in an aggregate amount of \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall consist of Revolving Advances of the same Type made on the same day by the Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(a). Any Swingline Advance shall be made and repaid in accordance with the procedures set forth in Section 2.03A.

(b) Letters of Credit. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue standby letters of credit (each a "Letter of Credit") for the account of the Borrower from time to time on any Business Day during the period from the Effective Date until 30 days before the Termination Date in an aggregate Available Amount for all Letters of Credit issued by each Issuing Bank not to exceed at any time such Issuing Bank's Letter of Credit Commitment, provided that after giving effect to the issuance of any Letter of Credit, (i) the Total Outstandings shall not exceed the aggregate Revolving Credit Commitments and (ii) each Lender's Ratable Share of the Total Outstandings shall not exceed such Lender's Revolving Credit Commitment. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the Letter of Credit Expiration Date. Within the limits referred to above, the Borrower may from time to time request the issuance of Letters of Credit under this Section 2.01(b). The terms "issue", "issued", "issuance" and all similar terms, when applied to a Letter of Credit, shall include any renewal, extension or amendment thereof.

Section 2.02 Making the Revolving Advances.

(a) Except as otherwise provided in Section 2.03(c), each Borrowing (other than a Swingline Advance) shall be made on notice, given not later than (x) 12:00 noon on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of Eurodollar Rate Advances or (y) 12:00 noon on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Advances, by the Borrower to the Agent, which shall give to each Lender prompt notice thereof by electronic communications. Each such notice of a Borrowing (a "Notice of Borrowing") shall be in writing in substantially the form of Exhibit B hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Revolving Advance. Each Lender shall, in the case of a Borrowing consisting of Base Rate Advances, before 2:00 p.m. on the date of such Borrowing, and in the case of a Borrowing consisting of Eurodollar Rate Advances, before 11:00 a.m. on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, such Lender's Ratable Share of such

Borrowing. After the Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such funds available to the Borrower at the Agent's address referred to in Section 8.02 or as requested by the Borrower in the applicable Notice of Borrowing.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances for any Borrowing if the aggregate amount of such Borrowing is less than \$1,000,000 or if the obligation of the Lenders to make Eurodollar Rate Advances shall then be suspended pursuant to Section 2.08 or Section 2.12 and (ii) at no time shall there be more than fifteen (15) different Interest Periods outstanding for Eurodollar Rate Advances.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense reasonably incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Advance to be made by such Lender as part of such Borrowing when such Revolving Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of the applicable Borrowing that such Lender will not make available to the Agent such Lender's Ratable Share of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Share available to the Agent, such Lender and the Borrower severally agree to repay to the Agent within one Business Day after demand for such Lender and within three Business Days after demand for the Borrower such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Revolving Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Advance to be made by such other Lender on the date of any Borrowing.

Section 2.03 Letters of Credit.

(a) General.

(i) No Issuing Bank shall issue any Letter of Credit, if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital and liquidity requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which, in each such case, such Issuing Bank in good faith deems material to it;

(B) except as otherwise agreed by the Borrower and such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$100,000;

(C) such Letter of Credit is to be denominated in a currency other than Dollars;

(D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(E) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension; or

(F) any Lender is at such time an Affected Lender hereunder, unless the applicable Issuing Bank is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until such Issuing Bank has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate such Issuing Bank's risk with respect to such Affected Lender, and participating interests in any such newly issued Letter of Credit shall be allocated among

non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(iii) No Issuing Bank shall amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) No Issuing Bank shall be under any obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower (for the support of its or its Subsidiaries' obligations or those of a third-party) delivered to the applicable Issuing Bank (with a copy to the Agent) in the form of a Letter of Credit Application appropriately completed and signed by an Authorized Officer of the Borrower, together with agreed-upon draft language for such Letter of Credit reasonably acceptable to the applicable Issuing Bank. Notwithstanding the applicant listed on any Letter of Credit Application or Letter of Credit, any such Letter of Credit shall be for the account of the Borrower. Such Letter of Credit Application must be received by such Issuing Bank and the Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Agent and such Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; (H) the account party and applicant to be named on the requested Letter of Credit, and (I) such other matters as such Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, the Borrower shall specify in such Letter of Credit Application in form and detail satisfactory to the applicable Issuing Bank (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such Issuing Bank may require. Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Related Documents, as the applicable Issuing Bank or the Agent may require. In the event and to the extent that the provisions of any Letter of Credit Application or other L/C Related Document shall conflict with this Agreement, the provisions of this Agreement shall govern. Without limitation of the immediately preceding sentence, to the extent that any such Letter of Credit

Application or other L/C Related Document shall impose any additional conditions on the maintenance of a Letter of Credit, any additional default provisions, collateral requirements or other obligations of the Borrower to any Issuing Bank, other than as stated in this Agreement, such additional conditions, provisions, requirements or other obligations shall not have effect so long as this Agreement shall be in effect, except to the extent as expressly agreed to by the Borrower and such Issuing Bank. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued hereunder, the Borrower will be fully responsible for the reimbursement of all L/C Obligations in accordance with the terms hereof, the payment of interest thereon and the payment of fees due hereunder to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of any entity that is an account party in respect of any such Letter of Credit).

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such Issuing Bank will provide the Agent with a copy thereof. Unless the applicable Issuing Bank has received written notice from the Required Lenders, the Agent or the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article III shall not then be satisfied, then, subject to the terms and conditions hereof and any applicable Letter of Credit Application, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Ratable Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to the applicable Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable Issuing Bank shall not permit any such extension (or may issue a Notice of Non-Extension) if (A) such Issuing Bank has determined that it would not be permitted at

such time to issue such Letter of Credit in its revised form (as extended) by reason of the provisions of clause (i) of Section 2.03(a) (or would have no obligation to issue such Letter of Credit by reason of the provisions of clause (ii) of Section 2.03(a)), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension pursuant to Section 6.02 or (2) from the Agent, the Required Lenders or the Borrower that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Subject to the provisions below, not later than 2:30 p.m. on the date (the “Honor Date”) that any Issuing Bank makes any payment on a drawing on any Letter of Credit, if the Borrower shall have received notice of such payment prior to 11:30 a.m. on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:30 p.m. on the next Business Day, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such drawing together with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, unless the Borrower shall have advised the Agent that it does not meet the conditions specified in clause (B) below, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Ratable Share thereof. In such event, the Borrower shall be deemed to have requested a Base Rate Advance to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01(a) or the delivery of a Notice of Borrowing but subject to (A) the amount of the aggregate Unused Commitments and (B) no Event of Default having occurred and be continuing, or resulting therefrom and, to the extent so financed, the Borrower’s obligation to satisfy the reimbursement obligation created by such payment by the Issuing Bank on the Honor Date shall be discharged and replaced by the resulting Base Rate Advance. Any notice given by any Issuing Bank or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Agent for the account of the applicable Issuing Bank at the Agent’s Office in an amount equal to its Ratable Share of the Unreimbursed Amount not later than 4:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed

to have made a Base Rate Advance to the Borrower in such amount. The Agent shall remit the funds so received to the applicable Issuing Bank.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Base Rate Advance because any of the conditions set forth in clauses (A) or (B) of Section 2.03(c)(i) cannot be satisfied or for any other reason, then not later than 2:30 p.m. on the next Business Day after the day notice of the drawing is given to the Borrower, in the case of a failure to meet any such condition, or in any other case, after notice of the event resulting in the outstanding Unreimbursed Amount, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such outstanding Unreimbursed Amount with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, the Borrower shall be deemed to have incurred from the applicable Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum. In such event, each Lender's payment to the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Base Rate Advance or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Ratable Share of such amount shall be solely for the account of the applicable Issuing Bank.

(v) Each Lender's obligation to make Base Rate Advances or L/C Advances to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Base Rate Advances pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 2.03(c)(i). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such Issuing Bank shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank

at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such Issuing Bank in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Base Rate Advance included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable Issuing Bank submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral (as defined in Section 2.03(h).) applied thereto by the Agent), the Agent will distribute to such Lender its Ratable Share thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c) (i) is required to be returned under any of the circumstances described in Section 8.12 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Lender shall pay to the Agent for the account of such Issuing Bank its Ratable Share thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Failure to Make Revolving Advances. The failure of any Lender to make the Revolving Advance to be made by it on the date specified in Section 2.03(c) or any L/C Advance shall not relieve any other Lender of its obligation hereunder to make its Revolving Advance or L/C Advance, as the case may be, to be made by such other Lender on such date.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter

of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

provided, however, that nothing in this Section 2.03(f) shall limit the rights of the Borrower under Section 2.03(g).

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity that is known to the Borrower in connection with any draw under such Letter of Credit of which the Borrower has reasonable notice, the Borrower will immediately notify the applicable Issuing Bank. To the extent allowed by applicable Law, Borrower shall be conclusively deemed to have waived any such claim against the applicable Issuing Bank and its correspondents unless such notice is given as aforesaid. Nothing herein shall require the Borrower to make any determination as to whether the drawing is in accordance with the requirements of the Letter of Credit, provided that the Borrower may waive any discrepancies in the drawing on any such Letter of Credit.

(g) Role of Issuing Bank. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct

as determined by a final, non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(f); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence as determined by a final, non-appealable judgment by a court of competent jurisdiction or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable Issuing Bank may accept documents that appear on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(h) Cash Collateral. Upon the request of the Agent or the applicable Issuing Bank, if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then outstanding L/C Obligations. Section 6.02 sets forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.10(b)(ii), Section 2.19(c) (ii), (iv) and (v) and Section 6.02, "Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the Issuing Banks and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Agent and each Issuing Bank (which documents are hereby consented to by the Lenders) in an amount equal to 100% of the amount of the L/C Obligations as of such date plus any accrued and unpaid interest and fees thereon. Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts with the Agent.

(i) Letter of Credit Reports. Each Issuing Bank shall furnish (A) to the Agent on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all such Letters of Credit and (B) to the Agent on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

(j) Interim Interest. Except as provided in Section 2.03(c)(ii) with respect to Unreimbursed Amounts refinanced as Base Rate Advances and Section 2.03(c)(iii) with respect to L/C Borrowings, unless the Borrower shall reimburse each payment by an Issuing Bank pursuant to a Letter of Credit in full on the Honor Date, the Unreimbursed Amount thereof shall bear interest, for each day from and including the Honor Date to but excluding the date that the Borrower reimburses such Issuing Bank for the Unreimbursed Amount in full, at the rate per annum equal to (i) the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time, to but excluding the next Business Day after the Honor Date and (ii) from and including the next Business Day after the Honor Date, the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum.

Section 2.03A Swingline Advances.

(a) Amount of Swingline Advances. Subject to the terms and conditions set forth herein, the Swingline Lender will make Swingline Advances in Dollars to the Borrower from time to time during the period from the Effective Date until the Termination Date, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of all outstanding Swingline Advances exceeding \$0 (or such lesser amount as agreed between the Borrower and the Swingline Lender) or (ii) the Total Outstandings exceeding the aggregate Revolving Credit Commitment. Each Swingline Advance shall be in an aggregate amount of \$0 or an integral multiple of \$0 in excess thereof or such greater amounts as agreed between the Borrower and the Swingline Lender. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Advances. The Swingline Lender shall be under no obligation to make a Swingline Advance if any Lender is at such time an Affected Lender hereunder, unless the Swingline Lender is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until the Swingline Lender has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate the Swingline Lender's risk with respect to such Affected Lender, and participating interests in any such newly made Swingline Advance shall be allocated among non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(b) Borrowing Notice and Making of Swingline Advances. To request a Swingline Advance, the Borrower shall notify the Swingline Lender and the Agent of such request by telephone (confirmed by electronic communications), not later than 2:00 p.m. (or such later time as the Swingline Lender may determine in its sole discretion), on the day of such Swingline Advance. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Advance. The Swingline Lender shall promptly notify the Borrower and the Agent (and the Agent shall promptly notify each Lender) and the Swingline Lender shall make each Swingline Advance available to the Borrower by 2:30 p.m. (or such later time as may be agreed by the Swingline Lender and the Borrower) on the requested date of such Swingline Advance in a manner agreed upon by the Borrower and the Swingline Lender. Each Swingline Advance shall bear interest at the Base Rate, or, at the option of the Borrower and subject to prior agreement between the Borrower and the Swingline Lender, shall be a Swingline Eurodollar Rate Advance or a Money Market Rate Advance.

(c) Repayment of Swingline Advances. Each Swingline Advance shall be paid in full by the Borrower on the earlier of (x) on or before the fourteenth (14th) Business Day after the date such Swingline Advance was made by the Swingline Lender or (y) the Termination Date. A Swingline Advance may not be repaid with the proceeds from another Swingline Advance. In addition, the Swingline Lender (i) may at any time in its sole discretion with respect to any outstanding Swingline Advance, or (ii) shall, on the fourteenth (14th) Business Day after the date any Swingline Advance is made and which has not been otherwise repaid, require each Lender (including the Swingline Lender) to make a Revolving Advance in the amount of such Lender's Ratable Share of such Swingline Advance (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swingline Advance. Not later than 2:00 p.m. on the date of any notice received pursuant to this Section 2.03A(c), each Lender shall make available to the Agent its required Revolving Advance, in immediately available funds in the same manner as provided in Section 2.02(a) with respect to Revolving Advances made by such Lender. Revolving Advances made pursuant to this Section 2.03A(c) shall initially be Base Rate Advances and thereafter may be continued as Base Rate Advances or converted into Eurodollar Rate Advances in the manner provided in Section 2.09 and subject to the other conditions and limitations set forth in this Article II. Each Lender's obligation to make Revolving Advances pursuant to this Section 2.03A(c) to repay Swingline Advances shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Agent, the Swingline Lender or any other Person, (b) the occurrence or continuance of a Default or an Event of Default, (c) any adverse change in the condition (financial or otherwise) of the Borrower, or (d) any other circumstance, happening or event whatsoever. In the event that any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), the Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Agent receives such payment from such Lender or such obligation is otherwise fully satisfied. In addition to the foregoing, if for any reason any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), such Lender shall be deemed, at the option of the Agent, to have unconditionally and irrevocably purchased from the Swingline Lender without recourse or warranty, an undivided interest and participation in the applicable Swingline Advance in the amount of such Revolving Advance, and such interest and participation may be recovered from such Lender together with interest thereon at the Federal Funds Rate for each day during the period commencing on the date of demand and ending on the date such amount is received.

(d) Swingline Advances Reports. The Swingline Lender shall furnish to the Agent on each Business Day a written report summarizing outstanding Swingline Advances made by the Swingline Lender and the due date for the repayment of such Swingline Advances; provided that if no Swingline Advances are outstanding, no such report shall be required to be delivered.

(e) Successor Swingline Lender. Subject to the appointment and acceptance of a successor Swingline Lender as provided in this paragraph, the Borrower may, upon not less than ten (10) Business Days prior notice to the Agent and the Lenders, replace the existing Swingline Lender with the consent of the Agent (which consent shall not unreasonably be withheld). Upon the acceptance of its appointment as Swingline Lender hereunder by a successor, such successor

shall succeed to and become vested with all the rights, powers, privileges and duties of the replaced Swingline Lender, and the replaced Swingline Lender shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Swingline Lender shall be as agreed between the Borrower and such successor. After the Swingline Lender's replacement hereunder, the provisions of this Article and Section 8.04 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Swingline Lender.

Section 2.04 Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each Lender a commitment fee on such Lender's Unused Commitment (provided that, for the avoidance of doubt, and without duplication, such Lender's Unused Commitment shall be calculated exclusive of such Lender's Swingline Exposure and, if such Lender is the Swingline Lender, without giving effect to the Swingline Advances, and in no event shall the aggregate of such commitment fees exceed an amount calculated based on the product of (a) the aggregate Revolving Credit Commitments minus the aggregate principal amount of all Revolving Advances and aggregate L/C Obligations and (b) the Applicable Rate for commitment fees) from the Effective Date in the case of each Initial Lender and from the effective date specified in the Assignment and Assumption pursuant to which it became a Lender in the case of each other Lender until the Termination Date at a rate per annum equal to the Applicable Rate for commitment fees in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December, commencing June 30, 2018, and on the Termination Date, provided that no commitment fee shall accrue with respect to the Unused Commitment of an Affected Lender so long as such Lender shall be an Affected Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each Lender a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time at a rate per annum equal to the Applicable Rate for Eurodollar Rate Advances in effect from time to time, during such calendar quarter, payable in arrears quarterly on the last day of each March, June, September and December, commencing with the quarter ended June 30, 2018, and on the Termination Date; provided that the Applicable Rate for Eurodollar Rate Advances shall be 2% above such Applicable Rate in effect upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest pursuant to Section 2.07(b).

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, payable in the amounts and at the times specified in the applicable Fee Letter between the Borrower and such Issuing Bank, and such other commissions, issuance fees, transfer fees and other fees and charges in connection with the issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree promptly following receipt of an invoice therefor.

(c) Agent's Fees. The Borrower shall pay to the Agent for its own account such fees as are agreed between the Borrower and the Agent pursuant to the Fee Letter between the Borrower and the Agent.

Section 2.05 Optional Termination or Reduction of the Commitments.

(a) The Borrower shall have the right, upon at least three Business Days' notice to the Agent, to terminate in whole or permanently reduce ratably in part the Unused Commitments or the Unissued Letter of Credit Commitments, provided that each partial reduction shall be in the aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) So long as no Default or Event of Default shall be continuing, the Borrower shall have the right, at any time, upon at least ten Business Days' notice to an Affected Lender (with a copy to the Agent), to terminate in whole such Lender's Revolving Credit Commitment and, if applicable, its Letter of Credit Commitment, without affecting the Commitments of any other Lender. Such termination shall be effective, (x) with respect to such Lender's Unused Commitment, on the date set forth in such notice, provided, however, that such date shall be no earlier than ten Business Days after receipt of such notice and (y) with respect to each Revolving Advance outstanding to such Lender, in the case of Base Rate Advances, on the date set forth in such notice and, in the case of Eurodollar Rate Advances, on the last day of the then current Interest Period relating to such Revolving Advance. Upon termination of a Lender's Commitments under this Section 2.05(b), the Borrower will pay or cause to be paid all principal of, and interest accrued to the date of such payment on, Revolving Advances (and if such Lender is the Swingline Lender, the Swingline Advances) owing to such Lender and, subject to Section 2.19, pay any accrued commitment fees or Letter of Credit fees payable to such Lender pursuant to the provisions of Section 2.04, and all other amounts payable to such Lender hereunder (including, but not limited to, any increased costs or other amounts owing under Section 2.11 and any indemnification for Taxes under Section 2.14); and, if such Lender is an Issuing Bank, shall pay to such Issuing Bank for deposit in an escrow account an amount equal to the Available Amount of all Letters of Credit issued by such Issuing Bank, whereupon all Letters of Credit issued by such Issuing Bank shall be deemed to have been issued outside of this Agreement on a bilateral basis and shall cease for all purposes to constitute a Letter of Credit issued under this Agreement, and upon such payments, except as otherwise provided below, the obligations of such Lender hereunder shall, by the provisions hereof, be released and discharged; provided, however, that (i) such Lender's rights under Section 2.11, Section 2.14 and Section 8.04, and, in the case of an Issuing Bank, Section 8.04(c), and its obligations under Section 8.04 and 8.08, in each case in accordance with the terms thereof, shall survive such release and discharge as to matters occurring prior to such date and (ii) such escrow agreement shall be in a form reasonably agreed to by the Borrower and such Issuing Bank, but in no event shall either the Borrower or such Issuing Bank require any waivers, covenants, events of default or other provisions that are more restrictive than or inconsistent with the provisions of this Agreement. The aggregate amount of the Commitments of the Lenders once reduced pursuant to this Section 2.05(b) may not be reinstated. The termination of the Commitments of an Affected Lender pursuant to this Section 2.05(b) will not be deemed to be a waiver of any right that the Borrower, the Agent, any Issuing Bank, the Swingline Lender or any other Lender may have against

the Affected Lender that arose prior to the date of such termination. Upon any such termination, the Ratable Share of each remaining Lender will be revised.

Section 2.06 Repayment of Advances. The Borrower shall repay to the Agent for the ratable account of the Lenders on the Termination Date the aggregate principal amount of the Revolving Advances made by such Lender and then outstanding. The Borrower shall repay Swingline Advances in accordance with Section 2.03A(c).

Section 2.07 Interest on Advances.

(a) Scheduled Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender (including the Swingline Lender) from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. During such periods as such Revolving Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Rate for Base Rate Advances in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. During such periods as such Revolving Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Revolving Advance to the sum of (x) the Eurodollar Rate for such Interest Period for such Revolving Advance plus (y) the Applicable Rate for Eurodollar Rate Advances in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurodollar Rate Advance shall be Converted or paid in full.

(iii) Swingline Advances. During such period as such Swingline Advance remains outstanding, the Base Rate or, as agreed to by the Swingline Lender and the Borrower, the Money Market Rate or the Eurodollar Rate, payable on the date such Swingline Advance is required to be repaid.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require the Borrower to pay interest (“Default Interest”) on (i) the unpaid principal amount of each Advance owing to each Lender, payable in arrears on the dates referred to in clause (a)(i), (a)(ii) or (a)(iii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Advance pursuant to clause (a)(i), (a)(ii) or (a)(iii) above and (ii) to the fullest extent permitted by Law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to clause (a)(i) above, provided, however, that following acceleration of

the Advances pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

(c) Interest Rate Limitation. Nothing contained in this Agreement or in any other Loan Document shall be deemed to establish or require the payment of interest to any Lender at a rate in excess of the maximum rate permitted by applicable Law. If the amount of interest payable for the account of any Lender on any interest payment date would exceed the maximum amount permitted by applicable Law to be charged by such Lender, the amount of interest payable for its account on such interest payment date shall be automatically reduced to such maximum permissible amount. In the event of any such reduction affecting any Lender, if from time to time thereafter the amount of interest payable for the account of such Lender on any interest payment date would be less than the maximum amount permitted by applicable Law to be charged by such Lender, then the amount of interest payable for its account on such subsequent interest payment date shall be automatically increased to such maximum permissible amount, provided that at no time shall the aggregate amount by which interest paid for the account of any Lender has been increased pursuant to this sentence exceed the aggregate amount by which interest paid for its account has theretofore been reduced pursuant to the previous sentence.

Section 2.08 Interest Rate Determination.

(a) The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.07(a).

(b) (i) If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Advance or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Advance, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Advance, the Agent will promptly so notify the Borrower and each Lender, whereupon each Eurodollar Rate Advance will automatically on the last day of the then existing Interest Period therefor Convert into a Base Rate Advance. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Advances shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of Eurodollar Rate Advances or, failing that, will be deemed to have Converted such request into a request for a Base Rate Advance in the amount specified therein.

(ii) Notwithstanding anything to the contrary herein, if at any time the Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.08(b)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.08(b)(i) have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date

after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 8.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(c) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Agent will forthwith so notify the Borrower and the Lenders and such Revolving Advances will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Advances.

(d) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$5,000,000, such Revolving Advances shall automatically Convert into Base Rate Advances.

(e) Upon the occurrence and during the continuance of any Event of Default,

(i) with respect to Eurodollar Rate Advances, each such Revolving Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance (or if such Revolving Advance is then a Base Rate Advance, will continue as a Base Rate Advance); and

(ii) the obligation of the Lenders to make Eurodollar Rate Advances or to Convert Revolving Advances into Eurodollar Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

Section 2.09 Optional Conversion of Revolving Advances. The Borrower may on any Business Day, upon notice given to the Agent not later than 12:00 noon on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Section 2.08 and Section 2.12, Convert all Revolving Advances of one Type comprising the same Borrowing into Revolving Advances of the other Type; provided, however, that (a) any Conversion of Eurodollar Rate Advances into Base Rate Advances shall be made only on the last day of an Interest Period for such Eurodollar Rate Advances, (b) any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b), (c) no Conversion of any Revolving Advances shall result in more separate Borrowings than

permitted under Section 2.02(b) and (d) no Swingline Advances may be converted. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Revolving Advances to be Converted, and (iii) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for each such Revolving Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

Section 2.10 Prepayments of Advances.

(a) Optional. At any time and from time to time, the Borrower shall have the right to prepay any Advance, in whole or in part, without premium or penalty (except as provided in clause (y) below), upon notice at least two Business Days' prior to the date of such prepayment, in the case of Eurodollar Rate Advances, and not later than 11:00 a.m. on the date of such prepayment in the case of Base Rate Advances and Swingline Advances, to the Agent (and, in the case of prepayment a Swingline Advance, the Swingline Lender) specifying the proposed date of such prepayment and the aggregate principal amount and Type of the Advance to be prepaid (and, in the case of Eurodollar Rate Advances, the Interest Period of the Borrowing pursuant to which made); provided, however, that (x) each partial prepayment shall be in an aggregate principal amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, and shall be accompanied by accrued interest to the date of prepayment on the principal amount prepaid, and (y) in the event of any such prepayment of a Eurodollar Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 8.04(e).

(b) Mandatory.

(i) The Borrower shall prepay the aggregate principal amount of the Advances, together with accrued interest to the date of prepayment on the principal amount prepaid, without requirement of demand therefor, or shall pay or prepay any other Indebtedness then outstanding at any time, when and to the extent required to comply with applicable Laws of any Governmental Authority or applicable resolutions of the Board of Directors of the Borrower.

(ii) If for any reason the Total Outstandings at any time exceed the aggregate Revolving Credit Commitments then in effect, the Borrower shall, within one Business Day after notice thereof, prepay Advances and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.10(b) unless, after the prepayment in full of the Advances, the Total Outstandings exceed the aggregate Revolving Credit Commitments then in effect.

Section 2.11 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the

account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 2.11(e)) or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Advances made by such Lender or any Letter of Credit or participation therein; or

(iii) subject the Agent or any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Other Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Agent or such Lender of making or maintaining any Advance (or of maintaining its obligation to make any such Revolving Advance), or to increase the cost to the Agent, such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Agent, such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Agent, such Lender or such Issuing Bank, the Borrower will pay to the Agent, such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate the Agent, such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Applicable Lending Office of such Lender or such Lender's or such Issuing Bank's holding company, if any, regarding capital and liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive and binding upon all parties absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation, provided that

the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Advances. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Advance equal to the actual costs of such reserves allocated to such Revolving Advance by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Eurodollar Rate Advance, provided the Borrower shall have received at least 30 days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice 30 days prior to the relevant interest payment date, such additional interest shall be due and payable 30 days from receipt of such notice.

Section 2.12 Illegality. If any Lender shall have determined in good faith that the introduction of or any change in any applicable Law or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance with any guideline or request from any such Governmental Authority (whether or not having the force of law), makes it unlawful for any Lender or its Applicable Lending Office to make, maintain or fund Eurodollar Rate Advances, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender to make or continue Eurodollar Rate Advances or to Convert Base Rate Advances to Eurodollar Rate Advances shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, Convert all Eurodollar Rate Advances of such Lender to Base Rate Advances, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Advances to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Advances. Upon any such prepayment or Conversion, the Borrower shall also pay accrued interest on the amount so prepaid or Converted.

Section 2.13 Payments and Computations.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make each payment hereunder not later than 1:00 p.m. on the day when due in U.S. dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like

funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date specified in such Assignment and Assumption, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest based on the Base Rate (when the Base Rate is based on the Prime Rate) shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, and all other computations of interest and fees hereunder (including computations of interest based on the Eurodollar Rate and the Federal Funds Rate and of fees and Letter of Credit commissions) shall be made by the Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Interest on Swingline Advances shall be calculated on the basis of a year of 360 days or such other basis agreed to by the Swingline Lender and the Borrower, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fees or commissions, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due to such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

Section 2.14 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Borrower or the Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower or the Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States of America Federal backup withholding and withholding Taxes, from any payment, then (A) the Agent shall withhold or make such deductions as are determined by the Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify the Agent, each Lender and each Issuing Bank, and shall make payment in respect thereof within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower or the Agent or paid by the Agent, such Lender or such Issuing Bank, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall also, and does hereby, indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or an Issuing Bank for any reason fails to pay indefeasibly to the Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the Agent), or by the Agent

on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(ii) Each Lender and each Issuing Bank shall, within 30 days after demand therefor, severally (A) indemnify the Agent for (x) any Indemnified Taxes and Other Taxes attributable to such Lender or such Issuing Bank (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower to do so), (y) any Taxes attributable to such Lender's or such Issuing Bank's failure to comply with the provisions of Section 8.07(d) relating to the maintenance of a Participant Register and (z) for any Excluded Taxes attributable to such Lender or such Issuing Bank, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, and (B) indemnify the Borrower and the Agent against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Agent) incurred by or asserted against the Borrower or the Agent by any Governmental Authority as a result of the failure by such Lender or such Issuing Bank, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or such Issuing Bank, as the case may be, to the Borrower or the Agent pursuant to subsection (e). A certificate as to the amount of such payment or liability delivered to any Lender or any Issuing Bank by the Agent shall be conclusive absent manifest error. Each Lender and each Issuing Bank hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or such Issuing Bank, as the case may be, under this Agreement or any other Loan Document or otherwise payable by the Agent to the Lender or the Issuing Bank from any other source against any amount due to the Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender or an Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 2.14, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Agent, such properly completed and executed documentation prescribed by applicable Laws

or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States of America,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Internal Revenue Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(2) executed originals of Internal Revenue Service Form W-8ECI,

(3) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(4) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a "controlled foreign corporation" described in

section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E, or

(5) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States of America Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Borrower and the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Applicable Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to each of the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Bank, or have any obligation to pay to any Lender or any Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such Issuing Bank, as the case may be. If the Agent, any Lender or any Issuing Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by the Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent, such Lender or such Issuing Bank in the event the

Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) Payments. Failure or delay on the part of the Agent, any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section 2.14 shall not constitute a waiver of the Agent's, such Lender's or such Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate the Agent, a Lender or an Issuing Bank pursuant to the foregoing provisions of this Section 2.14 for any Indemnified Taxes or Other Taxes imposed or asserted by the relevant Governmental Authority more than three months prior to the date that the Agent, such Lender or such Issuing Bank, as the case may be, claims compensation with respect thereto (except that, if a Change in Law giving rise to such Indemnified Taxes or Other Taxes is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(h) Each of the Agent, any Issuing Bank or any Lender agrees to cooperate with any reasonable request made by the Borrower in respect of a claim of a refund in respect of Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.14 if (i) the Borrower has agreed in writing to pay all of the Agent's or such Issuing Bank's or such Lender's reasonable out-of-pocket costs and expenses relating to such claim, (ii) the Agent or such Issuing Bank or such Lender determines, in its good faith judgment, that it would not be disadvantaged, unduly burdened or prejudiced as a result of such claim and (iii) the Borrower furnishes, upon request of the Agent, or such Issuing Bank or such Lender, an opinion of tax counsel (such opinion, which can be reasoned, and such counsel to be reasonably acceptable to such Lender, or such Issuing Bank or the Agent) that the Borrower is likely to receive a refund or credit.

Section 2.15 Sharing of Payments, Etc. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances or L/C Advances owing to it (other than pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary thereof if permitted hereby (as to which the provisions of this Section 2.15 shall apply) in excess of its Ratable Share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders (for cash at face value) such participations in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's Ratable Share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that

any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 2.16 Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Advance owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Advances. The Borrower agrees that upon notice by any Lender (including the Swingline Lender) to the Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Advances owing to, or to be made by, such Lender, the Borrower shall promptly execute and deliver to such Lender a Note payable to the order of such Lender in a principal amount up to the Revolving Credit Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 8.07(c) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assignment and Assumption delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement.

Section 2.17 Use of Proceeds. The proceeds of the Advances and issuances of Letters of Credit shall be available (and the Borrower agrees that it shall use such proceeds) solely to refinance Indebtedness of the Borrower under the Existing Credit Agreement and to directly or indirectly fund or otherwise support 4C Sub, the 7% Interest or related obligations. The Borrower will not, directly or indirectly, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions or Anti-Corruption Laws by any Person (including any Person participating in the Credit Extensions, whether as a Lender or otherwise).

Section 2.18 Reserved.

Section 2.19 Affected Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes an Affected Lender, then the following provisions shall apply for so long as such Lender is an Affected Lender:

- (a) fees shall cease to accrue on the Unused Commitment of such Affected Lender pursuant to Section 2.04(a);
- (b) the Revolving Credit Commitment and Advances of such Affected Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 8.01), other than any waiver, amendment or modification requiring the consent of all Lenders or of each Lender affected;
- (c) if (x) there shall be any Available Amount under any outstanding Letter of Credit or (y) any Swingline Exposure shall exist during any time a Lender is an Affected Lender, then:
 - (i) so long as no Default or Event of Default has occurred and is continuing, all or any part of the Available Amount of all such Letters of Credit and Swingline Exposure shall be reallocated among the non-Affected Lenders in accordance with their respective Ratable Shares (disregarding any Affected Lender's Revolving Credit Commitment) but only to the extent that with respect to each non-Affected Lender the sum of (A) the aggregate principal amount of all Revolving Advances made by such non-Affected Lender (in its capacity as a Lender) and outstanding at such time plus (B) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding L/C Obligations plus (C) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding Swingline Exposure, does not exceed such non-Affected Lender's Revolving Credit Commitment;
 - (ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Agent (x) first, prepay such unallocable Swingline Exposure and (y) second, Cash Collateralize for the benefit of the applicable Issuing Bank only the Borrower's obligations corresponding to such Affected Lender's Ratable Share of the Available Amount of outstanding Letters of Credit (after giving effect to any partial reallocation pursuant to clause (i) above) (the "Affected Lender Share") in accordance with the procedures set forth in Section 2.03(h) for so long as such there shall be any Available Amount of outstanding Letters of Credit;
 - (iii) if the Ratable Share of the Available Amount of outstanding Letters of Credit and the Swingline Exposure of the non-Affected Lenders is reallocated pursuant to this Section 2.19(c), then the fees payable to the Lenders pursuant to Section 2.04(a) and Section 2.04(b) shall be adjusted in accordance with such non-Affected Lenders' Ratable Shares;

(iv) if any Affected Lender Share is not reallocated pursuant to clause (i) above and if the Borrower fails to Cash Collateralize any portion of such Affected Lender Share pursuant to clause (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any Lender hereunder, the fee payable under Section 2.04(b) with respect to such Affected Lender Share shall be payable to the Issuing Bank until such Affected Lender Share is reallocated; and

(v) if the Borrower Cash Collateralizes any portion of any Affected Lender Share pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Affected Lender pursuant to Section 2.04(b)(i) or the applicable Issuing Bank pursuant to Section 2.04(b)(ii) (solely with respect to any fronting fee) with respect to such Affected Lender's Affected Lender Share during the period such Affected Lender's Affected Lender Share is Cash Collateralized;

(d) to the extent the Agent receives any payments or other amounts for the account of an Affected Lender under this Agreement, such Affected Lender shall be deemed to have requested that the Agent use such payment or other amount to fulfill such Affected Lender's previously unsatisfied obligations to fund a Revolving Advance under Section 2.03(c) or Section 2.03A(c) or L/C Advance or any other unfunded payment obligation of such Affected Lender under this Agreement; and

(e) subject to Section 8.18, for the avoidance of doubt, the Borrower, each Issuing Bank, the Swingline Lender, the Agent and each other Lender shall retain and reserve its other rights and remedies respecting each Affected Lender.

In the event that the Agent, the Borrower, the Swingline Lender and the Issuing Banks each agrees that an Affected Lender has adequately remedied all matters that caused such Lender to be an Affected Lender, then the Ratable Shares of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Advances of the other Lenders as the Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances in accordance with its Ratable Share. In addition, at such time as the Affected Lender is replaced by another Lender pursuant to Section 2.20, the Ratable Shares of the Lenders will be readjusted to reflect the inclusion of the replacing Lender's Commitment in accordance with Section 2.20. In either such case, this Section 2.19 will no longer apply.

Section 2.20 Replacement of Lenders. If any Lender requests compensation under Section 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, or if any Lender is an Affected Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 8.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more assignees that shall assume such obligations (which any such assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee specified in Section 8.07(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Advances and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 8.04(e)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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

Section 2.21 Reserved

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Effectiveness. This Agreement shall become effective on and as of the first date (the “Effective Date”) on which the following conditions precedent have been satisfied:

(a) The Lenders shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries as they shall have requested.

(b) The Borrower shall have paid all accrued fees and agreed expenses of the Agent, the Arrangers and the Lenders and the reasonable accrued fees and expenses of one law firm acting as counsel to the Agent that have been invoiced at least one Business Day prior to the Effective Date.

(c) On the Effective Date, the following statements shall be true and the Agent shall have received a certificate signed by a duly authorized officer of the Borrower, dated the Effective Date, stating that:

(i) The representations and warranties contained in Section 4.01 are true and correct on and as of the Effective Date, and

(ii) No event has occurred and is continuing that constitutes a Default.

(d) The Agent shall have received on or before the Effective Date the following, each dated such day, in form and substance satisfactory to the Agent and the Lenders:

(i) Receipt by the Agent of executed counterparts of this Agreement properly executed by a duly authorized officer of the Borrower and by each Lender.

(ii) The Notes, payable to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16.

(iii) The articles of incorporation of the Borrower certified to be true and complete as of a recent date by the appropriate governmental authority of the state or other jurisdiction of its incorporation and certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(iv) The bylaws of the Borrower certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(v) Certified copies of the resolutions of the Board of Directors of the Borrower approving this Agreement and the Notes, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Notes.

(vi) A certificate of the secretary, assistant secretary or associate secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the Notes and the other documents to be delivered hereunder.

(vii) A certificate as of a recent date from the Borrower's state of incorporation evidencing that the Borrower is in good standing in its state of organization or formation.

(viii) A favorable opinion of counsel for the Borrower, in form and substance reasonably acceptable to the Lenders.

(ix) A favorable opinion of Sidley Austin LLP, counsel for the Agent, in form and substance reasonably acceptable to the Lenders.

(e) Reserved.

(f) Reserved.

(g) Reserved.

(h) PATRIOT Act. At least five days prior to Effective Date, the Borrower shall have provided to the Agent and the Lenders the documentation and other information reasonably requested by the Agent, and reasonably available to the Borrower, in order to comply with requirements of the PATRIOT Act.

(i) Concurrently with or before the Effective Date, (i) all principal, interest and other amounts outstanding under the Borrower's Existing Credit Agreement shall be repaid and satisfied in full, (ii) all commitments to extend credit under the Existing Credit Agreement shall be terminated and (iii) any letters of credit outstanding under the Existing Credit Agreement shall have been terminated, canceled, transferred or replaced; and the Agent shall have received evidence of the foregoing satisfactory to it, including a payoff letter executed by the lenders or the agent under the Existing Credit Agreement if applicable. Notwithstanding the foregoing, in satisfying its obligations

of this Section 3.01(i), no breakage costs, back-funding or other early loan or borrowings repayment charges shall be due or otherwise payable by the Borrower.

(j) In the event that the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Borrower shall deliver, at least five days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower.

Section 3.02 Conditions Precedent to Each Credit Extension. The obligation of each Lender to make an Advance (other than an L/C Advance or an Advance made pursuant to Section 2.03(c) or Section 2.03A(c)) on the occasion of each Borrowing and the obligation of each Issuing Bank to issue a Letter of Credit shall be subject to the conditions precedent that the Effective Date shall have occurred and on the date of such Borrowing or such issuance (as the case may be), the following statements shall be true (and each of the giving of the applicable Notice of Borrowing or request for issuance and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or date of such issuance such statements are true):

(a) the representations and warranties contained in Section 4.01 (other than Section 4.01(k)), and in the case of a Borrowing or issuance of a Letter of Credit, Section 4.01(e)(ii) and Section 4.01(f)(ii) are correct on and as of such date, before and after giving effect to such Borrowing or issuance of a Letter of Credit and to the application of the proceeds therefrom, as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such Borrowing or issuance of a Letter of Credit or from the application of the proceeds therefrom, that constitutes a Default.

Each request for Credit Extension (which shall not include a Conversion or a continuation of Eurodollar Rate Advances) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 3.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

Section 3.03 Determinations Under Section 3.01. For purposes of determining compliance with the conditions specified in Section 3.01 and the satisfaction of each Lender with respect to letters delivered to it from the Borrower as set forth in Section 4.01(a), Section 4.01(e) and Section 4.01(f), each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Borrower designates as the proposed Effective Date, specifying its objection thereto. The Agent shall promptly notify the Lenders and the Borrower of the occurrence of the Effective Date.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) Each of the Borrower and each Material Subsidiary: (i) is a corporation or other entity duly organized and validly existing under the Laws of the jurisdiction of its incorporation or organization; (ii) has all requisite corporate or if the Material Subsidiary is not a corporation, other comparable power necessary to own its assets and carry on its business as presently conducted; (iii) has all governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as presently conducted, if the failure to have any such license, authorization, consent or approval is reasonably likely to have a Material Adverse Effect and except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion) and except that (A) APS from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (B) from time to time communities served by APS may become incorporated and considerable time may elapse before such a franchise is procured, (C) certain such franchises may have expired prior to the renegotiation thereof, (D) certain minor defects and exceptions may exist which, individually and in the aggregate, are not material and (E) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope); and (iv) is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify is reasonably likely to have a Material Adverse Effect.

(b) The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, and the consummation of the transactions contemplated hereby and thereby, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not or did not (i) contravene the Borrower's articles of incorporation or by-laws, (ii) contravene any Law, decree, writ, injunction or determination of any Governmental Authority, in each case applicable to or binding upon the Borrower or any of its properties, (iii) contravene any contractual restriction binding on or affecting the Borrower or (iv) cause the creation or imposition of any Lien upon the assets of the Borrower or any Material Subsidiary, except for Liens created under this Agreement and except where such contravention or creation or imposition of such Lien is not reasonably likely to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the Notes to be delivered by it.

(d) This Agreement has been, and each of the other Loan Documents upon execution and delivery will have been, duly executed and delivered by the Borrower. This Agreement is, and each of the other Loan Documents upon execution and delivery will be, the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with their respective terms, subject, however, to the application by a court of general principles of equity and to the effect

of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally.

(e) (i) The Consolidated balance sheet of the Borrower as of December 31, 2017, and the related Consolidated statements of income and cash flows of the Borrower for the fiscal year then ended, accompanied by an opinion thereon of Deloitte & Touche LLP, independent registered public accountants and the Consolidated balance sheet of the Borrower as of March 31, 2018, and the related Consolidated statements of income and cash flows of the Borrower for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to the Agent, fairly present in all material respects, subject, in the case of said balance sheet at March 31, 2018, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower as at such dates and the Consolidated results of the operations of the Borrower for the periods ended on such dates, all in accordance with GAAP (except as disclosed therein), and (ii) except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion), since December 31, 2017, there has been no Material Adverse Effect.

(f) There is no pending or, to the knowledge of an Authorized Officer of the Borrower, threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby or (ii) would be reasonably likely to have a Material Adverse Effect (except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion)) and there has been no adverse change in the status, or financial effect on the Borrower or any of its Subsidiaries, of such disclosed litigation that would be reasonably likely to have a Material Adverse Effect.

(g) No proceeds of any Advance will be used to acquire any equity security not issued by the Borrower of a class that is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

(h) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, in any case in violation of Regulation U. After application of the proceeds of any Advance, not more than 25% of the value of the assets subject to any restriction under this Agreement on the right to sell, pledge, transfer, or otherwise dispose of such assets is represented by margin stock.

(i) The Borrower and its Subsidiaries have filed all United States of America Federal income Tax returns and all other material Tax returns which are required to be filed by them and have paid all Taxes due pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries, except to the extent that (i) such Taxes are being contested in good faith and by appropriate proceedings and that appropriate reserves for the payment thereof have been maintained by the Borrower and its Subsidiaries in accordance with GAAP or (ii) the failure to make such filings or such payments is not reasonably likely to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Material Subsidiaries as set forth in the most recent financial statements of the Borrower delivered to the Agent pursuant to Section 4.01(e) or Section 5.01(h)(i) or Section 5.01(h)(ii) hereof in respect of Taxes and other governmental charges are, in the opinion of the Borrower, adequate.

(j) Set forth on Schedule 4.01(j) hereto (as such schedule may be modified from time to time by the Borrower by written notice to the Agent) is a complete and accurate list of all the Material Subsidiaries of the Borrower.

(k) Set forth on Schedule 4.01(k) hereto is a complete and accurate list identifying any Indebtedness of the Borrower outstanding in a principal amount equal to or exceeding \$5,000,000 and which is not described in the financial statements referred to in Section 4.01(e).

(l) The Borrower is not an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

(m) No report, certificate or other written information furnished by the Borrower or any of its Subsidiaries to the Agent, any Arranger or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) at the time so furnished, when taken together as a whole with all such written information so furnished, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except as would not reasonably be expected to result in a Material Adverse Effect; provided that with respect to any projected financial information, forecasts, estimates or forward-looking information, the Borrower represents only that such information and materials have been prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such forecasts, and no representation or warranty is made as to the actual attainability of any such projections, forecasts, estimates or forward-looking information.

(n) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Affiliates over which any of the foregoing exercises management control (each, a “Controlled Affiliate”) or any director or officer of the Borrower, any of its Subsidiaries or any of their respective Controlled Affiliates (each, a “Manager”) is a Prohibited Person, and the Borrower, its Subsidiaries and, to the knowledge of the Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(o) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Controlled Affiliates or Managers: (i) is the target of Sanctions; (ii) is owned

or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; (iii) is, or is owned or controlled by, a Person who is located, organized or resident in a country, region or territory that is, or whose government is, the subject of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria, or (iv) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State.

(p) None of the Borrower's or its Subsidiaries' assets constitute property of, or are beneficially owned, directly or indirectly, by any Person that is the target of Sanctions, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the "Trading With the Enemy Act"), any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which includes, without limitation, (i) Executive Order No. 13224, effective as of September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (ii) the PATRIOT Act), if the result of such ownership would be that any Credit Extension made by any Lender would be in violation of law ("Embargoed Person"); (a) no Embargoed Person has any interest of any nature whatsoever in the Borrower if the result of such interest would be that any Credit Extension would be in violation of law; (b) the Borrower has not engaged in business with Embargoed Persons if the result of such business would be that any Credit Extension made by any Lender would be in violation of law; (c) the Borrower will not, directly or indirectly, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions or Anti-Corruption Laws by any Person (including any Person participating in the Credit Extensions, whether as a Lender or otherwise), and (d) neither the Borrower nor any Controlled Affiliate (i) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) to the knowledge of the Borrower, engages in any dealings or transactions, or be otherwise associated, with any such "blocked person". For purposes of determining whether or not a representation is true under this Section 4.01(p) with respect to the securities of the Borrower, the Borrower shall not be required to make any investigation into (x) the ownership of publicly traded stock or other publicly traded securities or (y) the beneficial ownership of any collective investment fund.

(q) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower and its Subsidiaries, any of their respective Managers, has failed to comply with the U.S. Foreign Corrupt Practices Act, as amended from time to time (the "FCPA"), or any other applicable Anti-Corruption Laws, and it and they have not made, offered, promised or authorized, and will not make, offer, promise or authorize, whether directly or indirectly, any payment, of anything of value

to a Government Official while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity or (c) securing an improper advantage, in each case in order to obtain, retain or direct business.

(r) If Borrower is required to deliver a Beneficial Ownership Certificate, as of the Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

(s) The Borrower is not an EEA Financial Institution.

ARTICLE V

COVENANTS OF THE BORROWER

Section 5.01 Affirmative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall:

(a) Compliance with Laws, Etc. (i) Comply, and cause each of its Material Subsidiaries to comply, in all material respects, with all applicable Laws of Governmental Authorities, such compliance to include, without limitation, compliance with ERISA and Environmental Laws, unless the failure to so comply is not reasonably likely to have a Material Adverse Effect and (ii) comply at all times with all Laws, orders, decrees, writs, injunctions or determinations of any Governmental Authority relating to the incurrence or maintenance of Indebtedness by the Borrower, such compliance to include, without limitation, compliance with the PATRIOT Act, all applicable orders, rules and regulations of OFAC, the FCPA, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970 and other Anti-Corruption Laws, except (other than in the case of the PATRIOT Act, the applicable orders, rules and regulations of OFAC, or the FCPA, or any similar applicable laws) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, all Taxes imposed upon it or upon its property; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such Tax (i) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained in accordance with GAAP or (ii) if the failure to pay such Tax is not reasonably likely to have a Material Adverse Effect.

(c) Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates; provided, however, that the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same

general areas in which the Borrower or such Subsidiary operates and to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence, Etc. . Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises (other than “franchises” as described in Arizona Revised Statutes, Section 40-283 or any successor provision) reasonably necessary in the normal conduct of its business, if the failure to maintain such rights or privileges is reasonably likely to have a Material Adverse Effect, and, in the case of APS, will cause APS to use its commercially reasonable efforts to preserve and maintain such franchises reasonably necessary in the normal conduct of its business, except that (i) APS from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (ii) from time to time communities served by APS may become incorporated and considerable time may elapse before such a franchise is procured, (iii) certain such franchises may have expired prior to the renegotiation thereof, (iv) certain minor defects and exceptions may exist which, individually and in the aggregate, are not material and (v) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope; provided, however, that the Borrower and its Subsidiaries may consummate any merger or consolidation permitted under Section 5.02(b).

(e) Visitation Rights. At any reasonable time and from time to time, permit and cause each of its Subsidiaries to permit the Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any of their officers or directors; provided, however, that the Borrower and its Subsidiaries reserve the right to restrict access to any of its properties in accordance with reasonably adopted procedures relating to safety and security; and provided further that the costs and expenses incurred by such Lender or its agents or representatives in connection with any such examinations, copies, abstracts, visits or discussions shall be, upon the occurrence and during the continuation of a Default, for the account of the Borrower and, in all other circumstances, for the account of such Lender.

(f) Keeping of Books. Keep, and cause each of its Material Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in a manner that permits the preparation of financial statements in accordance with GAAP.

(g) Maintenance of Properties, Etc. . Keep, and cause each Material Subsidiary to keep, all property useful and necessary in its business in good working order and condition (ordinary wear and tear excepted), if the failure to do so is reasonably likely to have a Material Adverse Effect, it being understood that this covenant relates only to the working order and condition of such properties and shall not be construed as a covenant not to dispose of properties.

(h) Reporting Requirements. Furnish to the Agent:

(i) as soon as available and in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower commencing with the fiscal quarter ending June 30, 2018, (A) for each such fiscal quarter of the Borrower, Consolidated statements of income and cash flows of the Borrower for such fiscal quarter and the related Consolidated balance sheet of the Borrower as of the end of such fiscal quarter, setting forth in each case in comparative form the corresponding figures for the corresponding fiscal quarter in (or, in the case of the balance sheet, as of the end of) the preceding fiscal year and (B) for the period commencing at the end of the previous fiscal year and ending with the end of such fiscal quarter, Consolidated statements of income and cash flows of the Borrower for such period setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year; provided that so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(i), its report on Form 10-Q for such fiscal quarter. Each set of financial statements provided under this Section 5.01(h)(i) shall be accompanied by a certificate of an Authorized Officer, which certificate shall state that said Consolidated financial statements fairly present in all material respects the Consolidated financial condition and results of operations and cash flows of the Borrower in accordance with GAAP (except as disclosed therein), as at the end of, and for, such period (subject to normal year-end audit adjustments) and shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2018, audited Consolidated statements of income and cash flows of the Borrower for such year and the related Consolidated balance sheet of the Borrower as at the end of such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year; provided that, so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(ii), its report on Form 10-K for such fiscal year. Each set of financial statements provided pursuant to this Section 5.01(h)(ii) shall be accompanied by (A) an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that said Consolidated financial statements fairly present in all material respects the Consolidated financial condition and results of operations of the Borrower as at the end of, and for, such fiscal year, in accordance with GAAP (except as disclosed therein) and (B) a certificate of an Authorized Officer, which certificate shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03;

(iii) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence of each Default continuing on the date of such statement, a statement of an Authorized Officer of the Borrower setting forth details

of such Default and the action that the Borrower has taken and proposes to take with respect thereto;

(iv) promptly after the sending or filing thereof, copies of all reports and registration statements (other than exhibits thereto and registration statements on Form S-8 or its equivalent) that the Borrower or any Subsidiary files with the Securities and Exchange Commission;

(v) promptly after an Authorized Officer becomes aware of the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 4.01(f), except, with respect to any matter referred to in Section 4.01(f)(ii), to the extent disclosed in a report on Form 8-K, Form 10-Q or Form 10-K of the Borrower;

(vi) promptly after an Authorized Officer becomes aware of the occurrence thereof, notice of any change by Moody's or S&P of its respective Public Debt Rating or of the cessation (or subsequent commencement) by Moody's or S&P of publication of their respective Public Debt Rating;

(vii) promptly after the occurrence thereof, notice of the occurrence of any ERISA Event, together with (x) a written statement of an Authorized Officer of the Borrower specifying the details of such ERISA Event and the action that the Borrower has taken and proposes to take with respect thereto, (y) a copy of any notice with respect to such ERISA Event that may be required to be filed with the PBGC and (z) a copy of any notice delivered by the PBGC to the Borrower or an ERISA Affiliate with respect to such ERISA Event;

(viii) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence thereof, notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

(ix) promptly following request therefor, (a) such information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws; or (b) such other information respecting the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

Information required to be delivered pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv) above shall be deemed to have been delivered on the date on which the Borrower provides notice to the Agent that such information has been posted on the Borrower's website on the Internet at www.pinnaclewest.com, at sec.gov/edaux/searches.htm or at another website identified in such notice and accessible by the Lenders without charge; provided that (i) such notice may be included in a certificate delivered pursuant to Section 5.01(h)(i) or Section 5.01(h)(ii) and (ii) the Borrower shall deliver paper copies of the information referred to in Section 5.01(h)(i), (ii), and (iv) to any Lender which requests such delivery.

(i) Change in Nature of Business. Conduct directly or through its Subsidiaries the same general type of business conducted by the Borrower and its Material Subsidiaries on the date hereof.

Section 5.02 Negative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall not:

(a) Liens, Etc. Directly or indirectly create, incur, assume or permit to exist any Lien securing Indebtedness for borrowed money on or with respect to any property or asset (including, without limitation, the capital stock of APS) of the Borrower, whether now owned or held or hereafter acquired (unless it makes, or causes to be made, effective provision whereby the Obligations will be equally and ratably secured with any and all other obligations thereby secured so long as such other Indebtedness shall be so secured, such security to be pursuant to an agreement reasonably satisfactory to the Required Lenders); provided, however, that this Section 5.02(a) shall not apply to Liens securing Indebtedness for borrowed money (other than Indebtedness for borrowed money secured by the capital stock of APS) which do not in the aggregate exceed at any time outstanding the principal amount of \$50,000,000.

(b) Mergers, Etc. Merge or consolidate with or into any Person, or permit any of its Material Subsidiaries to do so, except that (i) any Material Subsidiary of the Borrower may merge or consolidate with or into any other Material Subsidiary of the Borrower, (ii) any Subsidiary of the Borrower may merge into the Borrower or any Material Subsidiary of the Borrower and (iii) the Borrower or any Material Subsidiary may merge with any other Person so long as the Borrower or such Material Subsidiary is the surviving corporation, provided, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of, or permit any of its Material Subsidiaries to sell, lease, transfer or otherwise dispose of, any assets, or grant any option or other right to purchase, lease or otherwise acquire any assets to any Person other than the Borrower or any Subsidiary of the Borrower, except (i) dispositions in the ordinary course of business, including, without limitation, sales or other dispositions of electricity and related and ancillary services, other commodities, emissions credits and similar mechanisms for reducing pollution, and damaged, obsolete, worn out or surplus property no longer required or useful in the business or operations of the Borrower or any of its Subsidiaries, (ii) sale or other disposition of patents, copyrights, trademarks or other intellectual property that are, in the Borrower's reasonable judgment, no longer economically practicable to maintain or necessary in the conduct of the business of the Borrower or its Subsidiaries and any license or sublicense of intellectual property that does not interfere with the business of the Borrower or any Material Subsidiary, (iii) in a transaction authorized by subsection (b) of this Section, (iv) individual dispositions occurring in the ordinary course of business which involve assets with a book value not exceeding \$5,000,000, (v) sales, leases, transfers or dispositions of assets during the term of this Agreement having an aggregate book value not to exceed 30% of the total of all assets properly appearing on the most recent balance sheet of the Borrower provided pursuant to Section 4.01(e)(i) or Section 5.01(h)(ii) hereof, (vi) at any time following the consummation of the Four Corners Acquisition, which occurred on December

30, 2013, and the closure by APS of Units 1, 2 and 3 of the Four Corners Power Plant near Farmington, New Mexico, as described in the SEC Reports, disposition of all or any portion of APS' interests in such Units 1, 2 and 3, (vii) any sale of 4C Sub or its assets, including, but not limited to, the 7% Interest, and (viii) any Lien permitted under Section 5.02(a).

(d) Ownership of APS. Except to the extent permitted under Section 5.02(b), the Borrower will at all times continue to own directly or indirectly at least 80% of the outstanding capital stock of APS.

Section 5.03 Financial Covenant. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower will maintain a ratio of (a) Consolidated Indebtedness to (b) the sum of Consolidated Indebtedness plus Consolidated Net Worth of not greater than 0.65 to 1.0.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01 Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall fail to pay when due (i) any principal of any Advance, (ii) any drawing under any Letter of Credit, or (iii) any interest on any Advance or any other fees or other amounts payable under this Agreement or any other Loan Documents, and (in the case of this clause (iii) only), such failure shall continue for a period of three Business Days; or

(b) Any representation or warranty made by the Borrower herein or by the Borrower (or any of its officers) in any certificate or other document delivered in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made or furnished; or

(c) (i) The Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 2.17, Section 5.01(d) (as to the corporate existence of the Borrower), Section 5.01(h)(iii), Section 5.01(h)(vi), Section 5.02 or Section 5.03, or (ii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in Section 5.01(e) if such failure shall remain unremedied for 15 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender or (iii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender; or

(d) (i) The Borrower or any of its Material Subsidiaries shall fail to pay (A) any principal of or premium or interest on any Indebtedness that is outstanding in a principal amount of at least \$35,000,000 in the aggregate (but excluding Indebtedness outstanding hereunder), or (B) an amount, or post collateral as contractually required in an amount, of at least \$35,000,000 in respect of any Hedge Agreement, of the Borrower or such Material Subsidiary (as the case may be), in each case,

when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness or Hedge Agreement; or (ii) any event of default shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or

(e) The Borrower or any of its Material Subsidiaries shall fail to pay any principal of or premium or interest in respect of any operating lease in respect of which the payment obligations of the Borrower have a present value of at least \$35,000,000, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in such operating lease, if the effect of such failure is to terminate, or to permit the termination of, such operating lease; or

(f) The Borrower or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Debtor Relief Law, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower or any of its Material Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) Judgments or orders for the payment of money that exceeds any applicable insurance coverage (the insurer of which shall be rated at least "A" by A.M. Best Company) by more than \$35,000,000 in the aggregate shall be rendered against the Borrower or any Material Subsidiary and such judgments or orders shall continue unsatisfied or unstayed for a period of 45 days; or

(h) (i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 30% or more of the equity securities of the Borrower entitled to vote for members of the board of directors of the Borrower; or (ii) during any period of 24 consecutive months, a majority of the members of the board of directors of the Borrower cease (other than due to death or disability) to be composed of individuals (A) who were members of that board on the first day of such period, (B) whose election

or nomination to that board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or (C) whose election or nomination to that board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board; or

(i) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$35,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$35,000,000;

then, and in any such event, the Agent shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, (i) declare the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, (ii) declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, (A) the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower and (iii) exercise all rights and remedies available to it under this Agreement, the other Loan Documents and applicable Law.

Section 6.02 Actions in Respect of Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may with the consent, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, (a) make demand upon the Borrower to, and forthwith upon such demand the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Required Lenders, provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. If at any time the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or interest of any Person other than the Agent, the Issuing Banks and the Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/

C Cash Deposit Account that are free and clear of any such right and interest. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable Law, or each Lender to the extent such Lender has funded a Revolving Advance in respect of such Letter of Credit. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a Lien upon and security interest in the L/C Cash Deposit Account and all amounts held therein from time to time as security for the L/C Obligations, and for application to the Borrower's reimbursement obligations as and when the same shall arise. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. After all such Letters of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be promptly returned to the Borrower.

ARTICLE VII

THE AGENT

Section 7.01 Appointment and Authority. Each of the Lenders (for purposes of this Article, references to the Lenders shall also mean the Issuing Banks) hereby irrevocably appoints MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.) to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as set forth in Section 7.06, the provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any of its Affiliates shall have rights as a third party beneficiary of any of such provisions.

Section 7.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 7.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or

such other number or percentage of the Lenders as shall be expressly provided for herein), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law; and

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

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 6.01 and Section 8.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent by the Borrower or a Lender.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 7.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Advance, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in good faith in accordance with the advice of any such counsel, accountants or experts.

Section 7.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any

and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Section 7.06 Resignation of Agent. The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower so long as no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United States of America, or an Affiliate of any such bank with an office in the United States of America. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 45 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be as agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 8.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

Section 7.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 7.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents, Documentation Agents or other agents listed on the cover

page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

Section 7.09 Issuing Banks. Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities provided in this Article VII (other than Section 7.02) to the same extent as such provisions apply to the Agent.

Section 7.10 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Advances, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agent or the Arrangers, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Advances, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent or any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Advances, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Advances, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Advances, the Letters of Credit or

the Commitments for an amount less than the amount being paid for an interest in the Advances, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall

(a) unless agreed to by each Lender directly affected thereby, (i) reduce or forgive the principal amount of any Advance or the Borrower's obligations to reimburse any drawing on a Letter of Credit, reduce the rate of or forgive any interest thereon (provided that only the consent of the Required Lenders shall be required to waive the applicability of any post-default increase in interest rates), or reduce or forgive any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), (ii) extend the final scheduled maturity date or any other scheduled date for the payment of any principal of or interest on any Advance, extend the time of payment of any obligation of the Borrower to reimburse any drawing on any Letter of Credit or any interest thereon, extend the expiry date of any Letter of Credit beyond the Letter of Credit Expiration Date, or extend the time of payment of any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), or (iii) increase any Revolving Credit Commitment of any such Lender over the amount thereof in effect or extend the maturity thereof (it being understood that a waiver of any condition precedent set forth in Section 3.02 or of any Default, if agreed to by the Required Lenders or all Lenders (as may be required hereunder with respect to such waiver), shall not constitute such an increase);

(b) unless agreed to by all of the Lenders, (i) reduce the percentage of the aggregate Revolving Credit Commitments or of the aggregate unpaid principal amount of the Advances, or the number or percentage of Lenders, that shall be required for the Lenders or any of them to take or approve, or direct the Agent to take, any action hereunder or under any other Loan Document (including as set forth in the definition of "Required Lenders"), (ii) change any other provision of this Agreement or any of the other Loan Documents requiring, by its terms, the consent or approval of all the Lenders for such amendment, modification, waiver, discharge or termination thereof or any consent to any departure by the Borrower therefrom, or (iii) change or waive any provision of Section 2.15, any other provision of this Agreement or any other Loan Document requiring pro rata treatment of any Lenders, or this Section 8.01 or Section 2.19(b); and

(c) unless agreed to by the Issuing Banks, the Swingline Lender, if any, or the Agent in addition to the Lenders required as provided hereinabove to take such action, affect the respective rights or obligations of the Issuing Banks, the Swingline Lender, if any, or the Agent, as applicable, hereunder or under any of the other Loan Documents.

(d) Reserved.

(e) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender directly affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, each Issuing Bank and the Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 8.07, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Section 2.11 and Section 2.14, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 8.04(e) had the Advances of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

Section 8.02 Notices, Etc.

(a) All notices and other communications provided for hereunder shall be either (x) in writing (including electronic communication) and mailed or delivered or (y) as and to the extent set forth in Section 8.02(b) and (c) and in the proviso to this Section 8.02(a), if to the Borrower, at the address specified on Schedule 8.02; if to any Lender, at its Domestic Lending Office; if to the Agent, at the address specified on Schedule 8.02; if to the Swingline Lender, at the address specified by the Swingline Lender to the Borrower and the Agent, and if to any Issuing Bank, at the address specified on Schedule 8.02 or, as to the Borrower or the Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Agent. All such notices and communications shall, when mailed, be effective when deposited in the mails, respectively, except that notices and communications to the Agent pursuant to Article II, Article III or Article VIII shall not be effective until received by the Agent. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b). Upon request of the Borrower, the Agent will provide to the Borrower (i) copies of each Administrative Questionnaire or (ii) the address of each Lender.

(b) Notices and other communications to the Lenders, the Agent and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet

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

(c) The Borrower agrees that the Agent may make materials delivered to the Agent pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv), as well as any other written information, documents, instruments and other material relating to the Borrower or any of its Subsidiaries and relating to this Agreement, the Notes or the transactions contemplated hereby, or any other materials or matters relating to this Agreement, the Notes or any of the transactions contemplated hereby (collectively, the "Communications") available to the Lenders by posting such notices on Intralinks or a substantially similar electronic system (the "Platform"). The Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided "as is" and "as available" and (iii) neither the Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent or any of its Affiliates in connection with the Platform.

(d) Each Lender agrees that notice to it (as provided in the next sentence) (a "Notice") specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender the Agent shall deliver a copy of the Communications to such Lender by e-mail or mail. Each Lender agrees (i) to notify the Agent in writing of such Lender's e-mail address to which a Notice may be sent by electronic transmission (including by electronic communication) on or before the date such Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Agent has on record an effective e-mail address for such Lender) and (ii) that any Notice may be sent to such e-mail address.

(e) The Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “ Public Lender ”). The Borrower hereby agrees that (w) all Communications that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Communications “PUBLIC,” the Borrower shall be deemed to have authorized the Agent, the Arrangers and the Lenders to treat such Communications as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States of America federal and state securities laws; (y) all Communications marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor;” and (z) the Agent and the Arrangers shall be entitled to treat any Communications that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Communications “PUBLIC.” Notwithstanding anything to the contrary herein, the Borrower and the Agent need not provide to any Public Lender any information, notice, or other document hereunder that is not public information, including without limitation, the Notice of Borrowing and any notice of Default.

Section 8.03 No Waiver; Cumulative Remedies; Enforcement . No failure by any Lender, any Issuing Bank or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Article VI for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 8.05 (subject to the terms of Section 2.15), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 8.04 Costs and Expenses; Indemnity; Damage Waiver.

(a) The Borrower agrees to pay on demand all costs and expenses of the Agent in connection with the administration, modification and amendment of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, the reasonable fees and expenses of one law firm acting as counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, reasonable fees and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this Section 8.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Agent (and any sub-agent thereof), each Lender, each Arranger, each Co-Syndication Agent and each Related Party of any of the foregoing (each, an “Indemnified Party”) from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith, whether based on contract, tort or any other theory), (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of any Advance or Letter of Credit (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent (a) such fees and expenses are expressly stated in this Agreement to be payable by the Indemnified Party, included expenses payable under Section 2.14, Section 5.01(e) and Section 8.07(b) or (b) such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence, willful misconduct or material breach of its obligations under this Agreement, in which case any fees and expenses previously paid or advanced by the Borrower to such Indemnified Party in respect of such indemnified obligation will be returned by such Indemnified Party. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated, provided that if the Borrower and such Indemnified Party are adverse parties in any such litigation or proceeding, and the Borrower prevails in a final, non-appealable judgment by a court of competent jurisdiction, any amounts under this Section 8.04(b) previously paid or advanced by the Borrower to such Indemnified Party pursuant to this Section 8.04(b) will be returned by such Indemnified Party.

(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing (and without limiting its obligation to do so), each Lender severally agrees to pay to the Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity.

(d) Without limiting the rights of indemnification of the Indemnified Parties set forth in this Agreement with respect to liabilities asserted by third parties, each party hereto also agrees not to assert any claim for special, indirect, consequential or punitive damages against the other parties hereto, or any Related Party of any party hereto, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any other Loan Document, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or the Letters of Credit. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems (including Intralinks, SyndTrak or similar systems) in connection with this Agreement or the other Loan Documents, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent such damages are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

(e) If any payment of principal of, or Conversion of, any Eurodollar Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Revolving Advance, as a result of a payment or Conversion pursuant to Section 2.08(d) or (e), Section 2.10 or Section 2.12, acceleration of the maturity of the Revolving Advances pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Revolving Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 2.19, the Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Revolving Advance.

(f) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Section 2.02(c), Section 2.11, Section 2.14 and Section 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

Section 8.05 Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Advances due and payable pursuant to the provisions of Section 6.01, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or Issuing Bank, whether or not such Lender or Issuing Bank shall have made any demand under this Agreement or such Note and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness. Each Lender and each Issuing Bank agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and each Issuing Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender may have.

Section 8.06 Effectiveness; Binding Effect. Except as provided in Section 3.01, this Agreement shall become effective when it shall have been executed by the Borrower and the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders (and any purported assignment without such consent shall be null and void).

Section 8.07 Successors and Assigns.

(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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (and any purported assignment or transfer without such consent shall be null and void) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees (other than to an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and the Revolving Advances (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment and the Revolving Advances at the time owing to it or in the case of an assignment to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Revolving Advances outstanding thereunder) or, if the Revolving Credit Commitment is not then in effect, the principal outstanding balance of the Revolving Advances of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to which such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Advances, L/C Obligations, Swingline Exposure or the Revolving Credit Commitment assigned, and each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received written notice thereof) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender;

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(D) the consent of the Swingline Lender, if any, (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under Swingline Advances (whether or not then outstanding).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that no such fee shall be payable in the case of an assignment made at the request of the Borrower to an existing Lender. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Ineligible Institutions. No such assignment shall be made to any Ineligible Institution.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section and notice thereof to the Borrower, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Agent shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitments of, and principal amounts of the Advances and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice

to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than an Ineligible Institution) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and/or the Revolving Advances (including such Lender’s participations in L/C Obligations) 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, the Agent, the Lenders and the Issuing Banks shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (iv) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Note, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification addressing the matters set forth in clause (iv) above to the extent subject to such participation. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04(e) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 8.05 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Advances or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any Advances or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.11 or Section 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.14 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.14(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as an Issuing Bank after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Issuing Bank assigns all of its Revolving Credit Commitment and Revolving Advances pursuant to subsection (b) above, such Issuing Bank may, upon 30 days' notice to the Borrower and the Lenders, resign as an Issuing Bank. If any Issuing Bank resigns, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Advances or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)).

(h) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 8.08 Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of the Borrower furnished to the Agent or the Lenders by the Borrower (such information being referred to collectively herein as the "Borrower Information"), except that each of the Agent and each of the Lenders may disclose Borrower Information (i) to its and its Affiliates' employees, officers, directors, agents and advisors having a need to know in connection with this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential on substantially the same terms as provided herein), (ii) to the extent requested by any regulatory authority or self-regulatory body, (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights

hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 8.08, (A) to any assignee or participant or prospective assignee or participant, (B) to any direct, indirect, actual or prospective counterparty (and its advisor) to any swap, derivative or securitization transaction related to the obligations under this Agreement and (C) to any credit insurance provider relating to the Borrower and its Obligations, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 8.08 by the Agent or such Lender or their Related Parties, or (B) is or becomes available to the Agent or such Lender on a nonconfidential basis from a source other than the Borrower (provided that the source of such information was not known by the recipient after inquiry to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other Person with respect to such information) and (viii) with the consent of the Borrower. The obligations under this Section 8.08 shall survive for two calendar years after the date of the termination of this Agreement.

Section 8.09 Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the Laws of the State of New York.

Section 8.10 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by electronic imaging means shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 8.11 Jurisdiction, Etc.

(a) Each of the parties hereto hereby submits to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by Law, in such federal court.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Notes in any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 8.12 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or

any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 8.13 Patriot Act. The Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each borrower (including the Borrower), guarantor or grantor (the “Loan Parties”), which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Agent or any Lender in order to assist the Agent and such Lender in maintaining compliance with the PATRIOT Act.

Section 8.14 Waiver of Jury Trial. EACH OF THE BORROWER, THE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF THE BORROWER, THE AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

Section 8.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm’s-length commercial transaction between the Borrower, on the one hand, and the Agent, each of the Lenders and each of the Arrangers, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each of the Agent, the Lenders and the Arrangers is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Agent nor any Lender or Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process

leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Agent or any Lender or Arranger has advised or is currently advising the Borrower or any of its Affiliates on other matters) and neither the Agent nor any Lender or Arranger has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Agent, each of the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Agent nor any Lender or Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Agent and each Lender and Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against the Agent and each Lender and Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with the Loan Documents.

Section 8.16 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf, and shall continue in full force and effect as long as any Advance or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 8.17 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.18 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

PINNACLE WEST CAPITAL CORPORATION

By: /s/ Lee R. Nickloy

Name: Lee R. Nickloy

Title: Vice President and Treasurer

Signature Page to 364-Day Credit Facility

ADMINISTRATIVE AGENT:

MUFG BANK, LTD. , as Agent, Issuing Bank and as a
Lender

By: /s/ Matthew Bly

Name: Matthew Bly

Title: Vice President

Signature Page to 364-Day Credit Facility

LENDERS:

JPMORGAN CHASE BANK, N.A. , as a Lender

By: /s/ Nancy R. Barwig

Name: Nancy R. Barwig

Title: Credit Risk Director

Signature Page to 364-Day Credit Facility

LENDERS:

BANK OF AMERICA, N.A. , as a Lender

By: /s/ Maggie Halleland

Name: Maggie Halleland

Title: Vice President

Signature Page to 364-Day Credit Facility

**SCHEDULE 1.01
COMMITMENTS AND RATABLE SHARES**

Bank	Revolving Credit Commitment	Ratable Share
MUFG Bank, Ltd.	\$50,000,000	33.3333%
JPMorgan Chase Bank, N.A.	\$50,000,000	33.3333%
Bank of America, N.A.	\$50,000,000	33.3333%
TOTAL	\$150,000,000.00	100.000000000%

SCHEDULE 4.01(j)
SUBSIDIARIES

Arizona Public Service Company

SCHEDULE 4.01(k)
EXISTING INDEBTEDNESS

None.

**SCHEDULE 8.02
CERTAIN ADDRESSES FOR NOTICES**

BORROWER:

Pinnacle West Capital Corporation
400 North 5th Street
Mail Station 9040
Phoenix, AZ 85004
Attention: Treasurer
Telephone: (602) 250-3300
Electronic lee.nickloy@pinnaclewest.com

AGENT :

Agent's Office

(for payments and Requests for Credit Extensions):

MUFG Bank, Ltd.
1221 Avenue of the Americas, New York, NY 10020
Attention: Lawrence Blat
Telephone: 1-212-405-6621 / 6628
Email: lblat@us.mufg.jp and to Agencydesk@us.mufg.jp

Agent's Account/Agency Service Wiring Information

MUFG Bank, Ltd.
Account Number: 9777-0191
Account Name: Loan Operations Department
Ref: Pinnacle West Capital Corporation

Other Notices as Agent :

MUFG Bank, Ltd.
1221 Avenue of the Americas, New York, NY 10020
Attention: Lawrence Blat
Telephone: 1-212-405-6621 / 6628
Email: lblat@us.mufg.jp and to Agencydesk@us.mufg.jp

ISSUING BANKS:

MUFG Bank, Ltd.
1221 Avenue of the Americas, New York, NY 10020
Attention: Lawrence Blat
Telephone: 1-212-405-6621 / 6628
Email: lblat@us.mufg.jp and to Agencydesk@us.mufg.jp

**EXHIBIT A — FORM OF
PROMISSORY NOTE**

_____, 20__

FOR VALUE RECEIVED, the undersigned, PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation (the “Borrower”), hereby promises to pay to _____ or its registered assigns (the “Lender”), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Advance from time to time made by the Lender to the Borrower pursuant to the 364-Day Credit Agreement dated as of June 28, 2018 among the Borrower, the Lender and certain other lenders parties thereto, MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as Agent for the Lender and such other lenders, and the issuing banks and other agents party thereto (as amended or modified from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined) outstanding on such date.

The Borrower promises to pay interest on the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to the Agent for the account of the Lender in same day funds at the address and account specified on Schedule 8.02. Each Advance owing to the Lender by the Borrower pursuant to the Credit Agreement, and all payments made on account of principal thereof, shall be recorded by the Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Promissory Note.

This Promissory Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement. The Credit Agreement, among other things, (i) provides for the making of Advances by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time the Lender’s Unused Commitment, the indebtedness of the Borrower resulting from each such Advance being evidenced by this Promissory Note and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

THIS PROMISSORY NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

PINNACLE WEST CAPITAL CORPORATION

By _____

Name: _____

Title: _____

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount of Advance	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By
------	----------------------	--	-----------------------------	---------------------

**EXHIBIT B — FORM OF NOTICE OF
BORROWING**

MUFG Bank, Ltd., as Agent
for the Lenders parties
to the Credit Agreement
referred to below

Attention: Loan Operations

[Date]

Ladies and Gentlemen:

The undersigned, Pinnacle West Capital Corporation, refers to the 364-Day Credit Agreement, dated as of June 28, 2018 (as amended or modified from time to time, the “Credit Agreement”, the terms defined therein being used herein as therein defined), among the undersigned, certain Lenders parties thereto, MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as Agent for said Lenders and the Issuing Banks and other agents party thereto, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the “Proposed Borrowing”) as required by Section 2.02(a) of the Credit Agreement:

- (i) The Business Day of the Proposed Borrowing is _____, 20__.
- (ii) The Type of Revolving Advances comprising the Proposed Borrowing is [Base Rate Advances] [Eurodollar Rate Advances].
- (iii) The aggregate amount of the Proposed Borrowing is \$_____.
- [(iv) The initial Interest Period for each Eurodollar Rate Advance made as part of the Proposed Borrowing is ___[week][month[s].]

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties contained in Section 4.01 (other than Sections 4.01(k), 4.01(e)(ii) and 4.01(f)(ii)) of the Credit Agreement are correct, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date;

(B) no event has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default; and

(C) before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date, the Indebtedness of the Borrower does not exceed that permitted by (i) applicable resolutions of the Board of Directors of the Borrower or (ii) applicable Laws of any Governmental Authority.

Very truly yours,

PINNACLE WEST CAPITAL CORPORATION

By _____

Name: _____

Title: _____

**EXHIBIT C — FORM OF
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “ Assignment and Assumption ”) is dated as of the Effective Date set forth below and is entered into by and between **[Insert name of Assignor]** (the “ Assignor ”) and **[Insert name of Assignee]** (the “ Assignee ”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “ Credit Agreement ”), receipt of a copy of which is hereby acknowledged by the Assignee. Annex 1 attached hereto (the “ Standard Terms and Conditions ”) is hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date referred to below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “ Assigned Interest ”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor. Assignee shall deliver (if it is not already a Lender) to the Agent an Administrative Questionnaire.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate of [identify Bank]]
3. Borrower: Pinnacle West Capital Corporation
4. Agent: MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as the administrative agent under the Credit Agreement
5. Credit Agreement: The 364-Day Credit Agreement dated as of June 28, 2018, by and among the Borrower, the Lenders party thereto, the Agent and the Issuing Banks and other agents party thereto.
6. Assigned Interest:

Aggregate Amount of Commitment for all Lenders	Amount of Commitment Assigned	Percentage Assigned of Commitment	CUSIP Number
\$ _____	\$ _____	_____ %	

[7. Trade Date:]

Effective Date: __, 20__ **[TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By _____

Name: _____

Title: _____

ASSIGNEE

[NAME OF ASSIGNEE]

By _____

Name: _____

Title: _____

[Consented to and] Accepted:
MUFG BANK, LTD., as Agent

By _____

Name:

Title:

[Consented to:]

PINNACLE WEST CAPITAL CORPORATION

By _____

Name:

Title:

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower of any of its obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under Section 8.07 of the Credit Agreement (subject to such consents, if any, as may be required under Section 8.07 of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 4.01(e) or delivered pursuant to Section 5.01(h), as applicable, thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a foreign lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by electronic imaging means shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

This Assignment and Assumption shall be governed by, and construed in accordance with, the Law of the State of New York.

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**NAVAJO TRANSITIONAL ENERGY COMPANY, LLC,
a Navajo Nation limited liability company,**

and

**4C ACQUISITION, LLC,
a Delaware limited liability company**

Dated as of June 29, 2018

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PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made as of June 29, 2018 (the “**Execution Date**”), by and between **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC**, a Navajo Nation limited liability company (“**Purchaser**”), and **4C ACQUISITION, LLC**, a Delaware limited liability company (“**Seller**”).

BACKGROUND

A. El Paso Electric Company, a Texas corporation (“**EPE**”), owned a seven percent (7%) ownership interest (the “**EPE Interest**”) in Units 4 and 5 at the fossil fuel generating facility known as the Four Corners Power Plant pursuant to the Facilities Co-Tenancy Agreement (as defined herein).

B. EPE notified Arizona Public Service Company (“**APS**”) that EPE would cease its participation in the operation of the Four Corners Power Plant when the 50 year Facilities Contracts (as defined herein) expired by their terms on July 6, 2016.

C. In connection with the decision of the other Facilities Owners (as defined herein) to continue operating the Four Corners Power Plant after the scheduled expiration of the Facilities Contracts, APS and EPE entered into that certain Purchase and Sale Agreement, dated February 17, 2015 (the “**EPE Interest Purchase Agreement**”). On July 6, 2016, EPE, APS and Seller entered into an Amendment Agreement, pursuant to which, among other things, APS assigned the EPE Interest Purchase Agreement to Seller, and Seller assumed all of the obligations as purchaser thereunder as if Seller was originally named therein (the “**Amendment**”). Seller thereafter acquired the EPE Interest on July 6, 2016.

D. Seller has agreed to sell, and Purchaser has agreed to purchase, the EPE Interest on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Defined Terms**. The following terms when used in this Agreement (or in the Schedules and Exhibits to this Agreement) with initial letters capitalized have the meanings set forth below:

1.1.1 **2016 Coal Supply Agreement**. “**2016 Coal Supply Agreement**” means the Four Corners 2016 Coal Supply Agreement dated as of December 30, 2013 by and among Navajo Mine Coal Company, LLC (as predecessor by merger to Purchaser), APS, Public Service Company of New Mexico, Salt River Project Agricultural and Improvement District, and Tucson Electric

Power Company, as amended by Amendment No. 1 to Four Corners 2016 Coal Supply Agreement, dated as of June 30, 2016. Seller became a party to the 2016 Coal Supply Agreement by Amendment 1 thereto.

1.1.2 Affiliate. “ **Affiliate** ” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

1.1.3 Agreement. “ **Agreement** ” means this Purchase and Sale Agreement, together with the Schedules and Exhibits hereto.

1.1.4 Amended and Restated 2016 Coal Supply Agreement. “ **Amended and Restated 2016 Coal Supply Agreement** ” means the Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018 by and among Purchaser, APS, Public Service Company of New Mexico, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company.

1.1.5 Ancillary Agreements. “ **Ancillary Agreements** ” means the Credit Agreement, the Note, the Collateral Assignment, the Intercreditor Agreement, the Lease Assignment, the Bill of Sale, the Assignment and Assumption Agreement, and any other agreement to be executed and delivered by the Parties under this Agreement, and for Purchaser also includes counterparts to the Facilities Contracts Purchaser will be required to execute at the Closing.

1.1.6 Arbitration. “ **Arbitration** ” means the American Arbitration Association arbitration styled *Navajo Transitional Energy Co., L.L.C., v. Arizona Public Service Co., et al.* , Case No. 01-17-0003-4505.

1.1.7 Article. “ **Article** ” means a numbered article of this Agreement. An Article includes all the numbered sections of this Agreement that begin with the same number as that Article.

1.1.8 Assignment and Assumption Agreement. “ **Assignment and Assumption Agreement** ” means the assignment and assumption agreement between Seller and Purchaser in the form attached to this Agreement as Exhibit A, to be delivered at the Closing and pursuant to which Seller shall assign to Purchaser all of Seller’s right, title and interest in and to the Facilities Contracts, certain intangible assets and certain other Assets, and Purchaser shall accept such assignments and assume the Assumed Liabilities.

1.1.9 Bill of Sale. “ **Bill of Sale** ” means the bill of sale from Seller to Purchaser in the form attached to this Agreement as Exhibit B, to be delivered at the Closing.

1.1.10 Business Day. “ **Business Day** ” means a day other than Saturday, Sunday or a day on which banks are legally closed for business in the State of Arizona.

1.1.11 Capital Expenditure. “ **Capital Expenditure** ” means any additions to or replacements of property, plant and equipment in accordance with any of the Facilities Contracts.

1.1.12 Code. “ **Code** ” means the Internal Revenue Code of 1986, as amended.

1.1.13 Collateral Assignment. “**Collateral Assignment**” means the collateral assignment and security agreement from Purchaser to Seller to be delivered at the Closing in the form attached to this Agreement as Exhibit G and securing payment of the Note.

1.1.14 Commercially Reasonable Efforts. “ **Commercially Reasonable Efforts** ” means efforts by a reasonable Person in the position of a Party which are designed to enable a Party to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by, or to perform its obligations under, this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount for transactions like those contemplated by this Agreement.

1.1.15 Consent Decree. “**Consent Decree**” means that certain Consent Decree, dated August 17, 2015, that settled litigation pending in the United States District Court for the District of New Mexico alleging violations of (a) the Prevention of Significant Deterioration provisions of Part C of Subchapter I of the Clean Air Act (“ **CAA** ”), 42 U.S.C. §§ 7470-7492 and the regulations promulgated thereunder as set forth at 40 C.F.R. § 52.21; (b) Section 111 of the CAA, 42 U.S.C. § 7411 and the regulations promulgated thereunder as set forth at 40 C.F.R. § 60.14; and (c) the requirements of Title V of the CAA, 42 U.S.C. §§ 7661-7661f.

1.1.16 Credit Agreement. “**Credit Agreement**” means the credit agreement between Purchaser and Seller for the financing of the Purchase Price, in the form attached to this Agreement as Exhibit E, including the Note and the Collateral Assignment to be delivered at the Closing.

1.1.17 Decommissioning Report. “ **Decommissioning Report** ” means that certain Four Corners Power Plant Decommissioning Cost Estimate, issued December 19, 2014, by Shaw Environmental Inc., a CB&I Company, establishing the basis for the estimated decommissioning costs for the Plant as of July 6, 2016.

1.1.18 Effective Date. “ **Effective Date** ” means either June 30, 2018 at 12:01 a.m., Fruitland, New Mexico prevailing time, if the Closing Date is on or prior to such date, or the Closing Date, if the Closing Date is after June 30, 2018.

1.1.19 Emission Allowance. “ **Emission Allowance** ” means an authorization to emit one specified unit of pollutant or Hazardous Substance from the Assets, which units are established by the Governmental Authority with jurisdiction over the Assets under (a) an air pollution control and emission reduction program designed to mitigate interstate or intrastate

transport of air pollutants, (b) a program designed to mitigate environmental impairment of surface waters, watersheds, or groundwater or (c) any pollution reduction program with a similar purpose. Emission Allowances include allowances, as described above, including credits, regardless of whether the Governmental Authority establishing such allowances designates such allowances by a name other than “allowances.” Except as specifically addressed in Section 2.2(k) with respect to SO₂ Emission Allowances, the amount of the Emission Allowances shall be all Emission Allowances granted to the Facilities or to Seller as a result of its ownership interests in the Facilities and in existence and not consumed as of the Execution Date, or subsequently authorized in respect of the Assets, reduced by the Emission Allowances consumed in the operation of the Facilities between the Execution Date and the Effective Date in the ordinary course of business.

1.1.20 Encumbrances. “ **Encumbrances** ” means any and all mortgages, pledges, claims, liens, interest, security interests, conditional and installment sales agreements, easements, activity and use restrictions and limitations, exceptions, rights-of-way, deed restrictions, defects of title, encumbrances, and charges of any kind.

1.1.21 Environment. “ **Environment** ” means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins, washes and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land (including land surface or subsurface strata), fish, plants, wildlife and other biota or other environmental medium or natural resource.

1.1.22 Environmental Condition. “ **Environmental Condition** ” means the presence, Release or threatened Release to the Environment of Hazardous Substances, including any migration of Hazardous Substances through the Environment, at, to or from the Facilities or the Facilities Switchyard or the Navajo Mine regardless of when such presence, Release or threatened Release occurred or is discovered.

1.1.23 Environmental Laws. “ **Environmental Laws** ” means all federal, state, local and tribal civil and criminal laws (including common law), statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to the Environment or human health and welfare, as the same may be amended or adopted, including, without limitation, those relating to Releases or threatened Releases to the Environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, threatened Release, transport, disposal or handling of Hazardous Substances, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Oil Pollution Act (33 U.S.C. Sec. 2701 *et seq.*), the Safe Drinking Water Act (42 U.S.C. Secs. 300f through 300j), the Occupational Safety and Health Act (29 U.S.C. Sec. 651 *et seq.*), or any similar laws of any Governmental Authority having jurisdiction over the site at which the Assets are located or otherwise applicable to the Assets.

1.1.24 Exhibits. “ **Exhibits** ” means the exhibits to this Agreement.

1.1.25 Facilities. “ **Facilities** ” means the “Four Corners Project,” as that term is defined in the Facilities Co-Tenancy Agreement, as well as those facilities defined by the following terms in the Facilities Co-Tenancy Agreement, to the extent they relate to the Four Corners Project, and to the extent such facilities exist, as of the Closing Date: “Existing New Facilities,” “Existing Related Facilities,” “Future New Facilities,” and “Future Related Facilities.”

1.1.26 Facilities Co-Tenancy Agreement. “ **Facilities Co-Tenancy Agreement** ” means that certain Four Corners Project Co-Tenancy Agreement executed as of July 19, 1966, by and among the Facilities Owners, as the same may be amended to the Closing Date.

1.1.27 Facilities Insurance Policies. “ **Facilities Insurance Policies** ” means all insurance policies carried by or for the benefit of the Facilities Owners with respect to the ownership, operation or maintenance of the Facilities or the Facilities Switchyard, including all liability, property damage, self-insurance arrangements, retrospective assessments and business interruption policies in respect thereof.

1.1.28 Facilities Lease. “ **Facilities Lease** ” means the Indenture of Lease dated December 1, 1960, between the Navajo Tribe of Indians and the Facilities Owners, as amended, supplemented and revised by the Supplemental and Additional Indenture of Lease executed as of July 6, 1966, between the Navajo Tribe of Indians and the Facilities Owners, as the same has been and may be further amended to the Closing Date.

1.1.29 Facilities Operating Agreement. “ **Facilities Operating Agreement** ” means that certain Four Corners Project Operating Agreement entered into as of May 15, 1969, by and among the Facilities Owners, as the same has been and may be further amended to the Closing Date.

1.1.30 Facilities Owner. “ **Facilities Owner** ” means each Person who, as of the relevant time, is a “Participant” under the Facilities Co-Tenancy Agreement, which, as of the date of this Agreement, means Seller, APS, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company, in each case in such Person’s capacity as a “ **Participant** ”.

1.1.31 Facilities Switchyard. “ **Facilities Switchyard** ” means the 500 kV and 345 kV switchyards located at and adjacent to the Facilities.

1.1.32 FERC. “ **FERC** ” means the Federal Energy Regulatory Commission as established by the Department of Energy Organization Act of 1977, 42 U.S.C. § 7171, as amended, or its regulatory successor, as applicable.

1.1.33 FIRPTA Certificate. “ **FIRPTA Certificate** ” means the Foreign Investment in Real Property Tax Act Certificate of Seller, to be delivered at the Closing.

1.1.34 Four Corners Financial Assurance Policy. “ **Four Corners Financial Assurance Policy** ” means the policy set forth as Exhibit 1 to Amendment No. 16 to the Facilities Operating Agreement.

1.1.35 Governmental Authority. “ **Governmental Authority** ” means any federal, state, local or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; any court or governmental tribunal; and any Tribal Authority; but does not include Purchaser, Seller, any Affiliate of Seller, or any of their respective successors in interest or any owner or operator of the Assets (if otherwise a Governmental Authority).

1.1.36 Hazardous Substances. “ **Hazardous Substances** ” means (a) any petroleum, asbestos, urea formaldehyde foam insulation and/or transformer or other equipment that contains polychlorinated biphenyls, (b) any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or “hazardous air pollutants,” or words of similar meaning and regulatory effect, under any environmental Law, and/or (c) any other chemical, material or substance that is listed or regulated under any environmental Law because it poses a hazard to human health or welfare or the Environment.

1.1.37 Income Tax. “ **Income Tax** ” means any Tax imposed by any Governmental Authority (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including municipal gross receipt Taxes, capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including corporate franchise Taxes) if one or more of such bases is described in clause (a), in each case together with any interest, penalties or additions attributable to such Tax.

1.1.38 Independent Accounting Firm. “ **Independent Accounting Firm** ” means such nationally recognized, independent accounting firm as is mutually appointed by Seller and Purchaser for purposes of this Agreement.

1.1.39 Intercreditor Agreement. “ **Intercreditor Agreement** ” has the meaning given to that term in the Credit Agreement.

1.1.40 Knowledge. The term “ **Knowledge** ” or similar phrases in this Agreement means: (a) in the case of Seller, the extent of the actual and current knowledge of Seller’s officers, employees, and knowledgeable persons listed in Schedule 1.1.39(a) at the Execution Date (or, with respect to the certificate delivered pursuant to Section 8.5, the date of delivery of the certificate) without any implication of verification or investigation concerning such knowledge; or (b) in the case of Purchaser, the extent of the actual and current knowledge of Purchaser’s officers, employees and authorized agents listed in Schedule 1.1.39(b) at the Execution Date (or, with respect to the certificate delivered pursuant to Section 9.5, the date of delivery of the certificate) without any implication of verification or investigation concerning such knowledge.

1.1.41 Landfill. “ **Landfill** ” means that certain landfill as identified in the sections labeled “LANDFILL” on the map attached as Exhibit C hereto.

1.1.42 Laws. “ **Laws** ” means all federal, state, local and tribal civil and criminal laws, statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders.

1.1.43 Lease Assignment. “ **Lease Assignment** ” means an assignment and assumption of interest in lease agreement in the form attached hereto as Exhibit D, pursuant to which Seller will convey all its right, title and interest in the real property Assets to Purchaser under this Agreement, subject to Permitted Encumbrances.

1.1.44 Navajo Mine. “ **Navajo Mine** ” means the coal mine located on the Navajo Nation property that is owned by Purchaser and that supplies coal to the Facilities.

1.1.45 Net Book Value. “ **Net Book Value** ” means the net amount set forth on the books of Seller for the EPE Interest on the Closing Date as determined in accordance with U.S. generally accepted accounting principles.

1.1.46 Note. “ **Note** ” means a secured promissory note in the form attached hereto as Exhibit F, evidencing Purchaser’s obligation to pay the Purchase Price to Seller.

1.1.47 Operating Agent. “ **Operating Agent** ” means Arizona Public Service Company, as operating agent under the Facilities Co-Tenancy Agreement and the Facilities Operating Agreement, or its successor in interest.

1.1.48 Party. “ **Party** ” means either Seller or Purchaser, as the context requires; “ **Parties** ” means, collectively, Seller and Purchaser.

1.1.49 Pension and OPEB Liabilities. “ **Pension and OPEB Liabilities** ” means the pension plan accumulated benefit obligation (ABO) and the post-retirement benefit obligation (APBO) for the Operating Agent and its Affiliates with respect to its retirement and post-retirement plans listed on Schedule 1.1.48 determined in accordance with Statement of Financial Accounting Standards No. 87 (FAS 87), Statement of Financial Accounting Standards No. 106 (FAS 106) and Accounting Standards Codification 715, as amended .

1.1.50 Permitted Encumbrances. “ **Permitted Encumbrances** ” means (a) liens for Property Taxes and other governmental charges and assessments which are not yet due and payable, (b) liens, encumbrances or title imperfections with respect to the Assets created by or resulting from the acts or omissions of Purchaser or Operating Agent, (c) liens, charges, claims, pledges, security interests, equities and encumbrances arising under the Facilities Contracts, or which will be and are discharged or released either prior to, or simultaneously with, the Closing, (d) the Assumed Liabilities, and (e) liens, charges, claims, pledges, security interests, equities and encumbrances that do not apply only and exclusively to the interest of Seller but that also constitute liens, charges, claims, pledges, security interests, equities or encumbrances upon the interests of the other Facilities Owners in common and/or the Operating Agent, as agent for any of the Facilities

Owners and that individually, or in the aggregate, are not materially adverse to the operations or physical condition of the Facilities and the Facilities Switchyard, taken as a whole.

1.1.51 Person. “ **Person** ” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

1.1.52 Plant. “ **Plant** ” means the fossil fuel generating facility known as the Four Corners Power Plant.

1.1.53 Post-Closing Actions. “ **Post-Closing Actions** ” means actions of or on behalf of the then Facility Owners on or after the Closing Date involving the Facilities that (a) are not in the ordinary course of business, (b) do not involve the shutdown or closure of the Facilities in accordance with applicable Laws, and (c) relate to the Landfill.

1.1.54 Pre-Closing Tax Period. “ **Pre-Closing Tax Period** ” means (a) any Tax period ending before the Effective Date and (b) with respect to a Tax period that begins before but ends on or after the Effective Date, the portion of such period before the Effective Date.

1.1.55 Property Tax. “ **Property Tax** ” means any Tax resulting from and relating to the assessment of real or personal property or a possessory interest in real or personal property by any Governmental Authority.

1.1.56 Purchaser. “ **Purchaser** ” has the meaning set forth in the introductory paragraph of this Agreement.

1.1.57 Purchaser’s Required Consents. “ **Purchaser’s Required Consents** ” means all consents specified in Schedule 1.1.56, which include the consent of any Person (other than a Governmental Authority) necessary for Purchaser’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.1.58 Purchaser’s Required Regulatory Approvals. “ **Purchaser’s Required Regulatory Approvals** ” means all approvals specified in Schedule 1.1.57, which include the approval by any Governmental Authority with general regulatory authority over Purchaser or the business and assets represented by the Assets and whose approval is required for Purchaser’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.1.59 Reclamation Report. “ **Reclamation Report** ” means the Navajo Mine 2016 Final Reclamation & Closure Plan Cost Estimate, dated December 2014, Project No. 1414309, prepared by Golder Associates Inc. (formerly known as Marston & Marston, Inc.), establishing the basis for the estimated reclamation costs for the Navajo Mine as of July 6, 2016.

1.1.60 Release. “ **Release** ” means any release, spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, leaching, dumping, depositing, dispersing, escaping or migration of a Hazardous Substance into, onto or through the Environment or within

any building, structure, facility or fixture, including the abandonment or discarding of Hazardous Substances in barrels, drums, or other containers.

1.1.61 Remediation. “ **Remediation** ” means any action of any kind to address an Environmental Condition or Release or threatened Release or the presence of Hazardous Substances on or in the Environment relating to the Facilities, the Facilities Switchyard, the Navajo Mine or any other location at which Hazardous Substances or non-hazardous substances or materials generated or originating at the Facilities were transported, stored or disposed of, including the following: (a) monitoring, investigation, treatment, cleanup, containment, remediation, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such work; (c) preparing and implementing any plans or studies for such work; (d) obtaining a written notice from a Governmental Authority with jurisdiction under applicable Environmental Laws that no material additional work is required by such Governmental Authority; (e) any response to or preparation for, any inquiry, order, hearing or other proceeding by or before any Governmental Authority with respect to any such Environmental Condition, Release or threatened Release or presence of Hazardous Substances, and (f) any other activities reasonably determined by the Operating Agent of the Facilities or the Facilities Switchyard, as applicable, to be necessary or required under Environmental Laws to address an Environmental Condition, the presence, Release or threatened Release of Hazardous Substances on or in the Environment at the Facilities, the Facilities Switchyard, the Navajo Mine or any other location at which Hazardous Substances or non-hazardous substances or materials generated or originating at the Facilities were transported, stored or disposed of.

1.1.62 Schedules. “ **Schedules** ” means the schedules to this Agreement.

1.1.63 Section. “ **Section** ” means a numbered section of this Agreement included within the Article that begins with the same number as that section.

1.1.64 § 323 Grants. “**§ 323 Grants** ” means one or more grants of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. § 323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. § 485), as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat. 564, 15 Stat. 228. 25 U.S.C. § 2) and such regulations promulgated thereunder, as are applicable, including 25 C.F.R. § 1.2 and 25 C.F.R. Part 169 granted to the Facilities Owners pursuant to the Facilities Lease.

1.1.65 Seller. “ **Seller** ” has the meaning set forth in the introductory paragraph of this Agreement.

1.1.66 Seller’s Required Consents. “ **Seller’s Required Consents** ” means all consents specified in Schedule 1.1.65 and consents of any Person (other than a Governmental Authority) necessary for Seller’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.1.67 Seller’s Required Regulatory Approvals. “ **Seller’s Required Regulatory Approvals** ” means all approvals specified in Schedule 1.1.66, which include the

approval of any Governmental Authority with general regulatory authority over Seller or the business and assets represented by the Assets and whose approval is required for Seller's consummation of the transaction contemplated by this Agreement and the Ancillary Agreements.

1.1.68 Tax. "Tax" means any federal, Tribal Authority, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, transactional, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not, including, without limitation, any item for which liability arises as a transferee or successor-in-interest.

1.1.69 Tax Return. "Tax Return" means any return, report, information return, declaration, claim for refund, or other document, together with all amendments and supplements thereto (including all related or supporting information), required to be supplied to any Governmental Authority responsible for the administration of Laws governing Taxes.

1.1.70 Third Party Claim. "Third Party Claim" means a claim by a Person that is not a member of the Seller Group or the Purchaser Group, including any claim for the costs of conducting Remediation or seeking an order or demanding that a Person undertake Remediation.

1.1.71 Transferable Permits. "Transferable Permits" means all those permits relating to the Facilities or the Facilities Switchyard (and all applications pertaining thereto) relating to the EPE Interest which are transferable under applicable law from Seller to Purchaser with or without a filing with, notice to, or consent or approval of any Governmental Authority.

1.1.72 Transfer Tax. "Transfer Tax" means any sales Tax, transaction privilege Tax, transaction Tax, conveyance fee, recording fee, use Tax, stamp Tax, stock transfer Tax or other similar Tax, including any related penalties, interest and additions thereto.

1.1.73 Tribal Authority. "Tribal Authority" means any sovereign nation recognized by the United States government, federally recognized Indian tribe, or any governmental subdivision, agency, department, or instrumentality thereof with the authority to administer and collect tribal Taxes, administer and enforce tribal laws and administer and enforce tribal agency processes. For the avoidance of doubt, "Tribal Authority" shall include the Navajo Nation.

1.2 Index of Other Defined Terms.

<u>Defined Term</u>	<u>Section</u>
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Allocation	3.5
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Applicable Tax Law	3.5

APS	Recital B
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Assets	2.1
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BAT	3.6(c)
Calendar Year 2016 True-Up Payment	6.11(e)
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True-Up Payment	6.11(e)

1.3 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition;
- (f) “hereunder,” “hereof,” “hereto” and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;
- (g) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (h) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including;”

(i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and

(j) any agreement, instrument, insurance policy, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, insurance, policy, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein.

ARTICLE 2 **PURCHASE AND SALE OF ASSETS**

2.1 Transfer of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, convey, assign, transfer and deliver to Purchaser, and Purchaser will purchase and acquire from Seller, all of Seller's interest in the Facilities and the Facilities Switchyard, including Seller's undivided interest therein as a tenant in common, which Seller owns or to which Seller has rights by reason of any of the Facilities Contracts, free and clear of all Encumbrances other than Permitted Encumbrances, including, without limitation, Seller's interest in the following, but excluding all Excluded Assets (collectively, the "**Assets**"):

(a) **Real Property Rights**. The parcels of real property (or interests therein), if any, owned by Seller, or by the Operating Agent on behalf of Seller, as one of the Facilities Owners, relating to the Facilities or the Facilities Switchyard, together with all buildings, facilities and other improvements thereon and all appurtenances thereto, including all construction work in process (the "**Owned Real Property**");

(b) **Leased Real Property**. The real property leasehold estates and the related lease or sublease agreements, if any, related to the Facilities or the Facilities Switchyard, together with all buildings, fixtures and real property improvements thereon and thereto, including all construction work in process (the "**Leased Property**"), including, without limitation, the items set forth on Schedule 2.1(b);

(c) **Rights-of-Way/Easements and Water Rights**. All rights-of-way, easements, grants and privileges (including all water rights) appurtenant to the Owned Real Property or the Leased Property, including, without limitation, the items set forth on Schedule 2.1(c);

(d) **Equipment**. All machinery, mobile or otherwise, equipment (including computer hardware and software and communications equipment), vehicles, tools, fixtures, furniture and furnishings, and other tangible personal property that (i) are not Inventory, (ii) are licensed, owned or leased by Seller, or the Operating Agent, on behalf of the Facilities Owners or on behalf of Seller, as one of the Facilities Owners, as of the Closing, and (iii) are related to, used,

or useful in the operation of the Facilities or the Facilities Switchyard, or are typically located at the Facilities, the Facilities Switchyard, the Navajo Mine or other locations or facilities which are owned, operated, maintained or under the control of the Operating Agent. For the avoidance of doubt, the equipment described herein specifically includes Seller's undivided interest in all of the foregoing as have been acquired in connection with the Facilities and the Facilities Switchyard since July 6, 2016;

(e) **Fuel Inventory**. All coal under contract or in inventory relating to the operation of the Facilities located at or in transit to the Facilities (the "**Fuel Inventory**");

(f) **Inventory**. The following items intended to be consumed at the Facilities or the Facilities Switchyard in the ordinary course of business: inventories of spare parts; maintenance, shop and office supplies; and other similar items of tangible personal property in existence as of the Closing, wherever located, excluding Fuel Inventory (the "**Inventory**");

(g) **Emission Allowances**. All Emission Allowances, except for allowances which are to be retained by Seller pursuant to Section 2.2(k);

(h) **Facilities Contracts**. The contracts, agreements, arrangements, licenses and leases of any nature, (i) to which Seller, in its capacity as a Facilities Owner, is a party, including, without limitation, the items set forth on Schedule 2.1(h), or (ii) to which the Operating Agent, on behalf of the Facilities Owners or on behalf of Seller, as one of the Facilities Owners, is a party, and by or to which Seller, the Facilities, or the Facilities Switchyard are bound or subject, in each case relating to the ownership, lease, maintenance or operation of the Facilities or the Facilities Switchyard (the "**Facilities Contracts**"); provided that Seller shall retain all rights under the Facilities Contracts with respect to any Excluded Assets or Excluded Liabilities;

(i) **Permits, Licenses, Etc**. The Transferable Permits and any other permits, licenses, approvals, registrations, franchises, certificates, other authorizations and consents of Governmental Authorities relating to the ownership, lease, maintenance or operation of the Facilities or the Facilities Switchyard that, in each case, as of the Closing are in favor of the Facilities Owners, or the Operating Agent, as agent for the Facilities Owners, except for and to the extent that such licenses, permits, approvals, registrations, franchises, certificates, other authorizations and consents relate to Excluded Assets (the "**Facilities Permits**");

(j) **Documents**. The books, records, materials, documents, information, drawings, reports, operating data, operating safety and maintenance manuals, inspection reports, engineering design plans, blueprints, specifications, and procedures and similar items (i) located at and/or relating to the Facilities or the Facilities Switchyard, other than any Tax Returns or Tax records, or (ii) otherwise relating to the Facilities or the Facilities Switchyard and owned by the Facilities Owners in common or by the Operating Agent as agent for the Facilities Owners, (the "**Facilities Documents**"); provided that Seller may retain, at its own expense, and may use subject to any confidentiality obligations that may apply to the Facilities Owners, copies of any Facilities Documents related to any Excluded Assets or Excluded Liabilities;

(k) **Third Party Warranties**. All unexpired, transferable warranties and guarantees from third parties with respect to the Facilities or the Facilities Switchyard or arising out of the Facilities Contracts or any contracts entered into thereunder, except to the extent they relate to Excluded Assets or Excluded Liabilities;

(l) **Intellectual Property**. All intangible assets of an intellectual property nature, including all patents and patent rights, trademarks and trademark rights, inventions, trade names and copyrights relating to the Facilities or the Facilities Switchyard, including the name of the Facilities and the Facilities Switchyard and all pending applications therefor, together with any trade secrets relating to the Facilities or the Facilities Switchyard, in each case that are owned in common by the Facilities Owners or by the Operating Agent as agent for the Facilities Owners;

(m) **Claims, Rights and Causes of Action**. All rights in, to and under (i) any claims, rights or causes of action against any third parties (including indemnification, contribution and insurance claims) relating to the Assets or the Assumed Liabilities, whether occurring prior to, on or after the Closing, if any, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like; whether received as payment or credit against future liabilities, and (ii) any actual or potential claim or cause of action as a Facilities Owner against the Operating Agent, whether known or unknown, contingent or accrued, arising prior to and in existence at the Closing, except in each case for Excluded Claims;

(n) **Prepayments**. Advance payments, prepayments, prepaid expenses, deposits, credits, rights of setoff, recoupment and the like, other than any prepaid Taxes, which shall be governed by Section 3.6(b), (i) made by Seller or the Operating Agent on Seller's behalf in the ordinary course of business prior to the Closing specifically with respect to the Facilities or the Facilities Switchyard, (ii) which exist as of the Closing, and (iii) with respect to which Purchaser will receive the benefit after the Closing;

(o) **Insurance Proceeds and Condemnation Proceeds**. The right to any proceeds from insurance policies to the extent covering the Assets or the Assumed Liabilities, except for Excluded Claims, but including the amounts described in Section 6.4(b), and the right to any claims, settlement or proceeds thereof from a condemnation or eminent domain proceeding as provided in Section 6.4(a);

(p) **Transmission Facilities**. Seller's undivided ownership interests in the Facilities Switchyard and associated interconnection facilities at the site (the generator step-up transformers and other interconnection facilities connecting the generating facilities to the switchyard) (together, the "**Transferred Transmission Facilities**"); and

(q) **Miscellaneous**. Any miscellaneous assets necessary, useful or used in or ancillary to operating the Facilities or the Facilities Switchyard and primarily utilized in connection therewith but not otherwise enumerated above, including, without limitation, the assets specified on Schedule 2.1(q), except for Excluded Assets, which in the ordinary course of business are typically located at the Facilities, the Facilities Switchyard, the Navajo Mine or other locations or facilities which are owned, operated, maintained or under the control of the Operating Agent or one of its Affiliates.

2.2 Excluded Assets. Nothing in this Agreement will constitute or be construed as conferring on Purchaser, and Purchaser is not acquiring, any right, title or interest of Seller in or to the following (the “**Excluded Assets**”), except to the extent Seller owns an interest in any such physical assets as a tenant in common with the other Facilities Owners, in which event such interest in such assets are Assets:

- (a) the assets listed or described on Schedule 2.2(a), which are associated with the Assets but are specifically excluded from the sale;
- (b) certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities;
- (c) all cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise) in existence and/or due as of the Closing, except for such assets on deposit with, or under the control of, the Operating Agent;
- (d) any and all data and information pertaining to customers of Seller or its Affiliates, unrelated to the Assets or Assumed Liabilities;
- (e) rights in, to and under all agreements and arrangements of any nature, which are not assigned to Purchaser under the terms of this Agreement, including any agreements for the sale by Seller of energy, capacity or ancillary services from the Facilities prior to the Closing, and any trade accounts receivable and all collateral, security arrangements, notes, bonds, and other evidences of indebtedness of and rights to receive payments arising out of or related to such sales, including any rights with respect to any third party collection procedures or any other actions or proceedings which have been commenced in connection therewith;
- (f) rights of Seller arising under this Agreement, any instrument or document executed and delivered pursuant to the terms hereof, or the transactions contemplated hereby;
- (g) any and all books and records not described in Section 2.1(j);
- (h) any rights in, to and under (i) any claims, rights or causes of action against any third parties (including indemnification, contribution and insurance claims) relating to the Excluded Assets or the Excluded Liabilities, whether occurring prior to, on or after the Closing, if any, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like; whether received as payment or credit against future liabilities, (ii) any actual or potential claim or cause of action as a Facilities Owner against the Operating Agent, whether known or unknown, contingent or accrued, arising prior to and in existence at the Closing relating to the Excluded Assets or the Excluded Liabilities, (iii) any claims for refunds, credits, prepayments, offsets, recoupments, judgments and the like relating to Taxes, and (iv) the Arbitration (claims described in clauses (i) – (iv), “**Excluded Claims**”);
- (i) all privileged or proprietary books, records, materials, documents, information, drawings, reports, operating data, operating safety and maintenance manuals,

inspection reports, engineering design plans, blueprints, specifications, and procedures and similar items not owned by the Facilities Owners in common or by the Operating Agent as agent for the Facilities Owners and any and all rights to use the same, including, without limitation, intangible assets of an intellectual property nature such as trademarks, service marks and trade names (whether or not registered), computer software that is proprietary to Seller, or the use of which under the pertinent license therefor is limited to operation by Seller or its Affiliates or on equipment owned by Seller or its Affiliates;

(j) the right to receive mail and other communications relating to any of the Excluded Assets or Excluded Liabilities, all of which mail and other communications shall be promptly forwarded by Purchaser to Seller;

(k) Emission Allowances for sulfur dioxide (SO₂) (“**SO₂ Emission Allowances**”) retained by EPE under the EPE Interest Purchase Agreement, together with (i) that portion of the SO₂ Emission Allowances necessary for Seller to meet any compliance obligations during its ownership of the EPE Interest, and (ii) any SO₂ Emission Allowances that, pursuant to the Consent Decree, may not be transferred;

(l) properties, assets and rights of Seller that are not used in the ownership or operation of the Assets, or that relate to the Excluded Liabilities;

(m) any and all transmission rights of Seller other than the Transferred Transmission Facilities; and

(n) any rights specifically excluded from the definition of the Assets under Section 2.1.

At any time or from time to time, up to ninety (90) days following the Closing, any and all of the Excluded Assets may be removed from the Facilities and the Facilities Switchyard by Seller (at no expense to Purchaser, but without charge by Purchaser for temporary storage); provided that Seller shall do so in a manner that does not unduly or unnecessarily disrupt normal business activities at the Facilities and the Facilities Switchyard and Seller provides Purchaser with reasonable notice of its intent to remove such property, and provided further that Excluded Assets may be retained at the Facilities and the Facilities Switchyard to the extent permitted by easements, licenses, agreements or similar arrangements in favor of Seller that have not been assigned to Purchaser pursuant to this Agreement. Further, if at any time after the Closing Purchaser comes into possession of an Excluded Asset, Purchaser will promptly notify Seller and make arrangements to pay over or otherwise deliver to Seller such Excluded Asset at Seller’s sole cost and expense.

2.3 Assumption of Liabilities. From and after the Closing, Purchaser will assume only the following obligations and liabilities of Seller, to the extent such obligations and liabilities relate to the Assets, the Facilities, or, as applicable, the Navajo Mine (the “**Assumed Liabilities**”):

(a) All liabilities and obligations under all agreements, contracts, undertakings, and licenses assigned to Purchaser under this Agreement, including the Facilities Contracts and the Transferable Permits in accordance with the terms thereof, except: (i) in each case to the extent

such liabilities and obligations were incurred by Seller prior to the Effective Date and not otherwise assumed by Purchaser pursuant to Sections 2.3(c), (d), (e) and (f), (ii) the payment obligations pro-rated to Seller under Section 3.6, and (iii) as specifically contemplated under Section 2.4;

(b) All liabilities or obligations, whether or not accrued, contingent, absolute, determined or determinable (including, without limitation, any fines, penalties or costs imposed by a Governmental Authority) arising under Environmental Laws (whether such laws are enacted before or after the Effective Date), and all liabilities and obligations relating to Environmental Conditions or Hazardous Substances, in each case to the extent attributable to actions or failures to act occurring, or conditions first arising, on or after the Effective Date, including any threatened Releases that do not exist prior to the Effective Date (the “ **Post-Closing Environmental Liabilities** ”);

(c) All liabilities or obligations, whether or not accrued, contingent, absolute, determined or determinable (including, without limitation, any fines, penalties or costs imposed by a Governmental Authority) arising under Environmental Laws or relating to Environmental Conditions or Hazardous Substances in connection with EPE’s or Seller’s ownership of the Assets or Facilities or with respect to the Navajo Mine (in each case, solely in connection with the pre-Effective Date period) (collectively, “ **Pre-Closing Environmental Liabilities** ”) to the extent such Pre-Closing Environmental Liabilities arise out of (i) the enactment, coming into force or change in any Environmental Law (including any change in the interpretation, application or enforcement of any such Environmental Law) on or after the Effective Date or (ii) Post-Closing Actions;

(d) That incremental portion, and only that incremental portion, if any, of the Landfill Obligations that are directly attributable to any Post-Closing Actions;

(e) All liabilities and obligations of Seller with respect to decommissioning the Facilities and the Facilities Switchyard, including without limitation the dismantling and removal of the Facilities and the Facilities Switchyard and the restoration of their sites (collectively, “ **Decommissioning** ”);

(f) All liabilities and obligations of Seller with respect to reclamation of the Navajo Mine, and the site comprising the same or on which the Navajo Mine exists or has existed (collectively, “ **Reclamation** ”);

(g) All of Seller’s share of any liabilities or obligations of the Operating Agent or its Affiliates with respect to pensions or other post-employment benefits attributable to Operating Agent’s operation of the Facilities;

(h) Any liabilities or obligations in respect of Purchaser’s share of the items prorated in Section 3.6(a);

(i) Taxes attributable to the ownership, operation or use of the Assets on or after the Effective Date (except for Taxes for which Seller is liable pursuant to Section 3.6, including Seller’s Income Taxes) and any Taxes for which Purchaser is liable under Section 6.3; and

- (j) All other liabilities expressly allocated to Purchaser in this Agreement.

For the avoidance of doubt, Purchaser is not assuming hereunder any liabilities or obligations of any of the Facilities Owners other than Seller pursuant to this Agreement.

2.4 Excluded Liabilities . Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of Seller other than the Assumed Liabilities. All obligations and liabilities of Seller other than the Assumed Liabilities are referred to herein as the “ **Excluded Liabilities** ”, all of which Excluded Liabilities shall remain the sole responsibility of Seller. The Excluded Liabilities include, without limitation, the following:

- (a) Any liabilities or obligations of Seller in respect of any Excluded Assets or other assets which are not Assets and Seller’s ownership, operation and conduct of any business in connection therewith or therefrom;
- (b) Except as otherwise specifically set forth in Section 2.4(a), all liabilities or obligations arising prior to the Effective Date under any of the agreements, contracts, undertakings and licenses assumed by Purchaser under this Agreement, including the Facilities Contracts and the Transferable Permits;
- (c) Any fines, penalties or costs (other than Taxes), including costs for environmental mitigation projects, imposed by a Governmental Authority with respect to the Assets resulting from (i) an investigation, proceeding, request for information or inspection before or by a Governmental Authority, but only relating to actions or omissions or conditions existing prior to the Effective Date (and only for the period prior to the Effective Date and not to the extent continuing past the Effective Date); or (ii) violations of applicable Law or illegal acts committed by Seller;
- (d) Seller’s share of the costs of removal of, or to conduct or perform Remediation of any Environmental Conditions or Hazardous Substances at the Landfill if the Facilities Owners are required to remove such Landfill or to conduct or perform Remediation of any Environmental Conditions or Hazardous Substances at the Landfill under Laws, the Facilities Lease or the § 323 Grants (collectively, the “ **Landfill Obligations** ”), except for the portion thereof, if any, described in Section 2.3(d);
- (e) All Pre-Closing Environmental Liabilities, excluding any Pre-Closing Environmental Liabilities assumed by Purchaser in Sections 2.3(c), 2.3(d), 2.3(e) and 2.3(f);
- (f) Any liability of Seller arising out of a breach by Seller of any of its obligations under this Agreement or the Ancillary Agreements;
- (g) Any obligation of Seller to indemnify any Person who is a member of the Purchaser Group pursuant to Article 7;
- (h) Any liabilities or obligations in respect of Seller’s share of the items prorated in Section 3.6(a);

(i) Taxes attributable to the ownership, operation or use of the Assets before the Effective Date (except for Taxes for which Purchaser is liable pursuant to Section 3.6, including Purchaser's Income Taxes) and any Taxes for which Seller is liable under Section 6.3; and

(j) All other liabilities expressly allocated to Seller in this Agreement.

ARTICLE 3 **CLOSING**

3.1 Closing. The closing of the sale of the Assets to, and the assumption of the Assumed Liabilities by, Purchaser (the “**Closing**”) will take place at the offices of Seller, 400 North Fifth Street, Phoenix, Arizona 85004, on the fifth Business Day following the satisfaction or waiver of the conditions set forth in Article 8 and Article 9, or on such other date as agreed to by the Parties. The time and date of Closing is hereinafter called the “**Closing Date**.” Notwithstanding anything in this Agreement to the contrary, the Closing shall be deemed to be effective on the Effective Date, or at such other time as the Parties may mutually agree.

3.2 Purchase Price. The purchase price for the EPE Interest shall be the Net Book Value of the EPE Interest as of the Closing Date (the “**Purchase Price**”). The Parties agree that the Purchase Price shall be deemed to be \$68,907,000, subject to adjustment as set forth in Section 3.3 and Section 3.6. For the avoidance of doubt, the Purchase Price shall not include any costs paid or payable by Purchaser to Seller as part of the Calendar Year 2016 True-Up Payment, the Calendar Year 2017 True-Up Payment, and/or the Calendar Year 2018 True-Up Payment. The obligation of Buyer to pay the Purchase Price to Seller shall be evidenced by the Credit Agreement and the Note, and secured by the Collateral Assignment.

3.3 Post-Closing Adjustments. Within sixty (60) days after the Effective Date, Seller shall prepare and deliver to Purchaser a statement (the “**Post-Closing Statement**”) that shall set forth the Purchase Price and all adjustments to the Purchase Price proposed by Seller to be required by the definition of Purchase Price in Section 3.2 (the “**Proposed Post-Closing Adjustment**”); provided that if any adjustments to be made cannot be made within sixty (60) days after the Effective Date, the Parties agree that additional Post-Closing Statements can be subsequently prepared to address such adjustments for a period of up to June 1 of the calendar year following the Effective Date. To the extent applicable, the Post-Closing Statement shall be prepared using the same accounting principles, policies and methods as the Operating Agent has historically used in connection with the calculation of the items reflected on such Post-Closing Statement. Within thirty (30) days after the delivery of the Post-Closing Statement by Seller to Purchaser, Purchaser may object in good faith to the Proposed Post-Closing Adjustment in writing, stating in reasonable detail its objections thereto. Seller and Purchaser agree to cooperate to exchange information used to prepare the Post-Closing Statement and information relating thereto. If Purchaser objects to the Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute within thirty (30) days after any objection by Purchaser, the Parties shall appoint the Independent Accounting Firm, which shall, at Seller's and Purchaser's joint expense, review the Proposed Post-Closing Adjustment and determine the appropriate adjustment to the Purchase Price, if any, within thirty (30) days after such appointment. The Parties agree to cooperate with the Independent Accounting Firm and

provide it with such information as it reasonably requests to enable it to make such determination. For purposes of this Section 3.3 and wherever the Independent Accounting Firm is retained to resolve a dispute between the Parties, the Independent Accounting Firm may determine the issues in dispute following such procedures, consistent with the language of this Agreement, as it deems appropriate to the circumstances and with reference to the amounts in issue. No particular procedures are intended to be imposed upon the Independent Accounting Firm, it being the desire of the Parties that any such disagreement shall be resolved as expeditiously and inexpensively as reasonably practicable. The Independent Accounting Firm shall have no liability to the Parties in connection with such services except for acts of bad faith, willful misconduct or gross negligence, and the Parties shall provide such indemnities to the Independent Accounting Firm as it may reasonably request. The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination of the appropriate adjustment (the “ **Post-Closing Adjustment** ”) by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than three (3) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee; provided that upon the written election of Purchaser, if Purchaser is the Party owing money, the amount owed shall instead be added to the face amount of the Note and be subject to the Credit Agreement and Collateral Assignment, and if Purchaser is owed any money, the amount owed shall be credited to reduce the principal amount of the Note.

3.4 Payment. Any cash payments required by this Agreement shall be paid in U.S. dollars in immediately available funds. The recipient of such funds will designate the account or accounts to which the funds will be wire transferred.

3.5 Allocation of Purchase Price. The allocation of the Purchase Price (including any portion of the Assumed Liabilities if applicable) will be negotiated by the Parties in accordance with Applicable Tax Law (as defined below). At least twenty (20) calendar days prior to the Closing Date, Seller shall propose and deliver, or shall have proposed and delivered, to Purchaser a preliminary allocation among the Assets of the Purchase Price and such other consideration to be paid by Seller pursuant to this Agreement (an “ **Allocation** ”). The Allocation shall be consistent with Code Section 1060 (“ **Applicable Tax Law** ”) and the regulations thereunder and in a manner which facilitates Property Tax reporting and shall separately allocate Assets in the Facilities Switchyard. Purchaser shall within ten (10) days thereafter propose any changes to the Allocation. Within five (5) days following delivery of such proposed changes, Seller shall provide Purchaser with a statement of any objections to such proposed changes, together with a reasonably detailed explanation of the reasons therefor. If Seller and Purchaser are unable to resolve any disputed objections within three (3) days thereafter, such objections shall be referred to the Independent Accounting Firm, which shall resolve the disputed item. The Independent Accounting Firm shall be instructed to deliver to Seller and Purchaser a written determination of the proper allocation of such disputed items within twenty (20) Business Days from the date of engagement. Such determination shall be final, conclusive and binding upon the Parties for all Tax purposes, and the Allocation shall be so adjusted (the allocation, including the adjustment, if any, to be referred to as the “ **Final Pre-Closing Allocation** ”). Within thirty (30) days of the determination of the Post-Closing Adjustment, the Parties shall agree to the adjustments to the Final Pre-Closing

Allocation (“ **Final Allocation** ”). The fees and disbursements of the Independent Accounting Firm attributable to any Allocation shall be shared equally by Seller and Purchaser. Seller and Purchaser agree to timely file Internal Revenue Service Form 8594, and all Tax Returns, in accordance with such Allocation or Final Allocation, as the case may be, and to report the transactions contemplated by this Agreement for federal Income Tax and all other Tax purposes in a manner consistent with the Allocation or Final Allocation, as the case may be. Each of Seller and Purchaser further agree to provide a copy of its Internal Revenue Service Form 8594 for inspection by the other Party not fewer than ten (10) Business Days prior to filing such form.

3.6 Prorations.

(a) Purchaser and Seller agree that, except as otherwise specifically provided in this Agreement, all of the budgeted, ordinary, and recurring items normally charged to the Facilities Owners, including those listed below (but not including any Income Taxes and Transfer Taxes), relating to the business and operation of the Assets acquired by Seller pursuant to the EPE Interest Purchase Agreement, shall be prorated and charged as of the Effective Date, without any duplication of payment under the Facilities Contracts, with Seller liable to the extent such items relate to the EPE Interest and any time period prior to the Effective Date, and Purchaser liable to the extent such items relate to the EPE Interest and periods commencing with the Effective Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) Retrospective adjustments and policyholder distributions for the applicable period during which the Closing occurs with respect to Facilities Insurance Policies included in the Assets occurring within twelve (12) months of Closing or ninety (90) days after the year-end following the Closing, whichever occurs first; and

(ii) Operating and maintenance expenses incurred in any period prior to the Effective Date (not including Capital Expenditures) in the nature of the expenses shown on Schedule 3.6(a)(ii), but only to the extent that the amount of such expenses are determined within twelve (12) months of Closing or ninety (90) days after the year end following the Closing, whichever occurs first.

(b) Purchaser and Seller agree that Property Taxes payable in respect of the same calendar year as the Effective Date shall be prorated and charged as of the Effective Date, without any duplication of payment under the Facilities Contracts, with Seller liable to the extent such items relate to any time period prior to the Effective Date, and Purchaser liable to the extent such items relate to periods commencing with the Effective Date (measured by calendar days). To the extent that, prior to the Closing, there has been a prepayment of any such Taxes attributable to any time period from and after the Effective Date, Purchaser shall reimburse Seller for such prepaid Taxes.

(c) Without limiting the generality of the foregoing, any and all liabilities for amounts payable (i) pursuant to the Tax Settlement and Closing Agreement, dated August 13, 2002, by and between EPE and the Office of the Navajo Nation Uniform Tax Administration Statute (as amended, from time to time, the “ **Tax Settlement Agreement** ”) or any successor agreement relating

to the Assets, or (ii) otherwise in respect of any possessory interest Tax (“**PIT**”) or business activities Tax (“**BAT**”) purported by the Office of the Navajo Nation Uniform Tax Administration Statute to be due in respect of the ownership or use of the Assets (collectively, the “**Tribal Payments**”) shall (x) be payable by Seller to the extent attributable to a period (or a portion of a period) ending at the close of the Business Day immediately preceding the Effective Date, and (y) otherwise be payable by Purchaser. Tribal Payments that are attributable to a period that begins before the Effective Date but ends on or after the Effective Date shall be prorated to the portion of the period ending prior to the Effective Date (i) on a per diem basis in the case of payments in respect of a PIT and (ii) on a closing of the books basis in the case of payments in respect of a BAT. To the extent that prior to the Closing, Seller has made a prepayment of any amount for which Purchaser is liable under this Section 3.6(c), Purchaser shall reimburse Seller for the amount of such prepayment.

(d) In connection with the prorations referred to in Sections 3.6(a), (b) and (c), in the event that actual figures are not available at the Closing Date, the proration shall be based upon the respective amounts accrued through the Closing Date or paid for the most recent year or other, appropriate period for which such amounts paid are available. All prorated amounts shall be recalculated and paid to the appropriate Party within sixty (60) days after the date that the previously unavailable actual figures become available, but in any event not later June 1 of the calendar year following the Effective Date. Seller and Purchaser shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all proration calculations made pursuant to this Section 3.6. Any disagreements regarding the prorations referred to in Sections 3.6(a) and (b) shall be resolved in accordance with the provisions of Section 3.3. Upon determination of the appropriate prorations pursuant to this Section 3.6 by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than three (3) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee; provided that upon the written election of Purchaser, if Purchaser is the Party owing money, the amount owed shall instead be added to the principal amount of the Note and be subject to the Credit Agreement and Collateral Assignment, and if Purchaser is owed any money, the amount owed shall be credited to reduce the principal amount of the Note.

3.7 Deliveries by Seller. Subject to the terms and conditions hereof, at the Closing Seller shall deliver, or cause to be delivered, the following to Purchaser:

(a) The Lease Assignment, duly executed by Seller and in recordable form, subject only to Permitted Encumbrances, together with any normal and customary affidavits or similar documents reasonably requested by Purchaser and required by the title insurer in connection with any leasehold title policy obtained by Purchaser;

(b) The Bill of Sale, duly executed by Seller;

(c) The Assignment and Assumption Agreement, duly executed by Seller;

(d) Evidence, in form and substance reasonably satisfactory to Purchaser and its respective counsel, of Seller’s receipt of (i) Seller’s Required Regulatory Approvals, (ii) Seller’s

Required Consents, and (iii) documentation evidencing the release of all Encumbrances on the Assets, excluding any Permitted Encumbrances;

(e) A Certificate of Good Standing with respect to Seller, as of a recent date, issued by the Delaware Secretary of State;

(f) A certificate addressed to Purchaser dated the Closing Date executed by a duly authorized officer of Seller to the effect set forth in Section 8.5;

(g) The FIRPTA Certificate to Purchaser, duly executed by Seller;

(h) Copies, certified by the Secretary or Assistant Secretary of Seller, of limited liability company resolutions authorizing the execution and delivery of this Agreement, each Ancillary Agreement to which Seller is a party and the authorization or ratification of all of the other agreements and instruments, in each case, to be executed and delivered by Seller in connection herewith;

(i) A certificate of the Secretary or Assistant Secretary of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement, each Ancillary Agreement to which Seller, is a party and the other agreements and instruments contemplated hereby;

(j) Counterparts of the Credit Agreement and Collateral Assignment, duly executed by Seller;

(k) The Financial Assurance, duly executed by Pinnacle West Capital Corporation (“**Pinnacle West**”);

(l) The Side Letter, duly executed by Pinnacle West; and

(m) All such other agreements, documents, instruments and writings required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or as the Parties and their respective counsel shall deem reasonably necessary to sell, assign, convey, transfer and deliver all of Seller’s rights, title and interests in and to the Assets, to Purchaser, in accordance with this Agreement and, where necessary or desirable, in recordable form.

3.8 Deliveries by Purchaser. Subject to the terms and conditions hereof, at the Closing, Purchaser shall deliver, or cause to be delivered, the following to Seller:

(a) The Credit Agreement, the Note, the Collateral Assignment and the Intercreditor Agreement, duly executed by Purchaser; together with UCC-1 financing statements evidencing the security interests of Seller and UCC-3 financing statement amendments evidencing the release of all liens of KeyBank National Association, as Administrative Agent and Collateral Agent and each of the other lenders of Purchaser on the collateral described in the Credit Agreement, the Note, the Collateral Assignment and the Intercreditor Agreement;

- (b) The Agreement to Provide Financial Assurance, together with the collateral documents related thereto;
- (c) The Assignment and Assumption Agreement, duly executed by Purchaser;
- (d) Evidence, in form and substance reasonably satisfactory to Seller and its respective counsel, of Purchaser's receipt of (i) Purchaser's Required Regulatory Approvals, and (ii) Purchaser's Required Consents;
- (e) A Certificate of Good Standing or equivalent with respect to Purchaser, as of a recent date, issued by the Navajo Nation;
- (f) A certificate dated the Closing Date executed by a duly authorized officer of Purchaser to the effect set forth in Section 9.5;
- (g) Copies, certified by the Secretary of the Management Committee of Purchaser, of resolutions authorizing the execution and delivery of this Agreement, each Ancillary Agreement to which Purchaser is a party and the authorization or ratification of all of the agreements and instruments, in each case, to be executed and delivered by Purchaser in connection herewith;
- (h) A certificate of the Secretary of the Management Committee of Purchaser identifying the name and title and bearing the signatures of the officers of Purchaser authorized to execute and deliver this Agreement, each Ancillary Agreement to which Purchaser is a party and the other agreements contemplated hereby;
- (i) All documents necessary for Purchaser to become and assume the obligations of a Facilities Owner, including a counterpart to the Facilities Co-Tenancy Agreement, a counterpart to the Facilities Operating Agreement, and a counterpart to the other applicable Facilities Documents, each duly executed by Purchaser;
- (j) A counterpart to the Consent Decree;
- (k) The Side Letter, duly executed by Purchaser; and
- (l) All such other agreements, documents, instruments and writings required to be delivered by Purchaser at or prior to the Closing Date pursuant to this Agreement.

3.9 Facilities Contracts. The Parties agree that between the date hereof and the Effective Date, the ownership, lease, maintenance and operation of the Facilities and the Facilities Switchyard will be governed by the Facilities Contracts.

ARTICLE 4
REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER

Except as set forth in Seller's Schedule of Exceptions corresponding to the Section of this Agreement to which such disclosure applies, Seller represents, warrants and, where specified, disclaims to Purchaser as follows:

4.1 Organization and Existence. Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Seller has heretofore delivered to Purchaser complete and correct copies of its Certificate of Formation and operating agreement as currently in effect.

4.2 Execution, Delivery and Enforceability. Seller has full limited liability company power to enter into, and carry out its obligations under, this Agreement and the Ancillary Agreements which are executed by Seller and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements which are executed by Seller, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary limited liability company action required on the part of Seller and no other limited liability company proceedings on the part of Seller are necessary to authorize this Agreement and the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby. Assuming Purchaser's due authorization, execution and delivery of this Agreement and the Ancillary Agreements when executed by Purchaser, this Agreement does and the Ancillary Agreements when executed by Seller will constitute the valid and legally binding obligations of Seller, enforceable against Seller in accordance with its and their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

4.3 No Violation. Subject to Seller obtaining Seller's Required Regulatory Approvals and Seller's Required Consents, neither the execution and delivery of this Agreement or any of the Ancillary Agreements executed by Seller, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:

- (a) violate, or conflict with, or result in a breach of any provisions of the Certificate of Formation or Limited Liability Company Agreement of Seller;
- (b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, or agreement or other instrument or obligation to which Seller is a party or by which Seller or any of the Assets may be bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been, or prior to the Closing Date will have been, obtained and delivered to Purchaser;
- (c) violate any law, rule, regulation, order, writ, injunction, or decree, applicable to Seller or any of its assets, except where such violations, individually or in the aggregate, will not affect the validity or enforceability of this Agreement or the Ancillary Agreements or the validity of the transactions contemplated hereby or thereby; or
- (d) require consent or approval of, filing with, or notice to any Person which, if not obtained would prevent Seller from performing its obligations hereunder.

4.4 Compliance with Laws. Seller has no Knowledge that it is in material violation of any applicable laws, orders, ordinances, rules, regulations or judgment of any Governmental Authority in existence as of the Execution Date with respect to the Assets, except for (a) violations or alleged violations the subject matter of which Purchaser has Knowledge or (b) violations or alleged violations by the Facilities Owners in common, or by the Operating Agent acting on their behalf.

4.5 Permits, Licenses, Etc. Seller holds all permits, registrations, franchises, certificates, licenses and other authorizations, consents and approvals of all Governmental Authorities that Seller requires in order to own any of the Assets (collectively, “**Seller Permits**”), except for such failures to hold such Seller Permits as to which Purchaser has Knowledge or are also failures of all of the other Facilities Owners (or all other than the Operating Agent).

4.6 Litigation. There is no claim, action, proceeding or investigation pending, or to Seller’s Knowledge, threatened against or relating to Seller or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, (b) a claim against Purchaser or its Affiliates for damages as a result of Seller entering into this Agreement or any of the Ancillary Agreements, or the consummation by Seller of the transactions contemplated hereby or thereby, or (c) a material impairment of Seller’s ability to perform its obligations under this Agreement or any of the Ancillary Agreements, except for the Arbitration and except for claims, actions, proceedings or investigations pending against, or judgments, decrees or orders involving all of the other Facilities Owners or the Operating Agent as agent for the Facilities Owners, or as to which Purchaser has Knowledge.

4.7 Title. Except as set forth on Schedule 4.7, Seller has good and marketable title, or valid and effective leasehold rights in the case of leased property, and valid and effective licenses in the case of licensed rights, to the Owned Real Property, Leased Property and tangible personal property included in the Assets to be sold, conveyed, assigned, transferred and delivered to Purchaser by Seller, free and clear of all Encumbrances of any nature whatsoever, except for (a) those created pursuant to this Agreement by Purchaser, (b) those which will be discharged or released prior to or substantially simultaneously with, the Closing, (c) Permitted Encumbrances, and (d) those which do not apply only and exclusively to the interest of Seller but that also apply to interests of the other Facilities Owners in common and/or the Operating Agent, as agent for any of the Facilities Owners.

4.8 Brokers. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Seller and in such a manner as not to give rise to any valid claim against Purchaser (by reason of Seller’s actions) for a brokerage commission, finder’s fee or other like payment to any Person.

4.9 Taxes.

(a) All Tax Returns with respect to the Facilities required to be filed by Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller.

(d) All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid.

(e) Seller is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Assets (other than for current Taxes not yet due and payable).

(g) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(h) Seller is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(i) None of the Assets is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

(j) None of the Assets is tax-exempt use property within the meaning of Section 168(h) of the Code. Compliance With Laws. To Seller's Knowledge, Seller is in compliance in all material respects with Laws applicable to the ownership and use of the Assets.

4.10 Environmental Matters. Except as disclosed on Schedule 4.10, Seller has no Knowledge of any written notices being issued to Seller since July 6, 2016: (a) from any Governmental Authority, either (i) alleging a material violation of Environmental Laws with respect to the Facilities or the Assets or (ii) requesting information concerning compliance with Environmental Laws with respect to the Facilities or Assets; (b) from any Person threatening or initiating a lawsuit or other judicial proceedings based upon allegations of material violations of

Environmental Laws with respect to the Facilities or the Assets; and (c) from any Person or Governmental Authority alleging the occurrence of any Release of Hazardous Materials arising, occurring, or originating since July 6, 2016 within or emanating from the Facilities or the Assets, which would reasonably be expected to impose material liability upon any Facility Owner.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in Purchaser's Schedule of Exceptions corresponding to the Section of this Agreement to which such disclosure applies Purchaser represents, warrants and, where specified, disclaims to Seller as follows:

5.1 Organization and Existence. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the Navajo Nation and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Purchaser has heretofore delivered to Seller complete and correct copies of its Certificate of Formation and operating agreement as currently in effect.

5.2 Execution, Delivery and Enforceability. Purchaser has full limited liability company power to enter into, and carry out its obligations under, this Agreement and the Ancillary Agreements which are executed by Purchaser and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements which are executed by Purchaser, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary limited liability company action required on the part of Purchaser and no other limited liability company proceedings on the part of Purchaser are necessary to authorize this Agreement and the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby. Assuming Seller's due authorization, execution and delivery of this Agreement and the Ancillary Agreements when executed by Seller, this Agreement does and the Ancillary Agreements when executed by Purchaser, will constitute the valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with its and their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

5.3 No Violation. Subject to Purchaser obtaining the Purchaser's Required Regulatory Approvals and the Purchaser's Required Consents, neither the execution and delivery of this Agreement or any of the Ancillary Agreements executed by Purchaser, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:

(a) violate, or conflict with, or result in a breach of any provisions of the operating agreement or other organizational documents of Purchaser;

(b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, or agreement or other instrument or obligation to which Purchaser is a party or by which Purchaser may be bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been, or prior to the Closing Date will have been, obtained;

(c) violate any law, rule, regulation, order, writ, injunction, or decree, applicable to Purchaser or any of its assets, except where such violations, individually or in the aggregate will not affect the validity or enforceability of this Agreement or the Ancillary Agreements or the validity of the transactions contemplated hereby or thereby; or

(d) require consent or approval of, filing with, or notice to any Person which, if not obtained would prevent Purchaser from performing its obligations hereunder.

5.4 Compliance with Laws. Purchaser has no Knowledge that it is in material violation of any applicable laws, orders, ordinances, rules, regulations or judgment of any Governmental Authority in existence as of the Execution Date with respect to the Assets.

5.5 Litigation. There is no claim, action, proceeding or investigation pending, or to Purchaser's Knowledge, threatened against or relating to Purchaser or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, (b) a claim against Seller or its Affiliates for damages as a result of Purchaser entering into this Agreement or any of the Ancillary Agreements, or the consummation by Purchaser of the transactions contemplated hereby or thereby or (c) a material impairment of Purchaser's ability to perform its obligations under this Agreement or any of the Ancillary Agreements.

5.6 Brokers. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Purchaser and in such a manner as not to give rise to any valid claim against Seller (by reason of Purchaser's actions) for a brokerage commission, finder's fee or other like payment to any Person.

5.7 Investigation. Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Assets as contemplated hereunder. Purchaser has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Without limiting the generality of the foregoing, Purchaser has reviewed, understands, and at the Closing will be able to perform all of its obligations as a Facilities Owner under the Facilities Contracts, including the Four Corners Financial Assurance Policy.

5.8 “AS IS” SALE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND IN THE ANCILLARY AGREEMENTS, PURCHASER UNDERSTANDS AND AGREES THAT THE ASSETS ARE BEING ACQUIRED “AS IS, WHERE IS” ON THE EFFECTIVE DATE, AND IN THEIR CONDITION ON THE EFFECTIVE DATE, AND THAT PURCHASER IS RELYING ON ITS OWN EXAMINATION OF THE ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, PURCHASER UNDERSTANDS AND AGREES THAT SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES AS TO LIABILITIES, OPERATIONS OF THE ASSETS, TITLE, CONDITION, VALUE OR QUALITY OF THE ASSETS OR THE PROSPECTS (FINANCIAL, ENVIRONMENTAL OR OTHERWISE), RISKS AND OTHER INCIDENTS OF THE ASSETS AND ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. PURCHASER FURTHER AGREES THAT NO INFORMATION OR MATERIAL PROVIDED BY OR COMMUNICATION MADE BY SELLER OR ANY REPRESENTATIVE OF SELLER WILL CAUSE OR CREATE ANY REPRESENTATION OR WARRANTY DISCLAIMED BY THE FOREGOING EXCEPT AS DISCLOSED IN THIS AGREEMENT, IN A SCHEDULE ATTACHED HERETO OR IN AN ANCILLARY AGREEMENT.

ARTICLE 6
COVENANTS OF EACH PARTY

6.1 Efforts to Close; Conduct Pending Closing.

(a) Commercially Reasonable Efforts. Subject to the terms and conditions herein provided, including the specific deadlines set forth in Section 6.2, each of the Parties hereto agrees to use its Commercially Reasonable Efforts to consummate and make effective, as soon as reasonably practicable, the transactions contemplated hereby, including the satisfaction of all conditions thereto set forth herein. Such actions shall include, without limitation, exerting their Commercially Reasonable Efforts to (i) obtain the consents, authorizations and approvals of all private parties and any Governmental Authority whose consent is reasonably necessary to effectuate the transactions contemplated hereby, and (ii) effect all other necessary registrations and filings, including, without limitation, filings with any applicable Governmental Authority. Each Party will provide the other with copies of all written communications from Governmental Authorities relating to the approval or disapproval of the transactions contemplated by the Agreement and the Ancillary Agreements.

(b) Expenses. Whether or not the transactions contemplated hereby are consummated, except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expenses. Notwithstanding the foregoing:

(i) Costs associated with preliminary title reports and title policies, extended coverage and any endorsements shall be borne by Purchaser; and

(ii) Except as otherwise specifically set forth in Section 6.2, all fees, charges and costs of economists and other experts, if any, jointly retained by Purchaser and Seller in connection with submissions made to any Governmental Authority and advice in connection therewith respecting approval of the transactions will be borne one-half by Purchaser and one-half by Seller.

All such charges and expenses shall be promptly settled between the Parties at the Closing or upon termination or expiration of further proceedings under this Agreement, or with respect to such charges and expenses not determined as of such time, as soon thereafter as is reasonably practicable.

(c) **Environmental Investigations**. Prior to Closing, Seller and/or Purchaser may, at their own cost and expense, conduct or cause to be conducted their own Phase 1 and Phase 2 environmental site assessments, and any follow up investigation, of the Facilities and the Facilities Switchyard as Seller and/or Purchaser deem necessary. The party conducting such assessments shall provide the other party with (1) a copy of any written reports resulting from such assessments, and (2) timely notice of any Environmental Condition(s) that require (x) public disclosure or reporting to a regulatory authority or (y) Remediation. Purchaser shall cooperate with and allow Seller to conduct such assessments and investigation. The results of such assessments and investigation shall not be binding on the Parties, and shall not be deemed to constitute an agreement by the Parties as to the existence or extent of current Environmental Conditions at the Facilities.

(d) **Conduct Pending Closing**. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, and except to the extent approved by Purchaser, Seller shall:

(i) Not: (A) sell, lease, transfer or dispose of, or make any contract for the sale, lease, transfer or disposition of, any assets or properties which would be included in the Assets, other than sales in the ordinary course of business which would not, individually or in the aggregate, have a material adverse effect upon the operations or value of the Facilities or the Facilities Switchyard; (B) incur, assume, guaranty, or otherwise become liable in respect of any indebtedness for money borrowed, in each case which would result in Purchaser assuming such liability hereunder after the Closing; (C) other than as set forth in Section 6.11, delay the payment and discharge of any liability which, upon Closing, would be an Assumed Liability, because of the transactions contemplated hereby; or (D) encumber or voluntarily subject to any lien any Asset, except for Permitted Encumbrances; and

(ii) Not take any action which would cause any of Seller's representations and warranties set forth in Article 4 to be materially false as of the Closing.

6.2 Consents and Approvals

(a) Subject to Section 6.1(a), Purchaser shall be responsible for obtaining all of Purchaser's Required Consents and Purchaser's Required Regulatory Approvals. As promptly as practicable after the date of this Agreement, Purchaser shall take all necessary actions to obtain the same, shall diligently prosecute all applications and shall afford Seller the opportunity to review all filings.

(b) Subject to Section 6.1(a), Purchaser shall have the primary responsibility for securing the transfer, reissuance or procurement of the Facilities Permits, effective as of the Effective Date. Seller shall use Commercially Reasonable Efforts to cooperate with Purchaser's efforts in this regard and assist in any transfer or reissuance of Facilities Permits included in the Assets or the procurement of any other Facilities Permits when so requested by Purchaser.

(c) The assignment of the Leased Property is, pursuant to the terms of the Facilities Lease, "subject to the prior written consent of the [Navajo] Nation, which consent shall not be unreasonably withheld, nor conditioned upon any payments or changes to the terms or conditions of the respective leases, other than normal administration fees" (the "**Navajo Consent**"). Further, pursuant to Section 12 of the Grant of Federal Rights-of-Way Easements, dated August 4, 2015 (the "**New ROW**"), Seller's interest in the New ROW may not be assigned without the consent of the Navajo Nation (the "**ROW Consent**"), which consent may not be unreasonably withheld. Seller acknowledges that Purchaser and EPE have been unable to date to obtain the Navajo Consent and the ROW Consent in connection with the EPE Interest Purchase Agreement. Purchaser and Seller shall use their Commercially Reasonable Efforts to obtain the Navajo Consent and the ROW Consent, both including the assignment to Seller from EPE, and the assignment to Purchaser from Seller, prior to the Closing Date, but if they are unable to do so, they each agree to waive any Closing conditions relating to the failure to obtain the Navajo Consent and/or the ROW Consent and shall continue to use Commercially Reasonable Efforts following the Closing to obtain the same. The commitment described in this Section 6.2(c) shall terminate on the later to occur of (i) the Closing under this Agreement, (ii) the date upon which the Navajo Consent (covering the assignment to Seller from EPE, and the assignment to Purchaser from Seller) is delivered to Purchaser and Seller, and (iii) the date upon which the ROW Consent (covering the assignment to Seller from EPE, and the assignment to Purchaser from Seller) is delivered to Purchaser and Seller.

6.3 Tax Matters.

(a) All Transfer Taxes, if any and to the extent required by applicable Laws, incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Purchaser. Purchaser will file, to the extent required by applicable law, all necessary Tax Returns and other documentation with respect to any such Transfer Taxes, and Seller, if required by applicable law, will join in the execution of any such Tax Returns or other documentation; provided that Seller will be entitled to review in advance any Tax Returns the execution of which it joins pursuant to this Section 6.3(a).

(b) With respect to Taxes to be prorated in accordance with Section 3.6 of this Agreement, Purchaser shall prepare and timely file all Tax Returns required to be filed after the Effective Date with respect to the Assets, if any, and shall duly and timely pay all such Taxes shown

to be due on such Tax Returns. Purchaser's preparation of those Tax Returns that are for a taxable period that begins before the Effective Date shall be subject to Seller's approval, which approval shall not be unreasonably withheld or delayed. Purchaser shall make such Tax Returns available for Seller's review and approval (which approval shall not be unreasonably withheld or delayed) no later than fifteen (15) Business Days prior to the due date for filing such Tax Returns, it being understood that Seller's failure to approve any such Tax Returns shall not limit Purchaser's obligation to timely file such Tax Returns and duly and timely pay all Taxes shown to be due thereon. Not less than five (5) Business Days prior to the due date of any such Tax Return, Seller shall, to the extent that such Tax has not been prepaid and has not been reflected in an adjustment to the Purchase Price, pay to Purchaser Seller's prorated portion of the amount shown as due on such Tax Returns as determined in accordance with Section 3.6 of this Agreement and shall, to the extent required by law, join in the execution of any such Tax Returns. Purchaser and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(c) Purchaser and Seller shall provide the other Party with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Purchaser and Seller shall retain all books and records with respect to Taxes assessed on the Assets for the full period of any applicable statute of limitations. Any information obtained pursuant to this Section 6.3 or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties hereto.

(d) In the event that a dispute arises between Seller and Purchaser as to the amount of Taxes, the Parties shall attempt in good faith to resolve such dispute, and any amount so agreed upon shall be paid to the appropriate Party. If such dispute is not resolved within thirty (30) days thereafter, the Parties shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on the Parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Seller and Purchaser. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

(e) If Purchaser receives or becomes entitled to any Tax refund or any amount credited against Tax that is attributable to the ownership, operation or use of the Assets prior to the Effective Date, Purchaser shall (i) in the case of a refund, pay Seller the amount of any such refund, reduced by any net Tax required under applicable Law to be paid by Purchaser with respect thereto, and (ii) in the case of a credit, pay to Seller at such time or times as such credit is actually utilized, the excess of (A) the amount of Taxes that would have been payable (or the amount of the Tax refund, offset or other reduction in Tax liability actually receivable) by Purchaser in the

absence of such credit over (B) the amount of Taxes actually payable (or the amount of the Tax refund, offset or other reduction in Tax liability that would have been receivable) by Purchaser.

(f) Nothing in this Section 6.3 or elsewhere in this Agreement shall make either Party liable for the Income Taxes of the other or for any Taxes (other than Transfer Taxes, if applicable) imposed on the other as a result of the transactions contemplated by this Agreement.

6.4 Risk of Loss.

(a) If, before the Effective Date, all or any portion of the Facilities or the Facilities Switchyard becomes subject to or is threatened with any condemnation or eminent domain proceeding, Seller shall notify Purchaser promptly in writing of such fact. In the event of such taking, Seller, upon the Closing, shall assign to Purchaser any claim, settlement or proceeds thereof.

(b) If, before the Effective Date all or any portion of the Facilities or the Facilities Switchyard are damaged or destroyed (whether by fire, theft, vandalism or other casualty) in whole or in part, Seller shall, upon the Closing, transfer the proceeds or the rights to the proceeds of applicable insurance to Purchaser.

6.5 Cooperation Relating to Insurance. Until the Closing, Seller will not take any action that will decrease the level of insurance coverage for the Facilities and the Facilities Switchyard as in effect on the date hereof, including, without limitation, property damage and liability insurance, unless agreed by the other Facilities Owners. In addition, Seller agrees to use Commercially Reasonable Efforts to assist Purchaser in making any claims against pre-Closing insurance policies of Seller that may provide coverage related to Assumed Liabilities. Purchaser agrees that it will indemnify Seller for its reasonable out-of-pocket expenses incurred in providing such assistance and cooperation. On and after the Closing, Seller shall authorize the Operating Agent to take any actions necessary to remove Seller from any Facilities Insurance Policies and, except with respect to insurance rights retained by Seller pursuant to Section 2.2(h), Seller agrees to waive its rights with respect to such insurance coverage from and after the Closing. If requested by Seller, Purchaser agrees to exercise Commercially Reasonable Efforts to assist Seller, at Seller's cost, in obtaining so-called "tail" coverage in respect of claims brought after the Closing for events occurring prior to the Closing, including, if appropriate, listing Seller as an additional insured or named insured in policies of Purchaser and/or the Facilities Owners. Seller agrees that it will reimburse Purchaser for its reasonable out-of-pocket expenses incurred in providing such assistance to Seller in obtaining tail coverage.

6.6 Reasonable Cooperation. Each Party agrees to use Commercially Reasonable Efforts to cooperate with the other Party to effect the consummation of the transactions contemplated by this Agreement, and to provide the other Party with such access or information related to the Facilities as may reasonably be requested in connection with such transactions. Without limiting the generality of the forgoing, the Parties shall work with each other prior to the Closing Date to determine if any Facilities Contract which is not currently listed on Schedule 2.1(h) or Schedule 1.1.56, or approval of any Governmental Authority which is not currently listed on Schedule 1.1.57 or Schedule 1.1.66, should be listed on such Schedules.

6.7 Exclusivity. During the term of this Agreement, and except as necessary to fulfill its obligations under the Facilities Co-Tenancy Agreement, Seller will (a) deal exclusively with Purchaser and will not offer to sell, solicit offers to sell or negotiate with any third party for the sale of the Assets; and (b) promptly notify Purchaser of any unsolicited offer, interest or inquiry by a third party concerning a possible purchase of the Assets and will not provide any information with respect to a possible sale of the Assets to any third party.

6.8 Post Closing – Further Assurances. At any time or from time to time after the Closing, each Party will, upon the reasonable request of the other Party, execute and deliver any further instruments or documents, and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of this Agreement or realize the benefits intended to be afforded hereby. After the Closing, and upon prior reasonable request, each Party shall exercise Commercially Reasonable Efforts to cooperate with the other, at the requesting Party's expense (but including only out-of-pocket expenses to third parties and not the costs incurred by any Party for the wages or other benefits paid to its officers, directors or employees), in furnishing non-privileged records, information, testimony and other assistance in connection with any inquiries, actions, audits, proceedings or disputes involving either of the Parties hereto (other than in connection with disputes between the Parties hereto) and based upon contracts, arrangements or acts of Seller, Purchaser, the other Facilities Owners or the Operating Agent on behalf of one or more of the Facilities Owners which were in effect or occurred on, prior to, or after Closing and which relate to the Assets, including, without limitation, arranging discussions with (and calling as a witness) officers, directors, employees, agents, and representatives of Purchaser or Seller. Without limiting the generality of the foregoing, Purchaser shall use Commercially Reasonable Efforts to (i) assist Seller, at Seller's expense, by making available Purchaser's representatives, as well as representatives of the companies providing the Decommissioning Report and the Reclamation Report, to provide testimony in proceedings on behalf of Seller and (ii) permit Seller to participate consistent with current practice in the financial audits for the Facilities with respect to pre-Closing periods.

6.9 Post Closing – Information and Records.

(a) Following the Closing, Purchaser will not dispose of any books, records, documents or information reasonably relating to any Excluded Assets or Excluded Liabilities except in accordance with Purchaser's existing record retention policies. During such period, Purchaser will permit Seller to examine and make copies, at Seller's expense, of such books, records, documents and information for any reasonable purpose, including any litigation now pending or hereafter commenced by or against Seller, or the preparation of income or other Tax Returns. Seller will provide reasonable notice to Purchaser of its need to access such books, records, documents or other information.

(b) Seller shall not be entitled to examine or copy privileged and/or attorney work product documents or information pursuant to Section 6.9(a). If privileged and/or attorney work product documents or information, including communications between Purchaser and its counsel, are disclosed to Seller in the books, records, documents or other information made available by Purchaser, Seller agrees (i) such disclosure is inadvertent, (ii) such disclosure will not

constitute a waiver, in whole or in part, of any privilege or work product, (iii) such information will be kept confidential, and (iv) Seller will promptly return to Purchaser (or will destroy or make inaccessible such information to the extent reasonably possible and certify as such to Purchaser) all copies of such books, records, documents or other information in the possession of Seller.

6.10 Waiver of Sovereign Immunity

(a) **Limited Waiver of Purchaser's Sovereign Immunity**. Purchaser limitedly waives its sovereign immunity from suit in accordance with and for the limited purposes described in this Section 6.10, namely for arbitration and any litigation proceedings necessary to compel arbitration, or to enforce an arbitral award pursuant to the terms and provisions of this Agreement, including Section 11.10 hereof, or for exigent or emergency equitable relief. Purchaser represents and agrees that Purchaser expressly, unequivocally, and irrevocably waives its immunity from suit and consents to the dispute resolution mechanisms stated in this Agreement in accordance with the clear and express terms of this Agreement, to permit enforcement of the terms and conditions of this Agreement.

(i) To the extent arbitration must be compelled, challenged, or sought to be enforced by a Party, Purchaser consents to such judicial proceedings in a New Mexico state court of competent jurisdiction as necessary to compel a Party's participation in arbitration, a Party's challenge of award, or a Party's enforcement of an award.

(ii) Seller may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Purchaser, pursuant to and in accordance with the terms of this Agreement, and Seller may seek recourse and enforcement against any and all of the assets of Purchaser.

(iii) Purchaser waives any benefits, rights, immunities, privileges, or limitations in applicable Navajo Nation Law that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies or relief from Purchaser pursuant to this Agreement.

(iv) Purchaser waives any otherwise existing right or claim of right to require exhaustion of tribal administrative or judicial remedies prior to exercise of the dispute resolution provisions of the Agreement, including with respect to arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award in a New Mexico state court of competent jurisdiction. Purchaser's consent to the jurisdiction of a New Mexico state court of competent jurisdiction as provided in this Agreement is irrevocable. Purchaser waives any rights to have any dispute heard in a Navajo Nation tribunal, in any Navajo Nation administrative or judicial body whatsoever.

(v) Purchaser agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to Seller and its successors and assigns, and exclusively for the purposes of this Agreement, to have binding arbitration conducted in pursuant to and in accordance with the provisions of Section 11.10 of this Agreement.

(vi) To the extent arbitration must be compelled, a Party challenges an arbitration award, or a Party seeks to enforce an arbitration award, pursuant to the terms of this Agreement, Purchaser clearly, expressly, unequivocally, and irrevocably consents to such judicial proceedings in a New Mexico state court of competent jurisdiction.

(vii) Purchaser agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity and any right otherwise existing, but only to Seller, and exclusively for the purposes of this Agreement, to have a dispute between the Parties pursuant to this Agreement heard in any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created.

(viii) Purchaser agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to Seller, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all of the assets of Purchaser only. Purchaser's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity shall not be asserted, interpreted, or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from the Purchaser's property, or any other property held by any other Navajo Nation instrumentality or entity other than Purchaser, whether such property is held in trust by the United States, or otherwise.

(ix) Purchaser's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity shall not apply, rebound, or inure to any other third party (or non-Party) person or entity other than Seller and Seller's successors and assigns, and authorizes only the remedies provided by this Agreement against Purchaser pursuant to only a claim, dispute, or cause of action brought by Seller against Purchaser to enforce Seller's rights, and Purchaser's obligations created and existing pursuant to this Agreement.

(x) Purchaser clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for Seller's disputes with Purchaser, Seller's claims against Purchaser, or Seller's causes of action against Purchaser, and only for Seller to enforce the rights of Seller and the obligations of Purchaser created and existing pursuant to this Agreement.

(xi) Purchaser clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for Seller to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, or a judge of a New Mexico state court of competent jurisdiction, for Seller to obtain one or more of the following: (A) interpretation of this Agreement; (B) to make Purchaser perform a specific action Purchaser is obligated to perform pursuant to this Agreement, or to make Purchaser discontinue some specific action Purchaser is precluded from performing pursuant to this Agreement; or (C) to require Purchaser to comply with the duties and obligations clearly and expressly agreed to by Purchaser within this Agreement.

(xii) Purchaser clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity solely with respect to actions by Seller in accordance with the terms of this Agreement, and Purchaser's limited waiver shall survive the termination or

expiration of this Agreement and remain effective until any applicable statute of limitations runs.

(xiii) Purchaser represents and warrants that all of the persons creating and executing this Agreement, and any related agreements necessary to effectuate this Agreement, are actually, fully, properly, apparently, and impliedly authorized to vest all of the persons creating and executing this Agreement with all authorities necessary to bind and obligate Purchaser to the terms of this Agreement.

(xiv) Purchaser clearly, expressly, unequivocally, and irrevocably agrees that, to the extent Purchaser changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by Navajo Nation Council resolution, or as otherwise required by the internal laws of the Navajo Nation, provide all of the same limited waivers of sovereign immunity to Seller as those set forth in this Section 6.10.

(xv) Purchaser agrees that to the extent any provisions of this Agreement are rendered ineffective by any later changes in Navajo Nation Law, any such change shall constitute a breach of the agreement(s) and be actionable under the dispute resolution terms of this Agreement.

(xvi) Purchaser agrees that the Navajo Nation's independent covenant not to regulate any aspects of the Facilities, pursuant to the Facilities Lease, remains unchanged and unaffected.

(b) **No Waiver of Navajo Nation Sovereign Immunity**. The Parties agree that nothing in this Agreement shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, nor any waiver of any of the Navajo Nation's rights, powers, or authorities as a sovereign governmental institution, whether express or implied.

(i) The Parties agree that although Purchaser is a wholly-owned instrumentality of the Navajo Nation that otherwise possesses sovereign immunity, by virtue of its relationship to and with the Navajo Nation, Purchaser is a company with its own particular assets, liabilities, rights, and obligations.

(ii) Purchaser's limited waiver of sovereign immunity in this Agreement extends only to Seller, and only as described in this Agreement, and shall not be asserted, interpreted, implied or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from Purchaser's property, whether such Navajo Nation property is held in trust for the Navajo Nation by the United States, or otherwise.

(iii) Purchaser's limited waiver of sovereign immunity shall not be asserted, interpreted, implied or applied to permit or authorize the sale or transfer of any property held by any Navajo Nation instrumentality, entity or enterprise other than Purchaser.

(iv) Purchaser agrees that the Navajo Nation's independent covenant not to regulate any aspects of the Facilities pursuant to the Facilities Lease remains unchanged

and unaffected. Because the Navajo Nation is not a party to this Agreement, this Agreement has no impact upon any existing contractual obligations of the Navajo Nation whatsoever.

6.11 Financial Assurances/Return on Equity/True-up Payments

(a) Financial Assurance. Purchaser has requested that Seller's Affiliate, Pinnacle West, provide a financial assurance on Purchaser's behalf consistent with the Four Corners Financial Assurance Policy and in a form acceptable to the other Facilities Owners (the "**Financial Assurance**"). Purchaser acknowledges that the Financial Assurance will not absolve Purchaser of primary liability for all obligations Purchaser will have under the Facilities Contracts from and after the Closing. Without limiting the generality of the foregoing, Purchaser agrees that nothing herein or in the Financial Assurance shall amend or alter (i) any of Purchaser's obligations as a Facilities Owner to timely meet and abide by all the obligations of the Facilities Owners under the Facilities Contracts and (ii) the application and enforcement, as to Purchaser, of the provisions of Section 20 and any other provision of the Facilities Co-Tenancy Agreement relating to a default. Any payment by Pinnacle West on account of the Financial Assurance shall be deemed a default by Purchaser under the Facilities Co-Tenancy Agreement, with all of the resulting consequences of a default, which default will be cured only if Pinnacle West is made whole on the amount so paid within three (3) Business Days following the default.

(b) Security for Financial Assurance. To induce Pinnacle West to provide the Financial Assurance, Purchaser has agreed to provide as security for Purchaser's repayment obligations the same collateral as described in the Collateral Assignment. The foregoing commitment of Purchaser to repay Pinnacle West, and the security backing such commitment, shall be set forth in a separate agreement between Purchaser and Pinnacle West that is in a form acceptable to Pinnacle West and Purchaser (the "**Agreement to Provide Financial Assurance**"). Anything to the contrary in the Agreement to Provide Financial Assurance notwithstanding, in the event of any payment by Pinnacle West made on behalf of Purchaser pursuant to the Financial Assurance, Purchaser shall at all times remain responsible to immediately reimburse and indemnify Pinnacle West for all such amounts paid by it on account of the Financial Assurance.

(c) Release of Collateral. Following payment in full of the Note, and provided that Purchaser is not then in default under the Agreement to Provide Financial Assurance or any documents or instruments related thereto, Purchaser shall have the right to seek to independently satisfy the Four Corners Financial Assurance Policy. If Purchaser is able to independently satisfy the Four Corners Financial Assurance Policy and posts the requisite financial assurance, then Pinnacle West shall release the collateral described in Section 6.11(b).

(d) Post-Closing Amendments to Facilities Co-Tenancy Agreement. Purchaser agrees that as promptly as practicable, and in any event within sixty (60) days following the Effective Date, Purchaser shall enter into an amendment to the Facilities Co-Tenancy Agreement acknowledging for the benefit of all Facilities Owners the matters described in Section 6.11(a), including the consequences of Purchaser's defaults.

(e) Return on Equity/True-up Payments. Simultaneous with the Closing, Seller shall cancel, forgive, and forever discharge any and all right to the return on equity component of

the Calendar Year 2018 True-Up Payment (for the avoidance of doubt, Purchaser remains responsible for the Calendar Year 2018 True-Up Payment with the assumption that the Target ROE will be 0% rather than 15%). The Parties agree that the Calendar Year 2017 True-Up Payment will be calculated in accordance with the 2016 Coal Supply Agreement and not be discounted. The Parties further agree that, unless and until an objection is raised by Purchaser in accordance with the terms of the 2016 Coal Supply Agreement, the Calendar Year 2017 True-Up Payment and the Calendar Year 2018 True-Up Payment calculations will be deemed presumptively correct and payable when due by Purchaser; provided, however, Purchaser shall retain the right to audit and, if it deems necessary, dispute any True-Up Payment based solely on audit findings, which audits must be completed on or before the first anniversary after such payment becomes due. As used in this Section 6.11(e), (i) “ **Calendar Year 2016 True-Up Payment** ” means the True-Up Payment for the period beginning on July 7, 2016 and ending on December 31, 2016, which was paid by Purchaser on December 17, 2017; (ii) “ **Calendar Year 2017 True-Up Payment** ” means the True-Up Payment for the 2017 calendar year to be paid by Purchaser to Seller pursuant to the 2016 Coal Supply Agreement on December 31, 2018; (iii) “ **Calendar Year 2018 True-Up Payment** ” means the True-Up Payment for that portion of the 2018 calendar year between January 1, 2018 and the Effective Date to be paid by Purchaser to Seller pursuant to the 2016 Coal Supply Agreement on December 31, 2019; (iv) “ **Target ROE** ” has the meaning set forth in Section 6.9 of the 2016 Coal Supply Agreement; and (v) “ **True-Up Payment** ” has the meaning set forth in Section 3 of Exhibit 6.9(a) of the 2016 Coal Supply Agreement.

(f) Post-Execution/Pre-Closing True-Up Payments. In the event that the Closing Date is after July 1, 2018, Purchaser shall be responsible payment of the True-Up Payments as set forth in Section 6.9 of the 2016 Coal Supply Agreement for the period of time between July 1, 2018 and the Closing Date or termination of this Agreement pursuant to Section 10.1 (“ **True-Up Payment Continuation Period** ”), provided, however, that during the True-Up Payment Continuation Period, if any, Seller shall forgive and waive any and all right to the return on equity component of the True-Up Payment attributable to the True-Up Payment Continuation Period (for the avoidance of doubt, Purchaser shall be responsible for payment of the True-Up Payment for the True-Up Payment Continuation Period pursuant to the procedure set forth in Section 6.9 of the 2016 Coal Supply Agreement, except that the Target ROE will be 0% rather than 15%, and notwithstanding the fact that the Parties shall have executed the Amended and Restated 2016 Coal Supply Agreement).

6.12 Pension and OPEB Liabilities. Seller shall cause Pinnacle West to enter into a letter agreement (the “ **Side Letter** ”) with Purchaser, in form reasonably satisfactory to Pinnacle West and Purchaser, to the effect that if, at the end of life of the Plant, Pinnacle West determines that the Pension and OPEB Liabilities allocable to the Facilities are underfunded, then Pinnacle West shall pay and indemnify Purchaser for its share thereof attributable to the EPE Interest.

ARTICLE 7 INDEMNIFICATION

7.1 Indemnification by Seller

(a) **Purchaser Claims**. From and after the Closing, Seller will indemnify, defend and hold harmless Purchaser and its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “**Purchaser Group**”), from and against any and all demands, suits, penalties, obligations, damages, claims, losses, liabilities, payments, costs and expenses (including reasonable legal, accounting and other expenses in connection therewith) (collectively, “**Damages**”), and including costs and expenses incurred in connection with investigations, and settlement proceedings arising out of, with respect to or by reason of, the following (collectively, “**Purchaser Claims**”):

(i) any breach or violation of any covenant or agreement of Seller set forth in this Agreement;

(ii) any breach or inaccuracy of the representations or warranties made by Seller contained in this Agreement in Article 4;

(iii) the Excluded Liabilities; and

(iv) any loss or damages resulting from or arising out of Seller’s ownership of the Assets prior to Closing, except for any loss or damage resulting from or arising out of (x) Assumed Liabilities or (y) any Taxes payable by Purchaser pursuant to this Agreement.

(b) **SELLER LIMITATIONS**. IF THE CLOSING OCCURS, THE PURCHASER GROUP WILL NOT BE ENTITLED TO ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF ANY PURCHASER CLAIMS, INCLUDING DAMAGES FOR LOST REVENUES, INCOME, PROFITS OR TAX BENEFITS, DIMINUTION IN VALUE OF THE FACILITIES, OR ANY OTHER DAMAGE OR LOSS RESULTING FROM THE DISRUPTION TO OR LOSS OF OPERATION OF THE ASSETS, EXCEPT TO THE EXTENT DUE ON ANY THIRD PARTY CLAIM.

7.2 Indemnification by Purchaser

(a) **Seller Claims**. From and after the Closing, Purchaser will indemnify, defend and hold harmless Seller and its Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “**Seller Group**”), from and against any and all Damages, and including costs and expenses incurred in connection with, investigations and settlement proceedings arising out of, with respect to or by reason of the following (collectively, “**Seller Claims**”):

(i) any breach or violation of any covenant or agreement of Purchaser set forth in this Agreement;

(ii) any breach or inaccuracy of any of the representations or warranties made by Purchaser contained in this Agreement in Article 5;

(iii) the Assumed Liabilities; and

(iv) any loss or damages resulting from or arising out of Purchaser's ownership or operation of the Assets from and after the Closing, except for any loss or damage resulting from or arising out of (x) Excluded Liabilities or (y) any Taxes payable by Seller pursuant to this Agreement.

(b) **PURCHASER LIMITATIONS**. IF THE CLOSING OCCURS, THE SELLER GROUP WILL NOT BE ENTITLED TO ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF ANY SELLER CLAIM, INCLUDING DAMAGES FOR LOST REVENUES, INCOME, PROFITS OR TAX BENEFITS, DIMINUTION IN THE VALUE OF THE FACILITIES OR ANY OTHER DAMAGE OR LOSS RESULTING FROM THE DISRUPTION TO OR LOSS OF OPERATION OF THE ASSETS, EXCEPT TO THE EXTENT DUE ON ANY THIRD PARTY CLAIM.

7.3 Notice of Claim. Subject to the terms of this Agreement and upon a Party's receipt of notice of the assertion of a claim or of the commencement of any suit, action or proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate, the Party seeking indemnification hereunder (the "**Indemnitee**") will promptly notify the Party against whom indemnification is sought (the "**Indemnitor**") in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 7.1 or Section 7.2. (The written notice is referred to as a "**Notice of Claim**.") A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnitee's rights to indemnification except to the extent such failure shall have materially and adversely prejudiced Indemnitor.

7.4 Defense of Third Party Claims. The Indemnitor will defend, in good faith and at its expense, any claim or demand set forth in a Notice of Claim relating to a Third Party Claim and the Indemnitee, at its expense, may participate in the defense and employ, at its expense, separate counsel of its choice for such purpose. The Indemnitee cannot settle or compromise any Third Party Claim so long as the Indemnitor is defending it in good faith. If the Indemnitor elects not to contest a Third Party Claim, the Indemnitee may undertake its defense, and the Indemnitor will be bound by the result obtained by the Indemnitee. The Indemnitor may at any time request the Indemnitee to agree to the abandonment of the contest of the Third Party Claim or to the payment or compromise by the Indemnitor of the asserted claim or demand. If the Indemnitee does not object in writing within fifteen (15) days of the Indemnitor's request, the Indemnitor may proceed with the action stated in the request. If within that fifteen (15) day period the Indemnitee notifies the Indemnitor in writing that it has determined that the contest should be continued, the Indemnitor will be liable under this Article 7 only for an amount up to the amount which the third party to the contested Third Party Claim had agreed to accept in payment or compromise as of the time the Indemnitor made its request. This Section 7.4 is subject to the rights of any Indemnitee's insurance carrier that is defending the Third Party Claim.

7.5 Control of Litigation.

(a) The Parties acknowledge and agree that, from and after the Effective Date, as between Seller and Purchaser, Seller shall be entitled exclusively to control, defend and settle any suit, action, proceeding or investigation arising out of or related to any Excluded Assets, Excluded Liabilities or Taxes for Pre-Closing Tax Periods, in each case, not involving claims against the Operating Agent or the other Facilities Owners, and Purchaser agrees to cooperate reasonably in connection therewith, it being understood that Purchaser shall not be required to incur any cost in connection with any such settlement but may be required to provide a release to a third party claimant in respect of the specific matters involved in such suit, action, proceeding or investigation; provided, however, that Seller shall reimburse Purchaser for all reasonable costs and expenses incurred in providing such cooperation to Seller.

(b) The Parties acknowledge and agree that, from and after the Effective Date, as between Seller and Purchaser, Purchaser shall be entitled exclusively to control, defend and settle any suit, action, proceeding or investigation arising out of or related to any Assets or Assumed Liabilities, in each case, not involving Excluded Assets, Excluded Liabilities or Taxes for Pre-Closing Tax Periods, and Seller agrees to cooperate reasonably in connection therewith, it being understood that Seller shall not be required to incur any cost in connection with any such settlement but may be required to provide a release to a third party claimant in respect of the specific matters involved in such suit, action, proceeding, or investigation; provided, however, that Purchaser shall reimburse Seller for all reasonable costs and expenses incurred in providing such cooperation to Purchaser and shall not unreasonably interfere with Seller's operations. The foregoing provisions of this Section 7.5(b) shall not apply to the Arbitration.

(c) For suits, actions, proceedings, or investigations arising out of or related to both Excluded Assets and/or Excluded Liabilities (other than Taxes), and Assets and/or Assumed Liabilities, the Parties agree to coordinate with each other with respect to the defense thereof. Without limiting the foregoing, for suits, actions, proceedings or investigations in which Seller and Purchaser are named parties, Seller and Purchaser shall discuss the feasibility of having one counsel represent Seller and Purchaser.

7.6 Direct Claim Procedures. In the event Indemnitee has a claim for indemnity under Section 7.1 or 7.2 against Indemnitor that does not involve a Third Party Claim, Indemnitee agrees to promptly deliver a Notice of Claim to Indemnitor. The Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnitee's rights to indemnification except to the extent such failure shall have materially and adversely prejudiced Indemnitor. If the Indemnitor does not notify the Indemnitee within thirty (30) days following the receipt of a Notice of Claim that the Indemnitor disputes its indemnity obligation to the Indemnitee with respect to such claim, such claim shall be conclusively deemed a liability of the Indemnitor and the Indemnitor shall promptly pay to the Indemnitee any and all damages arising out of such claim. If the Indemnitor has timely disputed its indemnity obligation with respect to such claim, the Parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved pursuant to Section 11.10.

7.7 Cooperation. The Party defending the Third Party Claim will (a) consult with the other Party throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, trial, appeal or other resolution of the Third Party Claim; and (b) afford the other Party the opportunity to be associated in the defense of the Third Party Claim. The Parties will cooperate in the defense of the Third Party Claim. The Indemnitee will make available to the Indemnitor or its representatives all records and other materials reasonably required by them for use in contesting any Third Party Claim (subject to obtaining an agreement to maintain the confidentiality of confidential or proprietary materials in a form reasonably acceptable to Indemnitor and Indemnitee). If requested by the Indemnitor, the Indemnitee will cooperate with the Indemnitor and its counsel in contesting any Third Party Claim that the Indemnitor elects to contest or, if appropriate, in making any counterclaim against the Person asserting the claim or demand, or any cross-complaint against any Person. The Indemnitor will reimburse the Indemnitee for any expenses incurred by Indemnitee in cooperating with or acting at the request of the Indemnitor.

7.8 Mitigation and Limitation on Claims. As used in this Agreement, the term “ **Indemnifiable Claim** ” means any Purchaser Claims or Seller Claims. Notwithstanding anything to the contrary contained herein:

(a) **Reasonable Steps to Mitigate.** The Indemnitee will take all reasonable steps to mitigate all losses, damages and the like relating to an Indemnifiable Claim, including availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at law or equity, and will provide such evidence and documentation of the nature and extent of the Indemnifiable Claim as may be reasonably requested by the Indemnitor. The Indemnitee’s reasonable steps include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expense for which indemnification would otherwise be due under this Article 7, and the Indemnitor will reimburse the Indemnitee for the Indemnitee’s reasonable expenditures in undertaking the mitigation, together with, interest thereon from the date of payment to the date of repayment at the “prime rate” as published in *The Wall Street Journal*, Eastern Edition.

(b) **Actual Damages.** Any Indemnifiable Claim is limited to the amount of actual damages sustained by the Indemnitee by reason of such breach or nonperformance.

(c) **Minimum Claim.** No Party shall have any liability or obligation to indemnify under Section 7.1(a)(ii) or Section 7.2(a)(ii), as the case may be, unless the aggregate amount for which such Party would be liable thereunder, but for this provision, exceeds One Hundred Fifty Thousand Dollars (\$150,000), and recovery shall be limited only to such amounts as exceed One Hundred Fifty Thousand Dollars (\$150,000). For purposes of the foregoing, individual claims of Fifteen Thousand Dollars (\$15,000) or less shall not be aggregated for purposes of calculating such deductible threshold amount or for calculating damages in excess of such amount. Nothing in this Section 7.8 is intended to modify or limit a Party’s liability or obligation hereunder for other Indemnifiable Claims or to constitute an assumption by Purchaser of any Excluded Liability or an assumption by Seller of any Assumed Liability.

7.9 Exclusivity. Except as specifically set forth in this Agreement, and except for intentional fraud, following the Closing, the rights and remedies of Seller Group, on the one hand, and Purchaser Group, on the other hand, for money damages under this Article 7 are, solely as

between Seller Group on the one hand and Purchaser Group on the other hand, exclusive and in lieu of any and all other rights and remedies for money damages which each of Seller on the one hand, and Purchaser on the other hand, may have under this Agreement under applicable Law with respect to any Indemnifiable Claim, whether at common law or in equity.

ARTICLE 8
CONDITIONS PRECEDENT TO OBLIGATIONS
OF PURCHASER AT THE CLOSING

The obligations of Purchaser under this Agreement to complete the purchase of the Assets and assume the Assumed Liabilities are subject to the satisfaction or waiver, or deemed satisfaction or waiver, on or prior to the Closing, of each of the following conditions precedent:

8.1 Compliance with Provisions. Seller has performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.

8.2 Injunction. No preliminary or permanent injunction or other order or decree by any federal or state court or Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to cooperate in all efforts to have any such injunction, order or decree lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority, which prohibits the consummation of the sale of the Assets.

8.3 Required Regulatory Approvals. Without limiting the generality of Sections 6.1 and 6.2, Purchaser shall have received all of Purchaser's Required Regulatory Approvals and Seller shall have received all of Seller's Required Regulatory Approvals.

8.4 Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the Closing Date, in each case as though made at and as of the Closing Date.

8.5 Officer's Certificate. Purchaser shall have received a certificate from Seller, executed by an authorized officer, dated the Closing Date, to the effect that the conditions set forth in Sections 8.1, 8.3 (insofar as such relate to Seller's Required Regulatory Approvals), 8.4 and 8.7 have been satisfied by Seller.

8.6 Liens. Any and all Encumbrances (other than Permitted Encumbrances) on the Assets shall have been released and any documents necessary to evidence such release shall have been delivered to Purchaser.

8.7 Seller's Required Consents. Without limiting the generality of Sections 6.1(a) and 6.2, all of Seller's Required Consents shall have been obtained.

8.8 FERC. All proper filings with FERC as to the addition of Purchaser as a party to the Facilities Contracts shall have been made, and any required waivers of applicable time periods for such filings shall have been obtained from FERC.

8.9 No Termination. Neither Party has exercised any termination right such Party is entitled to exercise pursuant to Section 10.1.

ARTICLE 9
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER AT THE CLOSING

The obligations of Seller under this Agreement to complete the sale of the Assets and transfer the Assets and Assumed Liabilities to Purchaser are subject to the satisfaction or waiver, or deemed satisfaction or waiver, on or prior to the Closing, of each of the following conditions precedent:

9.1 Compliance with Provisions. Purchaser has performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.

9.2 Injunction. No preliminary or permanent injunction or other order or decree by any federal or state court or Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its best efforts to have any such injunction, order or decree lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority in the United States which prohibits the consummation of the sale of the Assets.

9.3 Approvals. Without limiting the generality of Sections 6.1(a) and 6.2, Purchaser shall have received all of Purchaser's Required Regulatory Approvals, and Seller shall have received all of Seller's Required Regulatory Approvals.

9.4 Representations and Warranties. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct as of the Closing Date, in each case as though made at and as of the Closing Date, it being understood and agreed to by the Parties that, with respect to Purchaser's representation in Section 5.4 hereof, Purchaser's Knowledge, for purposes of this Section 9.4, will mean Purchaser's Knowledge as of the Closing Date, and Purchaser will be entitled to supplement its written disclosure to Seller through the Closing Date.

9.5 Officer's Certificate. Seller shall have received a certificate from Purchaser, executed by an authorized officer, dated the Closing Date, to the effect that the conditions set forth in Sections 9.1, 9.3 (insofar as it relates to Purchaser's Required Regulatory Approvals), 9.4 and 9.7 (insofar as it related to Purchaser's Required Consents) have been satisfied by Purchaser.

9.6 No Termination. Neither Party has exercised any termination right such Party is entitled to exercise pursuant to Section 10.1.

9.7 Purchaser's Required Consents. Without limiting the generality of Sections 6.1(a) and 6.2, all of Purchaser's Required Consents shall have been obtained and the Closing shall not result in a material breach by Seller of a material Facilities Contract.

9.8 FERC. The December 22, 2015 order from FERC authorizing Seller to sell the EPE Interest to Purchaser shall continue to be in full force and effect without material modification, or a new or amended order shall be in effect on terms acceptable to Seller which authorizes the Closing. In addition, all proper filings with FERC as to the addition of Purchaser as a party to the Facilities Contracts shall have been made, and any required waivers of applicable time periods for such filings shall have been obtained from FERC.

9.9 Consent Decree. (a) The United States Department of Justice shall have consented to the addition of Purchaser as a party to the Consent Decree effective as of the Closing, and (b) the United States District Court for the District of New Mexico shall have issued an appropriate order modifying the Consent Decree to that effect.

9.10 Credit Assurances. Purchaser shall have entered into the Agreement to Provide Financial Assurance as provided in Section 6.11.

ARTICLE 10 **TERMINATION**

10.1 Rights To Terminate. This Agreement, or to the extent specifically permitted herein a portion thereof, may, by written notice given on or prior to the Closing Date, in the manner provided in Section 11.11, be terminated at any time prior to the Closing Date (or such other date as may be set forth below):

(a) by Seller if there has been a material misrepresentation by Purchaser or a material default or breach by Purchaser with respect to the due and timely performance of any of Purchaser's covenants and agreements contained in this Agreement, and such misrepresentation; default or breach is not cured by the earlier of the Closing Date or the date thirty (30) days after receipt by Purchaser, of written notice specifying particularly such misrepresentation, default or breach;

(b) by Purchaser if there has been a material misrepresentation by Seller or a material default or breach by Seller with respect to the due and timely performance of any of Seller's covenants and agreements contained in this Agreement, and such misrepresentation, default or breach is not cured by the earlier of the Closing Date, or the date thirty (30) days after receipt by Seller of written notice specifying particularly such misrepresentation, default or breach;

(c) by Purchaser or Seller, if a permanent injunction or other order or decree by any federal or state court or Governmental Authority is issued which prevents the consummation of the transactions or if a Law shall have been enacted by any state or federal government or Governmental Authority in the United States which prohibits the consummation of the transactions;

(d) by Purchaser or Seller if the Closing has not occurred by a date that is the later of (i) ninety (90) days after the Execution Date, or (ii) the receipt of a final and non-appealable FERC order resolving the application for authorization of the transaction contemplated by this Agreement, provided that such final order is received no later than June 30, 2019, or such other date as mutually agreed in writing by the Parties, which agreement shall not be unreasonably withheld; provided that no Party then in default shall have the right to terminate this Agreement under this Section 10.1(d); or

(e) by mutual agreement of Seller and Purchaser.

10.2 Effect of Termination. If this Agreement is terminated pursuant to Section 10.1 or Section 11.6, all further obligations and liabilities of the Parties hereunder (or any stockholder, director, officer, employee, agent, consultant or representative of such Parties) will terminate, except (a) as set forth in Article 7 or as otherwise contemplated by this Agreement and (b) for the obligations set forth in Sections 4.8, 5.6 and Article 11. Upon termination, the originals of any items, documents or written materials provided by one Party to the other Party will be returned by the receiving Party to the providing Party.

10.3 Specific Performance; Limitation of Damages. Seller acknowledges that the transactions contemplated by this Agreement are unique and that Purchaser will be irreparably injured should such transactions not be consummated in a timely fashion. Consequently, Purchaser will not have an adequate remedy at law if Seller shall fail to transfer, assign and convey the Assets when required to do so hereunder. In such event, prior to any termination of this Agreement pursuant to Section 10.1, Purchaser shall have the right, in addition to any other remedy available in equity or law, to seek specific performance of such obligation by Seller and to seek an injunction or injunctions to prevent breaches by Seller hereunder, subject to Purchaser's performance of its obligations hereunder. Purchaser acknowledges that the transactions contemplated by this Agreement are unique and that Seller will be irreparably injured should such transactions not be consummated in a timely fashion. Consequently, Seller will not have an adequate remedy at law if Purchaser shall fail to purchase the Assets when required to do so hereunder. In such event, prior to any termination of this Agreement pursuant to Section 10.1, Seller shall have the right, in addition to any other remedy available in equity or law, to seek specific performance of such obligation by Purchaser and to seek an injunction or injunctions to prevent breaches by Purchaser hereunder, subject to Seller's performance of its obligations hereunder. Except as otherwise provided in Article 7, neither Party will be entitled to any punitive, incidental, indirect, special or consequential damages, including damages for lost revenues, income or profits, resulting from or arising out of a breach of this Agreement, whether or not the Closing occurs. This Section 10.3 is specifically authorized by the waivers of sovereign immunity set forth in Section 6.10.

ARTICLE 11 **MISCELLANEOUS AGREEMENTS AND ACKNOWLEDGMENTS**

11.1 Expenses. Except as otherwise provided herein, each Party is responsible for its own costs and expenses (including attorneys' and consultants' fees, costs and expenses) incurred

in connection with this Agreement and the consummation of the transactions contemplated by this Agreement.

11.2 Entire Document. This Agreement (including the Exhibits and Schedules to this Agreement and the Ancillary Agreements) contains the entire agreement between the Parties with respect to the transactions contemplated hereby and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings between the parties with respect to the subject matter of this Agreement prior to the execution date of this Agreement, written or oral.

11.3 Amendment and Waiver. No waiver and no modification or amendment of any provision of this Agreement is effective unless made in writing and duly signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective, referring specifically to this Agreement, and then only to the specific purpose, extent and interest so provided. Except as otherwise provided in this Agreement, no failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude or estop any other or further exercise thereof or the exercise of any other right, power or privilege. Except as set forth in Section 7.9, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

11.4 Schedules. The Parties agree and acknowledge that the Schedules in this Agreement may be incomplete or subject to revision prior to the Closing. The Parties will cooperate and work in good faith to complete and update such Schedules in a manner consistent with the requirements of this Agreement. The Schedules delivered pursuant to the terms of this Agreement are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

11.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto.

11.6 Severability. If any provision hereof is held invalid or unenforceable by any arbitrator or as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. To the extent permitted by law, the Parties waive, to the maximum extent permissible, any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

11.7 Assignability. This Agreement is not assignable by either Party without the prior written consent of the other Party, which may be provided or denied in the sole discretion of the non-assigning party, and no assignment shall relieve the assigning Party of any of its obligations

hereunder. This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

11.8 Captions. The captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.

11.9 Governing Law. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law.

11.10 Dispute Resolution. This Section 11.10 is specifically authorized by the waivers of sovereign immunity set forth in Section 6.10.

(a) **General.** Subject to Article 7 with respect to an Indemnifiable Claim, Section 3.2 with respect to Purchase Price Adjustments, Section 3.3 with respect to Post-Closing Adjustments, Section 3.5 with respect to the Purchase Price allocation, and Section 6.3(d) with respect to disputes regarding Taxes, the sole process available to either Party for resolution of any dispute or claim arising out of or relating to this Agreement or any Ancillary Agreement shall be the dispute resolution procedure set forth in this Section 11.10. The Parties agree to try to resolve any disputes through negotiations. If the matter is not resolved through such negotiations, the matter shall be submitted to binding arbitration, as set forth below.

(b) **Equitable Relief.** Unresolved disputes that require exigent or emergency equitable relief (specific performance and injunctive relief) may be brought only in the First Judicial District Court of the State of New Mexico or, if the First Judicial District Court lacks proper jurisdiction pursuant to a change in law, or the First Judicial District Court is otherwise unavailable to the Parties, then the Delaware Courts of Chancery, without the need (condition precedent) for the aggrieved Party to first submit to binding arbitration, but only pursuant to an emergency, and only for equitable relief (specific performance and injunctive relief).

(c) **Binding Arbitration.** In the event negotiations between the Parties do not result in resolution of the Parties' dispute(s), the Parties shall submit to binding arbitration conducted pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules and the Delaware Uniform Arbitration Act, with substantive resolution of disputes governed by the contract and commercial laws of the State of Delaware, subject to and conditioned by the following:

(i) **Arbitration Notice.** The demanding Party (the "**Claimant**") shall provide a notice of arbitration (the "**Arbitration Notice**") to the other Party to the dispute (the "**Respondent**"), which shall include: (A) the designation of such Party's arbitrator; and (B) a reasonably detailed statement of the facts and theories supporting that Party's claims. Within this same period, the Claimant shall provide a copy of the Arbitration Notice to the Respondent in accordance with the notice provisions of Section 11.11 of this Agreement.

(ii) Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), the Respondent shall provide the Claimant a response to the Arbitration Notice, which shall include: (A) the designation of such Party's arbitrator; and (B) a reasonably detailed statement of the facts and theories supporting the Respondent's defenses and counter-claims (the "**Response**").

(iii) Third Neutral Arbitrator. The two (2) Party arbitrators shall choose the third neutral arbitrator for the arbitration panel. In the event the two (2) Party arbitrators cannot agree on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.

(iv) Expenses of Arbitration. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.

(v) Arbitration Panel and Arbitrator Authority to Issue Interim Exigent Equitable Relief. Unless agreed to otherwise, the Parties shall request that the arbitrators commence the final arbitration hearing concerning all claims asserted in the Arbitration Notice, any amendments thereto and any counterclaims asserted in the Response thereto, within one hundred eighty (180) days of the date of the service of the Arbitration Notice, unless the arbitration panel determines that additional time is appropriate to ensure a fair hearing. The arbitration panel shall have authority to issue interim/equitable relief prior to the final hearing, including the authority to direct discovery (and, in that regard, the Parties agree that written discovery and depositions of fact and expert witnesses shall be permitted), specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement.

(vi) Location. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be any of the following cities: Shiprock, Navajo Nation; Farmington, New Mexico; Albuquerque, New Mexico; or Phoenix, Arizona. In the event the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be any of the following cities: Shiprock, Navajo Nation; Farmington, New Mexico; Albuquerque, New Mexico; or Phoenix, Arizona.

(vii) Award and Enforcement. The decision or award of the arbitration panel shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the final arbitration hearing, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration panel. The arbitration panel is authorized to award monetary damages and equitable relief (specific performance and injunctive (preliminary and permanent) and declaratory relief), if such relief, in their opinion, is appropriate. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees, unless the arbitration panel orders otherwise.

(d) Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitral Award

(i) Forum. The Judicial District Court of the State of New Mexico, or if the First Judicial District Court lacks proper jurisdiction pursuant to a change in law or the First Judicial District Court is otherwise unavailable to the Parties, then the Delaware Courts of Chancery, shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this Agreement, enforce an arbitral award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

(ii) Limitations on Judicial Review. The Parties' enforcement of an arbitral award shall be limited to the remedy/award issued by the arbitration panel, and shall only be enforceable by the First Judicial District Court of the State of New Mexico, or where the First Judicial District Court lacks proper jurisdiction as a result of a change in law, or the First Judicial District Court is otherwise unavailable to the Parties, then the Delaware Courts of Chancery. Neither Party shall petition, move, or otherwise request the First Judicial District Court of the State of New Mexico or the Delaware Courts of Chancery to conduct a de novo review of the matter in dispute, issues in dispute, evidence presented by the Parties or considered by the arbitration panel, or the remedy/award issued by the arbitration panel. Neither the First Judicial District Court of the State of New Mexico nor the Delaware Courts of Chancery may conduct a de novo review of any matter in dispute, any issues, any evidence, or any remedy/award issued by the arbitration panel. Rather, any judicial review of an arbitral award shall be strictly limited in the manner prescribed by the Delaware Uniform Arbitration Act. The Parties understand and acknowledge that the First Judicial District Court of New Mexico, or if the First Judicial District Court lacks proper jurisdiction pursuant to a change in law, or the First Judicial District Court is otherwise unavailable to the Parties, then the Delaware Courts of Chancery also have the authority to compel arbitration, hear and decide challenges of arbitral awards, and enforce arbitral awards.

(iii) Choice of Law. Without regard to any choice of law or conflicts of laws principles or provisions prohibiting application of the law of the State of Delaware whether in the context of an arbitral proceeding provided by this Agreement, or as a result of any judicial action to compel arbitration, challenge an arbitral award, or to enforce an arbitral award, the Delaware Uniform Arbitration Act, the laws of the State of Delaware, and the AAA's Commercial Arbitration Rules shall govern the resolution of any dispute(s) between the Parties arising out of, pursuant to, or in connection with this Agreement.

11.11 Notices. All notices, requests, demands and other communications under this Agreement must be in writing and must be delivered in person or sent by certified mail, postage prepaid, or by overnight delivery, and properly addressed as follows:

If to Purchaser:

Navajo Transitional Energy Company, LLC
4801 N. Butler Avenue, Bldg. 2000
Farmington, New Mexico 87401
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Navajo Transitional Energy Company, LLC
P.O. Box 11
Farmington, New Mexico 87499-011
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Parsons Behle and Latimer
201 South Main St., Suite 201
Salt Lake City, Utah 84111
Attention: Nora R. Pincus

If to Seller:

4C Acquisition, LLC
400 North Fifth Street, Station 9036
Phoenix, Arizona 85004
Attn: James R. Hatfield, Treasurer and Secretary

With a copy to:

Pinnacle West Capital Corporation
400 North Fifth Street, Station 8695
Phoenix, Arizona 85004
Attn: Shirley Baum, Associate General Counsel

Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this [Section 11.11](#) are effective upon delivery, if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice or communication shall be deemed not to have been received until the next succeeding Business Day.

11.12 Time is of the Essence. Time is of the essence of each term of this Agreement Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act will be strictly construed.

11.13 No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

11.14 No Joint Venture. Nothing contained in this Agreement creates or is intended to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to any Party.

11.15 Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any Party, but will be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Agreement.

11.16 Conflicts. In the event of any inconsistencies between the terms of and statements in the body of this Agreement and those in the Ancillary Agreements or the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the terms of and statements in the body of this Agreement will control.

11.17 Survival.

(a) The representations and warranties given or made by any Party in Article 4 or Article 5 hereof or in any certificate or other writing furnished in connection herewith shall survive the Closing until the first anniversary of the Effective Date, provided that the representations and warranties contained in Sections 4.8, 5.6, 5.7 and 5.8 shall survive indefinitely or until the latest date permitted by law.

(b) The covenants and agreements of the Parties contained in this Agreement, including those set forth in Sections 6.9, 6.10 and 6.11 and Article 7, shall survive the Closing indefinitely or until the latest date permitted by law, unless otherwise specified herein.

Notwithstanding the foregoing, any breach of covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to this Section 11.17, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**NAVAJO TRANSITIONAL ENERGY
COMPANY, LLC,**
a Navajo Nation limited liability company

By: /s/ Clark Moseley

Name: Clark Moseley

Title: Chief Executive Officer

4C ACQUISITION, LLC,
a Delaware limited liability company

By: /s/ James R. Hatfield

Name: James R. Hatfield

Title: Treasurer and Secretary

[*Signature Page to Purchase and Sale Agreement*]

Schedules to Purchase and Sale Agreement

- 1.1.39(a) “Seller’s Officers, Employees, and Knowledgeable Persons”
- 1.1.39(b) “Purchaser’s Officers, Employees and Authorized Agents”
- 1.1.48 “Retirement and Post-Retirement Plans”
- 1.1.56 “Purchaser’s Required Consents”
- 1.1.57 “Purchaser’s Required Regulatory Approvals”
- 1.1.65 “Seller’s Required Consents”
- 1.1.66 “Seller’s Required Regulatory Approvals”
- 2.1(b) “Leased Property”
- 2.1(c) “Rights-of-Way/Easements and Water Rights”
- 2.1(h) “Facilities Contracts”
- 2.1(q) “Miscellaneous Assets”
- 2.2(a) “Excluded Assets”
- 3.6(a)(ii) “Operating and Maintenance Expense Pro-Rations”
- 4.7 “Title”
- 4.10 “Environmental Matters”

Schedule 1.1.39(a)

Seller's Officers, Employees, and Knowledgeable Persons

- James R. Hatfield – Treasurer and Secretary

Schedule 1.1.39(b)

Purchaser's Officers, Employees and Authorized Agents

- Clark Moseley – Chief Executive Officer

Schedule 1.1.48

Retirement and Post-Retirement Plans

Pinnacle West Capital Corporation Plans

- Pinnacle West Capital Corporation Retirement Plan
- Pinnacle West Capital Corporation Group Life and Medical Plan

Schedule 1.1.56

Purchaser's Required Consents

- NTEC Management Committee

Schedule 1.1.57

Purchaser's Required Regulatory Approvals

- Federal Energy Regulatory Commission
- United States Department of Justice and United States District Court for the District of New Mexico under the Consent Decree

Schedule 1.1.65

Seller's Required Consents

- Board of Directors of Pinnacle West Capital Corporation (approving Seller financing and related guaranty)
- Participants under the Facilities Co-Tenancy Agreement (indirectly through revisions to Facilities Contracts to join Purchaser)
- Seller Board

Schedule 1.1.66

Seller's Required Regulatory Approvals

- Federal Energy Regulatory Commission
- United States Department of Justice and United States District Court for the District of New Mexico under the Consent Decree

Schedule 2.1(b)

Leased Property

- Facilities Lease
- The real property interests described in Exhibits 2 – 9 of the Facilities Lease
- See Schedule 2.1(c) which is incorporated herein by reference

Schedule 2.1(c)

Rights-of-Way/Easements and Water Rights

Multiparty Section 323 Grant for Plant Site.

Grant Date: 7/6/2016

Expiration Date: 7/6/2041

See Item 16 on Schedule 2.1(h) related to water rights.

Schedule 2.1(h)

Facilities Contracts

In each case, only to the extent Seller, in its capacity as a Facilities Owner, will be a party at the Closing or would otherwise have rights or obligations thereunder which would survive the Closing, but for the assignment of those rights and obligations at the Closing pursuant to the Agreement:

1. § 323 Grants (see Schedule 2.1(c)).
 2. Facilities Lease.
 3. Facilities Co-Tenancy Agreement.
 4. Facilities Operating Agreement.
 5. Four Corners 2016 Coal Supply Agreement, effective July 7, 2016 between Navajo Mine Coal Company, LLC and the Participants.
 6. Four Corners Project Emission Abatement System Operating Power Agreement, dated October 15, 1982 among the Participants.
 7. Four Corners Power Plant Acid Rain Program Designated Representation Agreement dated June 22, 2012 among the Participants and Amendment No. 1 dated January 13, 2014, as amended from time to time when Plant Manager changes.
 8. Four Corners Power Plant Greenhouse Gas Reporting Program Designated Representative Agreement dated June 22, 2012 among the Participants and Amendment No. 1 dated January 13, 2014, as amended from time to time when Plant Manager changes.
 9. Principals of Interconnected Operation Four Corners Project dated May 12, 1969, among the Participants, as amended.
 10. Voluntary Compliance Agreement Air Quality, dated May 18, 2005, as amended, by and among the Navajo Nation, Salt River Project Agricultural Improvement and Power District, as operating agent for the Navajo Generating Station (“NGS”) and with the express written consent of each participant of NGS and APS, as operating agent for the Four Corners Power Plant and with the express written consent of each Participant.
 11. Settlement and Closing Agreement, dated August 8, 2016, by and between the Seller and the Office of the Navajo Nation Uniform Tax Administration Statute.
 12. Shiprock-Four Corners Project 345-kV Switchyard Interconnection Agreement, dated October 2, 2002, by and among the Facilities Owners and Public Service Company of Colorado, Tri-State
-

Generation and Transmission Association, Inc., and Western Area Power Administration as the same may be amended.

13. Agreement for the Transfer of Interests in New Mexico Office of the State Engineer Permits 2838 and SJ-2197, by and among BHP Navajo Coal Company, BHP Billiton New Mexico Coal Inc., the Participants, and individually with Public Service Company of New Mexico and Tucson Electric Power, dated December 20, 2013.
14. Agreement for Divisions of Interests in New Mexico Office of the State Engineer Permit 2838, by and among BHP Billiton New Mexico Coal Inc., the Participants, and individually with Public Service Company of New Mexico and Tucson Electric Power, dated December 30, 2013.
15. New Mexico Office of the State Engineer Permit 2838, dated May 29, 2015.
16. Water Rights Deed to New Mexico Office of the State Engineer Permit 2838, by and among BHP Billiton New Mexico Coal Inc. and the Participants. [Copy of Deed to follow]

Schedule 2.1(q)

Miscellaneous Assets

- None

Schedule 2.2(a)

Excluded Assets

- None

Schedule 3.6(a)(ii)

Operating and Maintenance Expense Pro-Rations

The following costs and expenses incurred for the applicable period during which the Closing occurs shall be pro-rated between the Parties:

1. Seller is responsible for the operation and maintenance expenses as defined in the Facilities Operating Agreement, Section 17, Operating and Maintenance Expenses, incurred prior to the Closing Date, including but not limited to the following:
 - a. Outside services and materials and supplies, including all administrative and general loads, for operating and maintaining the plant; and
 - b. Payroll including related administrative and general, payroll taxes and benefits expenses.
2. Employee Incentive Plan payroll including related administrative and general, payroll taxes and benefits expenses.
3. Fuel expenses (Coal and Gas).
4. Insurance premiums.
5. Navajo Land Lease.
6. Environmental Operating Permit.
7. Ash Hauling Agreement costs.
8. All related royalties and taxes for Operating and Maintenance expenses and Fuel expenses.

Schedule 4.7

Title

The consent of the Navajo Tribe of Indians was not obtained in connection with the assignment of the Facilities Lease to Seller when Seller acquired the EPE Interest.

Schedule 4.10

Environmental Matters

- None

Exhibits to Purchase and Sale Agreement

Exhibit A	Assignment and Assumption Agreement
Exhibit B	Bill of Sale
Exhibit C	Landfill
Exhibit D	Lease Assignment
Exhibit E	Credit Agreement
Exhibit F	Secured Promissory Note
Exhibit G	Collateral Assignment and Security Agreement

Exhibit A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Agreement**”) is made as of June 29, 2018, by and between **4C ACQUISITION, LLC**, a Delaware limited liability company (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC**, a Navajo Nation limited liability company (“**Purchaser**”). Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of June 29, 2018 (the “**Purchase Agreement**”), by and between Seller and Purchaser, Seller has, by Bill of Sale of even date herewith, sold, assigned, transferred, conveyed and delivered unto Purchaser to have and to hold forever, all of its right, title and interest in and to the Assets. This Agreement effects such assignment of the Assets by Seller to Purchaser and the assumption by Purchaser of the Assumed Liabilities.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree as follows:

1. Assignment and Assumption. As of the Effective Date, subject to the terms and conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, (i) Seller hereby assigns, sells, transfers, conveys and delivers to Purchaser all of Seller’s right, title, and interest in and to the Assets, to the extent the same are assignable, and all of Seller’s obligations and liabilities in connection with each of the Assumed Liabilities, (ii) Purchaser hereby accepts such assignment and assumes and agrees to perform, pay and discharge when due all of the Assumed Liabilities, and (iii) Purchaser assumes no Excluded Liabilities, and the Parties agree that all such Excluded Liabilities shall remain the sole responsibility of Seller.

2. Further Acts and Agreements. Each of Purchaser and Seller agrees to, upon the reasonable request of the other Party, execute and deliver any further instruments or documents and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement or realize the benefits intended to be afforded thereby.

3. Terms of the Purchase and Sale Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

4. Miscellaneous.

4.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective permitted successors and assigns.

4.2 Governing Law. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state in which the Assets and the Facilities are located applicable to contracts made and performed in such state and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

4.3 Amendment. None of the provisions of this Agreement may be waived, superseded, changed or altered except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the Party waiving compliance.

Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF , the Parties have caused this Assignment and Assumption Agreement to be executed in their respective names by their respective undersigned duly authorized signatories as of the day and year first above written.

SELLER:
4C ACQUISITION, LLC

By: _____
Name: James R. Hatfield
Title: Treasurer and Secretary

PURCHASER:
NAVAJO TRANSITIONAL ENERGY
COMPANY, LLC

By: _____
Name: Clark Moseley
Title: Chief Executive Officer

[*Signature Page to Assignment and Assumption Agreement*]

Exhibit B

BILL OF SALE

This **BILL OF SALE** (“ **Bill of Sale** ”), is made as of June 29, 2018, by and between **4C ACQUISITION, LLC** , a Delaware limited liability company (“ **Seller** ”), and **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC** , a Navajo Nation limited liability company (“ **Purchaser** ”). Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, Seller and Purchaser have entered into a Purchase and Sale Agreement, dated as of June 29, 2018 (the “ **Purchase Agreement** ”), pursuant to which Seller has agreed to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser has agreed to purchase and acquire from Seller, all interest of Seller in the Assets.

NOW, THEREFORE , in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller agrees as follows:

1. As of the Effective Date, upon the terms and subject to the conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser all of Seller’s interest in the Assets, free and clear of all Encumbrances other than Permitted Encumbrances, to have and to hold unto Purchaser, its successors and assigns, forever.

2. At any time and from time to time after the Effective Date, Seller agrees to, upon reasonable request by Purchaser, execute and deliver any further instruments or documents, and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement and to carry out the intent and purpose of this Bill of Sale.

3. Notwithstanding anything to the contrary contained herein, Seller is not selling, assigning, transferring or conveying to Purchaser, and Purchaser is not purchasing or acquiring from Seller, any right, title, or interest in any of the Excluded Assets.

4. This Bill of Sale is binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

5. The validity, interpretation and effect of this Bill of Sale are governed by and will be construed in accordance with the laws of the state in which the Assets and the Facilities are located applicable to contracts made and performed in such state and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

6. None of the provisions of this Bill of Sale may be waived, superseded, changed or altered, except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the Party waiving compliance.

7. Without limiting Section 2 hereof, as of the Effective Date, Seller hereby constitutes and appoints Purchaser the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller, but on behalf of and for the benefit of Purchaser and its respective successors and assigns, from time to time:

- (a) to demand, receive and collect any and all of the Assets and to give receipts and releases for and with respect to the same, or any part thereof;
- (b) to institute and prosecute, in the name of Seller, any and all proceedings at law, in equity or otherwise, that Purchaser or its respective successors and assigns may deem proper in order to collect or reduce to possession any of the Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and
- (c) to do all things legally permissible, required or reasonably deemed by Purchaser to be required to recover and collect the Assets.

Seller hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

8. In the event of a conflict between the terms and conditions of this Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

9. This Bill of Sale may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF , Seller has caused, and Purchaser has acknowledged, this Bill of Sale to be executed as of the date first written above.

SELLER:

4C ACQUISITION, LLC

By:

Name: James R. Hatfield

Title: Treasurer and Secretary

Agreed and Accepted:

PURCHASER :

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

By:

Name: Clark Moseley

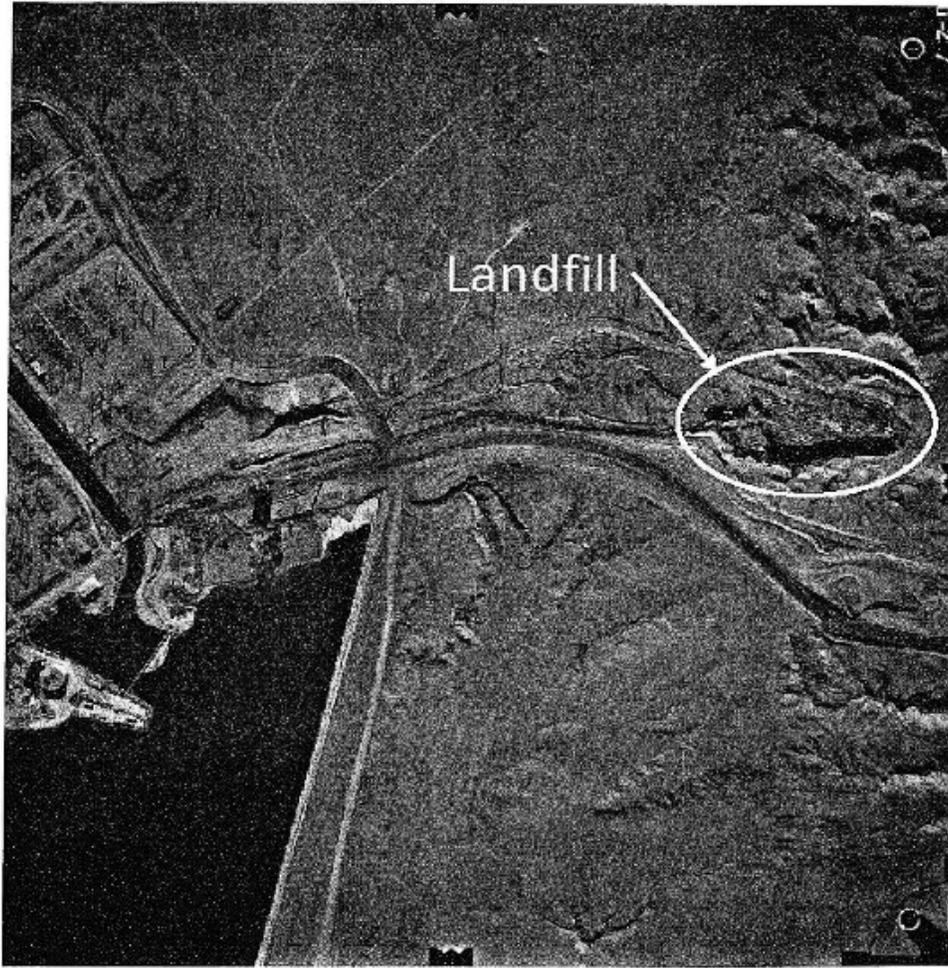
Title: Chief Executive Officer

Exhibit C-1



Exhibit C-1

Exhibit C-2



Four Corners Power Plant
Aerial Photo taken on 12/18/1979

Exhibit D

ASSIGNMENT AND ASSUMPTION AGREEMENT

Lease and Right of Way

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Agreement**”) is made as of June 29, 2018, by and between **4C ACQUISITION, LLC**, a Delaware limited liability company (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC**, a Navajo Nation limited liability company (“**Purchaser**”). Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of June 29, 2018 (the “**Purchase Agreement**”), by and between Seller and Purchaser, Seller has, by Bill of Sale of even date herewith, sold, assigned, transferred, conveyed and delivered unto Purchaser to have and to hold forever, all of its right, title and interest in and to the Assets. This Agreement effects the assignment by Seller to Purchaser of that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, as amended (the “**Lease**”), and that certain Grant of Federal Rights-of-Way Easements, dated August 4, 2015 (the “**ROW**”), and the assumption by Purchaser of the Assumed Liabilities relating to the Lease and ROW.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree as follows:

1. Assignment and Assumption. Effective upon the Effective Date (as defined below), and subject to the terms and conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, (i) Seller hereby assigns, sells, transfers, conveys and delivers to Purchaser all of Seller’s right, title, and interest in and to the Lease and ROW, and all of Seller’s obligations and liabilities in connection with the Assumed Liabilities related to the Lease and ROW, (ii) Purchaser hereby accepts such assignment and assumes and agrees to perform, pay and discharge when due all of the Assumed Liabilities related to the Lease and ROW.

2. Further Acts and Agreements. Each of Purchaser and Seller agrees to, upon the reasonable request of the other Party, execute and deliver any further instruments or documents and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement or realize the benefits intended to be afforded thereby.

3. Terms of the Purchase and Sale Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it,

extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the parties contained in the Purchase Agreement or the survival thereof.

4. **Effective Date**. This Agreement shall be effective upon the Effective Date of the Purchase Agreement

5. **Miscellaneous**.

5.1 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective permitted successors and assigns.

5.2 **Governing Law**. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state in which the Assets and the Facilities are located applicable to contracts made and performed in such state and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

5.3 **Amendment**. None of the provisions of this Agreement may be waived, superseded, changed or altered except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the party waiving compliance.

5.4 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF , the parties hereto have caused this Assignment and Assumption Agreement to be executed in their respective names by their respective undersigned duly authorized signatories as of the day and year first above written.

SELLER:

PURCHASER:
4C ACQUISITION, LLC

By: _____
Name: James R. Hatfield
Title: Treasurer and Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the ____ day of _____, 2018, by _____, the _____ of 4C ACQUISITION, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public, State of _____
My Commission Expires: _____

Consent to Assignment and Assumption:

The Navajo Nation Resources and Development Committee represents that it has the requisite legal authority to provide this consent on behalf of the Navajo Nation, and hereby consents to the assignment and assumption of the Lease and ROW as set forth above.

The Navajo Nation Resources and Development Committee

By: __

Name:

Title:

Exhibit E

CREDIT AGREEMENT

This Credit Agreement (the “ **Agreement** ”) is dated as of June 29, 2018, but made effective as of July 3, 2018, by and between Navajo Transitional Energy Company, LLC, a Navajo Nation limited liability company (“ **Borrower** ”), and 4C Acquisition, LLC, a Delaware limited liability company (“ **Lender** ”).

Recitals:

- A. Borrower and Lender are parties to that certain Purchase and Sale Agreement, dated as of June 29, 2018 (the “ **PSA** ”), pursuant to which, among other things, Borrower is acquiring from Lender certain Assets.
- B. Lender agreed in the PSA to finance the Purchase Price payable by Borrower for the Assets. This Agreement is the Credit Agreement referred to in the PSA.

Agreements:

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, Borrower and Lender, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms have the meanings specified in this Article I. All definitions of singular terms are deemed to include the definition of the plural of that same term. Capitalized terms not otherwise defined herein shall have the respective meanings given in the PSA.

1.1 “ **Agreement** ” means this Credit Agreement, as it may be amended from time to time.

1.2 “ **Agreement to Provide Financial Assurance** ” means that certain Agreement to Provide Financial Assurance between Borrower, Lender and Pinnacle West Capital Corporation as described in the PSA, together with all documents and instruments executed by Borrower and/or Pinnacle West Capital Corporation thereunder.

1.3 “ **Applicable Deferment Date** ” has the meaning given that term in Section 2.2(c).

1.4 “ **APS** ” means Arizona Public Service Company.

1.5 “ **Assets** ” has the meaning given that term in the PSA.

1.6 “ **Bankruptcy Code** ” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

1.7 “ **Base Rate** ” has the meaning given that term in Section 2.3(a).

- 1.8 “ **Borrower** ” has the meaning given that term in the introductory paragraph of this Agreement.
- 1.9 “ **Business** ” means the business of Borrower, and shall be deemed to include any of the following incidents of such business: income, cash flow, operations, condition (financial or other), assets, properties, anticipated revenues and income, prospects, liabilities, personnel and management.
- 1.10 “ **Business Day** ” means a day other than Saturday, Sunday or a day on which banks are legally closed for business in the State of Arizona.
- 1.11 “ **Coal Purchase Test** ” has the meaning given that term in Section 2.2(d).
- 1.12 “ **Closing Date** ” means the date of this Agreement.
- 1.13 “ **Collateral** ” means an aggregate of twenty-five percent (25%) of all present and future coal accounts receivable and any proceeds thereof due to Borrower from APS under the CSA, provided that once any amounts have been paid to Borrower by APS such paid amounts shall no longer be included as Collateral.
- 1.14 “ **Collateral Assignment** ” has the meaning given that term in Section 5.3.
- 1.15 “ **CSA** ” means the Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018 by and among Borrower, APS, Public Service Company of New Mexico, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company.
- 1.16 “ **Default** ” means any event or circumstance which would constitute, with the giving of notice, the lapse of time, or both, if not cured, waived, or otherwise remedied during such time, an Event of Default.
- 1.17 “ **Default Rate** ” has the meaning given that term in Section 2.3(b).
- 1.18 “ **Deferred Monthly Installments** ” has the meaning given that term in Section 2.2(b).
- 1.19 “ **Event of Default** ” has the meaning given that term in Section 6.1.
- 1.20 “ **GAAP** ” means United States generally accepted accounting principles.
- 1.21 “ **Governmental Authority** ” means any federal, state, local or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; any court or governmental tribunal; and any Tribal Authority; but does not include Lender, Borrower, any Affiliate thereof, or any of their respective successors in interest or any owner or operator of the Assets (if otherwise a Governmental Authority).
-

1.22 **Intercreditor Agreement** ” means that certain Intercreditor Agreement, dated as of the date hereof, between Borrower, Senior Lender, 4C Acquisition, LLC, and APS.

1.23 **Law** ” means all federal, state, local and tribal civil and criminal laws, statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders.

1.24 **Lender** ” has the meaning given that term in the introductory paragraph of this Agreement.

1.25 **Lien** ” means any mortgage, pledge, assignment, lien, charge, encumbrance or security interest of any kind, or the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

1.26 **Loan Amount** ” has the meaning given that term in Section 2.1.

1.27 **Loan** ” means the extension of credit under the Loan Documents.

1.28 **Loan Documents** ” means collectively this Agreement, the Note, the Collateral Assignment, UCC financing statements and all other agreements and instruments contemplated by this Agreement in connection with the Loan.

1.29 **Monthly Installments** ” has the meaning given that term in Section 2.2(a).

1.30 **Note** ” has the meaning given that term in Section 2.2(a).

1.31 **Obligations** ” means all present and future loans, advances, liabilities, obligations, covenants, duties, and debts owing by Borrower to Lender, arising under or pursuant to the Loan Documents, whether or not evidenced by any note, or other instrument or document, whether arising from an extension of credit, loan, indemnification or otherwise, whether direct or indirect, absolute or contingent, due or to become due, and including all principal, interest, charges, expenses, fees, attorneys’ fees, and any other sums chargeable to Borrower hereunder or under the other Loan Documents.

1.32 **Party** ” means either Lender or Borrower, as the context requires; Parties ” means, collectively, Lender and Borrower.

1.33 **Person** ” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

1.34 **PSA** ” has the meaning given that term in Recital A.

1.35 **Purchase Price** ” has the meaning given that term in the PSA.

1.36 **Senior Lender** ” means KeyBank National Association, as Administrative Agent and Collateral Agent and each of the other lenders under the Senior Loan.

1.37 “ **Senior Loan** ” means the Credit Agreement dated as of July 25, 2016, by and between Navajo Transitional Energy Company, LLC, as the borrower, and Senior Lender.

1.38 “ **Shortfall Payment** ” means a payment described in Section 4.5 of the CSA.

1.39 “ **Stated Maturity Date** ” means July 3, 2022, unless extended by the written consent of the Borrower and Lender.

1.40 “ **Termination Date** ” means the earliest to occur of (a) the Stated Maturity Date and (b) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

ARTICLE II LOAN

2.1 **Loan Amount**. Lender hereby agrees to finance the Purchase Price by extending to Borrower a loan in the amount of the Purchase Price (the “ **Loan Amount** ”). The Loan Amount may be increased or decreased following the Closing Date as provided in Sections 3.3 and 3.6 of the PSA.

2.2 **Note**.

(a) To document Borrower’s obligation to repay to Lender the Loan Amount, together with interest accrued thereon, Borrower shall, concurrently with the execution of this Agreement, execute and issue to Lender a secured promissory note in the form attached hereto as Exhibit A (the “ **Note** ”). The Note shall be paid in equal monthly installments of principal and interest (the “ **Monthly Installments** ”), beginning July 15, 2018 and continuing on the same day of each month thereafter until the Loan Amount is paid in full.

(b) Notwithstanding the foregoing provisions of Section 2.2(a), during the period beginning on the date of the Note and continuing through June 30, 2020, a Monthly Installment shall be deferred to, and be due and payable on, the Applicable Deferment Date if the Coal Purchase Test is not satisfied for such applicable month. Any Monthly Installment so deferred is referred to herein as a “ **Deferred Monthly Installment** .” All Deferred Monthly Installments shall continue to bear interest at the Base Rate until paid in full. For the avoidance of doubt, there shall be no deferrals of Monthly Installments from and after July 1, 2020.

(c) As used herein, (i) the “ **Applicable Deferment Date** ” for a Deferred Monthly Installment in the period from July 15, 2018 until June 30, 2019 shall be three (3) Business Days after Borrower is due to be paid the Shortfall Payment, if applicable, under the CSA for 2019 (which Shortfall Payment, if applicable, is due to be paid by July 20, 2019), and (ii) the “ **Applicable Deferment Date** ” for Deferred Monthly Installments in the period from July 1, 2019 until June 30, 2020 shall be three (3) Business Days after Borrower is due to be paid the Shortfall Payment, if applicable, under the CSA for 2020 (which Shortfall Payment, if applicable, is due to be paid by July 20, 2020).

(d) The “**Coal Purchase Test**” will be satisfied if the aggregate coal purchases made by all parties under the CSA for the three full calendar months immediately prior to the month for which the Monthly Installment is due cumulatively equal or exceed 900,000 tons.

(e) By way of example, with respect to the Monthly Installment due February 15, 2019, if the aggregate coal purchases made by all parties under the CSA from November 1, 2018 through January 31, 2019 are less than 900,000 tons, then that Monthly Installment is deferred until, and shall be paid (together with interest at the Base Rate from February 15, 2019), July 24, 2019.

2.3 **Interest**.

(a) The Note shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on interest thereon not paid when due) from the date made until paid in full in cash at the rate of 3.9% per annum, compounded monthly (the “**Base Rate**”). All interest charges shall be computed on the basis of a year of three hundred sixty (360) days.

(b) If any Default or Event of Default occurs and is continuing, then, while any such Default or Event of Default is continuing, the entire unpaid principal balance and accrued interest under the Note shall bear interest to the extent permitted by law at the Base Rate plus 8% per annum (the “**Default Rate**”). Interest at the Default Rate shall be payable monthly on the first day of each month until all amounts due under the Note have been paid in full.

2.4 **Maturity Date; Prepayments**. Borrower shall repay all remaining outstanding Obligations on the Stated Maturity Date. Borrower may prepay any amounts due to Lender hereunder at any time or from time to time without premium or penalty upon five (5) days’ advance notice to Lender.

2.5 **Payments by Borrower**.

(a) All payments to be made by Borrower shall be made without set-off, recoupment or counterclaim of any kind. Except as otherwise expressly provided in this Agreement, all payments by Borrower shall be made to Lender at the account designated by Lender and shall be made in United States dollars and in immediately available funds, no later than 12:00 noon (Phoenix, Arizona time) on the date specified herein. Any payment received by Lender later than 12:00 noon (Phoenix, Arizona time) shall be deemed to have been received on the following Business Day and any applicable interest shall continue to accrue.

(b) Whenever any payment is due on a day other than a Business Day, such payment may be made on the next ensuing Business Day with effect as though payment were made on the due date, and, if such payment is made, no additional interest shall accrue from and after such due date.

2.6 **Indemnity for Returned Payments**. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, Lender is for any reason compelled to surrender

such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible set-off, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by Lender, and Borrower shall be liable to pay to Lender, and hereby does indemnify Lender and hold Lender harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 2.6 shall be and remain effective notwithstanding any contrary action which may have been taken by Lender in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to Lender's rights under this Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 2.6 shall survive the termination of this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower makes the following representations and warranties to Lender:

3.1 **Organization; Qualification**. Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the Navajo Nation and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

3.2 **Authorization; Enforceability**. Borrower has full limited liability company power to enter into, and carry out its obligations under, this Agreement and the other Loan Documents and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the other Loan Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary limited liability company action required on the part of Borrower and no other limited liability company proceedings on the part of Borrower are necessary to authorize this Agreement and the other Loan Documents or to consummate the transactions contemplated hereby and thereby. Assuming Lender's due authorization, execution and delivery of this Agreement and the other Loan Documents when executed by Lender, this Agreement does and the other Loan Documents when executed by Borrower, will constitute the valid and legally binding obligations of Borrower, enforceable against Borrower in accordance with its and their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

3.3 **No Violation of Laws or Agreements; Consents**. Neither the execution and delivery of this Agreement or any of the other Loan Documents, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:

(a) violate, or conflict with, or result in a breach of any provisions of the Operating Agreement or the other organizational documents of Borrower;

(b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, or agreement or other instrument or obligation to which Borrower is a party or by which Borrower may be bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been, or prior to the Closing Date will have been, obtained;

(c) violate any law, rule, regulation, order, writ, injunction, or decree, applicable to Borrower or any of its assets, except where such violations, individually or in the aggregate will not affect the validity or enforceability of this Agreement or the other Loan Documents or the validity of the transactions contemplated hereby or thereby; or

(d) require consent or approval of, filing with, or notice to any Person which, if not obtained would prevent Borrower from performing its obligations hereunder.

ARTICLE IV COVENANTS

Borrower covenants and agrees that, so long as the Loan remains outstanding and until the Note has been paid in full and all of Borrower's Obligations under the Loan Documents have been fully discharged, unless Lender shall otherwise consent in writing:

4.1 **Existence and Good Standing**. Borrower shall maintain its limited liability company existence and its qualifications and good standing in all jurisdictions wherein the character of the properties owned or leased by it or the nature of the activities conducted by it makes such qualifications and good standing necessary.

4.2 **Compliance with Law and Agreements; Maintenance of Licenses**. Borrower shall comply in all respects with all requirements of Law of any Governmental Authority having jurisdiction over it or its Business. Borrower shall obtain and maintain all licenses, permits, franchises, and governmental authorizations necessary to own its property and to conduct its Business as conducted on the Closing Date or as proposed to be conducted.

4.3 **Maintenance of Property; Insurance**. Borrower shall maintain all of its property necessary and useful in the conduct of its Business, in good operating condition and repair, ordinary wear and tear excepted, and shall continue in full force and effect all existing insurance policies.

4.4 **Books and Records**. Borrower shall maintain, in a safe place, proper and accurate books, ledgers, correspondence and other records relating to its operations and Business. Lender shall have the right, from time to time, and upon reasonable notice during normal business hours, to examine and audit and to make abstracts from and photocopies of Borrower's books, ledgers, correspondence and other records.

4.5 **Taxes and Other Obligations**. Borrower shall pay all of its current obligations before they become delinquent, including all tribal, federal, state and local taxes, assessments, levies and governmental charges and all other payments required under any Law; provided, however, that Borrower need not pay any tax, assessment, governmental charge or other obligation that (a) it is

contesting in good faith by appropriate proceedings diligently pursued, and (b) it has established proper reserves for such non-payment as provided in GAAP.

4.6 **Mergers, Consolidations or Sales**. Borrower shall not enter into any merger, consolidation or other reorganization, with the exception of conversion to a corporation pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, 25 U.S.C. § 5124, or cease or suspend its Business, or take any steps in contemplation of dissolution, or sell, lease, transfer, assign or dispose of all or substantially all of its assets, or enter into any transaction except in the ordinary course of Borrower's Business.

4.7 **Limitations on Liens**. Borrower will not create or incur, or suffer to be incurred or to exist, any Lien on the Collateral except: (a) Liens for property taxes, assessments or other governmental charges or levies, and Liens securing claims or demands of mechanics and materialmen, provided that payment thereof is not at the time required by Section 4.5; or (b) Liens created pursuant to this Agreement.

4.8 **Business Conducted**. Borrower shall not engage directly or indirectly in any line of business other than related to the production, generation, storage and transmission of energy resources and the exploration, production, and extraction of energy fuels and hydrocarbon byproducts as permitted by Borrower's organizational documents.

4.9 **Further Assurances**. Borrower shall execute and deliver to Lender such documents and agreements, and shall take or cause to be taken such actions, as Lender may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

4.10 **Waiver of Sovereign Immunity**.

(a) **General**. The Parties agree that this Agreement is fully enforceable between them. Borrower agrees to waive and hereby waives its sovereign immunity, to the extent necessary to make this Agreement and the Loan Documents enforceable as to Lender. Therefore, Borrower clearly, expressly, unequivocally, and irrevocably, waives its sovereign immunity for purposes of this Agreement, and in accordance with and as limited by, the terms of this Agreement.

(b) **Limited Waiver of Borrower's Sovereign Immunity**. Borrower limitedly waives its sovereign immunity from suit in accordance with and for the limited purposes described in this Section 4.10, namely for litigation or to enforce an order or judgment in litigation pursuant to the terms and provisions of this Agreement, including Section 8.9 hereof, or for exigent or emergency equitable relief. Borrower represents and agrees that Borrower expressly, unequivocally, and irrevocably waives its immunity from suit and consents to the dispute resolution mechanisms stated in this Agreement in accordance with the clear and express terms of this Agreement, to permit enforcement of the terms and conditions of this Agreement.

(i) To the extent litigation must be compelled, challenged, or sought to be enforced by a Party, Borrower consents to such judicial proceedings in a New Mexico state

court of competent jurisdiction as necessary to compel a Party's participation in litigation, a Party's challenge of an order or judgment, or a Party's enforcement of a judgment.

(ii) Lender may seek and obtain specific performance, money damages, injunctive relief, and any other remedies or relief from Borrower, pursuant to and in accordance with the terms of this Agreement, and Lender may seek recourse and enforcement against any and all of the assets of Borrower.

(iii) Borrower waives any benefits, rights, immunities, privileges, or limitations in applicable Navajo Nation Law that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies or relief from Borrower pursuant to this Agreement.

(iv) Borrower waives any otherwise existing right or claim of right to require exhaustion of tribal administrative or judicial remedies prior to exercise of the dispute resolution provisions of the Agreement, including with respect to litigation proceedings or to enforce any order or judgment award in a New Mexico state court of competent jurisdiction. Borrower's consent to the jurisdiction of a New Mexico state court of competent jurisdiction as provided in this Agreement is irrevocable. Borrower waives any rights to have any dispute heard in a Navajo Nation tribunal, in any Navajo Nation administrative or judicial body whatsoever.

(v) Borrower agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to Lender and its successors and assigns, and exclusively for the purposes of this Agreement, to have litigation conducted pursuant to and in accordance with the provisions of Section 8.9 of this Agreement.

(vi) To the extent litigation must be compelled, a Party challenges a litigation order or judgment, or a Party seeks to enforce a litigation order or judgment, pursuant to the terms of this Agreement, Borrower clearly, expressly, unequivocally, and irrevocably consents to such judicial proceedings in a New Mexico state court of competent jurisdiction.

(vii) Borrower agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity and any right otherwise existing, but only to Lender, and exclusively for the purposes of this Agreement, to have a dispute between the Parties pursuant to this Agreement heard in any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created.

(viii) Borrower agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to Lender, and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all of the assets of Borrower only. Borrower's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity shall not be asserted, interpreted, or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from the Borrower's property, or any other property held by any other Navajo Nation instrumentality or entity other than Borrower, whether such property is held in trust by the United States, or otherwise.

(ix) Borrower's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity shall not apply, redound, or inure to any other third-party (or non-Party) person or entity other than Lender and Lender's successors and assigns, and authorizes only the remedies provided by this Agreement against Borrower pursuant to only a claim, dispute, or cause of action brought by Lender against Borrower to enforce Lender's rights, and Borrower's obligations created and existing pursuant to this Agreement.

(x) Borrower clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for Lender's disputes with Borrower, Lender's claims against Borrower, or Lender's causes of action against Borrower, and only for Lender to enforce the rights of Lender and the obligations of Borrower created and existing pursuant to this Agreement.

(xi) Borrower clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for Lender to seek to obtain, and where deemed appropriate by a judge of a New Mexico state court of competent jurisdiction, for Lender to obtain one or more of the following: (A) interpretation of this Agreement; (B) to make Borrower perform a specific action Borrower is obligated to perform pursuant to this Agreement, or to make Borrower discontinue some specific action Borrower is precluded from performing pursuant to this Agreement; or (C) to require Borrower to comply with the duties and obligations clearly and expressly agreed to by Borrower within this Agreement.

(xii) Borrower clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity solely with respect to actions by Lender in accordance with the terms of this Agreement, and Borrower's limited waiver shall survive the termination or expiration of this Agreement and remain effective until any applicable statute of limitations runs.

(xiii) Borrower represents and warrants that all of the persons creating and executing this Agreement, and any related agreements necessary to effectuate this Agreement, are actually, fully, properly, apparently, and impliedly authorized to vest all of the persons creating and executing this Agreement with all authorities necessary to bind and obligate Borrower to the terms of this Agreement.

(xiv) Borrower clearly, expressly, unequivocally, and irrevocably agrees that, to the extent Borrower changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by Navajo Nation Council resolution, provide all of the same limited waivers of sovereign immunity to Lender as those set forth in this Section 4.10.

(xv) Borrower agrees that to the extent any provisions of this Agreement are rendered ineffective by any later changes in Navajo Nation Law, any such change shall constitute a breach of the agreement(s) and be actionable under the dispute resolution terms of this Agreement.

(c) No Waiver of Navajo Nation Sovereign Immunity. The Parties agree that nothing in this Agreement shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, nor any waiver of any of the Navajo Nation's rights, powers, or authorities as a sovereign governmental institution, whether express or implied.

(i) The Parties agree that although Borrower is a wholly-owned instrumentality of the Navajo Nation that otherwise possesses sovereign immunity, by virtue of its relationship to and with the Navajo Nation, Borrower is a company with its own particular assets, liabilities, rights, and obligations.

(ii) Borrower's limited waiver of sovereign immunity in this Agreement extends only to Lender, and only as described in this Agreement, and shall not be asserted, interpreted, implied or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from Borrower's property, whether such Navajo Nation property is held in trust for the Navajo Nation by the United States, or otherwise.

(iii) Borrower's limited waiver of sovereign immunity shall not be asserted, interpreted, implied or applied to permit or authorize the sale or transfer of any property held by any Navajo Nation instrumentality, entity or enterprise other than Borrower.

(iv) Borrower agrees that the Navajo Nation's independent covenant not to regulate any aspects of the Facilities pursuant to the Facilities Lease remains unchanged and unaffected. Because the Navajo Nation is not a party to this Agreement, this Agreement has no impact upon any existing contractual obligations of the Navajo Nation whatsoever.

ARTICLE V CREATION OF SECURITY INTEREST

5.1 **Grant of Security Interest**. Borrower hereby grants to Lender a continuing security interest in all presently existing and hereafter arising Collateral to secure prompt repayment of the Obligations and to secure prompt performance by Borrower of each and all of its covenants and obligations under this Agreement and the other Loan Documents; provided that the Collateral shall also secure Borrower's obligations to Pinnacle West Capital Corporation under the Agreement to Provide Financial Assurance. The security interest granted herein shall at all times be and remain a first priority Lien. Lender's security interest in the Collateral shall attach to all Collateral without further act on the part of Lender or Borrower.

5.2 **No Other Liens**. Borrower's obligations to Pinnacle West Capital Corporation pursuant to the Agreement to Provide Financial Assurance shall not be subordinated, but shall be pari passu with Borrower's obligations hereunder. As of the Effective Date, the Senior Lender shall have released all liens on the Collateral granted in connection with the Senior Loan Agreement for the benefit of the Senior Lender and the other lenders party thereto. For the avoidance of doubt, with respect to the Collateral, Borrower shall not assign, pledge or otherwise encumber the Collateral except as provided in Section 5.3 hereof. Contemporaneous with execution of this Agreement, Borrower and the other parties thereto will enter into the Intercreditor Agreement.

5.3 **Delivery of Agreements**. Concurrently with Borrower's execution of this Agreement, and at any time or times hereafter at the request of Lender, Borrower shall (a) execute and deliver to Lender security agreements, assignments, affidavits, reports, notices, letters of authority and all other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect and maintain perfected Lender's security interests in the Collateral and in order to fully

consummate all of the transactions contemplated under this Agreement, including the Collateral Assignment and Security Agreement in the form attached hereto as Exhibit B (the “ **Collateral Assignment** ”) and related UCC financing statements, and (b) join with Lender in notifying APS of Lender’s security interest in the Collateral obtaining an acknowledgment from APS that it is holding the Collateral for the benefit of Lender. By authenticating or becoming bound by this Agreement, Borrower authorizes the filing of initial financing statement(s), and any amendment(s) covering the Collateral to perfect and maintain perfected Lender’s security interest in the Collateral. Upon the occurrence of an Event of Default, Borrower hereby irrevocably makes, constitutes and appoints Lender (and any of Lender’s officers, employees or agents designated by Lender) as Borrower’s true and lawful attorney-in-fact with power to sign the name of Borrower on any security agreement, mortgage, assignment, certificate of title, affidavit, letter of authority, notice of other similar documents which must be executed and/or filed in order to perfect or continue perfected Lender’s security interest in the Collateral.

5.4 **Discharge of Liens**. To protect or perfect the security interest which Lender is granted hereunder, Lender may, in its sole discretion, discharge any lien or encumbrance or bond the same, pay any insurance, or obtain any records, and all costs for the same shall be added to the Obligations and shall be payable to Lender on demand.

ARTICLE VI DEFAULT; REMEDIES

6.1 **Events of Default**. It shall constitute an event of default (“ **Event of Default** ”) if any one or more of the following shall occur:

(a) Any failure by Borrower to pay the principal of or interest on any of the Obligations or any other amount owing hereunder when due and such payment is not cured within five (5) days of Borrower’s receipt of written notice thereof from Lender;

(b) Any representation or warranty made by Borrower in this Agreement or the other Loan Documents, or made or furnished to Lender by or on behalf of Borrower in connection herewith, shall prove to be untrue in any material respect and such default is not cured within fifteen (15) days of Borrower’s receipt of written notice thereof from Lender;

(c) If any default shall occur in the observance or performance of any of the covenants and agreements contained in the Senior Loan, the Agreement to Provide Financial Assurance, this Agreement or the other Loan Documents, and such default is not cured within thirty (30) days of Borrower’s receipt of written notice thereof from Lender;

(d) Final judgment or judgments is/are granted against Borrower for the payment of money aggregating in excess of \$2,000,000 (net of any insurance proceeds) which remain unpaid for thirty (30) days;

(e) Borrower shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement or readjustment of its debts or for any other relief under the federal Bankruptcy Code,

as amended, or under any other bankruptcy or insolvency Law now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;

(f) An involuntary petition or proposal shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation or readjustment of the debts of Borrower or for any other relief under the federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency Law, now or hereafter existing and any of the following events occur: (i) Borrower consents to the institution of such action or proceeding; (ii) the petition commencing such action or proceeding is not timely controverted; (iii) the petition commencing such action or proceeding is not dismissed within ninety (90) days of the date of the filing thereof; or (iv) an order for relief shall have been issued or entered;

(g) A receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Borrower or for all or any part of its property shall be appointed or a warrant of attachment, execution or similar process shall be issued against any part of the property of Borrower and the same shall not have been dissolved or extinguished within ninety (90) days of such issuance; or

(h) Borrower shall file a certificate or articles of dissolution under applicable Law or shall be liquidated, dissolved or wound-up or shall commence or have commenced against it any action or proceeding for dissolution, winding up or liquidation, or shall take any action in furtherance thereof.

6.2 **Remedies.** If an Event of Default has occurred and is continuing, Lender may, at its option, declare the whole of the Obligations immediately due and payable, without notice or demand, and Lender may, additionally or alternatively, avail itself of any other relief to which Lender may be legally or equitably entitled, under the Collateral Assignment or otherwise, and may exercise the rights of enforcement contained in the Uniform Commercial Code.

ARTICLE VII TERM AND TERMINATION

7.1 **Term and Termination.** The term of this Agreement shall end on the Termination Date. Lender may terminate this Agreement without notice upon the occurrence of an Event of Default. Upon the effective date of termination of this Agreement for any reason whatsoever, all Obligations (including all unpaid principal, accrued and unpaid interest due under the Notes) shall become immediately due and payable. Notwithstanding the termination of this Agreement, until all Obligations are paid and performed in full, Borrower shall remain bound by the terms of this Agreement and shall not be relieved of any of its Obligations hereunder, and Lender shall retain all its rights and remedies hereunder and under the other Loan Documents. A termination of this Agreement shall not terminate the Collateral Assignment or any other documents or instruments securing Borrower's obligations to Pinnacle West Capital Corporation under the Agreement to Provide Financial Assurance.

**ARTICLE VIII
MISCELLANEOUS**

8.1 **Construction**. In this Agreement, unless a clear contrary intention appears:

(d) the singular number includes the plural number and vice versa;

(e) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;

(f) reference to any gender includes each other gender;

(g) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(h) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition;

(i) "hereunder," "hereof," "hereto" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;

(j) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(k) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;"

(l) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and

(m) any agreement, instrument, insurance policy, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, insurance, policy, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein.

8.2 **Costs and Expenses**. Borrower and Lender shall each pay its expenses and fees in connection with the establishment of the Loan.

8.3 **Entire Document**. This Agreement (including the Exhibits to this Agreement and the other Loan Documents) contains the entire agreement between the Borrower and Lender with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings between the parties with respect to the subject matter of this Agreement prior to the Closing Date.

8.4 **Amendment and Waiver**. No waiver and no modification or amendment of any provision of this Agreement is effective unless made in writing and duly signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective, referring specifically to this Agreement, and then only to the specific purpose, extent and interest so provided. No failure or delay by Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude or estop any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided to Lender shall be cumulative and not exclusive of any rights or remedies provided by Law. Unless otherwise expressly provided herein, Borrower waives presentment, and notice of demand or dishonor and protest as to any instrument, notice of intent to accelerate the Obligations and notice of acceleration of the Obligations.

8.5 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto.

8.6 **Severability**. If any provision hereof is held invalid or unenforceable by any court or as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. To the extent permitted by law, the parties waive, to the maximum extent permissible, any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

8.7 **Assignability**. This Agreement is not assignable by either Party without the prior written consent of the other Party, which may be provided or denied in the sole discretion of the non-assigning Party, and no assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

8.8 **Captions**. The captions of the various Articles, Sections and Exhibits of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.

8.9 **Governing Law**. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the State of New Mexico applicable

to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law. By execution and delivery of this Agreement, the parties knowingly, voluntarily and irrevocably: (a) consent, for themselves and in respect of their property, to the exclusive jurisdiction of the federal and state courts of the State of New Mexico; (b) waive any immunity or objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which they may have from or to the bringing of the dispute in such jurisdiction; (c) waive any personal service of any summons, complaint or other process that may be made by any other means permitted by the State of New Mexico; (d) waive any right to trial by jury; (e) agree that any such dispute shall be decided by court trial without a jury; and (f) agree that a Party may file an original counterpart or a copy of this Section 8.9 with any court as written evidence of the consents, waivers and agreements of the parties set forth in this Section 8.9.

8.10 **Notices.** All notices, requests, demands and other communications under this Agreement must be in writing and must be delivered in person or sent by certified mail, postage prepaid, or by overnight delivery, and properly addressed as follows:

If to Borrower:

Navajo Transitional Energy Company, LLC
4801 N. Butler Avenue, Bldg. 2000
Farmington, New Mexico 87401
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Navajo Transitional Energy Company, LLC
P.O. Box 11
Farmington, New Mexico 87499-011
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Parsons Behle and Latimer
201 South Main St., Suite 201
Salt Lake City, Utah 84111
Attention: Nora R. Pincus

If to Lender:

4C Acquisition, LLC
400 North Fifth Street, Station 9036
Phoenix, Arizona 85004
Attn: James R. Hatfield, Treasurer and Secretary

With a copy to:

Pinnacle West Capital Corporation
400 North Fifth Street, Station 8695
Phoenix, Arizona 85004
Attn: Shirley Baum, Associate General Counsel

Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 8.10 are effective upon delivery, if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice or communication shall be deemed not to have been received until the next succeeding Business Day.

8.11 **Time is of the Essence**. Time is of the essence of each term of this Agreement Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act will be strictly construed.

8.12 **No Third Party Beneficiaries**. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

8.13 **Construction of Agreement**. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any Party, but will be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Agreement.

8.14 **Attorneys' Fees**. In the event suit is brought or an attorney is required by either Party to enforce the terms of this Agreement or to collect for the breach hereof or for the interpretation of any provision herein in dispute, or in connection with any bankruptcy proceedings, the prevailing Party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BORROWER:

Navajo Transitional Energy, LLC,
a Navajo Nation limited liability company

By: _____
Name: Clark Moseley
Title: Chief Executive Officer

LENDER:

4C Acquisition, LLC,
a Delaware limited liability company

By: _____
Name: James R. Hatfield
Title: Treasurer and Secretary

[*Signature Page to Credit Agreement*]

Exhibit F

SENIOR SECURED PROMISSORY NOTE

\$68,907,000.00 July 3, 2018

FOR VALUE RECEIVED, Navajo Transitional Energy Company, LLC, a Navajo Nation limited liability company (“**Borrower**”), promises to pay to the order of 4C Acquisition, LLC, a Delaware limited liability company (“**Lender**”), the principal sum of \$68,907,000.00, subject to any principal adjustments described below and together with interest at the rate of 3.9% per annum, compounded monthly (the “**Base Rate**”), on the outstanding principal as provided in this Senior Secured Promissory Note (the “**Note**”). Capitalized terms used in this Note that are not otherwise defined shall have the meanings set forth in the Credit Agreement between Borrower and Lender, dated concurrently herewith (the “**Credit Agreement**”).

1. Principal. The principal amount of this Note may be adjusted from time to time as provided in Section 2.1 of the Credit Agreement. Any amounts so added as principal or subtracted from principal shall be noted by Lender on Exhibit A hereto, and such notations shall be conclusive as between Lender and Borrower absent manifest error.

2. Payment.

(a) All principal, interest and all other sums payable hereunder shall be paid in lawful money of the United States of America by wire transfer of immediately available funds to the account described on Exhibit B hereto or to such other account as Lender may designate in writing.

(b) All interest charges shall be computed on the basis of a year of 360 days. Principal and interest at the Base Rate shall be due and payable in equal Monthly Installments beginning on July 15, 2018 and continuing on the same day of each month thereafter until this Note is paid in full. Notwithstanding the foregoing, Monthly Installments are subject to deferral as provided in Section 2.2 of the Credit Agreement.

(c) Notwithstanding any other term, condition or provision hereof to the contrary, the entire unpaid principal balance, all accrued but unpaid interest and all other sums payable hereunder shall be repaid in full on the Stated Maturity Date.

3. Event of Default. If a Default or an Event of Default has occurred and is continuing within the meaning of and under the Credit Agreement, after notice of such Default and failure to cure within the applicable period stated therein, if any, then the entire principal of this Note, together with accrued interest, shall, at the election of Lender, and without notice of such election, become immediately due and payable, and while any such Default or Event of Default is continuing, the entire unpaid principal balance and accrued interest shall bear interest to the extent permitted by

law at the Default Rate. Interest at the Default Rate shall be payable monthly on the first day of each month until all amounts due under the Note have been paid in full.

4. Prepayment. Borrower shall have the option to prepay this Note, in full or in part, at any time without premium or penalty upon five (5) days' advance notice to Lender.

5. Application of Payments. All payments by Borrower shall be applied first to the payment of late charges and other costs of collection due hereunder, if any, second to the payment of accrued but unpaid interest, and third to the reduction of the then outstanding principal balance.

6. Security. This Note is secured by a first priority lien on the Collateral pursuant to and as provided in the Credit Agreement and the Collateral Assignment and Security Agreement executed and delivered pursuant thereto.

7. Representations of Borrower. Borrower represents and warrants that the indebtedness evidenced by this Note is required for business or commercial purposes, and that the funds obtained from Lender are not intended to be used, and will not be used, for family, household, agricultural or personal purposes. Borrower further represents that Borrower has full power, authority and legal right to execute and deliver this Note and that the indebtedness evidenced hereby constitutes a valid and binding obligation of Borrower, enforceable in accordance with its terms.

8. Rights and Remedies of Lender. The rights or remedies of Lender, as provided in this Note, shall be cumulative and concurrent and may, at the sole discretion of Lender, be pursued singly, successively, or together against Borrower. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such right or remedy or of the right to exercise such right or remedy at any later time.

9. Waiver by Borrower. Borrower and all endorsers, guarantors, sureties, accommodation parties hereof, and all other persons who are or may become liable for repayment of the indebtedness evidenced by this Note, jointly and severally (a) waive all applicable exemption rights, whether under the state constitution, homestead laws or otherwise, (b) waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity, (c) waive recourse to suretyship defenses generally, (d) consent to any and all renewals, extensions or modifications of the terms hereof (including time of payment), and (e) agree that any renewal, extension or modification of the terms hereof, or any other indulgences, shall not affect the liability of any of such parties for repayment of the indebtedness evidenced by this Note. Any renewals, extensions or modifications of the terms hereof may be made without notice to any of the parties referred to above.

10. Amendment; No Waiver by Lender. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing signed by the party against whom enforcement of such amendment, modification, change or waiver is sought; provided, however, that this Section 10 shall in no way be a limitation on the consents and waivers set forth in Section 9. Failure of Lender to exercise any right hereunder or under the Credit Agreement or Collateral Assignment shall not constitute a waiver of the right to

exercise the same in the event of any subsequent default, or in the event of continuance of any existing default after demand for strict performance hereof.

11. Payment of Collection Costs. Borrower and all endorsers, guarantors, sureties, accommodation parties hereof, and all other persons who are or may become liable for repayment of the indebtedness evidenced by this Note, agree, jointly and severally, to pay all costs of collection, including reasonable attorneys' fees and all costs of suit, in the event the unpaid principal amount of this Note, or any payment of interest or principal and interest thereon, is not paid when due. Such parties shall pay all such costs whether suit is brought or not, and whether any such suits or proceedings are maintained in courts of original jurisdiction or courts of appellate jurisdiction, or in a bankruptcy court or through other legal proceedings. In any suit, the amount of reasonable attorneys' fees shall be determined by the judge of the court and not the jury.

12. Compliance with Usury Laws. Borrower hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for herein, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the credit evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or the Credit Agreement, the total liability for payments in the nature of interest shall not exceed the limits imposed by the usury laws of the State of New Mexico. If Lender receives as interest an amount which would exceed such limits, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance and not to the payment of interest; and if a surplus remains after full payment of principal and lawful interest, such surplus shall be remitted to Borrower by Lender, and Borrower hereby agrees to accept such remittance. If this Section 12 becomes operative, the entire principal balance and accrued interest outstanding hereunder shall at the option of Lender become immediately due and payable and shall bear interest at the maximum rate then permitted by the usury laws of the State of New Mexico until all the then outstanding obligations of this Note, as modified by this Section 12, are paid and performed in full. The acceleration provided in this Section 12 may be avoided by Borrower and all parties liable to Lender by then waiving any and all usury claims and defenses they then have.

13. Assignment. Borrower shall not assign this Note without Lender's prior written consent which may be granted or withheld in Lender's sole and absolute discretion.

14. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New Mexico, without regard to the application of conflicts of law principles.

15. Credit Agreement. This Note evidences indebtedness incurred under the Credit Agreement, the terms and conditions of which, including all waivers of sovereign immunity, are incorporated herein by reference.

[Signature appears on the following page.]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

Navajo Transitional Energy Company, LLC, a Navajo Nation limited liability company

By: _____
Name: Clark Moseley
Title: Chief Executive Officer

Exhibit A
Principal Amount of Promissory Note

Date	Matter	Principal Adjustment (which may be positive or negative)	Aggregate Principal	Monthly Installment of Principal and Interest
July 3, 2018	Purchase Price at Closing	N/A	\$68,907,000.00	\$1,552,773.33

Exhibit B

Lender Wire Transfer Instructions

JP Morgan Chase
ABA 021000021
Pinnacle West General Fund
Acct xxxxxx

Exhibit G

COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

This Collateral Assignment and Security Agreement (this “**Assignment**”) is dated as of June 29, 2018, but made effective as of July 3, 2018 by and between Navajo Transitional Energy Company, LLC, a Navajo Nation limited liability company (“**Assignor**”), 4C Acquisition, LLC, a Delaware limited liability company (“**Lender**”), and Pinnacle West Capital Corporation, an Arizona corporation (“**PNW**” and, together with Lender, the “**Assignees**”).

Recitals:

A. Assignor and Lender are parties to that certain Purchase and Sale Agreement, dated as of June 29, 2018 (the “**PSA**”), pursuant to which, among other things, Assignor is acquiring from Lender certain Assets.

B. Lender agreed in the PSA to finance the Purchase Price payable by Assignor for the Assets. Concurrently with the execution of this Assignment, Assignor and Lender are entering into a Credit Agreement and Note. This Assignment is the Collateral Assignment referred to in the PSA given to secure payment of the Note.

C. In the PSA, it is a condition to Closing that Assignor be in compliance as of the Closing Date with the Four Corners Financial Assurance Policy. PNW has agreed to provide the financial assurances on behalf of Assignor required under the Four Corners Financial Assurance Policy pursuant to that certain Agreement to Provide Financial Assurances, dated as of June 29, 2018, but made effective July 3, 2018 (the “**Financial Assurances Agreement**”), between PNW, Lender and Assignor. This Assignment is the Collateral Assignment referred to in the Financial Assurances Agreement given to secure the repayment obligations of Assignor thereunder.

D. In order to induce Lender to enter into the PSA and the Credit Agreement, and in order to induce PNW to enter into the Financial Assurances Agreement, Assignor has agreed to secure its obligations to Lender and PNW as provided in this Assignment.

Agreements:

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Assignment, Assignor and Assignees, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms used in this Assignment have the meanings set forth in Section 24.
2. Security Interest. As security for the full and prompt payment and performance by Assignor of (a) all present and future Obligations to Lender under the Credit Agreement to, among other things, pay the principal amount of and interest under the Note, and (b) all present and future obligations of Assignor under the Financial Assurances Agreement to repay PNW for, among other things, amounts paid or advanced by PNW in order for Assignor to satisfy its obligations under the

Four Corners Financial Assurance Policy (the obligations described in clauses (a) and (b) collectively, the “ **Secured Obligations** ”), Assignor hereby absolutely, unconditionally and irrevocably assigns, transfers, grants a security interest in and sets over to Assignees an aggregate of twenty-five percent (25%) of all present and future coal accounts receivable and any proceeds thereof due to Assignor from APS under the CSA, provided that once any amounts have been paid to Assignor by APS such paid amounts shall no longer be included as collateral of the Assignees (the collateral of the Assignees being hereafter referred to as the “ **25% Coal Accounts Receivable Interest** ”) until such time as all Secured Obligations are satisfied in full. The Lien granted by this Assignment is a first priority Lien on the 25% Coal Accounts Receivable Interest.

3. Remedies upon Default. If Assignor is in Default of any of the Secured Obligations in accordance with the terms thereof, Lender or PNW, as the case may be, shall have the right to direct APS in writing to pay the 25% Coal Accounts Receivable Interest directly to Lender or PNW, as the case may be, until such time as the Default has been cured or until the Secured Obligations are satisfied in full. If there is a Default with respect to Secured Obligations owed to both Lender and PNW, then they shall issue a joint written direction to APS, and the 25% Coal Accounts Receivable Interest shall be paid by APS to Assignees in the proportion set forth in the joint written direction. APS shall be entitled to rely on any direction issued by Lender pursuant to this Section 3 without liability to Assignor, and Assignor hereby irrevocably authorizes APS to rely upon and comply with any written direction or demand by Lender or PNW for payment of the 25% Coal Accounts Receivable Interest to either or both of them. Assignees shall not be required to prove or otherwise establish for the benefit of APS the existence of a Default giving rise to rights under this Assignment, and APS is hereby authorized to rely upon the written statement of Lender and/or PNW with respect to the existence of such a Default. Without in any way limiting the effectiveness of the aforesaid authorization, if, during the existence of a Default giving rise to rights under this Assignment, Assignor shall receive all or any portion of the 25% Coal Accounts Receivable Interest that is receivable by Lender and/or PNW under this Assignment, Assignor will hold the same in trust and will remit the same immediately to Lender and/or PNW, as applicable. So long as any such Default is continuing, Assignees shall have, in addition, all of the rights of a secured creditor after Default respecting the 25% Coal Accounts Receivable Interest.

4. No Obligation. Assignees shall have no responsibility to enforce collection of the 25% Coal Accounts Receivable Interest and shall have no other responsibility in connection therewith, except the responsibility to account for funds actually received. Except as provided by Law, neither this Assignment nor any action or inaction on the part of Assignees shall constitute an assumption on the part of either Lender or PNW of any duty or obligation with respect to APS or the 25% Coal Accounts Receivable Interest, nor shall Assignees have any duty or obligation to make any payment to be made by Assignor, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts or the performance of any obligations that have been assigned to Assignees or to which Assignees may be entitled hereunder at any time or times. No action or inaction on the part of Lender or PNW shall adversely affect or limit in any way the rights of either Lender or PNW hereunder, except for Lender’s or PNW’s gross negligence or willful misconduct. For the avoidance of doubt, the rights of Lender hereunder shall not be impacted in any way by any gross negligence or willful misconduct on the part of PNW, and the

rights of PNW hereunder shall not be impacted in any way by any gross negligence or willful misconduct on the part of Lender.

5. Indemnification. Assignor shall indemnify and hold Lender, PNW and APS harmless from and against any and all harm, liabilities, losses, damages, costs, and expenses that either Lender, PNW or APS may incur by reason of this Assignment, except to the extent such harm, liability, loss, damage, cost or expense is the result of the gross negligence or willful misconduct of Lender, PNW or APS, respectively. The amount thereof, including reasonable attorneys' fees, together with interest on such amount from the date such amount or amounts were incurred by such Lender, PNW or APS to the date of payment thereof to Lender, PNW or APS by Assignor, shall be secured hereby, and Assignor shall reimburse Lender, PNW and APS therefor immediately upon demand.

6. Representations and Warranties of Assignor. Assignor represents and warrants to Assignees that (a) it has full right, power and authority to assign the 25% Coal Accounts Receivable Interest pursuant to the CSA, (b) the 25% Coal Accounts Receivable Interest is free and clear of all Liens, and has not been assigned, pledged or encumbered by Assignor, except pursuant to this Assignment, (c) Assignor is not in default under the CSA, and this Assignment complies with and does not cause Assignor to be so in default, (d) Assignor will receive value as a result of the Credit Agreement, Note, Financial Assurances Agreement and CSA sufficient to provide legal consideration to support the validity of this Assignment; and (e) this Assignment is the valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms. Without limiting the generality of the foregoing, Assignor represents that the Senior Lender has been provided with this Assignment, has consented hereto and has agreed that the Lien described herein shall be a first Lien on the 25% Coal Accounts Receivable Interest, free and clear of any Liens of the Senior Lender. The foregoing representations and warranties shall survive the execution and delivery of this Assignment.

7. Further Assurances. Assignor, at its expense, shall execute and deliver all such instruments and take all such action as Lender and/or PNW from time to time may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein created.

8. Termination. The Assignment shall terminate only upon payment in full of each of the Secured Obligations in accordance with the terms and conditions thereof. Assignees, at Assignor's sole cost and expense, will execute and deliver such instruments as Assignor may reasonably request to evidence such termination.

9. Binding Nature. The provisions of this Assignment shall be binding upon Assignor, its successors and assigns, and all Persons claiming under or through Assignor or any such Person, and shall inure to the benefit of and be enforceable by Lender, PNW, APS and their respective successors and assigns.

10. Perfection of Security Interest. This Assignment shall constitute a security agreement for all purposes under the Uniform Commercial Code and shall be construed in accordance with and governed by the Laws of the State of Arizona. Concurrently with execution and delivery of this Assignment, Assignor shall file a UCC financing statement with the Arizona Corporation

Commission, the New Mexico Secretary of State and the Navajo Nation Commerce Department within the Division of Economic Development evidencing the first priority Lien granted herein. Assignor will from time to time execute and file or record, at its own cost and expense, all additional financing statements, amendments or supplements thereto, continuation statements with respect thereto and all other instruments that may be necessary or that Lender or PNW may from time to time reasonably request, in order to perfect, protect and maintain the security interest hereby granted and its priority. Assignor will promptly deliver to Lender and PNW a copy of each such instrument and evidence of its filing or recording in the manner required. Assignor further agrees that a carbon, photographic, photostatic or other reproduction of this Assignment or of a financing statement is sufficient as a financing statement. Assignor hereby irrevocably appoints each of Lender and PNW as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf, if necessary, any financing statements or other statements signed only by Lender or PNW, as secured party, in connection with the security interest hereby granted.

11. Amendment and Waiver. No waiver and no modification or amendment of any provision of this Assignment is effective unless made in writing and duly signed, in the case of an amendment, by each Party to this Assignment, or in the case of a waiver, by the Party against whom the waiver is to be effective, referring specifically to this Assignment, and then only to the specific purpose, extent and interest so provided. No failure or delay by Lender or PNW in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude or estop any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided to Lender and PNW shall be cumulative and not exclusive of any rights or remedies provided by Law.

12. Counterparts. This Assignment may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. This Assignment shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Parties hereto.

13. Severability. If any provision hereof is held invalid or unenforceable by any court or as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the parties shall negotiate in good faith to modify this Assignment so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. To the extent permitted by Law, the Parties waive, to the maximum extent permissible, any provision of Law that renders any provision hereof prohibited or unenforceable in any respect.

14. Assignability. This Assignment is not assignable by Assignor without the prior written consent of Assignees, which may be provided or denied in the sole discretion of Lender and PNW, and no assignment shall relieve Assignor of any of its obligations hereunder. This Assignment is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

15. Captions. The captions of the various Sections of this Assignment have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Assignment.

16. Governing Law. The validity, interpretation and effect of this Assignment are governed by and will be construed in accordance with the Laws of the State of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal Law. By execution and delivery of this Assignment, the Parties knowingly, voluntarily and irrevocably: (a) consent, for themselves and in respect of their property, to the exclusive jurisdiction of the federal and state courts of the State of New Mexico; (b) waive any immunity or objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which they may have from or to the bringing of the dispute in such jurisdiction; (c) waive any personal service of any summons, complaint or other process that may be made by any other means permitted by the State of New Mexico; (d) waive any right to trial by jury; (e) agree that any such dispute shall be decided by court trial without a jury; and (f) agree that a Party may file an original counterpart or a copy of this Section 16 with any court as written evidence of the consents, waivers and agreements of the Parties set forth in this Section 16.

17. Notices. All notices, requests, demands and other communications under this Assignment must be in writing and must be delivered in person or sent by certified mail, postage prepaid, or by overnight delivery, and properly addressed as follows:

If to Assignor:

Navajo Transitional Energy Company, LLC
4801 N. Butler Avenue, Bldg. 2000
Farmington, New Mexico 87401
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Navajo Transitional Energy Company, LLC
P.O. Box 11
Farmington, New Mexico 87499-011
Attention: Clark Moseley, Chief Executive Officer

With a copy to:

Parsons Behle and Latimer
201 South Main St., Suite 201
Salt Lake City, Utah 84111
Attention: Nora R. Pincus

If to Lender:

4C Acquisition, LLC

400 North Fifth Street, Station 9036
Phoenix, Arizona 85004
Attn: James R. Hatfield, Treasurer and Secretary

With a copy to:

Pinnacle West Capital Corporation
400 North Fifth Street, Station 8695
Phoenix, Arizona 85004
Attn: Shirley Baum, Associate General Counsel

If to PNW:

Pinnacle West Capital Corporation
400 North Fifth Street, Station 9036
Phoenix, Arizona 85004
Attn: James R. Hatfield, Chief Financial Officer

With a copy to:

Pinnacle West Capital Corporation
400 North Fifth Street, Station 8695
Phoenix, Arizona 85004
Attn: Shirley Baum, Associate General Counsel

Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

All notices and other communications required or permitted under this Assignment which are addressed as provided in this Section 17 are effective upon delivery, if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice or communication shall be deemed not to have been received until the next succeeding Business Day.

18. Time is of the Essence. Time is of the essence of each term of this Assignment. Without limiting the generality of the foregoing, all times provided for in this Assignment for the performance of any act will be strictly construed.

19. No Third Party Beneficiaries. Except as may be specifically set forth in this Assignment, nothing in this Assignment, whether express or implied, is intended to confer any rights or remedies under or by reason of this Assignment on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Assignment intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party. Notwithstanding the foregoing, APS is an express third party beneficiary of this Assignment, including Sections 3 and 5 hereof.

20. Construction of Agreement. Ambiguities or uncertainties in the wording of this Assignment will not be construed for or against any Party, but will be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Assignment.

21. Attorneys' Fees. In the event suit is brought or an attorney is required by any Party to enforce the terms of this Assignment or to collect for the breach hereof or for the interpretation of any provision herein in dispute, or in connection with any bankruptcy proceedings, the prevailing Party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

22. No Further Encumbrance. Assignor covenants and agrees that the 25% Coal Accounts Receivable Interest shall not be further encumbered and/or conveyed, in any manner whatsoever, without the express prior written consent of each of Lender and PNW.

23. No Waiver or Discharge. Assignor shall not be discharged, and the security herein shall not be waived, or anyway affected or impaired, and the priority of Assignees' Liens hereunder shall in no way be affected or implied, by any extension of time, the making of additional advances or notes, any renewal or extension of the Secured Obligations, any modification to the terms of the Secured Obligations, any decrease or increase in the interest rate of any of the Secured Obligations, the taking of further security, releases of a part or all of the security, extinguishment or release of this Assignment as to all or any part of the 25% Coal Accounts Receivable Interest, or any other act except a release or discharge of this Assignment upon the full satisfaction of all Secured Obligations.

24. Definitions. As used in this Assignment, the following terms have the meanings specified in this Section 24. All definitions of singular terms are deemed to include the definition of the plural of that same term.

“ **25% Coal Accounts Receivable Interest** ” has the meaning given that term in Section 2.

“ **Assets** ” has the meaning given that term in the PSA.

“ **Assignment** ” means this Collateral Assignment, as it may be amended from time to time.

“ **APS** ” means Arizona Public Service Company, an Arizona corporation.

“ **Assignees** ” has the meaning given that term in the introductory paragraph of this Assignment.

“ **Assignor** ” has the meaning given that term in the introductory paragraph of this Assignment.

“ **Business Day** ” means a day other than Saturday, Sunday or a day on which banks are legally closed for business in the State of Arizona.

“ **Closing** ” has the meaning given that term in the PSA.

“ **Closing Date** ” has the meaning given that term in the PSA, and is the date of this Assignment.

“ **Credit Agreement** ” means that certain Credit Agreement, of even date herewith, between Assignor and Lender pursuant to which, among other things, Lender has agreed to finance the Purchase Price under the PSA.

“ **CSA** ” means the Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018, by and among Assignor, APS, Public Service Company of New Mexico, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company.

“ **Default** ” means (a) an Event of Default as defined in the Credit Agreement, including any event or circumstance which would constitute, with the giving of notice, the lapse of time, or both, if not cured, waived, or otherwise remedied during such time, a default or an event of default, and (b) an Event of Default as defined in the Financial Assurance Agreement, including any event or circumstance which would constitute, with the giving of notice, the lapse of time, or both, if not cured, waived, or otherwise remedied during such time, a default or an event of default.

“ **Financial Assurance Agreement** ” has the meaning given that term in Recital C.

“ **Four Corners Financial Assurance Policy** ” means the policy set forth as Exhibit 1 to Amendment No. 16 to the Four Corners Project Operating Agreement entered into as of May 15, 1969, by and among the owners who are also parties to the CSA as set forth in Recital D, as amended and in effect on the Closing Date.

“ **Governmental Authority** ” means any federal, state, local or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; any court or governmental tribunal; and any Tribal Authority; but does not include Assignor, Lender, APS, any affiliate thereof, or any of their respective successors in interest or any owner or operator of the Assets (if otherwise a Governmental Authority).

“ **Law** ” means all federal, state, local and tribal civil and criminal laws, statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders.

“ **Lender** ” has the meaning given that term in the introductory paragraph of this Assignment.

“ **Lien** ” means any mortgage, pledge, assignment, lien, charge, encumbrance or security interest of any kind, or the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

“ **Note** ” means the Senior Secured Promissory Note of even date herewith, made by Assignor and described in the PSA and the Credit Agreement.

“ **Obligations** ” has the meaning given that term in the Credit Agreement.

“ **Party** ” means either Assignor, Lender or PNW, as the context requires; “ Parties ” means, collectively, Assignor, Lender and PNW.

“ **Person** ” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“ **PNW** ” has the meaning given that term in the introductory paragraph of this Assignment.

“ **PSA** ” has the meaning given that term in Recital A.

“ **Purchase Price** ” has the meaning given that term in the PSA.

“ **Secured Obligations** ” has the meaning given that term in Section 2.

“ **Senior Lender** ” means KeyBank National Association, as Administrative Agent and Collateral Agent and each of the other lenders under the Senior Loan.

“ **Senior Loan** ” means the Credit Agreement dated as of July 25, 2016, by and between Navajo Transitional Energy Company, LLC, as the borrower and Senior Lender.

25. Credit Agreement and Financial Assurance Agreement. This Assignment is entered into pursuant to the Credit Agreement and the Financial Assurance Agreement, the terms and conditions of which, including waivers of sovereign immunity, are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

Navajo Transitional Energy, LLC,
a Navajo Nation limited liability company

By: _____
Name: Clark Moseley
Title: Chief Executive Officer

LENDER:

4C Acquisition, LLC,
a Delaware limited liability company

By: _____
Name: James R. Hatfield
Title: Treasurer and Secretary

PNW:

Pinnacle West Capital Corporation,
an Arizona corporation

By: _____
Name: James R. Hatfield
Title: Chief Financial Officer

[*Collateral Assignment Signature Page*]

U.S. \$200,000,000
FIVE-YEAR CREDIT AGREEMENT

Dated as of July 12, 2018

among

PINNACLE WEST CAPITAL CORPORATION,
as Borrower,

THE LENDERS PARTY HERETO,

BARCLAYS BANK PLC ,
as Agent and Issuing Bank,

MIZUHO BANK, LTD.,
as Syndication Agent,

MIZUHO BANK, LTD.,
BANK OF AMERICA, N.A.,
BNP PARIBAS,
JPMORGAN CHASE BANK, N.A.,
MUFG BANK, LTD.,
SUNTRUST BANK

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Issuing Banks.

BANK OF AMERICA, N.A.,
BNP PARIBAS,
JPMORGAN CHASE BANK, N.A.,
MUFG BANK, LTD.,
SUNTRUST BANK

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Co-Documentation Agents,

BARCLAYS BANK PLC,
MIZUHO BANK, LTD.,
BNP PARIBAS SECURITIES CORP.,
JPMORGAN CHASE BANK, N.A.,
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
MUFG BANK, LTD.,
SUNTRUST ROBINSON HUMPHREY, INC.

and

WELLS FARGO SECURITIES, LLC,
as Joint Lead Arrangers and Joint Book Runners

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FIVE-YEAR CREDIT AGREEMENT

Dated as of July 12, 2018

PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation (the “Borrower”), the banks, financial institutions and other institutional lenders (the “Initial Lenders”) and initial issuing banks (the “Initial Issuing Banks”) listed on the signature pages hereof, the other Lenders (as hereinafter defined), BARCLAYS BANK PLC, as Agent for the Lenders (as hereinafter defined), MIZUHO BANK, LTD., as Syndication Agent and BANK OF AMERICA, N.A., BNP PARIBAS , JPMORGAN CHASE BANK, N.A., MUFG BANK, LTD., SUNTRUST BANK and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Documentation Agents, agree as follows:

The Borrower has requested that the Lenders provide a revolving credit facility for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Additional Commitment Lender” has the meaning specified in Section 2.21(d).

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Agent.

“Advance” means a Revolving Advance or a Swingline Advance.

“Affected Lender” means any Lender, as reasonably determined by the Agent or if the Agent is the Affected Lender, by the Required Lenders, that (a) has failed to (i) fund all or any portion of any Revolving Advance within three (3) Business Days of the date such Revolving Advances were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, or (ii) pay to the Agent, any Issuing Bank, the Swingline Lender, if any, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit and funding obligations in respect of Swingline Advances) within three (3) Business Days of the date when due, (b) has notified the Borrower, the Agent, any Issuing Bank or any Lender in writing of its intention not to fund any Revolving Advance or any of its other funding obligations under this Agreement, (c) has failed, within three Business Days after written request by the Agent, or if the Agent is the Affected Lender, by the Required Lenders, to confirm that it will comply with the terms of this Agreement relating

to its obligations to fund prospective Revolving Advances and other funding obligations under this Agreement, (d) shall (or whose parent company shall) generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or shall have had any proceeding instituted by or against such Lender (or its parent company) seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 30 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for, it or for any substantial part of its property) shall occur, or shall take (or whose parent company shall take) any corporate action to authorize any of the actions set forth above in this subsection (d) or (e) has become the subject of a Bail-In Action, provided that a Lender shall not be deemed to be an Affected Lender solely by virtue of the ownership or acquisition of any equity interest in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“ Affiliate ” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

“ Agent ” means Barclays in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“ Agent’s Account ” means the account of the Agent designated on Schedule 8.02 under the heading “Agent’s Account” or such other account as the Agent may designate to the Lenders and the Borrower from time to time.

“ Agent’s Office ” means the Agent’s address and, as appropriate, the Agent’s Account, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

“ Anti-Corruption Laws ” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption or money laundering.

“ Applicable Lending Office ” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a Base Rate Advance and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Rate Advance.

“ Applicable Rate ” means, from time to time, the following percentages per annum determined by reference to the Public Debt Rating as set forth below:

Public Debt Rating S&P/Moody's	Eurodollar Rate Advances	Base Rate Advances	Commitment Fee
Level 1 AA-/Aa3 or above	0.750%	0.000%	0.060%
Level 2 A+/A1	0.875%	0.000%	0.075%
Level 3 A/A2	1.000%	0.000%	0.100%
Level 4 A-/A3	1.125%	0.125%	0.125%
Level 5 BBB+/Baa1	1.250%	0.250%	0.175%
Level 6 BBB/Baa2 or below	1.500%	0.500%	0.225%

“ Approved Fund ” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“ APS ” means Arizona Public Service Company, an Arizona corporation.

“ Arrangers ” means, collectively, Barclays, Mizuho Bank, Ltd., BNP Paribas Securities Corp., JPMorgan Chase Bank, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated (together with any affiliates it deems appropriate to provide the services contemplated herein), MUFG Bank, Ltd., SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC.

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

“ Assuming Lender ” has the meaning specified in Section 2.18(d).

“ Assumption Agreement ” has the meaning specified in Section 2.18(d)(ii).

“ Authorized Officer ” means the chairman of the board, chief executive officer, chief operating officer, chief financial officer, chief accounting officer, president, any vice president, treasurer, controller or any assistant treasurer of the Borrower.

“ Available Amount ” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

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

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

“ Barclays ” means Barclays Bank PLC.

“ Base Rate ” means for any day a fluctuating rate per annum equal to the highest of:

(a) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its “prime rate”;

(b) the Federal Funds Rate plus 0.50%; and

(c) an amount equal to (i) the Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus (ii) 1%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“ Base Rate Advance ” means a Revolving Advance that bears interest as provided in Section 2.07(a)(i).

“ Beneficial Ownership Certification ” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance acceptable to the Agent in its discretion.

“ Beneficial Ownership Regulation ” means 31 C.F.R. § 1010.230.

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

“ Borrower ” has the meaning given to such term in the introductory paragraph hereof.

“ Borrower Information ” has the meaning specified in Section 8.08.

“ Borrowing ” means (a) a borrowing consisting of simultaneous Revolving Advances of the same Type made by each of the Lenders pursuant to Section 2.01(a) or (b) Swingline Advances.

“ Business Day ” means a day of the year on which banks are not required or authorized by Law to close in New York City or Phoenix, Arizona and, if the applicable Business Day relates to

any Advance in which interest is calculated by reference to the Eurodollar Rate, on which dealings are carried on in the London interbank market.

“Capital Lease Obligations” means, subject to Section 1.03, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capital lease or a finance lease on the balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption of any Law, (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“Commitment” means a Revolving Credit Commitment or a Letter of Credit Commitment.

“Commitment Date” has the meaning specified in Section 2.18(b).

“Commitment Increase” has the meaning specified in Section 2.18(a).

“Consolidated” refers to the consolidation of accounts in accordance with GAAP.

“Consolidated Indebtedness” means, at any date, the Indebtedness of the Borrower and its Consolidated Subsidiaries determined on a Consolidated basis as of such date; provided, however, that so long as the creditors of the VIE Lessor Trusts have no recourse to the assets of APS, “Consolidated Indebtedness” shall not include any Indebtedness or other obligations of the VIE Lessor Trusts.

“Consolidated Net Worth” means, at any date, the sum as of such date of (a) the par value (or value stated on the books of the Borrower) of all classes of capital stock of the Borrower and its Subsidiaries, excluding the Borrower’s capital stock owned by the Borrower and/or its Subsidiaries, *plus* (or *minus* in the case of a surplus deficit) (b) the amount of the Consolidated surplus, whether capital or earned, of the Borrower, determined in accordance with GAAP as of the end of the most recent calendar month (excluding the effect on the Borrower’s accumulated other comprehensive income/loss of the ongoing application of Accounting Standards Codification Topic 815).

“Consolidated Subsidiary” means, at any date, any Subsidiary or other entity the accounts of which would be Consolidated with those of the Borrower on its Consolidated financial statements

if such financial statements were prepared as of such date; provided that in no event will Consolidated Subsidiaries include the VIE Lessor Trusts.

“Controlled Affiliate” has the meaning specified in Section 4.01(n).

“Convert”, “Conversion”, “Converted” and “Converting” each refers to a conversion of Revolving Advances of one Type into Revolving Advances of the other Type pursuant to Section 2.08, Section 2.09 or Section 2.12.

“Credit Extension” means each of the following: (a) a Borrowing and (b) the issuance of a Letter of Credit.

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

“Default” means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

“Dollars” or “\$” means dollars of the United States of America.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

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

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

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

“Effective Date” has the meaning specified in Section 3.01.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 8.07(b)(iii) and Section 8.07(b)(v) (subject to such consents, if any, as may be required under Section 8.07(b)(iii)).

“ Environmental Action ” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment and relating to any Environmental Law, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any Governmental Authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“ Environmental Law ” means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, natural resources or, to the extent relating to exposure to Hazardous Materials, human health or safety, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“ Environmental Permit ” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

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

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

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

“ Eurodollar Lending Office ” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“Eurodollar Rate” means for any Interest Period as to any Eurodollar Rate Advance, (i) the rate per annum determined by the Agent to be the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the “LIBO Rate”) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period; provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; and provided, further, that if any such rate determined pursuant to this definition is below zero, the Eurodollar Rate will be deemed to be zero.

“Eurodollar Rate Advance” means a Revolving Advance that bears interest at a rate based on the Eurodollar Rate (other than a Base Rate Advance bearing interest at a rate based on the Eurodollar Rate).

“Events of Default” has the meaning specified in Section 6.01.

“Excluded Taxes” means, with respect to the Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the United States of America or the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or does business or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding Tax that is required by the Internal Revenue Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 2.14(e)(ii), (d) in the case of a Foreign Lender (other than as agreed to between any assignee and the Borrower pursuant to a request by the Borrower under Section 2.20), any United States of America withholding Tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Applicable Lending Office) or (ii) is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 2.14(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.14(a)(i) or (ii) and (v) any United States withholding Tax imposed by FATCA.

“Executive Order” has the meaning specified in Section 4.01(p).

“Existing Credit Agreement” means that certain Five-Year Credit Agreement, dated as of May 13, 2016 by and among the Borrower, the Lenders from time to time party thereto and the Agent, as amended by that certain Amendment No. 1 to Five-Year Credit Agreement, dated as of June 29, 2017, by and among the Borrower, the Lenders party thereto and the Agent.

“Existing Termination Date” has the meaning specified in Section 2.21(a).

“Extending Lender” has the meaning specified in Section 2.21(b).

“Extension Date” has the meaning specified in Section 2.21(a).

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

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent, and (c) solely for purposes for determining the Money Market Rate, any such other publication or means of determining the rate for federal funds as agreed to between the Borrower and Swingline Lender; provided further, that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letters” means (a) each of the following letters to the Borrower dated June 11, 2018: (i) the letter from Barclays and Mizuho Bank, Ltd., (ii) the letter from Bank of America, N.A., BNP Paribas, BNP Paribas Securities Corp., JPMorgan Chase Bank, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, MUFG Bank, Ltd., SunTrust Bank, SunTrust Robinson Humphrey, Inc., Wells Fargo Bank, National Association and Wells Fargo Securities, LLC and (iii) the agent fee letter from Barclays, as Agent, each relating to certain fees payable by the Borrower to such parties in respect of the transactions contemplated by this Agreement and (b) any letter between the Borrower and any Issuing Bank other than an Initial Issuing Bank relating to certain fees payable to such Issuing Bank in its capacity as such, each as amended, modified, restated or supplemented from time to time.

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of an Issuing Bank or a Swingline Lender). For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Four Corners Acquisition” means the acquisition by APS from Southern California Edison Company (“SCE”) of SCE’s interests in Units 4 and 5 of the Four Corners Power Plant near Farmington, New Mexico, pursuant to the Purchase and Sale Agreement, dated as of November 8, 2010, by and between SCE and APS.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” has the meaning specified in Section 1.03.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Government Official” shall mean (a) an executive, official, employee or agent of a governmental department, agency or instrumentality, (b) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (c) a political party or official thereof, or candidate for political office or (d) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank).

“Guarantee” means as to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, agreements to keep well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hazardous Materials” means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“Hedge Agreement” means any interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract, commodity future or option contract, commodity forward contract or other similar agreement.

“Increase Date” has the meaning specified in Section 2.18(a).

“Increasing Lender” has the meaning specified in Section 2.18(b).

“ Indebtedness ” means as to any Person at any date (without duplication): (a) indebtedness created, issued, incurred or assumed by such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (b) all obligations of such Person to pay the deferred purchase price of property or services, excluding, however, trade accounts payable (other than for borrowed money) arising in, and accrued expenses incurred in, the ordinary course of business of such Person so long as such trade accounts payable are paid within 180 days (unless subject to a good faith dispute) of the date incurred; (c) all Indebtedness secured by a Lien on any asset of such Person, to the extent such Indebtedness has been assumed by, or is a recourse obligation of, such Person; (d) all Guarantees by such Person; (e) all Capital Lease Obligations of such Person; and (f) the amount of all reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments in support of Indebtedness; provided that Indebtedness, in accordance with Section 1.03, shall exclude any obligation or liability arising from the application or interpretation of ASC Topic 840 or 842 or any related, similar or successor pronouncement, guideline, publication or rule, or which is otherwise excluded in accordance with Section 1.03.

“ Indemnified Taxes ” means Taxes other than Excluded Taxes.

“ Ineligible Institution ” means (a) a natural person, (b) an Affected Lender or any of its Subsidiaries, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof, or (e) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute an Affected Lender or a Subsidiary thereof.

“ Initial Issuing Banks ” has the meaning given to such term in the introductory paragraph hereof.

“ Initial Lenders ” has the meaning given to such term in the introductory paragraph hereof.

“ Interest Period ” means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on (i) the date such Eurodollar Rate Advance is disbursed, (ii) the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance or (iii) the effective date of the most recent continuation of such Eurodollar Rate Advance, as the case may be, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one week, or one, two, three or six months, as the Borrower may, upon notice received by the Agent not later than 12:00 noon on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“Interpolated Rate” means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between:

(a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of that Loan; and

(b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of that Loan,

each as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period of that Loan.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuing Bank” means the Initial Issuing Banks or any other Lender approved by the Borrower that may agree to issue Letters of Credit pursuant to an Assignment and Assumption or other agreement in form satisfactory to the Borrower and the Agent, so long as such Lender expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank or Lender, as the case may be, shall have a Letter of Credit Commitment.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Ratable Share.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made nor refinanced as a Base Rate Advance.

“L/C Cash Deposit Account” means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

“L/C Obligations” means, as at any date of determination, the aggregate Available Amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Related Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower or in favor of any Issuing Bank and relating to such Letter of Credit.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lender Notice Date” has the meaning specified in Section 2.21(a).

“Lenders” means the Initial Lenders, each Issuing Bank, the Swingline Lender, if any, each Assuming Lender that shall become a party hereto pursuant to Section 2.18 and each Person that shall become a party hereto pursuant to Section 8.07.

“Letter of Credit” has the meaning specified in Section 2.01(b).

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any Issuing Bank.

“Letter of Credit Commitment” means, with respect to each Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower from time to time in an aggregate amount equal to (a) for each of the Initial Issuing Banks, \$20,000,000 and (b) for any other Issuing Bank, as separately agreed to by such Issuing Bank and the Borrower. The Letter of Credit Commitment is part of, and not in addition to, the Revolving Credit Commitments.

“Letter of Credit Expiration Date” means the day that is five Business Days prior to the Termination Date.

“LIBO Rate” has the meaning specified in the definition of “Eurodollar Rate.”

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge or other security interest or preferential arrangement that has the practical effect of creating a security interest, including, without limitation,

the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property, and any capital lease having substantially the same economic effect as any of the foregoing.

“Loan Documents” mean this Agreement, each Note, each L/C Related Document and the Fee Letters.

“Material Adverse Effect” means a material adverse effect on (a) the financial condition, operations, business or property of the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under this Agreement or any Note or (c) the ability of the Borrower to perform its obligations under this Agreement or any Note.

“Material Subsidiary” means APS, at any time, and each other Subsidiary of the Borrower which as of such time meets the definition of a “significant subsidiary” included as of the date hereof in Regulation S-X of the Securities and Exchange Commission or whose assets at such time exceed 10% of the assets of the Borrower and the Subsidiaries (on a consolidated basis).

“Money Market Rate” means (a) the Federal Funds Rate plus (b) the Applicable Rate for Eurodollar Rate Advances.

“Money Market Rate Advance” means a Swingline Advance that bears interest at a rate based on the Money Market Rate.

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Non-Extending Lender” has the meaning specified in Section 2.21(b).

“Note” means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto.

“Notice of Borrowing” has the meaning specified in Section 2.02(a).

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Revolving Advance, Swingline Advance or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue under any Loan Document after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means Office of Foreign Assets Control of the United States Department of the Treasury.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning specified in Section 8.07(d).

“Participant Register” has the meaning specified in Section 8.07(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended.

“PBGC” means the Pension Benefit Guaranty Corporation.

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

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Agent) or any similar release by the Federal Reserve Board (as determined by the Agent).

“Prohibited Person” means any Person (a) listed in the Annex to the Executive Order or identified pursuant to Section 1 of the Executive Order; (b) that is owned or controlled by, or acting for or on behalf of, any Person listed in the Annex to the Executive Order or identified pursuant to the provisions of Section 1 of the Executive Order; (c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-laundering law, including the Executive Order; (d) who commits, threatens, conspires to commit, or support “terrorism” as defined in the Executive Order; (e) who is named as a “Specially designated national or blocked

person” on the most current list published by the OFAC at its official website, at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> or any replacement website or other replacement official publication of such list; or (f) who is owned or controlled by a Person listed above in clause (c) or (e).

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

“Public Debt Rating” means, as of any date, the rating that has been most recently announced by either S&P or Moody’s, as the case may be, applicable to any outstanding class of non-credit enhanced long-term senior unsecured debt issued by, or, if no such senior unsecured debt is outstanding at the time of determination, such rating for bank credit facilities for, the Borrower or, if any such rating agency shall have issued more than one such rating, the lowest such rating issued by such rating agency. For purposes of the foregoing, (a) if only one of S&P and Moody’s shall have in effect a Public Debt Rating, the Applicable Rate shall be determined by reference to the available rating; (b) except as set forth in the proviso at the end of this definition, if neither S&P nor Moody’s shall have in effect a Public Debt Rating, the Applicable Rate will be set in accordance with Level 6 under the definition of “Applicable Rate”; (c) if the ratings established by S&P and Moody’s shall fall within different levels, the Applicable Rate shall be based upon the higher rating unless such ratings differ by two or more levels, in which case the applicable level will be deemed to be one level below the higher of such levels; and (d) if any rating established by S&P or Moody’s shall be changed (other than as a result of a change in the basis on which ratings are established), such change shall be effective as of the date on which such change is first announced publicly by the rating agency making such change; provided that if the Public Debt Rating system of S&P or Moody’s shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend the definition of “Applicable Rate” to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate will be set in accordance with the level most recently in effect under the definition of “Applicable Rate” prior to such change or cessation.

“PVNGS” means the Palo Verde Nuclear Generating Station.

“Ratable Share” of any amount means, with respect to any Lender at any time but subject to the provisions of Section 2.19, the product of such amount times a fraction the numerator of which is the amount of such Lender’s Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, such Lender’s Revolving Credit Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Revolving Credit Commitments at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, the aggregate amount of all Revolving Credit Commitments as in effect immediately prior to such termination).

“Register” has the meaning specified in Section 8.07(c).

“ Related Parties ” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“ Reportable Event ” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived under the final regulations issued under Section 4043, as in effect as of the date of this Agreement (the “Section 4043 Regulations”). Any changes made to the Section 4043 Regulations that become effective after the Effective Date shall have no impact on the definition of Reportable Event as used herein unless otherwise amended by the Borrower and the Required Lenders.

“ Required Lenders ” means, at any time, but subject to Section 2.19, Lenders holding in the aggregate more than 50% of (a) the Revolving Credit Commitments or (b) if the Revolving Credit Commitments have been terminated, the Total Outstandings.

“ Revolving Advance ” means an advance by a Lender to the Borrower as part of a Borrowing, including a Base Rate Advance made pursuant to Section 2.03(c), but excluding any L/C Advance made as part of an L/C Borrowing and any Swingline Advance, and refers to a Base Rate Advance or a Eurodollar Rate Advance (each of which shall be a Type of Revolving Advance).

“ Revolving Credit Commitment ” means, as to any Lender, its obligation to (a) make Revolving Advances to the Borrower pursuant to Section 2.01 and Section 2.03(c), (b) purchase participations in L/C Obligations and (c) make Revolving Advances pursuant to Section 2.03A(c) for the purpose of repaying Swingline Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01 under the column “Revolving Credit Commitment” or if such Lender has become a Lender hereunder pursuant to an Assumption Agreement or if such Lender has entered into any Assignment and Assumption, the amount set forth for such Lender in the Register, in each case as such amount may be reduced pursuant to Section 2.05 or increased pursuant to Section 2.18.

“ S&P ” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc.

“ Sale Leaseback Obligation Bonds ” means any bonds issued by or on behalf of the Borrower in connection with a sale/leaseback transaction and any refinancing or refunding of such obligations.

“ Sanctions ” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC and any similar economic or financial sanctions or trade embargoes of the type described in Sections 4.01(n) through (q) and imposed, administered or enforced from time to time by the U.S. government, including the U.S. Department of State, or any other applicable Governmental Authority.

“ SEC Reports ” means the Borrower’s (i) Form 10-K Report for the year ended December 31, 2017, (ii) Form 10-Q Report for the quarter ended March 31, 2018 and (iii) Form 8-K Reports filed on January 9, 2018, February 20, 2018, February 22, 2018, May 22, 2018, June 28, 2018 and July 2, 2018.

“ Subsidiary ” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding Voting Stock, (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries; provided that in no event will Subsidiaries include the VIE Lessor Trusts.

“ Swingline Advance ” means an advance made by the Swingline Lender, if any, to the Borrower pursuant to Section 2.03A.

“ Swingline Eurodollar Rate Advance ” means a Swingline Advance that bears interest at a rate equivalent to (a) clause (ii) under the definition of Eurodollar Rate, plus (b) the Applicable Rate for Eurodollar Rate Advances.

“ Swingline Exposure ” means, at any time, the aggregate principal amount of all Swingline Advances outstanding at such time. The Swingline Exposure of any Lender shall be its Ratable Share of the total Swingline Exposure at such time.

“ Swingline Lender ” means, upon notice to the Agent by such Lender and the Borrower, any Lender approved by the Borrower and the Agent from time to time that may agree to fund Swingline Advances.

“ Taxes ” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“ Termination Date ” means the earlier of (a) July 12, 2023, subject to extension (in the case of, and solely with respect to, each Lender consenting thereto) as provided in Section 2.21 in which case one or more different Termination Dates may exist which shall relate to individual Lender Commitments and (b) the date of termination in whole of the Commitments pursuant to Section 2.05 or Section 6.01.

“ Total Outstandings ” means the sum of (a) the aggregate principal amount of all Revolving Advances plus (b) all L/C Obligations outstanding plus (c) the aggregate Swingline Exposure.

“ Type ” means a Base Rate Advance or a Eurodollar Rate Advance.

“ Unreimbursed Amount ” has the meaning specified in Section 2.03(c)(i).

“ Unissued Letter of Credit Commitment ” means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“ Unused Commitment ” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the aggregate principal amount

of all Revolving Advances made by such Lender (in its capacity as a Lender) and outstanding at such time and (ii) such Lender's Ratable Share of the aggregate L/C Obligations and, other than for the purposes of calculation of the commitment fees, such Lender's Ratable Share of the aggregate Swingline Exposure outstanding at such time.

“VIE Lessor Trusts” means the three (3) separate variable-interest entity lessor trusts that purchased from, and leased back to, APS certain interests in the PVNGS Unit 2 and related common facilities, as described in Note 6 of Combined Notes to Condensed Consolidated Financial Statements in Borrower's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018.

“Voting Stock” means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's permitted successors and permitted assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 Accounting Terms. Unless otherwise specified herein, and subject to the provision below, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with generally accepted accounting principles as in effect from time to time, applied on a basis consistent (except for changes concurred in by the Borrower’s independent public accountants) with the most recent audited Consolidated financial statements of the Borrower delivered to the Agent (“GAAP”). If at any time any change in GAAP or in the interpretation thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or in the interpretation thereof (subject to the approval of the Required Lenders); provided that, unless and until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein. Notwithstanding the foregoing, (a) for purposes of all financial or covenant calculations made under this Agreement and for purposes of defining and calculating Capital Lease Obligations, Indebtedness and Consolidated Indebtedness hereunder for such purposes, all leases or other agreements of any Person deemed to be a lease or other obligation under GAAP (as in effect from time to time) (whether such lease or other agreement is existing as of the date hereof or hereafter entered into) that would not be characterized as (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, in each case, under this Agreement based on GAAP as in effect as of December 31, 2015, will not be deemed to be (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, respectively, as a result of any change in GAAP, or the interpretation or application thereof required or approved by such Person’s independent certified public accountants, occurring or coming into or taking effect after December 31, 2015, including ASC Topic 840 or 842 or any related, similar or successor pronouncement, guidance, publication or rule and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Person at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES AND LETTERS OF CREDIT

Section 2.01 The Revolving Advances and Letters of Credit.

(a) The Revolving Advances. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Revolving Advances in Dollars to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an amount not to exceed such Lender's Unused Commitment. Each Borrowing (other than a Swingline Advance) shall be in an aggregate amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall consist of Revolving Advances of the same Type made on the same day by the Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(a). Any Swingline Advance shall be made and repaid in accordance with the procedures set forth in Section 2.03A.

(b) Letters of Credit. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue standby letters of credit (each a "Letter of Credit") for the account of the Borrower from time to time on any Business Day during the period from the Effective Date until 30 days before the Termination Date in an aggregate Available Amount for all Letters of Credit issued by each Issuing Bank not to exceed at any time such Issuing Bank's Letter of Credit Commitment, provided that after giving effect to the issuance of any Letter of Credit, (i) the Total Outstandings shall not exceed the aggregate Revolving Credit Commitments and (ii) each Lender's Ratable Share of the Total Outstandings shall not exceed such Lender's Revolving Credit Commitment. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the Letter of Credit Expiration Date. Within the limits referred to above, the Borrower may from time to time request the issuance of Letters of Credit under this Section 2.01(b). The terms "issue", "issued", "issuance" and all similar terms, when applied to a Letter of Credit, shall include any renewal, extension or amendment thereof.

Section 2.02 Making the Revolving Advances.

(a) Except as otherwise provided in Section 2.03(c), each Borrowing (other than a Swingline Advance) shall be made on notice, given not later than (x) 12:00 noon on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of Eurodollar Rate Advances or (y) 1:00 p.m. on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Advances, by the Borrower to the Agent, which shall give to each Lender prompt notice thereof by facsimile. Each such notice of a Borrowing (a “Notice of Borrowing.”) shall be in writing or by facsimile in substantially the form of Exhibit B hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Revolving Advance. Each Lender shall, in the case of a Borrowing consisting of Base Rate Advances, before 2:00 p.m. on the date of such Borrowing, and in the case of a Borrowing consisting of Eurodollar Rate Advances, before 11:00 a.m. on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Agent at the Agent’s Account, in same day funds, such Lender’s Ratable Share of such Borrowing. After the Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such funds available to the Borrower at the Agent’s address referred to in Section 8.02 or as requested by the Borrower in the applicable Notice of Borrowing.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances for any Borrowing if the aggregate amount of such Borrowing is less than \$5,000,000 or if the obligation of the Lenders to make Eurodollar Rate Advances shall then be suspended pursuant to Section 2.08 or Section 2.12 and (ii) at no time shall there be more than fifteen different Interest Periods outstanding for Eurodollar Rate Advances.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense reasonably incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Advance to be made by such Lender as part of such Borrowing when such Revolving Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of the applicable Borrowing that such Lender will not make available to the Agent such Lender’s Ratable Share of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Share available to the Agent, such Lender and the Borrower severally agree to repay to the Agent within one Business Day after demand for such Lender and within three Business Days after demand

for the Borrower such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Revolving Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Advance to be made by such other Lender on the date of any Borrowing.

Section 2.03 Letters of Credit.

(a) General.

(i) No Issuing Bank shall issue any Letter of Credit, if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital and liquidity requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which, in each such case, such Issuing Bank in good faith deems material to it;

(B) except as otherwise agreed by the Borrower and such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$100,000;

- (C) such Letter of Credit is to be denominated in a currency other than Dollars;
- (D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;
- (E) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension; or
- (F) any Lender is at such time an Affected Lender hereunder, unless the applicable Issuing Bank is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until such Issuing Bank has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate such Issuing Bank's risk with respect to such Affected Lender, and participating interests in any such newly issued Letter of Credit shall be allocated among non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(iii) No Issuing Bank shall amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) No Issuing Bank shall be under any obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable Issuing Bank (with a copy to the Agent) in the form of a Letter of Credit Application appropriately completed and signed by an Authorized Officer of the Borrower, together with agreed-upon draft language for such Letter of Credit reasonably acceptable to the applicable Issuing Bank. Such Letter of Credit Application must be received by such Issuing Bank and the Agent not later than 11:00 a.m. at least three Business Days (or such later date and time as the Agent and such Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any

certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as such Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such Issuing Bank may require. Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Related Documents, as the applicable Issuing Bank or the Agent may require. In the event and to the extent that the provisions of any Letter of Credit Application or other L/C Related Document shall conflict with this Agreement, the provisions of this Agreement shall govern. Without limitation of the immediately preceding sentence, to the extent that any such Letter of Credit Application or other L/C Related Document shall impose any additional conditions on the maintenance of a Letter of Credit, any additional default provisions, collateral requirements or other obligations of the Borrower to any Issuing Bank, other than as stated in this Agreement, such additional conditions, provisions, requirements or other obligations shall not have effect so long as this Agreement shall be in effect, except to the extent as expressly agreed to by the Borrower and such Issuing Bank.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Agent (in writing) that the Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such Issuing Bank will provide the Agent with a copy thereof. Unless the applicable Issuing Bank has received written notice from the Required Lenders, the Agent or the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article III shall not then be satisfied, then, subject to the terms and conditions hereof and any applicable Letter of Credit Application, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Ratable Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request

to the applicable Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable Issuing Bank shall not permit any such extension (or may issue a Notice of Non-Extension) if (A) such Issuing Bank has determined that it would not be permitted at such time to issue such Letter of Credit in its revised form (as extended) by reason of the provisions of clause (i) of Section 2.03(a) (or would have no obligation to issue such Letter of Credit by reason of the provisions of clause (ii) of Section 2.03(a)), or (B) it has received notice (which shall be in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension pursuant to Section 6.02 or (2) from the Agent, the Required Lenders or the Borrower that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Subject to the provisions below, not later than 2:30 p.m. on the date (the “Honor Date”) that any Issuing Bank makes any payment on a drawing on any Letter of Credit, if the Borrower shall have received notice of such payment prior to 11:30 a.m. on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:30 p.m. on the next Business Day, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such drawing together with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, unless the Borrower shall have advised the Agent that it does not meet the conditions specified in clause (B) below, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Ratable Share thereof. In such event, the Borrower shall be deemed to have requested a Base Rate Advance to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01(a) or the delivery of a Notice of Borrowing but subject to (A) the amount of the aggregate Unused Commitments and (B) no Event of Default having occurred and be continuing, or resulting therefrom and, to the extent so financed, the Borrower’s obligation to satisfy the reimbursement obligation created by such payment by the Issuing Bank on the Honor Date shall be discharged and replaced by the resulting Base Rate Advance. Any notice given by any Issuing Bank or the Agent pursuant to this Section 2.03(c)(i) shall be given in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Agent for the account of the applicable Issuing Bank at the Agent's Office in an amount equal to its Ratable Share of the Unreimbursed Amount not later than 4:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Advance to the Borrower in such amount. The Agent shall remit the funds so received to the applicable Issuing Bank.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Base Rate Advance because any of the conditions set forth in clauses (A) or (B) of Section 2.03(c)(i) cannot be satisfied or for any other reason, then not later than 2:30 p.m. on the next Business Day after the day notice of the drawing is given to the Borrower, in the case of a failure to meet any such condition, or in any other case, after notice of the event resulting in the outstanding Unreimbursed Amount, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such outstanding Unreimbursed Amount with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, the Borrower shall be deemed to have incurred from the applicable Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum. In such event, each Lender's payment to the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Base Rate Advance or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Ratable Share of such amount shall be solely for the account of the applicable Issuing Bank.

(v) Each Lender's obligation to make Base Rate Advances or L/C Advances to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Base Rate Advances pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 2.03(c)(i). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such Issuing Bank shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such Issuing Bank in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Base Rate Advance included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable Issuing Bank submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral (as defined in Section 2.03(h)) applied thereto by the Agent), the Agent will distribute to such Lender its Ratable Share thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c) (i) is required to be returned under any of the circumstances described in Section 8.12 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Lender shall pay to the Agent for the account of such Issuing Bank its Ratable Share thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Failure to Make Revolving Advances. The failure of any Lender to make the Revolving Advance to be made by it on the date specified in Section 2.03(c) or any L/C Advance shall not relieve any other Lender of its obligation hereunder to make its Revolving Advance or L/C Advance, as the case may be, to be made by such other Lender on such date.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

provided, however, that nothing in this Section 2.03(f) shall limit the rights of the Borrower under Section 2.03(g).

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity that is known to the Borrower in connection with any draw under such Letter of Credit of which the Borrower has reasonable notice, the Borrower will immediately notify the applicable Issuing Bank. To the extent allowed by applicable Law, Borrower shall be conclusively deemed to have waived any such claim against the applicable Issuing Bank and its correspondents unless such notice is given as aforesaid. Nothing herein shall require the Borrower to make any determination as to whether the drawing is in accordance with the requirements of the Letter of Credit, provided that the Borrower may waive any discrepancies in the drawing on any such Letter of Credit.

(g) Role of Issuing Bank. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document

or the authority of the Person executing or delivering any such document. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(f); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence as determined by a final, non-appealable judgment by a court of competent jurisdiction or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable Issuing Bank may accept documents that appear on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(h) Cash Collateral. Upon the request of the Agent or the applicable Issuing Bank, if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then outstanding L/C Obligations. Section 6.02 sets forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.10(b)(ii), Section 2.19(c)(ii), (iv) and (v) and Section 6.02, "Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the Issuing Banks and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Agent and each Issuing Bank (which documents are hereby consented to by the Lenders) in an amount equal to 100% of the amount of the L/C Obligations as of such date plus any accrued and unpaid interest and fees thereon. Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts with the Agent.

(i) Letter of Credit Reports. Each Issuing Bank shall furnish (A) to the Agent on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all such Letters of Credit and (B) to the Agent on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

(j) Interim Interest. Except as provided in Section 2.03(c)(ii) with respect to Unreimbursed Amounts refinanced as Base Rate Advances and Section 2.03(c)(iii) with respect to L/C Borrowings, unless the Borrower shall reimburse each payment by an Issuing Bank pursuant to a Letter of Credit in full on the Honor Date, the Unreimbursed Amount thereof shall bear interest, for each day from and including the Honor Date to but excluding the date that the Borrower reimburses such Issuing Bank for the Unreimbursed Amount in full, at the rate per annum equal to (i) the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time, to but excluding the next Business Day after the Honor Date and (ii) from and including the next Business Day after the Honor Date, the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum.

Section 2.03A Swingline Advances.

(a) Amount of Swingline Advances. Subject to the terms and conditions set forth herein, the Swingline Lender will make Swingline Advances in Dollars to the Borrower from time to time during the period from the Effective Date until the Termination Date, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of all outstanding Swingline Advances exceeding \$25,000,000 (or such lesser amount as agreed between the Borrower and the Swingline Lender) or (ii) the Total Outstandings exceeding the aggregate Revolving Credit Commitment. Each Swingline Advance shall be in an aggregate amount of \$500,000 or an integral multiple of \$100,000 in excess thereof or such greater amounts as agreed between the Borrower and the Swingline Lender. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Advances. The Swingline Lender shall be under no obligation to make a Swingline Advance if any Lender is at such time an Affected Lender hereunder, unless the Swingline Lender is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until the Swingline Lender has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate the Swingline Lender's risk with respect to such Affected Lender, and participating interests in any such newly made Swingline Advance shall be allocated among non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(b) Borrowing Notice and Making of Swingline Advances. To request a Swingline Advance, the Borrower shall notify the Swingline Lender and the Agent of such request in writing, not later than 2:00 p.m. (or such later time as the Swingline Lender may determine in its sole discretion), on the day of such Swingline Advance. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Advance. The Swingline Lender shall promptly notify the Borrower and the Agent (and the Agent

shall promptly notify each Lender) and the Swingline Lender shall make each Swingline Advance available to the Borrower by 2:30 p.m. (or such later time as may be agreed by the Swingline Lender and the Borrower) on the requested date of such Swingline Advance in a manner agreed upon by the Borrower and the Swingline Lender. Each Swingline Advance shall bear interest at the Base Rate, or, at the option of the Borrower and subject to prior agreement between the Borrower and the Swingline Lender, shall be a Swingline Eurodollar Rate Advance or a Money Market Rate Advance.

(c) Repayment of Swingline Advances. Each Swingline Advance shall be paid in full by the Borrower on the earlier of (x) on or before the fourteenth (14th) Business Day after the date such Swingline Advance was made by the Swingline Lender or (y) the Termination Date. A Swingline Advance may not be repaid with the proceeds from another Swingline Advance. In addition, the Swingline Lender (i) may at any time in its sole discretion with respect to any outstanding Swingline Advance, or (ii) shall, on the fourteenth (14th) Business Day after the date any Swingline Advance is made and which has not been otherwise repaid, require each Lender (including the Swingline Lender) to make a Revolving Advance in the amount of such Lender's Ratable Share of such Swingline Advance (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swingline Advance. Not later than 2:00 p.m. on the date of any notice received pursuant to this Section 2.03A(c), each Lender shall make available to the Agent its required Revolving Advance, in immediately available funds in the same manner as provided in Section 2.02(a) with respect to Revolving Advances made by such Lender. Revolving Advances made pursuant to this Section 2.03A(c) shall initially be Base Rate Advances and thereafter may be continued as Base Rate Advances or converted into Eurodollar Rate Advances in the manner provided in Section 2.09 and subject to the other conditions and limitations set forth in this Article II. Each Lender's obligation to make Revolving Advances pursuant to this Section 2.03A(c) to repay Swingline Advances shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Agent, the Swingline Lender or any other Person, (b) the occurrence or continuance of a Default or an Event of Default, (c) any adverse change in the condition (financial or otherwise) of the Borrower, or (d) any other circumstance, happening or event whatsoever. In the event that any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), the Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Agent receives such payment from such Lender or such obligation is otherwise fully satisfied. In addition to the foregoing, if for any reason any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), such Lender shall be deemed, at the option of the Agent, to have unconditionally and irrevocably purchased from the Swingline Lender without recourse or warranty, an undivided interest and participation in the applicable Swingline Advance in the amount of such Revolving Advance, and such interest and participation may be recovered from such Lender together with interest thereon at the Federal Funds Rate for each day during the period commencing on the date of demand and ending on the date such amount is received.

(d) Swingline Advances Reports. The Swingline Lender shall furnish to the Agent on each Business Day a written report summarizing outstanding Swingline Advances made by the

Swingline Lender and the due date for the repayment of such Swingline Advances; provided that if no Swingline Advances are outstanding, no such report shall be required to be delivered.

(e) Successor Swingline Lender. Subject to the appointment and acceptance of a successor Swingline Lender as provided in this paragraph, the Borrower may, upon not less than ten (10) Business Days prior notice to the Agent and the Lenders, replace the existing Swingline Lender with the consent of the Agent (which consent shall not unreasonably be withheld). Upon the acceptance of its appointment as Swingline Lender hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the replaced Swingline Lender, and the replaced Swingline Lender shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Swingline Lender shall be as agreed between the Borrower and such successor. After the Swingline Lender's replacement hereunder, the provisions of this Article and Section 8.04 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Swingline Lender.

Section 2.04 Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each Lender a commitment fee on such Lender's Unused Commitment (provided that, for the avoidance of doubt, and without duplication, such Lender's Unused Commitment shall be calculated exclusive of such Lender's Swingline Exposure and, if such Lender is the Swingline Lender, without giving effect to the Swingline Advances, and in no event shall the aggregate of such commitment fees exceed an amount calculated based on the product of (a) the aggregate Revolving Credit Commitments minus the aggregate principal amount of all Revolving Advances and aggregate L/C Obligations and (b) the Applicable Rate for commitment fees) from the Effective Date in the case of each Initial Lender and from the effective date specified in the Assumption Agreement or in the Assignment and Assumption pursuant to which it became a Lender in the case of each other Lender until the Termination Date at a rate per annum equal to the Applicable Rate for commitment fees in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December, commencing September 30, 2018, and on the Termination Date, provided that no commitment fee shall accrue with respect to the Unused Commitment of an Affected Lender so long as such Lender shall be an Affected Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each Lender a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time at a rate per annum equal to the Applicable Rate for Eurodollar Rate Advances in effect from time to time, during such calendar quarter, payable in arrears quarterly on the last day of each March, June, September and December, commencing with the quarter ended September 30, 2018, and on the Termination Date; provided that the Applicable Rate for Eurodollar Rate Advances shall be 2% above such Applicable Rate in effect upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest pursuant to Section 2.07(b).

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, payable in the amounts and at the times specified in the applicable Fee Letter between the Borrower and such Issuing Bank, and such other commissions, issuance fees, transfer fees and other fees and charges in connection with the issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree promptly following receipt of an invoice therefor.

(c) Agent's Fees. The Borrower shall pay to the Agent for its own account such fees as are agreed between the Borrower and the Agent pursuant to the Fee Letter between the Borrower and the Agent.

Section 2.05 Optional Termination or Reduction of the Commitments.

(a) The Borrower shall have the right, upon at least three Business Days' notice to the Agent, to terminate in whole or permanently reduce ratably in part the Unused Commitments or the Unissued Letter of Credit Commitments, provided that each partial reduction shall be in the aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) So long as no Default or Event of Default shall be continuing, the Borrower shall have the right, at any time, upon at least ten Business Days' notice to an Affected Lender (with a copy to the Agent), to terminate in whole such Lender's Revolving Credit Commitment and, if applicable, its Letter of Credit Commitment, without affecting the Commitments of any other Lender. Such termination shall be effective, (x) with respect to such Lender's Unused Commitment, on the date set forth in such notice, provided, however, that such date shall be no earlier than ten Business Days after receipt of such notice and (y) with respect to each Revolving Advance outstanding to such Lender, in the case of Base Rate Advances, on the date set forth in such notice and, in the case of Eurodollar Rate Advances, on the last day of the then current Interest Period relating to such Revolving Advance. Upon termination of a Lender's Commitments under this Section 2.05(b), the Borrower will pay or cause to be paid all principal of, and interest accrued to the date of such payment on, Revolving Advances (and if such Lender is the Swingline Lender, the Swingline Advances) owing to such Lender and, subject to Section 2.19, pay any accrued commitment fees or Letter of Credit fees payable to such Lender pursuant to the provisions of Section 2.04, and all other amounts payable to such Lender hereunder (including, but not limited to, any increased costs or other amounts owing under Section 2.11 and any indemnification for Taxes under Section 2.14); and, if such Lender is an Issuing Bank, shall pay to such Issuing Bank for deposit in an escrow account an amount equal to the Available Amount of all Letters of Credit issued by such Issuing Bank, whereupon all Letters of Credit issued by such Issuing Bank shall be deemed to have been issued outside of this Agreement on a bilateral basis and shall cease for all purposes to constitute a Letter of Credit issued under this Agreement, and upon such payments, except as otherwise provided below, the obligations of such Lender hereunder shall, by the provisions hereof, be released and discharged; provided, however, that (i) such Lender's rights under Section 2.11, Section 2.14 and Section 8.04, and, in the case of an Issuing Bank, Section 8.04(c), and its obligations under Section 8.04 and 8.08, in each case in accordance with the terms thereof, shall survive such release and discharge as to matters occurring prior to such date and (ii) such escrow agreement shall be in a form reasonably agreed to by the Borrower and such Issuing Bank, but in

no event shall either the Borrower or such Issuing Bank require any waivers, covenants, events of default or other provisions that are more restrictive than or inconsistent with the provisions of this Agreement. Subject to Section 2.18, the aggregate amount of the Commitments of the Lenders once reduced pursuant to this Section 2.05(b) may not be reinstated. The termination of the Commitments of an Affected Lender pursuant to this Section 2.05(b) will not be deemed to be a waiver of any right that the Borrower, the Agent, any Issuing Bank, the Swingline Lender or any other Lender may have against the Affected Lender that arose prior to the date of such termination. Upon any such termination, the Ratable Share of each remaining Lender will be revised.

Section 2.06 Repayment of Advances. The Borrower shall repay to the Agent for the ratable account of the Lenders on the Termination Date the aggregate principal amount of the Revolving Advances made by such Lender and then outstanding. The Borrower shall repay Swingline Advances in accordance with Section 2.03A(c).

Section 2.07 Interest on Advances.

(a) Scheduled Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender (including the Swingline Lender) from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. During such periods as such Revolving Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Rate for Base Rate Advances in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. During such periods as such Revolving Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Revolving Advance to the sum of (x) the Eurodollar Rate for such Interest Period for such Revolving Advance plus (y) the Applicable Rate for Eurodollar Rate Advances in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurodollar Rate Advance shall be Converted or paid in full.

(iii) Swingline Advances. During such period as such Swingline Advance remains outstanding, the Base Rate or, as agreed to by the Swingline Lender and the Borrower, the Money Market Rate or the Eurodollar Rate, payable on the date such Swingline Advance is required to be repaid.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require the Borrower to pay interest (“Default Interest”) on (i) the unpaid principal amount of each Advance owing to each Lender, payable in arrears on the dates referred to in clause (a)(i), (a)(ii) or (a)(iii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum

required to be paid on such Advance pursuant to clause (a)(i), (a)(ii) or (a)(iii) above and (ii) to the fullest extent permitted by Law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to clause (a)(i) above, provided, however, that following acceleration of the Advances pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

(c) Interest Rate Limitation. Nothing contained in this Agreement or in any other Loan Document shall be deemed to establish or require the payment of interest to any Lender at a rate in excess of the maximum rate permitted by applicable Law. If the amount of interest payable for the account of any Lender on any interest payment date would exceed the maximum amount permitted by applicable Law to be charged by such Lender, the amount of interest payable for its account on such interest payment date shall be automatically reduced to such maximum permissible amount. In the event of any such reduction affecting any Lender, if from time to time thereafter the amount of interest payable for the account of such Lender on any interest payment date would be less than the maximum amount permitted by applicable Law to be charged by such Lender, then the amount of interest payable for its account on such subsequent interest payment date shall be automatically increased to such maximum permissible amount, provided that at no time shall the aggregate amount by which interest paid for the account of any Lender has been increased pursuant to this sentence exceed the aggregate amount by which interest paid for its account has theretofore been reduced pursuant to the previous sentence.

Section 2.08 Interest Rate Determination.

(a) The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.07(a).

(b) (i) If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Advance or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Advance, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Advance, the Agent will promptly so notify the Borrower and each Lender, whereupon each Eurodollar Rate Advance will automatically on the last day of the then existing Interest Period therefor Convert into a Base Rate Advance. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Advances shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of Eurodollar Rate Advances or, failing that, will be deemed to have Converted such request into a request for a Base Rate Advance in the amount specified therein.

(i) Notwithstanding anything to the contrary herein, if at any time the Agent or the Required Lenders determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.08(b)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.08(b)(i) have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 8.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest, together with a copy of such amendment, is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(c) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Agent will forthwith so notify the Borrower and the Lenders and such Revolving Advances will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Advances.

(d) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$5,000,000, such Revolving Advances shall automatically Convert into Base Rate Advances.

(e) Upon the occurrence and during the continuance of any Event of Default,

(i) with respect to Eurodollar Rate Advances, each such Revolving Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance (or if such Revolving Advance is then a Base Rate Advance, will continue as a Base Rate Advance); and

(ii) the obligation of the Lenders to make Eurodollar Rate Advances or to Convert Revolving Advances into Eurodollar Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

Section 2.09 Optional Conversion of Revolving Advances. The Borrower may on any Business Day, upon notice given to the Agent not later than 12:00 noon on the third Business Day

prior to the date of the proposed Conversion and subject to the provisions of Section 2.08 and Section 2.12. Convert all Revolving Advances of one Type comprising the same Borrowing into Revolving Advances of the other Type; provided, however, that (a) any Conversion of Eurodollar Rate Advances into Base Rate Advances shall be made only on the last day of an Interest Period for such Eurodollar Rate Advances, (b) any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b), (c) no Conversion of any Revolving Advances shall result in more separate Borrowings than permitted under Section 2.02(b) and (d) no Swingline Advances may be converted. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Revolving Advances to be Converted, and (iii) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for each such Revolving Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

Section 2.10 Prepayments of Advances.

(a) Optional. At any time and from time to time, the Borrower shall have the right to prepay any Advance, in whole or in part, without premium or penalty (except as provided in clause (y) below), upon notice at least two Business Days' prior to the date of such prepayment, in the case of Eurodollar Rate Advances, and not later than 11:00 a.m. on the date of such prepayment in the case of Base Rate Advances and Swingline Advances, to the Agent (and, in the case of prepayment a Swingline Advance, the Swingline Lender) specifying the proposed date of such prepayment and the aggregate principal amount and Type of the Advance to be prepaid (and, in the case of Eurodollar Rate Advances, the Interest Period of the Borrowing pursuant to which made); provided, however, that (x) each partial prepayment shall be in an aggregate principal amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, and shall be accompanied by accrued interest to the date of prepayment on the principal amount prepaid, and (y) in the event of any such prepayment of a Eurodollar Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 8.04(e).

(b) Mandatory.

(i) The Borrower shall prepay the aggregate principal amount of the Advances, together with accrued interest to the date of prepayment on the principal amount prepaid, without requirement of demand therefor, or shall pay or prepay any other Indebtedness then outstanding at any time, when and to the extent required to comply with applicable Laws of any Governmental Authority or applicable resolutions of the Board of Directors of the Borrower.

(ii) If for any reason the Total Outstandings at any time exceed the aggregate Revolving Credit Commitments then in effect, the Borrower shall, within one Business Day after notice thereof, prepay Advances and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.10(b) unless, after the prepayment in full of the Advances, the Total Outstandings exceed the aggregate Revolving Credit Commitments then in effect.

Section 2.11 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 2.11(e)) or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Advances made by such Lender or any Letter of Credit or participation therein; or

(iii) subject the Agent or any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Other Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Agent or such Lender of making, maintaining or Converting any Advance (or of maintaining its obligation to make any such Revolving Advance), or to increase the cost to the Agent, such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Agent, such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Agent, such Lender or such Issuing Bank, the Borrower will pay to the Agent, such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate the Agent, such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Applicable Lending Office of such Lender or such Lender's or such Issuing Bank's holding company, if any, regarding capital and liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive and binding upon all parties absent manifest error.

The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

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

(e) Reserves on Eurodollar Rate Advances. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Advance equal to the actual costs of such reserves allocated to such Revolving Advance by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Eurodollar Rate Advance, provided the Borrower shall have received at least 30 days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice 30 days prior to the relevant interest payment date, such additional interest shall be due and payable 30 days from receipt of such notice.

Section 2.12 Illegality. If any Lender shall have determined in good faith that the introduction of or any change in any applicable Law or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance with any guideline or request from any such Governmental Authority (whether or not having the force of law), makes it unlawful for any Lender or its Applicable Lending Office to make, maintain or fund Eurodollar Rate Advances, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender to make or continue Eurodollar Rate Advances or to Convert Base Rate Advances to Eurodollar Rate Advances shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, Convert all Eurodollar Rate Advances of such Lender to Base Rate Advances, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Advances to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Advances. Upon any such prepayment or Conversion, the Borrower shall also pay accrued interest on the amount so prepaid or Converted.

Section 2.13 Payments and Computations.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make each payment hereunder not later than 1:00 p.m. on the day when due in U.S. dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender becoming a Lender hereunder as a result of a Commitment Increase pursuant to Section 2.18, and upon the Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date, the Agent shall make all payments hereunder and under any Notes issued in connection therewith in respect of the interest assumed thereby to the Assuming Lender. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date specified in such Assignment and Assumption, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest based on the Base Rate (when the Base Rate is based on the Prime Rate) shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, and all other computations of interest and fees hereunder (including computations of interest based on the Eurodollar Rate and the Federal Funds Rate and of fees and Letter of Credit commissions) shall be made by the Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Interest on Swingline Advances shall be calculated on the basis of a year of 360 days or such other basis agreed to by the Swingline Lender and the Borrower, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fees or commissions, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment

in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due to such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

Section 2.14 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Borrower or the Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower or the Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States of America Federal backup withholding and withholding Taxes, from any payment, then (A) the Agent shall withhold or make such deductions as are determined by the Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify the Agent, each Lender and each Issuing Bank, and shall make payment in respect thereof within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower or the Agent or paid by the Agent, such Lender or such Issuing

Bank, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall also, and does hereby, indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or an Issuing Bank for any reason fails to pay indefeasibly to the Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(ii) Each Lender and each Issuing Bank shall, within 30 days after demand therefor, severally (A) indemnify the Agent for (x) any Indemnified Taxes and Other Taxes attributable to such Lender or such Issuing Bank (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower to do so), (y) any Taxes attributable to such Lender's or such Issuing Bank's failure to comply with the provisions of Section 8.07(d) relating to the maintenance of a Participant Register and (z) for any Excluded Taxes attributable to such Lender or such Issuing Bank, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, and (B) indemnify the Borrower and the Agent against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Agent) incurred by or asserted against the Borrower or the Agent by any Governmental Authority as a result of the failure by such Lender or such Issuing Bank, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or such Issuing Bank, as the case may be, to the Borrower or the Agent pursuant to subsection (e). A certificate as to the amount of such payment or liability delivered to any Lender or any Issuing Bank by the Agent shall be conclusive absent manifest error. Each Lender and each Issuing Bank hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or such Issuing Bank, as the case may be, under this Agreement or any other Loan Document or otherwise payable by the Agent to the Lender or the Issuing Bank from any other source against any amount due to the Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender or an Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 2.14, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report

such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States of America,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Internal Revenue Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(2) executed originals of Internal Revenue Service Form W-8ECI,

(3) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(4) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E, or

(5) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States of America Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Borrower and the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Applicable Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to each of the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Bank, or have any obligation to pay to any Lender or any Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such Issuing Bank, as the case may be. If the Agent, any Lender or any Issuing Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall

pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by the Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent, such Lender or such Issuing Bank in the event the Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) Payments. Failure or delay on the part of the Agent, any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section 2.14 shall not constitute a waiver of the Agent's, such Lender's or such Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate the Agent, a Lender or an Issuing Bank pursuant to the foregoing provisions of this Section 2.14 for any Indemnified Taxes or Other Taxes imposed or asserted by the relevant Governmental Authority more than three months prior to the date that the Agent, such Lender or such Issuing Bank, as the case may be, claims compensation with respect thereto (except that, if a Change in Law giving rise to such Indemnified Taxes or Other Taxes is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(h) Each of the Agent, any Issuing Bank or any Lender agrees to cooperate with any reasonable request made by the Borrower in respect of a claim of a refund in respect of Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.14 if (i) the Borrower has agreed in writing to pay all of the Agent's or such Issuing Bank's or such Lender's reasonable out-of-pocket costs and expenses relating to such claim, (ii) the Agent or such Issuing Bank or such Lender determines, in its good faith judgment, that it would not be disadvantaged, unduly burdened or prejudiced as a result of such claim and (iii) the Borrower furnishes, upon request of the Agent, or such Issuing Bank or such Lender, an opinion of tax counsel (such opinion, which can be reasoned, and such counsel to be reasonably acceptable to such Lender, or such Issuing Bank or the Agent) that the Borrower is likely to receive a refund or credit.

Section 2.15 Sharing of Payments, Etc. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances or L/C Advances owing to it (other than pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary thereof if permitted hereby (as to which the provisions of this Section 2.15 shall apply) in excess of its Ratable Share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders (for cash at face value) such participations

in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's Ratable Share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 2.16 Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Advance owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Advances. The Borrower agrees that upon notice by any Lender (including the Swingline Lender) to the Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Advances owing to, or to be made by, such Lender, the Borrower shall promptly execute and deliver to such Lender a Note payable to the order of such Lender in a principal amount up to the Revolving Credit Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 8.07(c) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assumption Agreement and each Assignment and Assumption delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement.

Section 2.17 Use of Proceeds. The proceeds of the Advances and issuances of Letters of Credit shall be available (and the Borrower agrees that it shall use such proceeds) solely to refinance

Indebtedness of the Borrower from time to time and for other general corporate purposes of the Borrower.

Section 2.18 Increase in the Aggregate Revolving Credit Commitments.

(a) The Borrower may, at any time prior to the Termination Date, by notice to the Agent, request that the aggregate amount of the Revolving Credit Commitments be increased by an amount of \$10,000,000 or an integral multiple thereof (each a “Commitment Increase”) to be effective as of a date that is at least 90 days prior to the Termination Date (the “Increase Date”) as specified in the related notice to the Agent; provided, however that (i) in no event shall the aggregate amount of the Revolving Credit Commitments at any time exceed \$300,000,000 or the aggregate amount of Commitment Increases exceed \$100,000,000 and (ii) on the date of any request by the Borrower for a Commitment Increase and on the related Increase Date, the applicable conditions set forth in this Section 2.18 shall be satisfied.

(b) The Agent shall promptly notify the Lenders of a request by the Borrower for a Commitment Increase, which notice shall include (i) the proposed amount of such requested Commitment Increase, (ii) the proposed Increase Date and (iii) the date by which Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Revolving Credit Commitments (the “Commitment Date”). Each Lender that is willing to participate in such requested Commitment Increase (each an “Increasing Lender”) shall, in its sole discretion, give written notice to the Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Revolving Credit Commitment. If the Lenders notify the Agent that they are willing to increase the amount of their respective Revolving Credit Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among the Lenders willing to participate therein in such amounts as are agreed between the Borrower and the Agent. Each Increasing Lender shall be subject to such applicable consents as may be required under Section 8.07(b)(iii) (including, but not limited to, the consent, not to be unreasonably withheld, of each Issuing Bank and the Swingline Lender).

(c) Promptly following each Commitment Date, the Agent shall notify the Borrower as to the amount, if any, by which the Lenders are willing to participate in the requested Commitment Increase. If the aggregate amount by which the Lenders are willing to participate in any requested Commitment Increase on any such Commitment Date is less than the requested Commitment Increase, then the Borrower may extend offers to one or more Eligible Assignees to participate in any portion of the requested Commitment Increase that has not been committed to by the Lenders as of the applicable Commitment Date; provided, however, that the Revolving Credit Commitment of each such Eligible Assignee shall be in an amount of not less than \$10,000,000.

(d) On each Increase Date, each Eligible Assignee that accepts an offer to participate in a requested Commitment Increase in accordance with Section 2.18(c) (each such Eligible Assignee, an “Assuming Lender”) shall become a Lender party to this Agreement as of such Increase Date and the Revolving Credit Commitment of each Increasing Lender for such requested Commitment Increase shall be so increased by the amount by which the Increasing Lender agreed to increase its Revolving Credit Commitment (or by the amount allocated to such Lender pursuant to the next to

last sentence of Section 2.18(b)) as of such Increase Date; provided, however, that the Agent shall have received on or before such Increase Date the following, each dated such date:

- (i) (A) certified copies of resolutions of the Board of Directors of the Borrower approving the Commitment Increase and the corresponding modifications to this Agreement, (B) an opinion of counsel for the Borrower (which may be in-house counsel), in form and substance reasonably acceptable to the Required Lenders and (C) a certificate from a duly authorized officer of the Borrower, stating that the conditions set forth in Section 3.02(a) and Section 3.02(b) are satisfied;
- (ii) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Borrower and the Agent (each an “ Assumption Agreement ”), duly executed by such Assuming Lender, the Agent, the Borrower and each other Person required to consent thereto, as applicable under Section 8.07(b)(iii); and
- (iii) confirmation from each Increasing Lender of the increase in the amount of its Revolving Credit Commitment in a writing satisfactory to the Borrower and the Agent.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.18(d), the Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 p.m., by telecopier, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date. Each Increasing Lender and each Assuming Lender shall, before 2:00 p.m. on the Increase Date, make available for the account of its Applicable Lending Office to the Agent at the Agent’s Account, in same day funds, in the case of such Assuming Lender, an amount equal to such Assuming Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase) and, in the case of such Increasing Lender, an amount equal to the excess of (i) such Increasing Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase) over (ii) such Increasing Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment (without giving effect to the relevant Commitment Increase) as a percentage of the aggregate Revolving Credit Commitments (without giving effect to the relevant Commitment Increase)). After the Agent’s receipt of such funds from each such Increasing Lender and each such Assuming Lender, the Agent will promptly thereafter cause to be distributed like funds to the other Lenders for the account of their respective Applicable Lending Offices in an amount to each other Lender such that the aggregate amount of the outstanding Advances owing to each Lender after giving effect to such distribution equals such Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase).

Section 2.19 Affected Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes an Affected Lender, then the following provisions shall apply for so long as such Lender is an Affected Lender:

- (a) fees shall cease to accrue on the Unused Commitment of such Affected Lender pursuant to Section 2.04(a);

(b) the Revolving Credit Commitment and Advances of such Affected Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 8.01), other than any waiver, amendment or modification requiring the consent of all Lenders or of each Lender affected;

(c) if (x) there shall be any Available Amount under any outstanding Letter of Credit or (y) any Swingline Exposure shall exist during any time a Lender is an Affected Lender, then:

(i) so long as no Default or Event of Default has occurred and is continuing, all or any part of the Available Amount of all such Letters of Credit and Swingline Exposure shall be reallocated among the non-Affected Lenders in accordance with their respective Ratable Shares (disregarding any Affected Lender's Revolving Credit Commitment) but only to the extent that with respect to each non-Affected Lender the sum of (A) the aggregate principal amount of all Revolving Advances made by such non-Affected Lender (in its capacity as a Lender) and outstanding at such time plus (B) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding L/C Obligations plus (C) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding Swingline Exposure, does not exceed such non-Affected Lender's Revolving Credit Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Agent (x) first, prepay such unallocable Swingline Exposure and (y) second, Cash Collateralize for the benefit of the applicable Issuing Bank only the Borrower's obligations corresponding to such Affected Lender's Ratable Share of the Available Amount of outstanding Letters of Credit (after giving effect to any partial reallocation pursuant to clause (i) above) (the "Affected Lender Share") in accordance with the procedures set forth in Section 2.03(h) for so long as such there shall be any Available Amount of outstanding Letters of Credit;

(iii) if the Ratable Share of the Available Amount of outstanding Letters of Credit and the Swingline Exposure of the non-Affected Lenders is reallocated pursuant to this Section 2.19(c), then the fees payable to the Lenders pursuant to Section 2.04(a) and Section 2.04(b) shall be adjusted in accordance with such non-Affected Lenders' Ratable Shares;

(iv) if any Affected Lender Share is not reallocated pursuant to clause (i) above and if the Borrower fails to Cash Collateralize any portion of such Affected Lender Share pursuant to clause (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any Lender hereunder, the fee payable under Section 2.04(b) with respect to such Affected Lender Share shall be payable to the Issuing Bank until such Affected Lender Share is reallocated; and

(v) if the Borrower Cash Collateralizes any portion of any Affected Lender Share pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Affected Lender pursuant to Section 2.04(b)(i) or the applicable Issuing Bank pursuant to

Section 2.04(b)(ii) (solely with respect to any fronting fee) with respect to such Affected Lender's Affected Lender Share during the period such Affected Lender's Affected Lender Share is Cash Collateralized;

(d) to the extent the Agent receives any payments or other amounts for the account of an Affected Lender under this Agreement, such Affected Lender shall be deemed to have requested that the Agent use such payment or other amount to fulfill such Affected Lender's previously unsatisfied obligations to fund a Revolving Advance under Section 2.03(c) or Section 2.03A(c) or L/C Advance or any other unfunded payment obligation of such Affected Lender under this Agreement; and

(e) subject to Section 8.18, for the avoidance of doubt, the Borrower, each Issuing Bank, the Swingline Lender, the Agent and each other Lender shall retain and reserve its other rights and remedies respecting each Affected Lender.

In the event that the Agent, the Borrower, the Swingline Lender and the Issuing Banks each agrees that an Affected Lender has adequately remedied all matters that caused such Lender to be an Affected Lender, then the Ratable Shares of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Advances of the other Lenders as the Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances in accordance with its Ratable Share. In addition, at such time as the Affected Lender is replaced by another Lender pursuant to Section 2.20, the Ratable Shares of the Lenders will be readjusted to reflect the inclusion of the replacing Lender's Commitment in accordance with Section 2.20. In either such case, this Section 2.19 will no longer apply.

Section 2.20 Replacement of Lenders. If any Lender requests compensation under Section 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, or if any Lender is an Affected Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 8.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more assignees that shall assume such obligations (which any such assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee specified in Section 8.07(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Advances and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 8.04(e)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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

Section 2.21 Extension of Termination Date

(a) The Borrower may at any time from time to time not more than ninety (90) days and not less than thirty (30) days prior to any anniversary of the Effective Date, by notice to the Agent (who shall promptly notify the Lenders) not later than 10 Business Days prior to the date on which the Lenders are requested to respond thereto (each such date, a “Lender Notice Date”), request that each Lender extend (each such date on which such extension occurs, an “Extension Date”) such Lender’s Termination Date to the date that is one year after the Termination Date then in effect for such Lender (the “Existing Termination Date”).

(b) Each Lender, acting in its sole and individual discretion, shall, by notice to the Agent given not later than the applicable Lender Notice Date, advise the Agent whether or not such Lender agrees to such extension (each Lender that determines to so extend its Termination Date, an “Extending Lender”). Each Lender that determines not to so extend its Termination Date (a “Non-Extending Lender”) shall notify the Agent of such fact promptly after such determination (but in any event no later than the Lender Notice Date), and any Lender that does not so advise the Agent on or before the Lender Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree, and it is understood and agreed that no Lender shall have any obligation whatsoever to agree to any request made by the Borrower for extension of the Termination Date.

(c) The Agent shall promptly notify the Borrower of each Lender’s determination under this Section.

(d) The Borrower shall have the right, but shall not be obligated, on or before the applicable Termination Date for any Non-Extending Lender to replace such Non-Extending Lender with, and add as “Lenders” under this Agreement in place thereof, one or more financial institutions that are Eligible Assignees (each, an “Additional Commitment Lender”) approved by the Agent, each Issuing Bank and the Swingline Lender in accordance with the procedures provided in Section 8.07, each of which Additional Commitment Lenders shall have entered into an Assignment and Assumption (in accordance with and subject to the restrictions contained in Section 8.07, with the Borrower obligated to pay any applicable processing or recordation fee) with such Non-Extending Lender, pursuant to which such Additional Commitment Lenders shall, effective on or before the Termination Date for such Non-Extending Lender, assume a Revolving Credit Commitment (and, if any such Additional Commitment Lender is already a Lender, its Revolving Credit Commitment shall be in addition to such Lender’s Revolving Credit Commitment hereunder on such date). The Agent may effect such amendments to this Agreement as are reasonably necessary to provide for any such extensions with the consent of the Borrower but without the consent of any other Lenders.

(e) If (and only if) the total of the Revolving Credit Commitments of the Lenders that have agreed to extend their Termination Date and the additional Revolving Credit Commitments of the Additional Commitment Lenders is more than 50% of the aggregate amount of the Revolving Credit Commitments in effect immediately prior to the applicable Extension Date, then, effective as of the applicable Extension Date, the Termination Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date that is one year after the Existing Termination Date (except that, if such date is not a Business Day, such Termination Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a “Lender” for all purposes of this Agreement and shall be bound by the provisions of this Agreement as a Lender hereunder and shall have the obligations of a Lender hereunder.

(f) Notwithstanding the foregoing, (x) no more than two (2) extensions of the Termination Date shall be permitted hereunder and (y) any extension of any Termination Date pursuant to this Section 2.21 shall not be effective with respect to any Extending Lender unless as of the applicable Extension Date and immediately after giving effect thereto:

(i) there shall exist no Default;

(ii) the representations and warranties made by the Borrower contained herein shall be true and correct; and

(iii) the Agent shall have received a certificate from the Borrower signed by an Authorized Officer of the Borrower (A) certifying the accuracy of the foregoing clauses (i) and (ii) and (B) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension.

(g) On the Termination Date of each Non-Extending Lender, (i) the Revolving Credit Commitment of each Non-Extending Lender shall automatically terminate and (ii) the Borrower shall repay such Non-Extending Lender in accordance with Section 2.06 (and shall pay to such Non-Extending Lender all of the other obligations owing to it under this Agreement) and after giving effect thereto shall prepay any Revolving Advances outstanding on such date (and pay any additional amounts required pursuant to Section 2.02) to the extent necessary to keep outstanding Revolving Advances ratable with any revised Ratable Share of the respective Lenders effective as of such date, and the Agent shall administer any necessary reallocation of the outstanding Advances (without regard to any minimum borrowing, pro rata borrowing and/or pro rata payment requirements contained elsewhere in this Agreement).

(h) This Section shall supersede any provisions in Section 2.02 or Section 8.01 to the contrary.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Effectiveness. This Agreement shall become effective on and as of the first date (the “Effective Date”) on which the following conditions precedent have been satisfied:

(a) The Lenders shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries as they shall have requested.

(b) The Borrower shall have paid all accrued fees and agreed expenses of the Agent, the Arrangers and the Lenders and the reasonable accrued fees and expenses of one law firm acting as counsel to the Agent that have been invoiced at least one Business Day prior to the Effective Date.

(c) On the Effective Date, the following statements shall be true and the Agent shall have received a certificate signed by a duly authorized officer of the Borrower, dated the Effective Date, stating that:

(i) The representations and warranties contained in Section 4.01 are true and correct on and as of the Effective Date, and

(ii) No event has occurred and is continuing that constitutes a Default.

(d) The Agent shall have received on or before the Effective Date the following, each dated such day, in form and substance satisfactory to the Agent and the Lenders:

(i) Receipt by the Agent of executed counterparts of this Agreement properly executed by a duly authorized officer of the Borrower and by each Lender.

(ii) The Notes, payable to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16.

(iii) The articles of incorporation of the Borrower certified to be true and complete as of a recent date by the appropriate governmental authority of the state or other jurisdiction of its incorporation and certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(iv) The bylaws of the Borrower certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(v) Certified copies of the resolutions of the Board of Directors of the Borrower approving this Agreement and the Notes, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Notes.

(vi) A certificate of the secretary, assistant secretary or associate secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the Notes and the other documents to be delivered hereunder.

(vii) A certificate as of a recent date from the Borrower's state of incorporation evidencing that the Borrower is in good standing in its state of organization or formation.

(viii) A favorable opinion of counsel for the Borrower, in form and substance reasonably acceptable to the Lenders.

(ix) A favorable opinion of Sidley Austin LLP, counsel for the Agent, in form and substance reasonably acceptable to the Lenders.

(e) Concurrently with or before the Effective Date, (i) all principal, interest and other amounts outstanding under the Borrower's Existing Credit Agreement shall be repaid and satisfied in full, (ii) all commitments to extend credit under the Existing Credit Agreement shall be terminated and (iii) any letters of credit outstanding under the Existing Credit Agreement shall have been terminated, canceled, transferred or replaced; and the Agent shall have received evidence of the foregoing satisfactory to it, including an escrow agreement or payoff letter executed by the lenders or the agent under the Existing Credit Agreement if applicable.

(f) The Agent shall have received evidence satisfactory to it that that certain \$500,000,000 Five-Year Credit Agreement dated as of May 13, 2016 by and among APS, as borrower, the lenders from time to time parties thereto and Barclays Bank PLC, as administrative agent, shall have been terminated and cancelled and all indebtedness and other amounts due and unpaid thereunder shall have been (or shall concurrently with the effectiveness of this Agreement be) fully repaid on terms and conditions reasonably acceptable to the Agent.

(g) The Agent shall have received reasonably satisfactory evidence that that certain \$500,000,000 Five-Year Credit Agreement, dated as of July 12, 2018, by and among APS, as borrower, the lenders from time to time parties thereto and Barclays Bank PLC, as administrative agent, shall be effective prior to or substantially concurrently with the effectiveness of this Agreement.

(h) PATRIOT Act. At least five days prior to the Effective Date, the Borrower shall have provided to the Agent and the Lenders the documentation and other information reasonably requested by the Agent, and reasonably available to the Borrower, in order to comply with requirements of the PATRIOT Act.

(i) In the event that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Borrower shall deliver, at least five days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower.

Section 3.02 Conditions Precedent to Each Credit Extension and Commitment Increase. The obligation of each Lender to make an Advance (other than an L/C Advance or an Advance made pursuant to Section 2.03(c) or Section 2.03A(c)) on the occasion of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit, and each Commitment Increase shall be subject to the conditions precedent that the Effective Date shall have occurred and on the date of such Borrowing or such issuance (as the case may be), or the applicable Increase Date, the following statements shall be true (and each of the giving of the applicable Notice of Borrowing or request for issuance and the acceptance by the Borrower of the proceeds

of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or date of such issuance such statements are true):

(a) the representations and warranties contained in Section 4.01 (other than Section 4.01(k)), and in the case of a Borrowing or issuance of a Letter of Credit, Section 4.01(e)(ii) and Section 4.01(f)(ii)) are correct on and as of such date, before and after giving effect to such Borrowing or issuance of a Letter of Credit, or such Commitment Increase and to the application of the proceeds therefrom, as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such Borrowing or issuance of a Letter of Credit, or such Commitment Increase or from the application of the proceeds therefrom, that constitutes a Default.

Each request for Credit Extension (which shall not include a Conversion or a continuation of Eurodollar Rate Advances) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 3.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

Section 3.03 Determinations Under Section 3.01. For purposes of determining compliance with the conditions specified in Section 3.01 and the satisfaction of each Lender with respect to letters delivered to it from the Borrower as set forth in Section 4.01(a), Section 4.01(e) and Section 4.01(f), each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Borrower designates as the proposed Effective Date, specifying its objection thereto. The Agent shall promptly notify the Lenders and the Borrower of the occurrence of the Effective Date.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) Each of the Borrower and each Material Subsidiary: (i) is a corporation or other entity duly organized and validly existing under the Laws of the jurisdiction of its incorporation or organization; (ii) has all requisite corporate or if the Material Subsidiary is not a corporation, other comparable power necessary to own its assets and carry on its business as presently conducted; (iii) has all governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as presently conducted, if the failure to have any such license, authorization, consent or approval is reasonably likely to have a Material Adverse Effect and except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each

Lender in its sole discretion) and except that (A) APS from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (B) from time to time communities served by APS may become incorporated and considerable time may elapse before such a franchise is procured, (C) certain such franchises may have expired prior to the renegotiation thereof, (D) certain minor defects and exceptions may exist which, individually and in the aggregate, are not material and (E) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope); and (iv) is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify is reasonably likely to have a Material Adverse Effect.

(b) The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, and the consummation of the transactions contemplated hereby and thereby, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not or did not (i) contravene the Borrower's articles of incorporation or by-laws, (ii) contravene any Law, decree, writ, injunction or determination of any Governmental Authority, in each case applicable to or binding upon the Borrower or any of its properties, (iii) contravene any contractual restriction binding on or affecting the Borrower or (iv) cause the creation or imposition of any Lien upon the assets of the Borrower or any Material Subsidiary, except for Liens created under this Agreement and except where such contravention or creation or imposition of such Lien is not reasonably likely to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the Notes to be delivered by it.

(d) This Agreement has been, and each of the other Loan Documents upon execution and delivery will have been, duly executed and delivered by the Borrower. This Agreement is, and each of the other Loan Documents upon execution and delivery will be, the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with their respective terms, subject, however, to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally.

(e) (i) The Consolidated balance sheet of the Borrower as of December 31, 2017, and the related Consolidated statements of income and cash flows of the Borrower for the fiscal year then ended, accompanied by an opinion thereon of Deloitte & Touche LLP, independent registered public accountants and the Consolidated balance sheet of the Borrower as of March 31, 2018, and the related Consolidated statements of income and cash flows of the Borrower for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to the Agent, fairly present in all material respects, subject, in the case of said balance sheet at March 31, 2018, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower as at such dates and the Consolidated results of the operations of the Borrower for the periods ended on such dates, all in accordance with GAAP (except as disclosed therein), and (ii) except as disclosed

to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion), since December 31, 2017, there has been no Material Adverse Effect.

(f) There is no pending or, to the knowledge of an Authorized Officer of the Borrower, threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby or (ii) would be reasonably likely to have a Material Adverse Effect (except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion)) and there has been no adverse change in the status, or financial effect on the Borrower or any of its Subsidiaries, of such disclosed litigation that would be reasonably likely to have a Material Adverse Effect.

(g) No proceeds of any Advance will be used to acquire any equity security not issued by the Borrower of a class that is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

(h) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, in any case in violation of Regulation U. After application of the proceeds of any Advance, not more than 25% of the value of the assets subject to any restriction under this Agreement on the right to sell, pledge, transfer, or otherwise dispose of such assets is represented by margin stock.

(i) The Borrower and its Subsidiaries have filed all United States of America Federal income Tax returns and all other material Tax returns which are required to be filed by them and have paid all Taxes due pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries, except to the extent that (i) such Taxes are being contested in good faith and by appropriate proceedings and that appropriate reserves for the payment thereof have been maintained by the Borrower and its Subsidiaries in accordance with GAAP or (ii) the failure to make such filings or such payments is not reasonably likely to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Material Subsidiaries as set forth in the most recent financial statements of the Borrower delivered to the Agent pursuant to Section 4.01(e) or Section 5.01(h)(i) or Section 5.01(h)(ii) hereof in respect of Taxes and other governmental charges are, in the opinion of the Borrower, adequate.

(j) Set forth on Schedule 4.01(j) hereto (as such schedule may be modified from time to time by the Borrower by written notice to the Agent) is a complete and accurate list of all the Material Subsidiaries of the Borrower.

(k) Set forth on Schedule 4.01(k) hereto is a complete and accurate list identifying any Indebtedness of the Borrower outstanding in a principal amount equal to or exceeding \$5,000,000 and which is not described in the financial statements referred to in Section 4.01(e).

(l) The Borrower is not an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

(m) No report, certificate or other written information furnished by the Borrower or any of its Subsidiaries to the Agent, any Arranger or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) at the time so furnished, when taken together as a whole with all such written information so furnished, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except as would not reasonably be expected to result in a Material Adverse Effect; provided that with respect to any projected financial information, forecasts, estimates or forward-looking information, the Borrower represents only that such information and materials have been prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such forecasts, and no representation or warranty is made as to the actual attainability of any such projections, forecasts, estimates or forward-looking information.

(n) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Affiliates over which any of the foregoing exercises management control (each, a “Controlled Affiliate”) or any director or officer of the Borrower, any of its Subsidiaries or any of their respective Controlled Affiliates (each, a “Manager”) is a Prohibited Person, and the Borrower, its Subsidiaries and, to the knowledge of the Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(o) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Controlled Affiliates or Managers: (i) is the target of Sanctions; (ii) is owned or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; (iii) is, or is owned or controlled by, a Person who is located, organized or resident in a country, region or territory that is, or whose government is, the subject of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria, or (iv) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State, or any other applicable Governmental Authority.

(p) None of the Borrower’s or its Subsidiaries’ assets constitute property of, or are beneficially owned, directly or indirectly, by any Person that is the target of Sanctions, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the “Trading With the Enemy Act”), any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as

amended) (the “ Foreign Assets Control Regulations ”) or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which includes, without limitation, (i) Executive Order No. 13224, effective as of September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “ Executive Order ”) and (ii) the PATRIOT Act), if the result of such ownership would be that any Credit Extension made by any Lender would be in violation of law (“ Embargoed Person ”); (a) no Embargoed Person has any interest of any nature whatsoever in the Borrower if the result of such interest would be that any Credit Extension would be in violation of law; (b) the Borrower has not engaged in business with Embargoed Persons if the result of such business would be that any Credit Extension made by any Lender would be in violation of law; (c) the Borrower will not, directly or indirectly, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions or Anti-Corruption Laws by any Person (including any Person participating in the Credit Extensions, whether as a Lender or otherwise), and (d) neither the Borrower nor any Controlled Affiliate (i) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) to the knowledge of the Borrower, engages in any dealings or transactions, or be otherwise associated, with any such “blocked person”. For purposes of determining whether or not a representation is true under this Section 4.01(p) with respect to the securities of the Borrower, the Borrower shall not be required to make any investigation into (x) the ownership of publicly traded stock or other publicly traded securities or (y) the beneficial ownership of any collective investment fund.

(q) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower and its Subsidiaries, any of their respective Managers, has failed to comply with the U.S. Foreign Corrupt Practices Act, as amended from time to time (the “ FCPA ”), or any other applicable Anti-Corruption Laws, and it and they have not made, offered, promised or authorized, and will not make, offer, promise or authorize, whether directly or indirectly, any payment, of anything of value to a Government Official while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity or (c) securing an improper advantage, in each case in order to obtain, retain or direct business.

(r) If Borrower is required to deliver a Beneficial Ownership Certificate, as of the Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

(s) The Borrower is not an EEA Financial Institution.

ARTICLE V

COVENANTS OF THE BORROWER

Section 5.01 Affirmative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall:

(a) Compliance with Laws, Etc. (i) Comply, and cause each of its Material Subsidiaries to comply, in all material respects, with all applicable Laws of Governmental Authorities, such compliance to include, without limitation, compliance with ERISA and Environmental Laws, unless the failure to so comply is not reasonably likely to have a Material Adverse Effect and (ii) comply at all times with all Laws, orders, decrees, writs, injunctions or determinations of any Governmental Authority relating to the incurrence or maintenance of Indebtedness by the Borrower, such compliance to include, without limitation, compliance with the PATRIOT Act, all applicable orders, rules and regulations of OFAC, the FCPA, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970 and other Anti-Corruption Laws, except (other than in the case of the PATRIOT Act, the applicable orders, rules and regulations of OFAC, or the FCPA, or any similar applicable laws) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, all Taxes imposed upon it or upon its property; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such Tax (i) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained in accordance with GAAP or (ii) if the failure to pay such Tax is not reasonably likely to have a Material Adverse Effect.

(c) Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates; provided, however, that the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises (other than “franchises” as described in Arizona Revised Statutes, Section 40-283 or any successor provision) reasonably necessary in the normal conduct of its business, if the failure to maintain such rights or privileges is reasonably likely to have a Material Adverse Effect, and, in the case of APS, will cause APS to use its commercially reasonable efforts to preserve and maintain such franchises reasonably necessary in the normal conduct of its business, except that (i) APS from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (ii) from time to time communities served by APS may become incorporated and considerable time may elapse before such a franchise is procured, (iii) certain such franchises may have expired prior to the renegotiation thereof, (iv) certain minor defects and exceptions may exist

which, individually and in the aggregate, are not material and (v) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope; provided, however, that the Borrower and its Subsidiaries may consummate any merger or consolidation permitted under Section 5.02(b).

(e) Visitation Rights. At any reasonable time and from time to time, permit and cause each of its Subsidiaries to permit the Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any of their officers or directors; provided, however, that the Borrower and its Subsidiaries reserve the right to restrict access to any of its properties in accordance with reasonably adopted procedures relating to safety and security; and provided further that the costs and expenses incurred by such Lender or its agents or representatives in connection with any such examinations, copies, abstracts, visits or discussions shall be, upon the occurrence and during the continuation of a Default, for the account of the Borrower and, in all other circumstances, for the account of such Lender.

(f) Keeping of Books. Keep, and cause each of its Material Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in a manner that permits the preparation of financial statements in accordance with GAAP.

(g) Maintenance of Properties, Etc. Keep, and cause each Material Subsidiary to keep, all property useful and necessary in its business in good working order and condition (ordinary wear and tear excepted), if the failure to do so is reasonably likely to have a Material Adverse Effect, it being understood that this covenant relates only to the working order and condition of such properties and shall not be construed as a covenant not to dispose of properties.

(h) Reporting Requirements. Furnish to the Agent:

(i) as soon as available and in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2018, (A) for each such fiscal quarter of the Borrower, Consolidated statements of income and cash flows of the Borrower for such fiscal quarter and the related Consolidated balance sheet of the Borrower as of the end of such fiscal quarter, setting forth in each case in comparative form the corresponding figures for the corresponding fiscal quarter in (or, in the case of the balance sheet, as of the end of) the preceding fiscal year and (B) for the period commencing at the end of the previous fiscal year and ending with the end of such fiscal quarter, Consolidated statements of income and cash flows of the Borrower for such period setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year; provided that so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(i), its report on Form 10-Q for such fiscal quarter. Each set of financial statements provided under this Section 5.01(h)(i) shall be accompanied by a certificate of an Authorized Officer, which certificate shall state that said Consolidated financial

statements fairly present in all material respects the Consolidated financial condition and results of operations and cash flows of the Borrower in accordance with GAAP (except as disclosed therein), as at the end of, and for, such period (subject to normal year-end audit adjustments) and shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03 ;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2018, audited Consolidated statements of income and cash flows of the Borrower for such year and the related Consolidated balance sheet of the Borrower as at the end of such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year; provided that, so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(ii), its report on Form 10-K for such fiscal year. Each set of financial statements provided pursuant to this Section 5.01(h)(ii) shall be accompanied by (A) an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that said Consolidated financial statements fairly present in all material respects the Consolidated financial condition and results of operations of the Borrower as at the end of, and for, such fiscal year, in accordance with GAAP (except as disclosed therein) and (B) a certificate of an Authorized Officer, which certificate shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03 ;

(iii) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence of each Default continuing on the date of such statement, a statement of an Authorized Officer of the Borrower setting forth details of such Default and the action that the Borrower has taken and proposes to take with respect thereto;

(iv) promptly after the sending or filing thereof, copies of all reports and registration statements (other than exhibits thereto and registration statements on Form S-8 or its equivalent) that the Borrower or any Subsidiary files with the Securities and Exchange Commission;

(v) promptly after an Authorized Officer becomes aware of the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 4.01(f), except, with respect to any matter referred to in Section 4.01(f)(ii), to the extent disclosed in a report on Form 8-K, Form 10-Q or Form 10-K of the Borrower;

(vi) promptly after an Authorized Officer becomes aware of the occurrence thereof, notice of any change by Moody's or S&P of its respective Public Debt Rating or of the cessation (or subsequent commencement) by Moody's or S&P of publication of their respective Public Debt Rating;

(vii) promptly after the occurrence thereof, notice of the occurrence of any ERISA Event, together with (x) a written statement of an Authorized Officer of the Borrower specifying the details of such ERISA Event and the action that the Borrower has taken and proposes to take with respect thereto, (y) a copy of any notice with respect to such ERISA Event that may be required to be filed with the PBGC and (z) a copy of any notice delivered by the PBGC to the Borrower or an ERISA Affiliate with respect to such ERISA Event;

(viii) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence thereof, notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

(ix) promptly following request therefor, (a) such information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws; or (b) such other information respecting the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

Information required to be delivered pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv) above shall be deemed to have been delivered on the date on which the Borrower provides notice to the Agent that such information has been posted on the Borrower’s website on the Internet at www.pinnaclewest.com, at sec.gov/edaux/searches.htm or at another website identified in such notice and accessible by the Lenders without charge; provided that (i) such notice may be included in a certificate delivered pursuant to Section 5.01(h)(i) or Section 5.01(h)(ii) and (ii) the Borrower shall deliver paper copies of the information referred to in Section 5.01(h)(i), Section 5.01(h)(ii), and Section 5.01(h)(iv) to any Lender which requests such delivery.

(i) Change in Nature of Business. Conduct directly or through its Subsidiaries the same general type of business conducted by the Borrower and its Material Subsidiaries on the date hereof.

Section 5.02 Negative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall not:

(a) Liens, Etc. Directly or indirectly create, incur, assume or permit to exist any Lien securing Indebtedness for borrowed money on or with respect to any property or asset (including, without limitation, the capital stock of APS) of the Borrower, whether now owned or held or hereafter acquired (unless it makes, or causes to be made, effective provision whereby the Obligations will be equally and ratably secured with any and all other obligations thereby secured so long as such other Indebtedness shall be so secured, such security to be pursuant to an agreement reasonably satisfactory to the Required Lenders); provided, however, that this Section 5.02(a) shall not apply to Liens securing Indebtedness for borrowed money (other than Indebtedness for borrowed money secured by the capital stock of APS) which do not in the aggregate exceed at any time outstanding the principal amount of \$50,000,000.

(b) Mergers, Etc. Merge or consolidate with or into any Person, or permit any of its Material Subsidiaries to do so, except that (i) any Material Subsidiary of the Borrower may merge or consolidate with or into any other Material Subsidiary of the Borrower, (ii) any Subsidiary of the Borrower may merge into the Borrower or any Material Subsidiary of the Borrower and (iii) the Borrower or any Material Subsidiary may merge with any other Person so long as the Borrower or such Material Subsidiary is the surviving corporation, provided, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of, or permit any of its Material Subsidiaries to sell, lease, transfer or otherwise dispose of, any assets, or grant any option or other right to purchase, lease or otherwise acquire any assets to any Person other than the Borrower or any Subsidiary of the Borrower, except (i) dispositions in the ordinary course of business, including, without limitation, sales or other dispositions of electricity and related and ancillary services, other commodities, emissions credits and similar mechanisms for reducing pollution, and damaged, obsolete, worn out or surplus property no longer required or useful in the business or operations of the Borrower or any of its Subsidiaries, (ii) sale or other disposition of patents, copyrights, trademarks or other intellectual property that are, in the Borrower's reasonable judgment, no longer economically practicable to maintain or necessary in the conduct of the business of the Borrower or its Subsidiaries and any license or sublicense of intellectual property that does not interfere with the business of the Borrower or any Material Subsidiary, (iii) in a transaction authorized by subsection (b) of this Section, (iv) individual dispositions occurring in the ordinary course of business which involve assets with a book value not exceeding \$5,000,000, (v) sales, leases, transfers or dispositions of assets during the term of this Agreement having an aggregate book value not to exceed 30% of the total of all assets properly appearing on the most recent balance sheet of the Borrower provided pursuant to Section 4.01(e)(i) or Section 5.01(h)(ii) hereof, (vi) at any time following the consummation of the Four Corners Acquisition, which occurred on December 30, 2013, and the closure by APS of Units 1, 2 and 3 of the Four Corners Power Plant near Farmington, New Mexico, as described in the SEC Reports, (A) disposition of all or any portion of APS' interests in such Units 1, 2 and 3, or (B) disposition of all or any portion of any Subsidiary's (other than APS) interests in Units 4 and 5 of the Four Corners Power Plant near Farmington, New Mexico, and (vii) any Lien permitted under Section 5.02(a).

(d) Ownership of APS. Except to the extent permitted under Section 5.02(b), the Borrower will at all times continue to own directly or indirectly at least 80% of the outstanding capital stock of APS.

Section 5.03 Financial Covenant. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower will maintain a ratio of (a) Consolidated Indebtedness to (b) the sum of Consolidated Indebtedness plus Consolidated Net Worth of not greater than 0.65 to 1.0.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01 Events of Default. If any of the following events (“Events of Default”) shall occur and be continuing:

(a) The Borrower shall fail to pay when due (i) any principal of any Advance, (ii) any drawing under any Letter of Credit, or (iii) any interest on any Advance or any other fees or other amounts payable under this Agreement or any other Loan Documents, and (in the case of this clause (iii) only), such failure shall continue for a period of three Business Days; or

(b) Any representation or warranty made by the Borrower herein or by the Borrower (or any of its officers) in any certificate or other document delivered in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made or furnished; or

(c) (i) The Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 2.17, Section 5.01(d) (as to the corporate existence of the Borrower), Section 5.01(h)(iii), Section 5.01(h)(vi), Section 5.02 or Section 5.03, or (ii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in Section 5.01(e) if such failure shall remain unremedied for 15 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender or (iii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender; or

(d) (i) The Borrower or any of its Material Subsidiaries shall fail to pay (A) any principal of or premium or interest on any Indebtedness that is outstanding in a principal amount of at least \$35,000,000 in the aggregate (but excluding Indebtedness outstanding hereunder), or (B) an amount, or post collateral as contractually required in an amount, of at least \$35,000,000 in respect of any Hedge Agreement, of the Borrower or such Material Subsidiary (as the case may be), in each case, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness or Hedge Agreement; or (ii) any event of default shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or

(e) The Borrower or any of its Material Subsidiaries shall fail to pay any principal of or premium or interest in respect of any operating lease in respect of which the payment obligations of the Borrower have a present value of at least \$35,000,000, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in such operating lease, if the effect of such failure is to terminate, or to permit the termination of, such operating lease; or

(f) The Borrower or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall

make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Debtor Relief Law, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower or any of its Material Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) Judgments or orders for the payment of money that exceeds any applicable insurance coverage (the insurer of which shall be rated at least "A" by A.M. Best Company) by more than \$35,000,000 in the aggregate shall be rendered against the Borrower or any Material Subsidiary and such judgments or orders shall continue unsatisfied or unstayed for a period of 45 days; or

(h) (i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 30% or more of the equity securities of the Borrower entitled to vote for members of the board of directors of the Borrower; or (ii) during any period of 24 consecutive months, a majority of the members of the board of directors of the Borrower cease (other than due to death or disability) to be composed of individuals (A) who were members of that board on the first day of such period, (B) whose election or nomination to that board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or (C) whose election or nomination to that board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board; or

(i) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$35,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$35,000,000;

then, and in any such event, the Agent shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, (i) declare the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, (ii) declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of

any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, (A) the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower and (iii) exercise all rights and remedies available to it under this Agreement, the other Loan Documents and applicable Law.

Section 6.02 Actions in Respect of Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may with the consent, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, (a) make demand upon the Borrower to, and forthwith upon such demand the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Required Lenders, provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. If at any time the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or interest of any Person other than the Agent, the Issuing Banks and the Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Deposit Account that are free and clear of any such right and interest. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable Law, or each Lender to the extent such Lender has funded a Revolving Advance in respect of such Letter of Credit. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a Lien upon and security interest in the L/C Cash Deposit Account and all amounts held therein from time to time as security for the L/C Obligations, and for application to the Borrower's reimbursement obligations as and when the same shall arise. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. After all such Letters of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be promptly returned to the Borrower.

ARTICLE VII

THE AGENT

Section 7.01 Appointment and Authority. Each of the Lenders (for purposes of this Article, references to the Lenders shall also mean the Issuing Banks) hereby irrevocably appoints Barclays

to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as set forth in Section 7.06, the provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any of its Affiliates shall have rights as a third party beneficiary of any of such provisions.

Section 7.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 7.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law; and

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

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 6.01 and Section 8.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent by the Borrower or a Lender.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder

or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 7.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Advance, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in good faith in accordance with the advice of any such counsel, accountants or experts.

Section 7.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Section 7.06 Resignation of Agent. The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower so long as no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United States of America, or an Affiliate of any such bank with an office in the United States of America. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 45 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan

Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be as agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 8.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

Section 7.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 7.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Syndication Agents, Documentation Agents or other agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

Section 7.09 Issuing Banks. Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities provided in this Article VII (other than Section 7.02) to the same extent as such provisions apply to the Agent.

Section 7.10 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Advances, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agent or the Arrangers, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Advances, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent or any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Advances, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Advances, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Advances, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Advances, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments, Etc. Except as provided in Section 2.21 with respect to the extension of the then-existing Termination Date, no amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall

(a) unless agreed to by each Lender directly affected thereby, (i) reduce or forgive the principal amount of any Advance or the Borrower's obligations to reimburse any drawing on a

Letter of Credit, reduce the rate of or forgive any interest thereon (provided that only the consent of the Required Lenders shall be required to waive the applicability of any post-default increase in interest rates), or reduce or forgive any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), (ii) extend the final scheduled maturity date or any other scheduled date for the payment of any principal of or interest on any Advance, extend the time of payment of any obligation of the Borrower to reimburse any drawing on any Letter of Credit or any interest thereon, extend the expiry date of any Letter of Credit beyond the Letter of Credit Expiration Date, or extend the time of payment of any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), or (iii) increase any Revolving Credit Commitment of any such Lender over the amount thereof in effect or extend the maturity thereof (it being understood that a waiver of any condition precedent set forth in Section 3.02 or of any Default, if agreed to by the Required Lenders or all Lenders (as may be required hereunder with respect to such waiver), shall not constitute such an increase);

(b) unless agreed to by all of the Lenders, (i) reduce the percentage of the aggregate Revolving Credit Commitments or of the aggregate unpaid principal amount of the Advances, or the number or percentage of Lenders, that shall be required for the Lenders or any of them to take or approve, or direct the Agent to take, any action hereunder or under any other Loan Document (including as set forth in the definition of “Required Lenders”), (ii) change any other provision of this Agreement or any of the other Loan Documents requiring, by its terms, the consent or approval of all the Lenders for such amendment, modification, waiver, discharge or termination thereof or any consent to any departure by the Borrower therefrom, or (iii) change or waive any provision of Section 2.15, any other provision of this Agreement or any other Loan Document requiring pro rata treatment of any Lenders, or this Section 8.01 or Section 2.19(b); and

(c) unless agreed to by the Issuing Banks, the Swingline Lender, if any, or the Agent in addition to the Lenders required as provided hereinabove to take such action, affect the respective rights or obligations of the Issuing Banks, the Swingline Lender, if any, or the Agent, as applicable, hereunder or under any of the other Loan Documents.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) pursuant to an increase in the Revolving Credit Commitment pursuant to Section 2.18 with only the consents prescribed by such Section.

(e) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender directly affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, each Issuing Bank and the Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such

date and to comply with the requirements of clause (b) of Section 8.07, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Section 2.11 and Section 2.14, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 8.04(e) had the Advances of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

Section 8.02 Notices, Etc.

(a) All notices and other communications provided for hereunder shall be either (x) in writing (including facsimile communication) and mailed, faxed or delivered or (y) as and to the extent set forth in Sections 8.02(b) and (c) and in the proviso to this Section 8.02(a), if to the Borrower, at the address specified on Schedule 8.02; if to any Lender, at its Domestic Lending Office; if to the Agent, at the address specified on Schedule 8.02; if to the Swingline Lender, at the address specified by the Swingline Lender to the Borrower and the Agent, and if to any Issuing Bank, at the address specified on Schedule 8.02 or, as to the Borrower or the Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Agent. All such notices and communications shall, when mailed or faxed, be effective when deposited in the mails or faxed, respectively, except that notices and communications to the Agent pursuant to Article II, Article III or Article VIII shall not be effective until received by the Agent. Delivery by facsimile of an executed counterpart of any amendment or waiver of any provision of this Agreement or the Notes or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b). Upon request of the Borrower, the Agent will provide to the Borrower (i) copies of each Administrative Questionnaire or (ii) the address of each Lender.

(b) Notices and other communications to the Lenders, the Agent and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent and agreed to by the Borrower, provided that the foregoing shall not apply to notices to any Lender or the Issuing Banks pursuant to Article II if such Lender or the Issuing Banks, as applicable, has notified the Agent and the Borrower that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Agent and the Borrower otherwise agree, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have

been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Borrower agrees that the Agent may make materials delivered to the Agent pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv), as well as any other written information, documents, instruments and other material relating to the Borrower or any of its Subsidiaries and relating to this Agreement, the Notes or the transactions contemplated hereby, or any other materials or matters relating to this Agreement, the Notes or any of the transactions contemplated hereby (collectively, the “Communications”) available to the Lenders by posting such notices on Intralinks or a substantially similar electronic system (the “Platform”). The Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent or any of its Affiliates in connection with the Platform.

(d) Each Lender agrees that notice to it (as provided in the next sentence) (a “Notice”) specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender the Agent shall deliver a copy of the Communications to such Lender by e-mail, facsimile or mail. Each Lender agrees (i) to notify the Agent in writing of such Lender’s e-mail address to which a Notice may be sent by electronic transmission (including by electronic communication) on or before the date such Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Agent has on record an effective e-mail address for such Lender) and (ii) that any Notice may be sent to such e-mail address.

(e) The Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that (w) all Communications that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Communications “PUBLIC,” the Borrower shall be deemed to have authorized the Agent, the Arrangers and the Lenders to treat such Communications as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States of America federal and state securities laws; (y) all Communications marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor;” and (z) the Agent and the Arrangers shall be entitled to treat any Communications

that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Communications “PUBLIC.” Notwithstanding anything to the contrary herein, the Borrower and the Agent need not provide to any Public Lender any information, notice, or other document hereunder that is not public information, including without limitation, the Notice of Borrowing and any notice of Default.

Section 8.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, any Issuing Bank or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Article VI for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 8.05 (subject to the terms of Section 2.15), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 8.04 Costs and Expenses; Indemnity; Damage Waiver.

(a) The Borrower agrees to pay on demand all costs and expenses of the Agent in connection with the administration, modification and amendment of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, the reasonable fees and expenses of one law firm acting as counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, reasonable fees

and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this Section 8.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Agent (and any sub-agent thereof), each Lender, each Arranger, the Syndication Agent, the Co-Documentation Agents and each Related Party of any of the foregoing (each, an “Indemnified Party”) from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith, whether based on contract, tort or any other theory), (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of any Advance or Letter of Credit (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent (a) such fees and expenses are expressly stated in this Agreement to be payable by the Indemnified Party, included expenses payable under Section 2.14, Section 5.01(e) and Section 8.07(b) or (b) such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence, willful misconduct or material breach of its obligations under this Agreement, in which case any fees and expenses previously paid or advanced by the Borrower to such Indemnified Party in respect of such indemnified obligation will be returned by such Indemnified Party. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated, provided that if the Borrower and such Indemnified Party are adverse parties in any such litigation or proceeding, and the Borrower prevails in a final, non-appealable judgment by a court of competent jurisdiction, any amounts under this Section 8.04(b) previously paid or advanced by the Borrower to such Indemnified Party pursuant to this Section 8.04(b) will be returned by such Indemnified Party.

(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing (and without limiting its obligation to do so), each Lender severally agrees to pay to the Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender’s Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the

foregoing acting for the Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity.

(d) Without limiting the rights of indemnification of the Indemnified Parties set forth in this Agreement with respect to liabilities asserted by third parties, each party hereto also agrees not to assert any claim for special, indirect, consequential or punitive damages against the other parties hereto, or any Related Party of any party hereto, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any other Loan Document, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or the Letters of Credit. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems (including Intralinks, SyndTrak or similar systems) in connection with this Agreement or the other Loan Documents, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent such damages are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

(e) If any payment of principal of, or Conversion of, any Eurodollar Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Revolving Advance, as a result of a payment or Conversion pursuant to Section 2.08(d) or (e), Section 2.10 or Section 2.12, acceleration of the maturity of the Revolving Advances pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Revolving Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 2.19, the Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Revolving Advance.

(f) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Section 2.02(c), Section 2.11, Section 2.14 and Section 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

Section 8.05 Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Advances due and payable pursuant to the provisions of Section 6.01, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such

Lender or Issuing Bank, whether or not such Lender or Issuing Bank shall have made any demand under this Agreement or such Note and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness. Each Lender and each Issuing Bank agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and each Issuing Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender may have.

Section 8.06 Effectiveness; Binding Effect. Except as provided in Section 3.01, this Agreement shall become effective when it shall have been executed by the Borrower and the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders (and any purported assignment without such consent shall be null and void).

Section 8.07 Successors and Assigns.

(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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (and any purported assignment or transfer without such consent shall be null and void) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees (other than to an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and the Revolving Advances (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment and the Revolving Advances at the time owing to it or in the case of an

assignment to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Revolving Advances outstanding thereunder) or, if the Revolving Credit Commitment is not then in effect, the principal outstanding balance of the Revolving Advances of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to which such assignment is delivered to the Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Revolving Advances, L/C Obligations, Swingline Exposure or the Revolving Credit Commitment assigned, and each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received written notice thereof) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender;

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(D) the consent of the Swingline Lender, if any, (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to

participate in exposure under Swingline Advances (whether or not then outstanding).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that no such fee shall be payable in the case of an assignment made at the request of the Borrower to an existing Lender. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Ineligible Institutions. No such assignment shall be made to any Ineligible Institution.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section and notice thereof to the Borrower, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Agent shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitments of, and principal amounts of the Advances and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than an Ineligible Institution) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and/or the Revolving Advances (including such Lender's participations in L/C Obligations) 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, the Agent, the Lenders and the Issuing Banks shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations

under this Agreement and (iv) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Note, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification addressing the matters set forth in clause (iv) above to the extent subject to such participation. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04(e) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 8.05 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Advances or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.11 or Section 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.14 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.14(e) as though it were a Lender.

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

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

(g) Resignation as an Issuing Bank after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Issuing Bank assigns all of its Revolving Credit Commitment and Revolving Advances pursuant to subsection (b) above, such Issuing Bank may, upon 30 days' notice to the Borrower and the Lenders, resign as an Issuing Bank. If any Issuing Bank resigns, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Advances or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)).

(h) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 8.08 Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of the Borrower furnished to the Agent or the Lenders by the Borrower (such information being referred to collectively herein as the "Borrower Information"), except that each of the Agent and each of the Lenders may disclose Borrower Information (i) to its and its Affiliates' employees, officers, directors, agents and advisors having a need to know in connection with this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential on substantially the same terms as provided herein), (ii) to the extent requested by any regulatory authority or self-regulatory body, (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 8.08, (A) to any assignee or participant or prospective assignee or participant, (B) to any direct, indirect, actual or prospective counterparty (and its advisor) to any swap, derivative or securitization transaction related to the obligations under this Agreement and (C) to any credit insurance provider relating to the Borrower and its Obligations, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 8.08 by the Agent or such Lender or their Related Parties, or (B) is or becomes available to the Agent or such Lender on a nonconfidential basis from a source other than the Borrower (provided that the source of such information was not known by the recipient after inquiry to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other Person with respect to such information)

and (viii) with the consent of the Borrower. The obligations under this Section 8.08 shall survive for two calendar years after the date of the termination of this Agreement.

Section 8.09 Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the Laws of the State of New York.

Section 8.10 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 8.11 Jurisdiction, Etc.

(a) Each of the parties hereto hereby submits to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by Law, in such federal court.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Notes in any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 8.12 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing

Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 8.13 Patriot Act and Beneficial Ownership Regulation. The Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each borrower (including the Borrower), guarantor or grantor (the “Loan Parties”), which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Agent or any Lender in order to assist the Agent and such Lender in maintaining compliance with the PATRIOT Act and the Beneficial Ownership Regulation.

Section 8.14 Waiver of Jury Trial. EACH OF THE BORROWER, THE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF THE BORROWER, THE AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

Section 8.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm’s-length commercial transaction between the Borrower, on the one hand, and the Agent, each of the Lenders and each of the Arrangers, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each of the Agent, the Lenders and the Arrangers is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Agent nor any Lender or Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Agent or any Lender or Arranger has advised or is currently advising the Borrower or any of its Affiliates on other matters) and neither the Agent nor any Lender or Arranger has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Agent, each of the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Agent nor any Lender or Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship;

and (v) the Agent and each Lender and Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against the Agent and each Lender and Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with the Loan Documents.

Section 8.16 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf, and shall continue in full force and effect as long as any Advance or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 8.17 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.18 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, (such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

PINNACLE WEST CAPITAL CORPORATION

By: /s/ Lee R. Nickloy

Name: Lee R. Nickloy

Title: Vice President and Treasurer

ADMINISTRATIVE AGENT:

BARCLAYS BANK PLC , as Agent, Issuing Bank and Lender

By: /s/ Sydney G. Dennis
Name: Sydney G. Dennis
Title: Director

LENDERS:

MIZUHO BANK, LTD., as a Lender and as an Issuing Bank

By: /s/ Tracy Rahn

Name: Tracy Rahn

Title: Authorized Signatory

LENDERS:

BANK OF AMERICA, N.A., as a Lender and as an Issuing
Bank

By: /s/ Maggie Halleland

Name: Maggie Halleland

Title: Vice President

LENDERS:

JPMORGAN CHASE BANK, N.A, as a Lender and as an
Issuing Bank

By: /s/ Nancy R. Barwig
Name: Nancy R. Barwig
Title: Credit Risk Director

LENDERS:

SUNTRUST BANK, as a Lender and as an Issuing Bank

By: /s/ Arize Agumadu

Name: Arize Agumadu

Title: Vice President

LENDERS:

MUFG BANK,LTD., as a Lender and as an Issuing Bank

By: /s/ Maria Ferracias

Name: Maria Ferracias

Title: Director

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a
Lender and as an Issuing Bank

By: /s/ Matthew Kerr

Name: Matthew Kerr

Title: Vice President

LENDERS:

BNP PARIBAS, as a Lender and as an Issuing Bank

By: /s/ Francis Delaney

Name: Francis Delaney

Title: Managing Director

By: /s/ Theodore Sheen

Name: Theodore Sheen

Title: Director

LENDERS:

CITIBANK, N.A., as a Lender

By: /s/ Hans Lin

Name: Hans Lin

Title: Senior Vice President

LENDERS:

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Keven D. Smith

Name: Keven D. Smith

Title: Senior Vice President

LENDERS:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Madeline L. Pleskovic

Name: Madeline L. Pleskovic

Title: Vice President

LENDERS:

TD BANK, N.A., as a Lender

By: /s/ Vijay Prasad

Name: Vijay Prasad

Title: Senior Vice President

LENDERS:

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Mark W. Rogers

Name: Mark W. Rogers

Title: Vice President

LENDERS:

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Nick Giarratano

Name: Nick Giarratano

Title: Director

LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Michael Temnick

Name: Michael Temnick

Title: Vice President

LENDERS:

BRANCH BANKING & TRUST COMPANY, as a Lender

By: /s/ Sarah Salmon

Name: Sarah Salmon

Title: Senior Vice President

LENDERS:

ZB, N.A. DBA NATIONAL BANK OF ARIZONA, as a
Lender

By: /s/ Sabina Aaronson

Name: Sabina Aaronson

Title: Vice President

**SCHEDULE 1.01
COMMITMENTS AND RATABLE SHARES**

Bank	Revolving Credit Commitment	Ratable Share
Barclays Bank PLC	\$14,000,000.00	7%
Mizuho Bank, Ltd.	\$14,000,000.00	7%
Bank of America, N.A.	\$14,000,000.00	7%
JPMorgan Chase Bank, N.A.	\$14,000,000.00	7%
SunTrust Bank	\$14,000,000.00	7%
Wells Fargo Bank, National Association	\$14,000,000.00	7%
MUFG Bank, Ltd.	\$14,000,000.00	7%
BNP Paribas	\$14,000,000.00	7%
Citibank, N.A.	\$9,750,000.00	4.875%
KeyBank National Association	\$9,750,000.00	4.875%
PNC Bank, National Association	\$9,750,000.00	4.875%
Royal Bank of Canada	\$9,750,000.00	4.875%
TD Bank, N.A.	\$9,750,000.00	4.875%
The Bank of New York Mellon	\$9,750,000.00	4.875%
The Bank of Nova Scotia	\$9,750,000.00	4.875%
U.S. Bank National Association	\$9,750,000.00	4.875%
Branch Banking & Trust Company	\$5,000,000.00	2.5%
ZB, N.A. dba National Bank of Arizona	\$5,000,000.00	2.5%
TOTAL	\$200,000,000.00	100.000000000%

SCHEDULE 4.01(j)
SUBSIDIARIES

Arizona Public Service Company

SCHEDULE 4.01(k)
EXISTING INDEBTEDNESS

364-Day Credit Agreement, dated as of June 28, 2018, among the Borrower, the Lenders party thereto, MUFG Bank, Ltd. (f/k/a The Bank of Tokyo-Mitsubishi UFJ, Ltd.), as Agent and Issuing Bank and JPMorgan Chase Bank, N.A. and Bank of America, N.A., as Co-Syndication Agents.

**SCHEDULE 8.02
CERTAIN ADDRESSES FOR NOTICES**

BORROWER:

Pinnacle West Capital Corporation
400 North 5th Street
Mail Station 9040
Phoenix, AZ 85004
Attention: Treasurer
Telephone: (602) 250-3300
Telecopier: (602) 250-3902
Electronic lee.nickloy@pinnaclewest.com

AGENT :

Agent's Office

(for payments and Requests for Credit Extensions):

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Rajeev Nagpuria
Telephone: (302) 286-2263
Email: rajeev.nagpuria@barclays.com

with copies to:

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Patrick Shields
Telephone: (212) 526-9531
Email: Patrick.Shields@barclays.com

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019
Attention: Bank Debt Management
Telephone: (212) 526-9531
Email: tmny@barclays.com

Agent's Account/Barclays Bank Agency Service Wiring Information

Barclays Bank PLC
New York, New York
ABA: 026002574
Account Number: 050-019104
Account Name: Clad Control Account
Ref: Pinnacle West Capital Corporation

Other Notices as Agent :

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Patrick Shields
Telephone: (212) 526-9531
Email: Patrick.Shields@barclays.com

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019
Attention: Bank Debt Management
Telephone: (212) 526-9531
Email: tmny@barclays.com

ISSUING BANKS:

Barclays Bank PLC
Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attn. US Letter of Credit Team
Email xraletterofcredit@barclays.com

Mizuho Bank, Ltd.

Mizuho Bank, Ltd.
1800 Plaza Ten
Harborside Financial Ctr.
Jersey City, NJ 07311
Attention: Hyunsook (Sophia) Hwang
Telephone: 201-626-9416
Facsimile: 201-626-9941
Email: LAU_USCORP3@MIZUHOCBUS.COM

Bank of America, N.A.

Bank of America, N.A.
100 N. Tryon Street
Charlotte, NC 28255-0001
Attention: William A. Merritt, III
Telephone: (980) 386-9762
Facsimile: (980) 683-6339
E-mail: william.merritt@baml.com

BNP Paribas

BNP Paribas
c/o BNP Paribas RCC, Inc.
Newport Tower – Suite 188
525 Washington Boulevard

Jersey City, New Jersey 07310
Attn: Letters of Credit
E-mail: nyls.agency.support@us.bnpparibas.com
With a cc to: NYTFStandby@us.bnpparibas.com

JPMorgan Chase Bank, N.A.

JPMorgan Chase Bank, N.A.
10 South Dearborn, 9th Floor
Mail Code: IL1-0364
Chicago, IL 60603
Attention: Nancy R. Barwig
Telephone: (312) 732-1838
Facsimile: (312) 732-1762
E-mail: nancy.r.barwig@jpmorgan.com
With a cc to: jpm.standbylc.ccb@jpmorgan.com
With a cc to: Kavita.x.ujjini@jpmorgan.com

MUFG Bank, Ltd.

MUFG Bank, Ltd.
1221 Avenue of the Americas
New York, NY 10020-1104
Facsimile: 201-521-2304; 201-521-2305
E-Mail: 2015212304@njhr2163.btmna.com; irisuscb@us.mufg.jp

SunTrust Bank

SunTrust Robinson Humphrey, Inc.
SunTrust Bank
3333 Peachtree Road
Atlanta, GA 30326
Attention: Andrew Johnson
Telephone: (404) 439-7451
Facsimile: (404) 439-7470
E-mail: andrew.johnson@suntrust.com

Wells Fargo Bank, National Association

Wells Fargo Bank, N.A.
Wholesale Loan Services
7711 Plantation Road
MAC R4058-010
Roanoke, VA 24019
Attention: Tammy Pentecost
Telephone: 540-759-3118
Facsimile: 866-270-7214
E-mail: tammy.pentecost@wellsfargo.com
With a cc to: sheila.shaffer@wellsfargo.com

**EXHIBIT A — FORM OF
PROMISSORY NOTE**

_____, 20__

FOR VALUE RECEIVED, the undersigned, PINNACLE WEST CAPITAL CORPORATION, an Arizona corporation (the “Borrower”), hereby promises to pay to the order of _____ or its registered assigns (the “Lender”), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Advance from time to time made by the Lender to the Borrower pursuant to the Five-Year Credit Agreement dated as of July 12, 2018 among the Borrower, the Lender and certain other lenders parties thereto, Barclays Bank PLC, as Agent for the Lender and such other lenders, and the issuing banks and other agents party thereto (as amended or modified from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined) outstanding on such date.

The Borrower promises to pay interest on the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to the Agent for the account of the Lender in same day funds at the address and account specified on Schedule 8.02. Each Advance owing to the Lender by the Borrower pursuant to the Credit Agreement, and all payments made on account of principal thereof, shall be recorded by the Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Promissory Note.

This Promissory Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement. The Credit Agreement, among other things, (i) provides for the making of Advances by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time the Lender’s Unused Commitment, the indebtedness of the Borrower resulting from each such Advance being evidenced by this Promissory Note and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

THIS PROMISSORY NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

PINNACLE WEST CAPITAL CORPORATION

By _____

Name: _____

Title: _____

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount of Advance	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By
------	----------------------	--	-----------------------------	---------------------

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**EXHIBIT B — FORM OF NOTICE OF
BORROWING**

Barclays Bank PLC, as Agent
for the Lenders parties
to the Credit Agreement
referred to below

Attention: Loan Operations

[Date]

Ladies and Gentlemen:

The undersigned, Pinnacle West Capital Corporation, refers to the Five-Year Credit Agreement, dated as of July 12, 2018 (as amended or modified from time to time, the “Credit Agreement”, the terms defined therein being used herein as therein defined), among the undersigned, certain Lenders parties thereto, Barclays Bank PLC, as Agent for said Lenders and the Issuing Banks and other agents party thereto, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the “Proposed Borrowing”) as required by Section 2.02(a) of the Credit Agreement:

- (i) The Business Day of the Proposed Borrowing is _____, 20__.
- (ii) The Type of Revolving Advances comprising the Proposed Borrowing is [Base Rate Advances] [Eurodollar Rate Advances].
- (iii) The aggregate amount of the Proposed Borrowing is \$_____.
- [(iv) The initial Interest Period for each Eurodollar Rate Advance made as part of the Proposed Borrowing is [one week] [__month[s].]

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties contained in Section 4.01 (other than Sections 4.01(k), 4.01(e)(ii) and 4.01(f)(ii)) of the Credit Agreement are correct, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date;

(B) no event has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default; and

(C) before and after giving effect to the Proposed Borrowing and to the application of

the proceeds therefrom, as though made on and as of such date, the Indebtedness of the Borrower does not exceed that permitted by (i) applicable resolutions of the Board of Directors of the Borrower or (ii) applicable Laws of any Governmental Authority.

Very truly yours,

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PINNACLE WEST CAPITAL CORPORATION

By _____

Name: _____

Title: _____

**EXHIBIT C — FORM OF
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between **[Insert name of Assignor]** (the “Assignor”) and **[Insert name of Assignee]** (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. Annex 1 attached hereto (the “Standard Terms and Conditions”) is hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date referred to below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “Assigned Interest”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor. Assignee shall deliver (if it is not already a Lender) to the Agent an Administrative Questionnaire.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate of [identify Bank]]
3. Borrower: Pinnacle West Capital Corporation
4. Agent: Barclays Bank PLC, as the administrative agent under the Credit Agreement
5. Credit Agreement: The Five-Year Credit Agreement dated as of July 12, 2018, by and among the Borrower, the Lenders party thereto, the Agent and the Issuing Banks and other agents party thereto.
6. Assigned Interest:

Aggregate Amount of Commitment for all Lenders	Amount of Commitment Assigned	Percentage Assigned of Commitment	CUSIP Number
\$ _____	\$ _____	_____ %	

[7. Trade Date:]

Effective Date: __, 20__ [TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By _____

Name: _____

Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By _____

Name: _____

Title: _____

[Consented to and] Accepted:
BARCLAYS BANK PLC, as Agent

By _____

Name:

Title:

[Consented to:]
[BARCLAYS BANK PLC, as Issuing Bank]

By _____

Name:

Title:

[MIZUHO BANK, LTD., as Issuing Bank]

By _____

Name:

Title:

[BANK OF AMERICA, N.A., as Issuing Bank]

By _____

Name:

Title:

[BNP PARIBAS, as Issuing Bank]

By _____

Name:

Title:

[JPMORGAN CHASE BANK, N.A., as Issuing Bank]

By _____

Name:

Title:

[MUFG BANK, LTD., as Issuing Bank]

By _____

Name:

Title:

[SUNTRUST BANK, as Issuing Bank]

By _____

Name:

Title:

[WELLS FARGO BANK, NATIONAL ASSOCIATION, as Issuing Bank]

By _____

Name:

Title:

PINNACLE WEST CAPITAL CORPORATION

By _____
Name:

Title:

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower of any of its obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under Section 8.07 of the Credit Agreement (subject to such consents, if any, as may be required under Section 8.07 of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 4.01(e) or delivered pursuant to Section 5.01(h), as applicable, thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a foreign lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other

amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the Law of the State of New York.

U.S. \$500,000,000
FIVE-YEAR CREDIT AGREEMENT
Dated as of July 12, 2018

among

ARIZONA PUBLIC SERVICE COMPANY,
as Borrower,

THE LENDERS PARTY HERETO,

BARCLAYS BANK PLC,
as Agent and Issuing Bank,

MIZUHO BANK, LTD.,
as Syndication Agent,

MIZUHO BANK, LTD.,
BANK OF AMERICA, N.A.,
BNP PARIBAS,
JPMORGAN CHASE BANK, N.A.,
MUFG BANK, LTD.,
SUNTRUST BANK

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Issuing Banks,

BANK OF AMERICA, N.A.,
BNP PARIBAS,
JPMORGAN CHASE BANK, N.A.,
MUFG BANK, LTD.,
SUNTRUST BANK

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Co-Documentation Agents,

BARCLAYS BANK PLC,
MIZUHO BANK, LTD.,
BNP PARIBAS SECURITIES CORP.,
JPMORGAN CHASE BANK, N.A.,
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
MUFG BANK, LTD.,
SUNTRUST ROBINSON HUMPHREY, INC.

and

WELLS FARGO SECURITIES, LLC,
as Joint Lead Arrangers and Joint Book Runners

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FIVE-YEAR CREDIT AGREEMENT

Dated as of July 12, 2018

ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation (the “Borrower”), the banks, financial institutions and other institutional lenders (the “Initial Lenders”) and initial issuing banks (the “Initial Issuing Banks”) listed on the signature pages hereof, the other Lenders (as hereinafter defined), BARCLAYS BANK PLC, as Agent for the Lenders (as hereinafter defined), MIZUHO BANK, LTD., as Syndication Agent and BANK OF AMERICA, N.A., BNP PARIBAS, JPMORGAN CHASE BANK, N.A., MUFG BANK, LTD., SUNTRUST BANK and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Documentation Agents, agree as follows:

The Borrower has requested that the Lenders provide a revolving credit facility for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“2013 Order” means Decision No. 73659, dated February 6, 2013, of the Arizona Corporation Commission.

“Additional Commitment Lender” has the meaning specified in Section 2.21(d).

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Agent.

“Advance” means a Revolving Advance or a Swingline Advance.

“Affected Lender” means any Lender, as reasonably determined by the Agent or if the Agent is the Affected Lender, by the Required Lenders, that (a) has failed to (i) fund all or any portion of any Revolving Advance within three (3) Business Days of the date such Revolving Advances were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, or (ii) pay to the Agent, any Issuing Bank, the Swingline Lender, if any, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit and funding obligations in respect of Swingline Advances) within three (3) Business Days of the date when due, (b) has notified the Borrower, the Agent, any Issuing Bank or any Lender in writing of its intention not to fund any Revolving Advance or any of its other funding obligations under this Agreement, (c) has failed, within three Business Days after written request by the Agent, or if the Agent is the Affected Lender, by the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Revolving Advances and other funding obligations under this Agreement, (d) shall (or whose parent company shall) generally not pay its debts as such debts become due, or shall admit in writing

its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or shall have had any proceeding instituted by or against such Lender (or its parent company) seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 30 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian for, it or for any substantial part of its property) shall occur, or shall take (or whose parent company shall take) any corporate action to authorize any of the actions set forth above in this subsection (d) or (e) has become the subject of a Bail-In Action, provided that a Lender shall not be deemed to be an Affected Lender solely by virtue of the ownership or acquisition of any equity interest in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

“Agent” means Barclays in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Agent’s Account” means the account of the Agent designated on Schedule 8.02 under the heading “Agent’s Account” or such other account as the Agent may designate to the Lenders and the Borrower from time to time.

“Agent’s Office” means the Agent’s address and, as appropriate, the Agent’s Account, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption or money laundering.

“Applicable Lending Office” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a Base Rate Advance and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Rate Advance.

“ Applicable Rate ” means, from time to time, the following percentages per annum determined by reference to the Public Debt Rating as set forth below:

Public Debt Rating S&P/Moody's	Eurodollar Rate Advances	Base Rate Advances	Commitment Fee
Level 1 AA-/Aa3 or above	0.750%	0.000%	0.060%
Level 2 A+/A1	0.875%	0.000%	0.075%
Level 3 A/A2	1.000%	0.000%	0.100%
Level 4 A-/A3	1.125%	0.125%	0.125%
Level 5 BBB+/Baa1 or below	1.250%	0.250%	0.175%

“ Approved Fund ” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“ Arrangers ” means, collectively, Barclays, Mizuho Bank, Ltd., BNP Paribas Securities Corp., JPMorgan Chase Bank, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated (together with any affiliates it deems appropriate to provide the services contemplated herein), MUFG Bank, Ltd., SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC.

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

“ Assuming Lender ” has the meaning specified in Section 2.18(d).

“ Assumption Agreement ” has the meaning specified in Section 2.18(d)(ii).

“ Authorized Officer ” means the chairman of the board, chief executive officer, chief operating officer, chief financial officer, chief accounting officer, president, any vice president, treasurer, controller or any assistant treasurer of the Borrower.

“ Available Amount ” of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

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

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

“ Barclays ” means Barclays Bank PLC.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of:

- (a) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its “prime rate”;
- (b) the Federal Funds Rate plus 0.50%; and

(c) an amount equal to (i) the Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus (ii) 1%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Advance” means a Revolving Advance that bears interest as provided in Section 2.07(a)(i).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance acceptable to the Agent in its discretion.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

“Borrower” has the meaning given to such term in the introductory paragraph hereof.

“Borrower Information” has the meaning specified in Section 8.08.

“Borrowing” means (a) a borrowing consisting of simultaneous Revolving Advances of the same Type made by each of the Lenders pursuant to Section 2.01(a) or (b) Swingline Advances.

“Business Day” means a day of the year on which banks are not required or authorized by Law to close in New York City or Phoenix, Arizona and, if the applicable Business Day relates to any Advance in which interest is calculated by reference to the Eurodollar Rate, on which dealings are carried on in the London interbank market.

“Capital Lease Obligations” means, subject to Section 1.03, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capital lease or a finance lease on the balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption of any Law, (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued

in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“Commitment” means a Revolving Credit Commitment or a Letter of Credit Commitment.

“Commitment Date” has the meaning specified in Section 2.18(b).

“Commitment Increase” has the meaning specified in Section 2.18(a).

“Consolidated” refers to the consolidation of accounts in accordance with GAAP.

“Consolidated Indebtedness” means, at any date, the Indebtedness of the Borrower and its Consolidated Subsidiaries determined on a Consolidated basis as of such date; provided, however, that so long as the creditors of the VIE Lessor Trusts have no recourse to the assets of the Borrower, “Consolidated Indebtedness” shall not include any Indebtedness or other obligations of the VIE Lessor Trusts.

“Consolidated Net Worth” means, at any date, the sum as of such date of (a) the par value (or value stated on the books of the Borrower) of all classes of capital stock of the Borrower and its Subsidiaries, excluding the Borrower’s capital stock owned by the Borrower and/or its Subsidiaries, *plus* (or *minus* in the case of a surplus deficit) (b) the amount of the Consolidated surplus, whether capital or earned, of the Borrower, determined in accordance with GAAP as of the end of the most recent calendar month (excluding the effect on the Borrower’s accumulated other comprehensive income/loss of the ongoing application of Accounting Standards Codification Topic 815).

“Consolidated Subsidiary” means, at any date, any Subsidiary or other entity the accounts of which would be Consolidated with those of the Borrower on its Consolidated financial statements if such financial statements were prepared as of such date; provided that in no event will Consolidated Subsidiaries include the VIE Lessor Trusts.

“Controlled Affiliate” has the meaning specified in Section 4.01(n).

“Convert”, “Conversion”, “Converted” and “Converting” each refers to a conversion of Revolving Advances of one Type into Revolving Advances of the other Type pursuant to Section 2.08, Section 2.09 or Section 2.12.

“Credit Extension” means each of the following: (a) a Borrowing and (b) the issuance of a Letter of Credit.

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

“Default” means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

“Dollars” or “\$” means dollars of the United States of America.

“ Domestic Lending Office ” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

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

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

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

“ Effective Date ” has the meaning specified in Section 3.01.

“ Eligible Assignee ” means any Person that meets the requirements to be an assignee under Section 8.07(b)(iii) and Section 8.07(b)(v) (subject to such consents, if any, as may be required under Section 8.07(b)(iii)).

“ Environmental Action ” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment and relating to any Environmental Law, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any Governmental Authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“ Environmental Law ” means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, natural resources or, to the extent relating to exposure to Hazardous Materials, human health or safety, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“ Environmental Permit ” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

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

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

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

“ Eurodollar Lending Office ” means, with respect to any Lender, the office of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“ Eurodollar Rate ” means for any Interest Period as to any Eurodollar Rate Advance, (i) the rate per annum determined by the Agent to be the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the “ LIBO Rate ”) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period; provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; and provided, further, that if any such rate determined pursuant to this definition is below zero, the Eurodollar Rate will be deemed to be zero.

“ Eurodollar Rate Advance ” means a Revolving Advance that bears interest at a rate based on the Eurodollar Rate (other than a Base Rate Advance bearing interest at a rate based on the Eurodollar Rate).

“ Events of Default ” has the meaning specified in Section 6.01.

“ Excluded Taxes ” means, with respect to the Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the United States of America or the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or does business or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding Tax that is required by the Internal Revenue

Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 2.14(e)(ii), (d) in the case of a Foreign Lender (other than as agreed to between any assignee and the Borrower pursuant to a request by the Borrower under Section 2.20), any United States of America withholding Tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Applicable Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 2.14(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.14(a)(i) or (ii) and (v) any United States withholding Tax imposed by FATCA.

“Executive Order” has the meaning specified in Section 4.01(p).

“Existing Credit Agreement” means that certain Five-Year Credit Agreement, dated as of May 13, 2016 by and among the Borrower, the Lenders from time to time party thereto and the Agent, as amended by that certain Amendment No. 1 to Five-Year Credit Agreement, dated as of June 29, 2017, by and among the Borrower, the Lenders party thereto and the Agent.

“Existing Termination Date” has the meaning specified in Section 2.21(a).

“Extending Lender” has the meaning specified in Section 2.21(b).

“Extension Date” has the meaning specified in Section 2.21(a).

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

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent, and (c) solely for purposes for determining the Money Market Rate, any such other publication or means of determining the rate for federal funds as agreed to between the Borrower and Swingline Lender; provided further, that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letters” means (a) each of the following letters to the Borrower dated June 11, 2018: (i) the letter from Barclays and Mizuho Bank, Ltd., (ii) the letter from Bank of America, N.A., BNP Paribas, BNP Paribas Securities Corp., JPMorgan Chase Bank, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, MUFG Bank, Ltd., SunTrust Bank, SunTrust Robinson Humphrey, Inc., Wells Fargo Bank, National Association and Wells Fargo Securities, LLC and (iii) the agent fee letter from Barclays, as Agent, each relating to certain fees payable by the Borrower to such parties in respect of the transactions contemplated by this Agreement and (b) any letter between the Borrower and any Issuing Bank other than an Initial Issuing

Bank relating to certain fees payable to such Issuing Bank in its capacity as such, each as amended, modified, restated or supplemented from time to time.

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of an Issuing Bank or a Swingline Lender). For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Four Corners Acquisition” means the acquisition by the Borrower from Southern California Edison Company (“SCE”) of SCE’s interests in Units 4 and 5 of the Four Corners Power Plant near Farmington, New Mexico, pursuant to the Purchase and Sale Agreement, dated as of November 8, 2010, by and between SCE and the Borrower.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” has the meaning specified in Section 1.03.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Government Official” shall mean (a) an executive, official, employee or agent of a governmental department, agency or instrumentality, (b) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (c) a political party or official thereof, or candidate for political office or (d) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank).

“Guarantee” means as to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, agreements to keep well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hazardous Materials” means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“Hedge Agreement” means any interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract, commodity future or option contract, commodity forward contract or other similar agreement.

“Increase Date” has the meaning specified in Section 2.18(a).

“Increasing Lender” has the meaning specified in Section 2.18(b).

“Indebtedness” means as to any Person at any date (without duplication): (a) indebtedness created, issued, incurred or assumed by such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (b) all obligations of such Person to pay the deferred purchase price of property or services, excluding, however, trade accounts payable (other than for borrowed money) arising in, and accrued expenses incurred in, the ordinary course of business of such Person so long as such trade accounts payable are paid within 180 days (unless subject to a good faith dispute) of the date incurred; (c) all Indebtedness secured by a Lien on any asset of such Person, to the extent such Indebtedness has been assumed by, or is a recourse obligation of, such Person; (d) all Guarantees by such Person; (e) all Capital Lease Obligations of such Person; and (f) the amount of all reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments in support of Indebtedness; provided that Indebtedness, in accordance with Section 1.03, shall exclude any obligation or liability arising from the application or interpretation of ASC Topic 840 or 842 or any related, similar or successor pronouncement, guideline, publication or rule, or which is otherwise excluded in accordance with Section 1.03.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Ineligible Institution” means (a) a natural person, (b) an Affected Lender or any of its Subsidiaries, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof, or (e) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute an Affected Lender or a Subsidiary thereof.

“Initial Issuing Banks” has the meaning given to such term in the introductory paragraph hereof.

“Initial Lenders” has the meaning given to such term in the introductory paragraph hereof.

“Interest Period” means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on (i) the date such Eurodollar Rate Advance is disbursed, (ii) the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance or (iii) the effective date of the most recent continuation of such Eurodollar Rate Advance, as the case may be, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one week, or one, two, three or six months, as the Borrower may, upon notice received by the Agent not later than 12:00 noon on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next

succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“Interpolated Rate” means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between:

(a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of that Loan; and

(b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of that Loan,

each as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period of that Loan.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuing Bank” means the Initial Issuing Banks or any other Lender approved by the Borrower that may agree to issue Letters of Credit pursuant to an Assignment and Assumption or other agreement in form satisfactory to the Borrower and the Agent, so long as such Lender expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank or Lender, as the case may be, shall have a Letter of Credit Commitment.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Ratable Share.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made nor refinanced as a Base Rate Advance.

“L/C Cash Deposit Account” means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

“L/C Obligations” means, as at any date of determination, the aggregate Available Amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms

but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Related Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower or in favor of any Issuing Bank and relating to such Letter of Credit.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lender Notice Date” has the meaning specified in Section 2.21(a).

“Lenders” means the Initial Lenders, each Issuing Bank, the Swingline Lender, if any, each Assuming Lender that shall become a party hereto pursuant to Section 2.18 and each Person that shall become a party hereto pursuant to Section 8.07.

“Letter of Credit” has the meaning specified in Section 2.01(b).

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any Issuing Bank.

“Letter of Credit Commitment” means, with respect to each Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower from time to time in an aggregate amount equal to (a) for each of the Initial Issuing Banks, \$31,250,000 and (b) for any other Issuing Bank, as separately agreed to by such Issuing Bank and the Borrower. The Letter of Credit Commitment is part of, and not in addition to, the Revolving Credit Commitments.

“Letter of Credit Expiration Date” means the day that is five Business Days prior to the Termination Date.

“LIBO Rate” has the meaning specified in the definition of “Eurodollar Rate.”

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge or other security interest or preferential arrangement that has the practical effect of creating a security interest, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property, and any capital lease having substantially the same economic effect as any of the foregoing.

“Loan Documents” mean this Agreement, each Note, each L/C Related Document and the Fee Letters.

“Material Adverse Effect” means a material adverse effect on (a) the financial condition, operations, business or property of the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under this Agreement or any Note or (c) the ability of the Borrower to perform its obligations under this Agreement or any Note.

“Material Subsidiary” means, at any time, a Subsidiary of the Borrower which as of such time meets the definition of a “significant subsidiary” included as of the date hereof in Regulation S-X of the Securities and Exchange Commission or whose assets at such time exceed 10% of the assets of the Borrower and the Subsidiaries (on a consolidated basis).

“Money Market Rate” means (a) the Federal Funds Rate plus (b) the Applicable Rate for Eurodollar Rate Advances.

“Money Market Rate Advance” means a Swingline Advance that bears interest at a rate based on the Money Market Rate.

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Non-Extending Lender” has the meaning specified in Section 2.21(b).

“Note” means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto.

“Notice of Borrowing” has the meaning specified in Section 2.02(a).

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Revolving Advance, Swingline Advance or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue under any Loan Document after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means Office of Foreign Assets Control of the United States Department of the Treasury.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning specified in Section 8.07(d).

“Participant Register” has the meaning specified in Section 8.07(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or

maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“ Permitted Lien ” of the Borrower or any Material Subsidiary means any of the following:

(i) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been made;

(ii) Liens imposed by or arising by operation of law, such as Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business, including, without limitation, landlord’s liens arising under Arizona Law under leases entered into by the Borrower in the 1986 sale and leaseback transactions with respect to PVNGS Unit 2 and securing the payment of rent under such leases, in each case, for sums not overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been made;

(iii) Liens incurred in the ordinary course of business in connection with worker’s compensation, unemployment insurance or other forms of governmental insurance or benefits or other similar statutory obligations;

(iv) Liens to secure obligations on surety or appeal bonds;

(v) Liens on cash deposits in the nature of a right of setoff, banker’s lien, counterclaim or netting of cash amounts owed arising in the ordinary course of business on deposit accounts, commodity accounts or securities accounts;

(vi) easements, restrictions, reservations, licenses, covenants, and other defects of title that are not, in the aggregate, materially adverse to the use of such property for the purpose for which it is used;

(vii) Liens securing claims against or other obligations of any Person other than the Borrower or any Subsidiary of the Borrower neither assumed nor guaranteed by the Borrower or any Subsidiary of the Borrower nor on which the Borrower or any Subsidiary of the Borrower customarily pays interest, existing upon real estate or rights in or relating to real estate acquired by the Borrower or any Subsidiary of the Borrower for use in the operation of the business of the Borrower or any Subsidiary of the Borrower, including, without limitation, for the generation, transmission or distribution of electric energy, transportation, telephonic, telegraphic, radio, wireless or other electronic communication or any other purpose;

(viii) rights reserved to or vested in and Liens on assets arising out of obligations or duties to any municipality or public authority with respect to any right, power, franchise, grant, license or permit, or by any provision of Law;

(ix) rights reserved to or vested in others to take or receive any part of the power pursuant to firm power commitment contracts, purchased power contracts, tolling agreements and similar

agreements, coal, gas, oil or other minerals, timber or other products generated, developed, manufactured or produced by, or grown on, or acquired with, any property of the Borrower;

(x) rights reserved to or vested in any municipality or public authority to control or regulate any property of the Borrower, or to use such property in a manner that does not materially impair the use of such property for the purposes for which it is held by the Borrower;

(xi) security interests granted in favor of the lessors in the Borrower's Decommissioning Trust Agreement (PVNGS Unit 2) dated as of January 31, 1992 (such agreement, as amended or otherwise modified from time to time, being the "Unit 2 Trust Agreement") entered into in connection with the PVNGS Unit 2 sale leaseback transaction to secure the Borrower's obligations in respect of the decommissioning of PVNGS Unit 2 or related facilities;

(xii) Liens that may exist with respect to the Unit 2 Trust Agreement (other than as described in paragraph (xi) above) or with respect to either of the Borrower's Decommissioning Trust Agreement (PVNGS Unit 1) or Decommissioning Trust Agreement (PVNGS Unit 3), each dated as of July 1, 1991, as amended or otherwise modified from time to time, relating to the Borrower's obligation to set aside funds for the decommissioning and retirement from service of such Units;

(xiii) pledges of pollution control bonds and related rights to secure the Borrower's reimbursement obligations in respect of letters of credit, bond insurance, and other credit or liquidity enhancements supporting pollution control bond transactions, provided that such pollution control bonds are not secured by any other assets of the Borrower or any Material Subsidiary;

(xiv) rights and interests of Persons other than the Borrower or any Material Subsidiary (including, without limitation, acquisition rights), related obligations of the Borrower or any Material Subsidiary and restrictions on it or its property arising out of contracts, agreements and other instruments to which the Borrower or any Material Subsidiary is a party that relate to the common ownership or joint use of property or other use of property for the benefit of one or more third parties or that allow a third party to purchase property of the Borrower or any Material Subsidiary and all Liens on the interests of Persons other than the Borrower or any Material Subsidiary in such property;

(xv) transfers of operational or other control of facilities to a regional transmission organization or other similar body and Liens on such facilities to cover expenses, fees and other costs of such an organization or body;

(xvi) Liens established on specified bank accounts of the Borrower to secure the Borrower's reimbursement obligations in respect of letters of credit supporting commercial paper issued by the Borrower and similar arrangements for collateral security with respect to refinancings or replacements of the same;

(xvii) rights of transmission users or any regional transmission organizations or similar entities in transmission facilities;

(xviii) Liens on property of the Borrower sold in a transaction permitted by Section 5.02(a) to another Person pursuant to a conditional sales agreement where the Borrower retains title;

(xix) Liens created under this Agreement;

(xx) Liens on cash or cash equivalents not to exceed \$200,000,000 (A) deposited in margin accounts with or on behalf of futures contract brokers or paid over to other contract counterparties or (B) pledged or deposited as collateral to a contract counterparty to secure obligations with respect to (1) contracts (other than for Indebtedness) for commercial and trading activities in the ordinary course of business for the purchase, transmission, distribution, sale, storage, lease or hedge of any energy or energy related commodity or (2) Hedge Agreements;

(xxi) Liens granted on cash or cash equivalents to defease Indebtedness of the Borrower or any of its Subsidiaries;

(xxii) Liens granted on cash or cash equivalents constituting proceeds from any sale or disposition of assets that is not prohibited by Section 5.02(c) deposited in escrow accounts or otherwise withheld or set aside to secure obligations of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase price or any similar obligations, in each case, in an amount not to exceed the amount of gross proceeds received by the Borrower or any Subsidiary in connection with such sale or disposition;

(xxiii) Liens, deposits and similar arrangements to secure the performance of bids, tenders or contracts (other than contracts for borrowed money), public or statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business by the Borrower or any of its Subsidiaries;

(xxiv) rights of lessees arising under leases entered into by the Borrower or any of its Subsidiaries as lessor, in the ordinary course of business;

(xxv) any Liens on or reservations with respect to governmental and other licenses, permits, franchises, consents and allowances;

(xxvi) Liens on property which is the subject of a Capital Lease Obligation designating the Borrower or any of its Subsidiaries as lessee and all right, title and interest of the Borrower or any of its Subsidiaries in and to such property and in, to and under such lease agreement, whether or not such lease agreement is intended as a security;

(xxvii) licenses of intellectual property entered into in the ordinary course of business;

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

(xxix) deposits or funds established for the removal from service of operating facilities and coal mines and related facilities or other similar facilities used in connection therewith; and

(xxx) Liens on cash deposits used to secure letters of credit under defaulting lender provisions in credit or reimbursement facilities;

provided, however, that no Lien in favor of the PBGC shall, in any event, be a Permitted Lien.

“ Person ” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Agent) or any similar release by the Federal Reserve Board (as determined by the Agent).

“Prohibited Person” means any Person (a) listed in the Annex to the Executive Order or identified pursuant to Section 1 of the Executive Order; (b) that is owned or controlled by, or acting for or on behalf of, any Person listed in the Annex to the Executive Order or identified pursuant to the provisions of Section 1 of the Executive Order; (c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-laundering law, including the Executive Order; (d) who commits, threatens, conspires to commit, or support “terrorism” as defined in the Executive Order; (e) who is named as a “Specially designated national or blocked person” on the most current list published by the OFAC at its official website, at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> or any replacement website or other replacement official publication of such list; or (f) who is owned or controlled by a Person listed above in clause (c) or (e).

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

“Public Debt Rating” means, as of any date, the rating that has been most recently announced by either S&P or Moody’s, as the case may be, for any class of non-credit enhanced long-term senior unsecured debt issued by the Borrower or, if any such rating agency shall have issued more than one such rating, the lowest such rating issued by such rating agency. For purposes of the foregoing, (a) if only one of S&P and Moody’s shall have in effect a Public Debt Rating, the Applicable Rate shall be determined by reference to the available rating; (b) except as set forth in the proviso at the end of this definition, if neither S&P nor Moody’s shall have in effect a Public Debt Rating, the Applicable Rate will be set in accordance with Level 5 under the definition of “Applicable Rate”; (c) if the ratings established by S&P and Moody’s shall fall within different levels, the Applicable Rate shall be based upon the higher rating unless such ratings differ by two or more levels, in which case the applicable level will be deemed to be one level below the higher of such levels; and (d) if any rating established by S&P or Moody’s shall be changed (other than as a result of a change in the basis on which ratings are established), such change shall be effective as of the date on which such change is first announced publicly by the rating agency making such change; provided that if the Public Debt Rating system of S&P or Moody’s shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend the definition of “Applicable Rate” to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate will be set in accordance with the level most recently in effect under the definition of “Applicable Rate” prior to such change or cessation.

“PVNGS” means the Palo Verde Nuclear Generating Station.

“PWCC” means Pinnacle West Capital Corporation, an Arizona corporation.

“Ratable Share” of any amount means, with respect to any Lender at any time but subject to the provisions of Section 2.19, the product of such amount times a fraction the numerator of which is the amount

of such Lender's Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, such Lender's Revolving Credit Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Revolving Credit Commitments at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or Section 6.01, the aggregate amount of all Revolving Credit Commitments as in effect immediately prior to such termination).

“Register” has the meaning specified in Section 8.07(c).

“Related Parties” means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived under the final regulations issued under Section 4043, as in effect as of the date of this Agreement (the “Section 4043 Regulations”). Any changes made to the Section 4043 Regulations that become effective after the Effective Date shall have no impact on the definition of Reportable Event as used herein unless otherwise amended by the Borrower and the Required Lenders.

“Required Lenders” means, at any time, but subject to Section 2.19, Lenders holding in the aggregate more than 50% of (a) the Revolving Credit Commitments or (b) if the Revolving Credit Commitments have been terminated, the Total Outstandings.

“Revolving Advance” means an advance by a Lender to the Borrower as part of a Borrowing, including a Base Rate Advance made pursuant to Section 2.03(c), but excluding any L/C Advance made as part of an L/C Borrowing and any Swingline Advance, and refers to a Base Rate Advance or a Eurodollar Rate Advance (each of which shall be a Type of Revolving Advance).

“Revolving Credit Commitment” means, as to any Lender, its obligation to (a) make Revolving Advances to the Borrower pursuant to Section 2.01 and Section 2.03(c), (b) purchase participations in L/C Obligations and (c) make Revolving Advances pursuant to Section 2.03A(c) for the purpose of repaying Swingline Advances, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.01 under the column “Revolving Credit Commitment” or if such Lender has become a Lender hereunder pursuant to an Assumption Agreement or if such Lender has entered into any Assignment and Assumption, the amount set forth for such Lender in the Register, in each case as such amount may be reduced pursuant to Section 2.05 or increased pursuant to Section 2.18.

“S&P” means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc.

“Sale Leaseback Obligation Bonds” means any bonds issued by or on behalf of the Borrower in connection with a sale/leaseback transaction and any refinancing or refunding of such obligations.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC and any similar economic or financial sanctions or trade embargoes of the type described in Sections 4.01(n) through (q) and imposed, administered or enforced from time to time by the U.S. government, including the U.S. Department of State, or any other applicable Governmental Authority.

“SEC Reports” means the Borrower's (i) Form 10-K Report for the year ended December 31, 2017, (ii) Form 10-Q Report for the quarter ended March 31, 2018 and (iii) Form 8-K Reports filed on January 9, 2018 and February 22, 2018.

“Subsequent Order” means any decision, order or ruling of the Arizona Corporation Commission issued after the Effective Date relating to the incurrence or maintenance of Indebtedness by the Borrower and that amends, supersedes or otherwise modifies the 2013 Order or any successor decision, order or ruling.

“Subsidiary” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding Voting Stock, (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries; provided that in no event will Subsidiaries include the VIE Lessor Trusts.

“Swingline Advance” means an advance made by the Swingline Lender, if any, to the Borrower pursuant to Section 2.03A.

“Swingline Eurodollar Rate Advance” means a Swingline Advance that bears interest at a rate equivalent to (a) clause (ii) under the definition of Eurodollar Rate, plus (b) the Applicable Rate for Eurodollar Rate Advances.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Advances outstanding at such time. The Swingline Exposure of any Lender shall be its Ratable Share of the total Swingline Exposure at such time.

“Swingline Lender” means, upon notice to the Agent by such Lender and the Borrower, any Lender approved by the Borrower and the Agent from time to time that may agree to fund Swingline Advances.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earlier of (a) July 12, 2023, subject to extension (in the case of, and solely with respect to, each Lender consenting thereto) as provided in Section 2.21 in which case one or more different Termination Dates may exist which shall relate to individual Lender Commitments and (b) the date of termination in whole of the Commitments pursuant to Section 2.05 or Section 6.01.

“Total Outstandings” means the sum of (a) the aggregate principal amount of all Revolving Advances plus (b) all L/C Obligations outstanding plus (c) the aggregate Swingline Exposure.

“Type” means a Base Rate Advance or a Eurodollar Rate Advance.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“Unused Commitment” means, with respect to each Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all Revolving Advances made by such Lender (in its capacity as a Lender) and outstanding at such time and (ii) such Lender’s Ratable Share of the aggregate L/C Obligations and, other than for the purposes of calculation of

the commitment fees, such Lender's Ratable Share of the aggregate Swingline Exposure outstanding at such time.

“VIE Lessor Trusts” means the three (3) separate variable-interest entity lessor trusts that purchased from, and leased back to, the Borrower certain interests in the PVNGS Unit 2 and related common facilities, as described in Note 6 of Combined Notes to Condensed Consolidated Financial Statements in the Borrower's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018.

“Voting Stock” means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's permitted successors and permitted assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03 Accounting Terms. Unless otherwise specified herein, and subject to the provision below, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with generally accepted accounting principles as in effect from time to time, applied on a basis consistent (except for changes concurred in by the Borrower's independent public accountants) with the most recent audited Consolidated financial statements of the Borrower delivered to the Agent ("GAAP"). If at any time any change in GAAP or in the interpretation thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or in the interpretation thereof (subject to the approval of the Required Lenders); provided that, unless and until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein. Notwithstanding the foregoing, (a) for purposes of all financial or covenant calculations made under this Agreement and for purposes of defining and calculating Capital Lease Obligations, Indebtedness and Consolidated Indebtedness hereunder for such purposes, all leases or other agreements of any Person deemed to be a lease or other obligation under GAAP (as in effect from time to time) (whether such lease or other agreement is existing as of the date hereof or hereafter entered into) that would not be characterized as (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, in each case, under this Agreement based on GAAP as in effect as of December 31, 2015, will not be deemed to be (i) a Capital Lease Obligation, (ii) Indebtedness or (iii) Consolidated Indebtedness, respectively, as a result of any change in GAAP, or the interpretation or application thereof required or approved by such Person's independent certified public accountants, occurring or coming into or taking effect after December 31, 2015, including ASC Topic 840 or 842 or any related, similar or successor pronouncement, guidance, publication or rule and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Person at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES AND LETTERS OF CREDIT

Section 2.01 The Revolving Advances and Letters of Credit.

(a) The Revolving Advances. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Revolving Advances in Dollars to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an amount not to exceed such Lender's Unused Commitment. Each Borrowing (other than a Swingline Advance) shall be in an aggregate amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof and shall consist of Revolving Advances of the same Type made on the same day by the Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(a). Any Swingline Advance shall be made and repaid in accordance with the procedures set forth in Section 2.03A.

(b) Letters of Credit. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue standby letters of credit (each a "Letter of Credit") for the account of the Borrower from time to time on any Business Day during the period from the Effective Date until 30 days before the Termination Date in an aggregate Available Amount for all Letters of Credit issued by each Issuing Bank not to exceed at any time such Issuing Bank's Letter of Credit Commitment, provided that after giving effect to the issuance of any Letter of Credit, (i) the Total Outstandings shall not exceed the aggregate Revolving Credit Commitments and (ii) each Lender's Ratable Share of the Total Outstandings shall not exceed such Lender's Revolving Credit Commitment. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the Letter of Credit Expiration Date. Within the limits referred to above, the Borrower may from time to time request the issuance of Letters of Credit under this Section 2.01(b). The terms "issue", "issued", "issuance" and all similar terms, when applied to a Letter of Credit, shall include any renewal, extension or amendment thereof.

Section 2.02 Making the Revolving Advances.

(a) Except as otherwise provided in Section 2.03(c), each Borrowing (other than a Swingline Advance) shall be made on notice, given not later than (x) 12:00 noon on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of Eurodollar Rate Advances or (y) 1:00 p.m. on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Advances, by the Borrower to the Agent, which shall give to each Lender prompt notice thereof by facsimile. Each such notice of a Borrowing (a "Notice of Borrowing") shall be in writing or by facsimile in substantially the form of Exhibit B hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Revolving Advance. Each Lender shall, in the case of a Borrowing consisting of Base Rate Advances, before 2:00 p.m. on the date of such Borrowing, and in the case of a Borrowing consisting of Eurodollar Rate Advances, before 11:00 a.m. on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, such Lender's Ratable Share of such Borrowing. After the Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such funds available to the Borrower at the Agent's address referred to in Section 8.02 or as requested by the Borrower in the applicable Notice of Borrowing.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances for any Borrowing if the aggregate amount of such Borrowing is less than \$5,000,000 or if the obligation of the Lenders to make Eurodollar Rate Advances shall then be suspended

pursuant to Section 2.08 or Section 2.12 and (ii) at no time shall there be more than fifteen different Interest Periods outstanding for Eurodollar Rate Advances.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense reasonably incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Advance to be made by such Lender as part of such Borrowing when such Revolving Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of the applicable Borrowing that such Lender will not make available to the Agent such Lender's Ratable Share of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Share available to the Agent, such Lender and the Borrower severally agree to repay to the Agent within one Business Day after demand for such Lender and within three Business Days after demand for the Borrower such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Revolving Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Advance to be made by such other Lender on the date of any Borrowing.

Section 2.03 Letters of Credit.

(a) General.

(i) No Issuing Bank shall issue any Letter of Credit, if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance

of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital and liquidity requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which, in each such case, such Issuing Bank in good faith deems material to it;

(B) except as otherwise agreed by the Borrower and such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$100,000;

(C) such Letter of Credit is to be denominated in a currency other than Dollars;

(D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(E) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension; or

(F) any Lender is at such time an Affected Lender hereunder, unless the applicable Issuing Bank is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until such Issuing Bank has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate such Issuing Bank's risk with respect to such Affected Lender, and participating interests in any such newly issued Letter of Credit shall be allocated among non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(iii) No Issuing Bank shall amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) No Issuing Bank shall be under any obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable Issuing Bank (with a copy to the Agent) in the form of a Letter of Credit Application appropriately completed and signed by an Authorized Officer of the Borrower, together with agreed-upon draft language for such Letter of Credit reasonably acceptable to the applicable Issuing Bank. Such Letter of Credit Application must be received by such Issuing Bank and the Agent not later than 11:00 a.m. at least three Business Days (or such later date and time as the Agent and such Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C)

the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as such Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable Issuing Bank (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such Issuing Bank may require. Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Related Documents, as the applicable Issuing Bank or the Agent may require. In the event and to the extent that the provisions of any Letter of Credit Application or other L/C Related Document shall conflict with this Agreement, the provisions of this Agreement shall govern. Without limitation of the immediately preceding sentence, to the extent that any such Letter of Credit Application or other L/C Related Document shall impose any additional conditions on the maintenance of a Letter of Credit, any additional default provisions, collateral requirements or other obligations of the Borrower to any Issuing Bank, other than as stated in this Agreement, such additional conditions, provisions, requirements or other obligations shall not have effect so long as this Agreement shall be in effect, except to the extent as expressly agreed to by the Borrower and such Issuing Bank.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Agent (in writing) that the Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such Issuing Bank will provide the Agent with a copy thereof. Unless the applicable Issuing Bank has received written notice from the Required Lenders, the Agent or the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article III shall not then be satisfied, then, subject to the terms and conditions hereof and any applicable Letter of Credit Application, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Ratable Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to the applicable Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable Issuing Bank shall not permit any such extension (or may issue a Notice

of Non-Extension) if (A) such Issuing Bank has determined that it would not be permitted at such time to issue such Letter of Credit in its revised form (as extended) by reason of the provisions of clause (i) of Section 2.03(a) (or would have no obligation to issue such Letter of Credit by reason of the provisions of clause (ii) of Section 2.03(a)), or (B) it has received notice (which shall be in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension pursuant to Section 6.02 or (2) from the Agent, the Required Lenders or the Borrower that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each such case directing such Issuing Bank not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Subject to the provisions below, not later than 2:30 p.m. on the date (the “Honor Date”) that any Issuing Bank makes any payment on a drawing on any Letter of Credit, if the Borrower shall have received notice of such payment prior to 11:30 a.m. on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:30 p.m. on the next Business Day, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such drawing together with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, unless the Borrower shall have advised the Agent that it does not meet the conditions specified in either clause (B) or (C) below, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Ratable Share thereof. In such event, the Borrower shall be deemed to have requested a Base Rate Advance to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01(a) or the delivery of a Notice of Borrowing but subject to (A) the amount of the aggregate Unused Commitments, (B) no Event of Default having occurred and be continuing, or resulting therefrom, and (C) the conditions specified in Section 3.02(c) and Section 3.02(d) being satisfied on and as of the date of the applicable Base Rate Advance and, to the extent so financed, the Borrower's obligation to satisfy the reimbursement obligation created by such payment by the Issuing Bank on the Honor Date shall be discharged and replaced by the resulting Base Rate Advance. Any notice given by any Issuing Bank or the Agent pursuant to this Section 2.03(c)(i) shall be given in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Agent for the account of the applicable Issuing Bank at the Agent’s Office in an amount equal to its Ratable Share of the Unreimbursed Amount not later than 4:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Advance to the Borrower in such amount. The Agent shall remit the funds so received to the applicable Issuing Bank.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Base Rate Advance because any of the conditions set forth in clauses (A), (B) or (C) of Section 2.03(c)

(i) cannot be satisfied or for any other reason, then not later than 2:30 p.m. on the next Business Day after the day notice of the drawing is given to the Borrower, in the case of a failure to meet any such condition, or in any other case, after notice of the event resulting in the outstanding Unreimbursed Amount, the Borrower shall reimburse such Issuing Bank through the Agent in an amount equal to the amount of such outstanding Unreimbursed Amount with interest thereon. If the Borrower fails to so reimburse such Issuing Bank by such time, the Borrower shall be deemed to have incurred from the applicable Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum. In such event, each Lender's payment to the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Base Rate Advance or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Ratable Share of such amount shall be solely for the account of the applicable Issuing Bank.

(v) Each Lender's obligation to make Base Rate Advances or L/C Advances to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Base Rate Advances pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 2.03(c)(i). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such Issuing Bank shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such Issuing Bank in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Base Rate Advance included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable Issuing Bank submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral (as defined in Section 2.03(h)) applied thereto by the Agent), the Agent will distribute to such Lender its Ratable Share thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the applicable Issuing Bank pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 8.12 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Lender shall pay to the Agent for the account of such Issuing Bank its Ratable Share thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Failure to Make Revolving Advances. The failure of any Lender to make the Revolving Advance to be made by it on the date specified in Section 2.03(c) or any L/C Advance shall not relieve any other Lender of its obligation hereunder to make its Revolving Advance or L/C Advance, as the case may be, to be made by such other Lender on such date.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any

transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

provided, however, that nothing in this Section 2.03(f) shall limit the rights of the Borrower under Section 2.03(g).

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity that is known to the Borrower in connection with any draw under such Letter of Credit of which the Borrower has reasonable notice, the Borrower will immediately notify the applicable Issuing Bank. To the extent allowed by applicable Law, Borrower shall be conclusively deemed to have waived any such claim against the applicable Issuing Bank and its correspondents unless such notice is given as aforesaid. Nothing herein shall require the Borrower to make any determination as to whether the drawing is in accordance with the requirements of the Letter of Credit, provided that the Borrower may waive any discrepancies in the drawing on any such Letter of Credit.

(g) Role of Issuing Bank. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(f); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence as determined by a final, non-appealable judgment by a court of competent jurisdiction or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable Issuing Bank may accept documents that appear on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(h) Cash Collateral. Upon the request of the Agent or the applicable Issuing Bank, if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then outstanding L/C Obligations. Section 6.02 sets forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.10(b)(ii), Section 2.19(c)(ii), (iv) and (v) and Section 6.02, “Cash Collateralize” means to pledge and deposit with or deliver to the Agent, for the benefit of the Issuing Banks and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Agent and each Issuing Bank (which documents are hereby consented to by the Lenders) in an amount equal to 100% of the amount of the L/C Obligations as of such date plus any accrued and unpaid interest and fees thereon. Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts with the Agent.

(i) Letter of Credit Reports. Each Issuing Bank shall furnish (A) to the Agent on the first Business Day of each month a written report summarizing issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all such Letters of Credit and (B) to the Agent on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

(j) Interim Interest. Except as provided in Section 2.03(c)(ii) with respect to Unreimbursed Amounts refinanced as Base Rate Advances and Section 2.03(c)(iii) with respect to L/C Borrowings, unless the Borrower shall reimburse each payment by an Issuing Bank pursuant to a Letter of Credit in full on the Honor Date, the Unreimbursed Amount thereof shall bear interest, for each day from and including the Honor Date to but excluding the date that the Borrower reimburses such Issuing Bank for the Unreimbursed Amount in full, at the rate per annum equal to (i) the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time, to but excluding the next Business Day after the Honor Date and (ii) from and including the next Business Day after the Honor Date, the Base Rate in effect from time to time plus the Applicable Rate for Base Rate Advances in effect from time to time plus 2% per annum.

Section 2.03A Swingline Advances.

(a) Amount of Swingline Advances. Subject to the terms and conditions set forth herein, the Swingline Lender will make Swingline Advances in Dollars to the Borrower from time to time during the period from the Effective Date until the Termination Date, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of all outstanding Swingline Advances exceeding \$50,000,000 (or such lesser amount as agreed between the Borrower and the Swingline Lender) or (ii) the Total Outstandings exceeding the aggregate Revolving Credit Commitment. Each Swingline Advance shall be in an aggregate amount of \$500,000 or an integral multiple of \$100,000 in excess thereof or such greater amounts as agreed between the Borrower and the Swingline Lender. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Advances. The Swingline Lender shall be under no obligation to make a Swingline Advance if any Lender is at such time an Affected Lender hereunder, unless the Swingline Lender is satisfied that the related exposure will be 100% covered by the Commitments of the non-Affected Lenders or, if not so covered, until the Swingline Lender has entered into arrangements satisfactory to it in its sole discretion with the Borrower or such Affected Lender to eliminate the Swingline Lender’s risk with respect to such Affected Lender, and participating interests in any such newly made Swingline Advance shall be allocated among

non-Affected Lenders in a manner consistent with Section 2.19(c)(i) (and Affected Lenders shall not participate therein).

(b) Borrowing Notice and Making of Swingline Advances. To request a Swingline Advance, the Borrower shall notify the Swingline Lender and the Agent of such request in writing, not later than 2:00 p.m. (or such later time as the Swingline Lender may determine in its sole discretion), on the day of such Swingline Advance. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Advance. The Swingline Lender shall promptly notify the Borrower and the Agent (and the Agent shall promptly notify each Lender) and the Swingline Lender shall make each Swingline Advance available to the Borrower by 2:30 p.m. (or such later time as may be agreed by the Swingline Lender and the Borrower) on the requested date of such Swingline Advance in a manner agreed upon by the Borrower and the Swingline Lender. Each Swingline Advance shall bear interest at the Base Rate, or, at the option of the Borrower and subject to prior agreement between the Borrower and the Swingline Lender, shall be a Swingline Eurodollar Rate Advance or a Money Market Rate Advance.

(c) Repayment of Swingline Advances. Each Swingline Advance shall be paid in full by the Borrower on the earlier of (x) on or before the fourteenth (14th) Business Day after the date such Swingline Advance was made by the Swingline Lender or (y) the Termination Date. A Swingline Advance may not be repaid with the proceeds from another Swingline Advance. In addition, the Swingline Lender (i) may at any time in its sole discretion with respect to any outstanding Swingline Advance, or (ii) shall, on the fourteenth (14th) Business Day after the date any Swingline Advance is made and which has not been otherwise repaid, require each Lender (including the Swingline Lender) to make a Revolving Advance in the amount of such Lender's Ratable Share of such Swingline Advance (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swingline Advance. Not later than 2:00 p.m. on the date of any notice received pursuant to this Section 2.03A(c), each Lender shall make available to the Agent its required Revolving Advance, in immediately available funds in the same manner as provided in Section 2.02(a) with respect to Revolving Advances made by such Lender. Revolving Advances made pursuant to this Section 2.03A(c) shall initially be Base Rate Advances and thereafter may be continued as Base Rate Advances or converted into Eurodollar Rate Advances in the manner provided in Section 2.09 and subject to the other conditions and limitations set forth in this Article II. Each Lender's obligation to make Revolving Advances pursuant to this Section 2.03A(c) to repay Swingline Advances shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Agent, the Swingline Lender or any other Person, (b) the occurrence or continuance of a Default or an Event of Default, (c) any adverse change in the condition (financial or otherwise) of the Borrower, or (d) any other circumstance, happening or event whatsoever. In the event that any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), the Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Agent receives such payment from such Lender or such obligation is otherwise fully satisfied. In addition to the foregoing, if for any reason any Lender fails to make payment to the Agent of any amount due under this Section 2.03A(c), such Lender shall be deemed, at the option of the Agent, to have unconditionally and irrevocably purchased from the Swingline Lender without recourse or warranty, an undivided interest and participation in the applicable Swingline Advance in the amount of such Revolving Advance, and such interest and participation may be recovered from such Lender together with interest thereon at the Federal Funds Rate for each day during the period commencing on the date of demand and ending on the date such amount is received.

(d) Swingline Advances Reports. The Swingline Lender shall furnish to the Agent on each Business Day a written report summarizing outstanding Swingline Advances made by the Swingline Lender

and the due date for the repayment of such Swingline Advances; provided that if no Swingline Advances are outstanding, no such report shall be required to be delivered.

(e) Successor Swingline Lender. Subject to the appointment and acceptance of a successor Swingline Lender as provided in this paragraph, the Borrower may, upon not less than ten (10) Business Days prior notice to the Agent and the Lenders, replace the existing Swingline Lender with the consent of the Agent (which consent shall not unreasonably be withheld). Upon the acceptance of its appointment as Swingline Lender hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the replaced Swingline Lender, and the replaced Swingline Lender shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Swingline Lender shall be as agreed between the Borrower and such successor. After the Swingline Lender's replacement hereunder, the provisions of this Article and Section 8.04 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Swingline Lender.

Section 2.04 Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each Lender a commitment fee on such Lender's Unused Commitment (provided that, for the avoidance of doubt, and without duplication, such Lender's Unused Commitment shall be calculated exclusive of such Lender's Swingline Exposure and, if such Lender is the Swingline Lender, without giving effect to the Swingline Advances, and in no event shall the aggregate of such commitment fees exceed an amount calculated based on the product of (a) the aggregate Revolving Credit Commitments minus the aggregate principal amount of all Revolving Advances and aggregate L/C Obligations and (b) the Applicable Rate for commitment fees) from the Effective Date in the case of each Initial Lender and from the effective date specified in the Assumption Agreement or in the Assignment and Assumption pursuant to which it became a Lender in the case of each other Lender until the Termination Date at a rate per annum equal to the Applicable Rate for commitment fees in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December, commencing September 30, 2018, and on the Termination Date, provided that no commitment fee shall accrue with respect to the Unused Commitment of an Affected Lender so long as such Lender shall be an Affected Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each Lender a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time at a rate per annum equal to the Applicable Rate for Eurodollar Rate Advances in effect from time to time, during such calendar quarter, payable in arrears quarterly on the last day of each March, June, September and December, commencing with the quarter ended September 30, 2018, and on the Termination Date; provided that the Applicable Rate for Eurodollar Rate Advances shall be 2% above such Applicable Rate in effect upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest pursuant to Section 2.07(b).

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, payable in the amounts and at the times specified in the applicable Fee Letter between the Borrower and such Issuing Bank, and such other commissions, issuance fees, transfer fees and other fees and charges in connection with the issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree promptly following receipt of an invoice therefor.

(c) Agent's Fees. The Borrower shall pay to the Agent for its own account such fees as are agreed between the Borrower and the Agent pursuant to the Fee Letter between the Borrower and the Agent.

Section 2.05 Optional Termination or Reduction of the Commitments.

(a) The Borrower shall have the right, upon at least three Business Days' notice to the Agent, to terminate in whole or permanently reduce ratably in part the Unused Commitments or the Unissued Letter of Credit Commitments, provided that each partial reduction shall be in the aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) So long as no Default or Event of Default shall be continuing, the Borrower shall have the right, at any time, upon at least ten Business Days' notice to an Affected Lender (with a copy to the Agent), to terminate in whole such Lender's Revolving Credit Commitment and, if applicable, its Letter of Credit Commitment, without affecting the Commitments of any other Lender. Such termination shall be effective, (x) with respect to such Lender's Unused Commitment, on the date set forth in such notice, provided, however, that such date shall be no earlier than ten Business Days after receipt of such notice and (y) with respect to each Revolving Advance outstanding to such Lender, in the case of Base Rate Advances, on the date set forth in such notice and, in the case of Eurodollar Rate Advances, on the last day of the then current Interest Period relating to such Revolving Advance. Upon termination of a Lender's Commitments under this Section 2.05(b), the Borrower will pay or cause to be paid all principal of, and interest accrued to the date of such payment on, Revolving Advances (and if such Lender is the Swingline Lender, the Swingline Advances) owing to such Lender and, subject to Section 2.19, pay any accrued commitment fees or Letter of Credit fees payable to such Lender pursuant to the provisions of Section 2.04, and all other amounts payable to such Lender hereunder (including, but not limited to, any increased costs or other amounts owing under Section 2.11 and any indemnification for Taxes under Section 2.14); and, if such Lender is an Issuing Bank, shall pay to such Issuing Bank for deposit in an escrow account an amount equal to the Available Amount of all Letters of Credit issued by such Issuing Bank, whereupon all Letters of Credit issued by such Issuing Bank shall be deemed to have been issued outside of this Agreement on a bilateral basis and shall cease for all purposes to constitute a Letter of Credit issued under this Agreement, and upon such payments, except as otherwise provided below, the obligations of such Lender hereunder shall, by the provisions hereof, be released and discharged; provided, however, that (i) such Lender's rights under Section 2.11, Section 2.14 and Section 8.04, and, in the case of an Issuing Bank, Section 8.04(c), and its obligations under Section 8.04 and 8.08, in each case in accordance with the terms thereof, shall survive such release and discharge as to matters occurring prior to such date and (ii) such escrow agreement shall be in a form reasonably agreed to by the Borrower and such Issuing Bank, but in no event shall either the Borrower or such Issuing Bank require any waivers, covenants, events of default or other provisions that are more restrictive than or inconsistent with the provisions of this Agreement. Subject to Section 2.18, the aggregate amount of the Commitments of the Lenders once reduced pursuant to this Section 2.05(b) may not be reinstated. The termination of the Commitments of an Affected Lender pursuant to this Section 2.05(b) will not be deemed to be a waiver of any right that the Borrower, the Agent, any Issuing Bank, the Swingline Lender or any other Lender may have against the Affected Lender that arose prior to the date of such termination. Upon any such termination, the Ratable Share of each remaining Lender will be revised.

Section 2.06 Repayment of Advances. The Borrower shall repay to the Agent for the ratable account of the Lenders on the Termination Date the aggregate principal amount of the Revolving Advances made by such Lender and then outstanding. The Borrower shall repay Swingline Advances in accordance with Section 2.03A(c).

Section 2.07 Interest on Advances.

(a) Scheduled Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender (including the Swingline Lender) from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. During such periods as such Revolving Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Rate for Base Rate Advances in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. During such periods as such Revolving Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Revolving Advance to the sum of (x) the Eurodollar Rate for such Interest Period for such Revolving Advance plus (y) the Applicable Rate for Eurodollar Rate Advances in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurodollar Rate Advance shall be Converted or paid in full.

(iii) Swingline Advances. During such period as such Swingline Advance remains outstanding, the Base Rate or, as agreed to by the Swingline Lender and the Borrower, the Money Market Rate or the Eurodollar Rate, payable on the date such Swingline Advance is required to be repaid.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require the Borrower to pay interest (“Default Interest”) on (i) the unpaid principal amount of each Advance owing to each Lender, payable in arrears on the dates referred to in clause (a)(i), (a)(ii) or (a)(iii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Advance pursuant to clause (a)(i), (a)(ii) or (a)(iii) above and (ii) to the fullest extent permitted by Law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to clause (a)(i) above, provided, however, that following acceleration of the Advances pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

(c) Interest Rate Limitation. Nothing contained in this Agreement or in any other Loan Document shall be deemed to establish or require the payment of interest to any Lender at a rate in excess of the maximum rate permitted by applicable Law. If the amount of interest payable for the account of any Lender on any interest payment date would exceed the maximum amount permitted by applicable Law to be charged by such Lender, the amount of interest payable for its account on such interest payment date shall

be automatically reduced to such maximum permissible amount. In the event of any such reduction affecting any Lender, if from time to time thereafter the amount of interest payable for the account of such Lender on any interest payment date would be less than the maximum amount permitted by applicable Law to be charged by such Lender, then the amount of interest payable for its account on such subsequent interest payment date shall be automatically increased to such maximum permissible amount, provided that at no time shall the aggregate amount by which interest paid for the account of any Lender has been increased pursuant to this sentence exceed the aggregate amount by which interest paid for its account has theretofore been reduced pursuant to the previous sentence.

Section 2.08 Interest Rate Determination.

(a) The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.07(a).

(b) (i) If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Advance or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Advance, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Advance, the Agent will promptly so notify the Borrower and each Lender, whereupon each Eurodollar Rate Advance will automatically on the last day of the then existing Interest Period therefor Convert into a Base Rate Advance. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Advances shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of Eurodollar Rate Advances or, failing that, will be deemed to have Converted such request into a request for a Base Rate Advance in the amount specified therein.

(i) Notwithstanding anything to the contrary herein, if at any time the Agent or the Required Lenders determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.08(b)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.08(b)(i) have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 8.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest, together with a copy of such amendment, is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(c) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of “Interest Period” in Section 1.01, the Agent will forthwith so notify the Borrower and the Lenders and such Revolving Advances will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Advances.

(d) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$5,000,000, such Revolving Advances shall automatically Convert into Base Rate Advances.

(e) Upon the occurrence and during the continuance of any Event of Default,

(i) with respect to Eurodollar Rate Advances, each such Revolving Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance (or if such Revolving Advance is then a Base Rate Advance, will continue as a Base Rate Advance); and

(ii) the obligation of the Lenders to make Eurodollar Rate Advances or to Convert Revolving Advances into Eurodollar Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

Section 2.09 Optional Conversion of Revolving Advances. The Borrower may on any Business Day, upon notice given to the Agent not later than 12:00 noon on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Section 2.08 and Section 2.12, Convert all Revolving Advances of one Type comprising the same Borrowing into Revolving Advances of the other Type; provided, however, that (a) any Conversion of Eurodollar Rate Advances into Base Rate Advances shall be made only on the last day of an Interest Period for such Eurodollar Rate Advances, (b) any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b), (c) no Conversion of any Revolving Advances shall result in more separate Borrowings than permitted under Section 2.02(b) and (d) no Swingline Advances may be converted. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Revolving Advances to be Converted, and (iii) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for each such Revolving Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

Section 2.10 Prepayments of Advances.

(a) Optional. At any time and from time to time, the Borrower shall have the right to prepay any Advance, in whole or in part, without premium or penalty (except as provided in clause (y) below), upon notice at least two Business Days’ prior to the date of such prepayment, in the case of Eurodollar Rate Advances, and not later than 11:00 a.m. on the date of such prepayment in the case of Base Rate Advances and Swingline Advances, to the Agent (and, in the case of prepayment a Swingline Advance, the Swingline Lender) specifying the proposed date of such prepayment and the aggregate principal amount and Type of the Advance to be prepaid (and, in the case of Eurodollar Rate Advances, the Interest Period of the Borrowing pursuant to which made); provided, however, that (x) each partial prepayment shall be in an aggregate principal amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, and shall be accompanied by accrued interest to the date of prepayment on the principal amount prepaid, and (y) in the event of any such prepayment of a Eurodollar Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 8.04(e).

(b) Mandatory.

(i) The Borrower shall prepay the aggregate principal amount of the Advances, together with accrued interest to the date of prepayment on the principal amount prepaid, without requirement of demand therefor, or shall pay or prepay any other Indebtedness then outstanding at any time, when and to the extent required to comply with applicable Laws of any Governmental Authority, including the 2013 Order and/or any Subsequent Order, or applicable resolutions of the Board of Directors of the Borrower.

(ii) If for any reason the Total Outstandings at any time exceed the aggregate Revolving Credit Commitments then in effect, the Borrower shall, within one Business Day after notice thereof, prepay Advances and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.10(b) unless, after the prepayment in full of the Advances, the Total Outstandings exceed the aggregate Revolving Credit Commitments then in effect.

Section 2.11 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 2.11(e)) or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Advances made by such Lender or any Letter of Credit or participation therein; or

(iii) subject the Agent or any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Other Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Agent or such Lender of making, maintaining or Converting any Advance (or of maintaining its obligation to make any such Revolving Advance), or to increase the cost to the Agent, such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Agent, such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Agent, such Lender or such Issuing Bank, the Borrower will pay to the Agent, such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate the Agent, such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Applicable Lending Office of such Lender or such Lender's or such Issuing Bank's holding company, if any, regarding capital and liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or participations in Letters of Credit

held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive and binding upon all parties absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

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

(e) Reserves on Eurodollar Rate Advances. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Advance equal to the actual costs of such reserves allocated to such Revolving Advance by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Eurodollar Rate Advance, provided the Borrower shall have received at least 30 days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice 30 days prior to the relevant interest payment date, such additional interest shall be due and payable 30 days from receipt of such notice.

Section 2.12 Illegality. If any Lender shall have determined in good faith that the introduction of or any change in any applicable Law or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance with any guideline or request from any such Governmental Authority (whether or not having the force of law), makes it unlawful for any Lender or its Applicable Lending Office to make, maintain or fund Eurodollar Rate Advances, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender to make or continue Eurodollar Rate Advances or to Convert Base Rate Advances to Eurodollar Rate Advances shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable,

Convert all Eurodollar Rate Advances of such Lender to Base Rate Advances, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Advances to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Advances. Upon any such prepayment or Conversion, the Borrower shall also pay accrued interest on the amount so prepaid or Converted.

Section 2.13 Payments and Computations.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make each payment hereunder not later than 1:00 p.m. on the day when due in U.S. dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender becoming a Lender hereunder as a result of a Commitment Increase pursuant to Section 2.18, and upon the Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date, the Agent shall make all payments hereunder and under any Notes issued in connection therewith in respect of the interest assumed thereby to the Assuming Lender. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date specified in such Assignment and Assumption, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest based on the Base Rate (when the Base Rate is based on the Prime Rate) shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, and all other computations of interest and fees hereunder (including computations of interest based on the Eurodollar Rate and the Federal Funds Rate and of fees and Letter of Credit commissions) shall be made by the Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Interest on Swingline Advances shall be calculated on the basis of a year of 360 days or such other basis agreed to by the Swingline Lender and the Borrower, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fees or commissions, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Agent

may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due to such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

Section 2.14 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Borrower or the Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower or the Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States of America Federal backup withholding and withholding Taxes, from any payment, then (A) the Agent shall withhold or make such deductions as are determined by the Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify the Agent, each Lender and each Issuing Bank, and shall make payment in respect thereof within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower or the Agent or paid by the Agent, such Lender or such Issuing Bank, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall also, and does hereby, indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or an Issuing Bank for any reason fails to pay indefeasibly to the Agent as required by clause

(ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(ii) Each Lender and each Issuing Bank shall, within 30 days after demand therefor, severally (A) indemnify the Agent for (x) any Indemnified Taxes and Other Taxes attributable to such Lender or such Issuing Bank (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrower to do so), (y) any Taxes attributable to such Lender's or such Issuing Bank's failure to comply with the provisions of Section 8.07(d) relating to the maintenance of a Participant Register and (z) for any Excluded Taxes attributable to such Lender or such Issuing Bank, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, and (B) indemnify the Borrower and the Agent against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Agent) incurred by or asserted against the Borrower or the Agent by any Governmental Authority as a result of the failure by such Lender or such Issuing Bank, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or such Issuing Bank, as the case may be, to the Borrower or the Agent pursuant to subsection (e). A certificate as to the amount of such payment or liability delivered to any Lender or any Issuing Bank by the Agent shall be conclusive absent manifest error. Each Lender and each Issuing Bank hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or such Issuing Bank, as the case may be, under this Agreement or any other Loan Document or otherwise payable by the Agent to the Lender or the Issuing Bank from any other source against any amount due to the Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender or an Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 2.14, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States of America,

(A) any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Internal Revenue Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(2) executed originals of Internal Revenue Service Form W-8ECI,

(3) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(4) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of Internal Revenue Service Form W-8BEN or Form W-8BEN-E, or

(5) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States of America Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Borrower and the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Applicable Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to each of the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Bank, or have any obligation to pay to any Lender or any Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such Issuing Bank, as the case may be. If the Agent, any Lender or any Issuing Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by the Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent, such Lender or such Issuing Bank in the event the Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) Payments. Failure or delay on the part of the Agent, any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section 2.14 shall not constitute a waiver of the Agent's, such Lender's or such Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate the Agent, a Lender or an Issuing Bank pursuant to the foregoing provisions of this Section 2.14 for any Indemnified Taxes or Other Taxes imposed or asserted by the relevant Governmental Authority more than three months prior to the date that the Agent, such Lender or such Issuing Bank, as the case may be, claims compensation with respect thereto (except that, if a Change in Law giving rise to such Indemnified Taxes or Other Taxes is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

(h) Each of the Agent, any Issuing Bank or any Lender agrees to cooperate with any reasonable request made by the Borrower in respect of a claim of a refund in respect of Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.14 if (i) the Borrower has agreed in writing to pay all of the Agent's or such Issuing Bank's or such Lender's reasonable out-of-pocket costs and expenses relating to such claim, (ii) the Agent or such Issuing Bank or such Lender determines, in its good faith judgment, that it would not be disadvantaged, unduly burdened or prejudiced as a result of such claim and (iii) the Borrower furnishes, upon request of the Agent, or such Issuing Bank or such Lender, an opinion of tax counsel (such opinion, which can be reasoned,

and such counsel to be reasonably acceptable to such Lender, or such Issuing Bank or the Agent) that the Borrower is likely to receive a refund or credit.

Section 2.15 Sharing of Payments, Etc. . If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances or L/C Advances owing to it (other than pursuant to Section 2.05(b), Section 2.11, Section 2.12, Section 2.14, Section 2.20 or Section 8.04(e)) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary thereof if permitted hereby (as to which the provisions of this Section 2.15 shall apply) in excess of its Ratable Share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders (for cash at face value) such participations in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's Ratable Share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 2.16 Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Advance owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Advances. The Borrower agrees that upon notice by any Lender (including the Swingline Lender) to the Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Advances owing to, or to be made by, such Lender, the Borrower shall promptly execute and deliver to such Lender a Note payable to the order of such Lender in a principal amount up to the Revolving Credit Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 8.07(c) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assumption Agreement and each Assignment and Assumption delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to

make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement.

Section 2.17 Use of Proceeds. The proceeds of the Advances and issuances of Letters of Credit shall be available (and the Borrower agrees that it shall use such proceeds) solely to refinance Indebtedness of the Borrower from time to time and for other general corporate purposes of the Borrower, subject to such restrictions that are imposed in the 2013 Order and/or any Subsequent Order.

Section 2.18 Increase in the Aggregate Revolving Credit Commitments.

(a) The Borrower may, at any time prior to the Termination Date, by notice to the Agent, request that the aggregate amount of the Revolving Credit Commitments be increased by an amount of \$10,000,000 or an integral multiple thereof (each a “Commitment Increase”) to be effective as of a date that is at least 90 days prior to the Termination Date (the “Increase Date”) as specified in the related notice to the Agent; provided, however that (i) in no event shall the aggregate amount of the Revolving Credit Commitments at any time exceed \$700,000,000 or the aggregate amount of Commitment Increases exceed \$200,000,000 and (ii) on the date of any request by the Borrower for a Commitment Increase and on the related Increase Date, the applicable conditions set forth in this Section 2.18 shall be satisfied.

(b) The Agent shall promptly notify the Lenders of a request by the Borrower for a Commitment Increase, which notice shall include (i) the proposed amount of such requested Commitment Increase, (ii) the proposed Increase Date and (iii) the date by which Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Revolving Credit Commitments (the “Commitment Date”). Each Lender that is willing to participate in such requested Commitment Increase (each an “Increasing Lender”) shall, in its sole discretion, give written notice to the Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Revolving Credit Commitment. If the Lenders notify the Agent that they are willing to increase the amount of their respective Revolving Credit Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among the Lenders willing to participate therein in such amounts as are agreed between the Borrower and the Agent. Each Increasing Lender shall be subject to such applicable consents as may be required under Section 8.07(b)(iii) (including, but not limited to, the consent, not to be unreasonably withheld, of each Issuing Bank and the Swingline Lender).

(c) Promptly following each Commitment Date, the Agent shall notify the Borrower as to the amount, if any, by which the Lenders are willing to participate in the requested Commitment Increase. If the aggregate amount by which the Lenders are willing to participate in any requested Commitment Increase on any such Commitment Date is less than the requested Commitment Increase, then the Borrower may extend offers to one or more Eligible Assignees to participate in any portion of the requested Commitment Increase that has not been committed to by the Lenders as of the applicable Commitment Date; provided, however, that the Revolving Credit Commitment of each such Eligible Assignee shall be in an amount of not less than \$10,000,000.

(d) On each Increase Date, each Eligible Assignee that accepts an offer to participate in a requested Commitment Increase in accordance with Section 2.18(c) (each such Eligible Assignee, an “Assuming Lender”) shall become a Lender party to this Agreement as of such Increase Date and the Revolving Credit Commitment of each Increasing Lender for such requested Commitment Increase shall be so increased by the amount by which the Increasing Lender agreed to increase its Revolving Credit Commitment (or by the amount allocated to such Lender pursuant to the next to last sentence of

Section 2.18(b)) as of such Increase Date; provided, however, that the Agent shall have received on or before such Increase Date the following, each dated such date:

(i) (A) certified copies of resolutions of the Board of Directors of the Borrower approving the Commitment Increase and the corresponding modifications to this Agreement, (B) an opinion of counsel for the Borrower (which may be in-house counsel), in form and substance reasonably acceptable to the Required Lenders and (C) a certificate from a duly authorized officer of the Borrower, stating that the conditions set forth in Section 3.02(a) and Section 3.02(b) are satisfied;

(ii) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Borrower and the Agent (each an “Assumption Agreement”), duly executed by such Assuming Lender, the Agent, the Borrower and each other Person required to consent thereto, as applicable under Section 8.07(b)(iii); and

(iii) confirmation from each Increasing Lender of the increase in the amount of its Revolving Credit Commitment in a writing satisfactory to the Borrower and the Agent.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.18(d), the Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 p.m., by telecopier, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date. Each Increasing Lender and each Assuming Lender shall, before 2:00 p.m. on the Increase Date, make available for the account of its Applicable Lending Office to the Agent at the Agent’s Account, in same day funds, in the case of such Assuming Lender, an amount equal to such Assuming Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase) and, in the case of such Increasing Lender, an amount equal to the excess of (i) such Increasing Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase) over (ii) such Increasing Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment (without giving effect to the relevant Commitment Increase) as a percentage of the aggregate Revolving Credit Commitments (without giving effect to the relevant Commitment Increase)). After the Agent’s receipt of such funds from each such Increasing Lender and each such Assuming Lender, the Agent will promptly thereafter cause to be distributed like funds to the other Lenders for the account of their respective Applicable Lending Offices in an amount to each other Lender such that the aggregate amount of the outstanding Advances owing to each Lender after giving effect to such distribution equals such Lender’s Ratable Share of the Borrowings then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments outstanding after giving effect to the relevant Commitment Increase).

Section 2.19 Affected Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes an Affected Lender, then the following provisions shall apply for so long as such Lender is an Affected Lender:

(a) fees shall cease to accrue on the Unused Commitment of such Affected Lender pursuant to Section 2.04(a);

(b) the Revolving Credit Commitment and Advances of such Affected Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 8.01), other than any waiver, amendment or modification requiring the consent of all Lenders or of each Lender affected;

(c) if (x) there shall be any Available Amount under any outstanding Letter of Credit or (y) any Swingline Exposure shall exist during any time a Lender is an Affected Lender, then:

(i) so long as no Default or Event of Default has occurred and is continuing, all or any part of the Available Amount of all such Letters of Credit and Swingline Exposure shall be reallocated among the non-Affected Lenders in accordance with their respective Ratable Shares (disregarding any Affected Lender's Revolving Credit Commitment) but only to the extent that with respect to each non-Affected Lender the sum of (A) the aggregate principal amount of all Revolving Advances made by such non-Affected Lender (in its capacity as a Lender) and outstanding at such time plus (B) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding L/C Obligations plus (C) such non-Affected Lender's Ratable Share (after giving effect to the reallocation contemplated in this Section 2.19(c)(i)) of the outstanding Swingline Exposure, does not exceed such non-Affected Lender's Revolving Credit Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Agent (x) first, prepay such unallocable Swingline Exposure and (y) second, Cash Collateralize for the benefit of the applicable Issuing Bank only the Borrower's obligations corresponding to such Affected Lender's Ratable Share of the Available Amount of outstanding Letters of Credit (after giving effect to any partial reallocation pursuant to clause (i) above) (the "Affected Lender Share") in accordance with the procedures set forth in Section 2.03(h) for so long as such there shall be any Available Amount of outstanding Letters of Credit;

(iii) if the Ratable Share of the Available Amount of outstanding Letters of Credit and the Swingline Exposure of the non-Affected Lenders is reallocated pursuant to this Section 2.19(c), then the fees payable to the Lenders pursuant to Section 2.04(a) and Section 2.04(b) shall be adjusted in accordance with such non-Affected Lenders' Ratable Shares;

(iv) if any Affected Lender Share is not reallocated pursuant to clause (i) above and if the Borrower fails to Cash Collateralize any portion of such Affected Lender Share pursuant to clause (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any Lender hereunder, the fee payable under Section 2.04(b) with respect to such Affected Lender Share shall be payable to the Issuing Bank until such Affected Lender Share is reallocated; and

(v) if the Borrower Cash Collateralizes any portion of any Affected Lender Share pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Affected Lender pursuant to Section 2.04(b)(i) or the applicable Issuing Bank pursuant to Section 2.04(b)(ii) (solely with respect to any fronting fee) with respect to such Affected Lender's Affected Lender Share during the period such Affected Lender's Affected Lender Share is Cash Collateralized;

(d) to the extent the Agent receives any payments or other amounts for the account of an Affected Lender under this Agreement, such Affected Lender shall be deemed to have requested that the Agent use such payment or other amount to fulfill such Affected Lender's previously unsatisfied obligations to fund a

Revolving Advance under Section 2.03(c) or Section 2.03A(c) or L/C Advance or any other unfunded payment obligation of such Affected Lender under this Agreement; and

(e) subject to Section 8.18, for the avoidance of doubt, the Borrower, each Issuing Bank, the Swingline Lender, the Agent and each other Lender shall retain and reserve its other rights and remedies respecting each Affected Lender.

In the event that the Agent, the Borrower, the Swingline Lender and the Issuing Banks each agrees that an Affected Lender has adequately remedied all matters that caused such Lender to be an Affected Lender, then the Ratable Shares of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Advances of the other Lenders as the Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances in accordance with its Ratable Share. In addition, at such time as the Affected Lender is replaced by another Lender pursuant to Section 2.20, the Ratable Shares of the Lenders will be readjusted to reflect the inclusion of the replacing Lender's Commitment in accordance with Section 2.20. In either such case, this Section 2.19 will no longer apply.

Section 2.20 Replacement of Lenders. If any Lender requests compensation under Section 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, or if any Lender is an Affected Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 8.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more assignees that shall assume such obligations (which any such assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee specified in Section 8.07(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Advances and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 8.04(e)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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

Section 2.21 Extension of Termination Date.

(a) The Borrower may at any time from time to time not more than ninety (90) days and not less than thirty (30) days prior to any anniversary of the Effective Date, by notice to the Agent (who shall promptly notify the Lenders) not later than 10 Business Days prior to the date on which the Lenders are

requested to respond thereto (each such date, a “ Lender Notice Date ”), request that each Lender extend (each such date on which such extension occurs, an “ Extension Date ”) such Lender’s Termination Date to the date that is one year after the Termination Date then in effect for such Lender (the “ Existing Termination Date ”).

(b) Each Lender, acting in its sole and individual discretion, shall, by notice to the Agent given not later than the applicable Lender Notice Date, advise the Agent whether or not such Lender agrees to such extension (each Lender that determines to so extend its Termination Date, an “ Extending Lender ”). Each Lender that determines not to so extend its Termination Date (a “ Non-Extending Lender ”) shall notify the Agent of such fact promptly after such determination (but in any event no later than the Lender Notice Date), and any Lender that does not so advise the Agent on or before the Lender Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree, and it is understood and agreed that no Lender shall have any obligation whatsoever to agree to any request made by the Borrower for extension of the Termination Date.

(c) The Agent shall promptly notify the Borrower of each Lender’s determination under this Section.

(d) The Borrower shall have the right, but shall not be obligated, on or before the applicable Termination Date for any Non-Extending Lender to replace such Non-Extending Lender with, and add as “Lenders” under this Agreement in place thereof, one or more financial institutions that are Eligible Assignees (each, an “ Additional Commitment Lender ”) approved by the Agent, each Issuing Bank and the Swingline Lender in accordance with the procedures provided in Section 8.07, each of which Additional Commitment Lenders shall have entered into an Assignment and Assumption (in accordance with and subject to the restrictions contained in Section 8.07, with the Borrower obligated to pay any applicable processing or recordation fee) with such Non-Extending Lender, pursuant to which such Additional Commitment Lenders shall, effective on or before the Termination Date for such Non-Extending Lender, assume a Revolving Credit Commitment (and, if any such Additional Commitment Lender is already a Lender, its Revolving Credit Commitment shall be in addition to such Lender’s Revolving Credit Commitment hereunder on such date). The Agent may effect such amendments to this Agreement as are reasonably necessary to provide for any such extensions with the consent of the Borrower but without the consent of any other Lenders.

(e) If (and only if) the total of the Revolving Credit Commitments of the Lenders that have agreed to extend their Termination Date and the additional Revolving Credit Commitments of the Additional Commitment Lenders is more than 50% of the aggregate amount of the Revolving Credit Commitments in effect immediately prior to the applicable Extension Date, then, effective as of the applicable Extension Date, the Termination Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date that is one year after the Existing Termination Date (except that, if such date is not a Business Day, such Termination Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a “Lender” for all purposes of this Agreement and shall be bound by the provisions of this Agreement as a Lender hereunder and shall have the obligations of a Lender hereunder.

(f) Notwithstanding the foregoing, (x) no more than two (2) extensions of the Termination Date shall be permitted hereunder and (y) any extension of any Termination Date pursuant to this Section 2.21 shall not be effective with respect to any Extending Lender unless as of the applicable Extension Date and immediately after giving effect thereto:

(i) there shall exist no Default;

(ii) the representations and warranties made by the Borrower contained herein shall be true and correct; and

(iii) the Agent shall have received a certificate from the Borrower signed by an Authorized Officer of the Borrower (A) certifying the accuracy of the foregoing clauses (i) and (ii) and (B) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension.

(g) On the Termination Date of each Non-Extending Lender, (i) the Revolving Credit Commitment of each Non-Extending Lender shall automatically terminate and (ii) the Borrower shall repay such Non-Extending Lender in accordance with Section 2.06 (and shall pay to such Non-Extending Lender all of the other obligations owing to it under this Agreement) and after giving effect thereto shall prepay any Revolving Advances outstanding on such date (and pay any additional amounts required pursuant to Section 2.02) to the extent necessary to keep outstanding Revolving Advances ratable with any revised Ratable Share of the respective Lenders effective as of such date, and the Agent shall administer any necessary reallocation of the outstanding Advances (without regard to any minimum borrowing, pro rata borrowing and/or pro rata payment requirements contained elsewhere in this Agreement).

(h) This Section shall supersede any provisions in Section 2.02 or Section 8.01 to the contrary.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Effectiveness. This Agreement shall become effective on and as of the first date (the “Effective Date”) on which the following conditions precedent have been satisfied:

(a) The Lenders shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries as they shall have requested.

(b) The Borrower shall have paid all accrued fees and agreed expenses of the Agent, the Arrangers and the Lenders and the reasonable accrued fees and expenses of one law firm acting as counsel to the Agent that have been invoiced at least one Business Day prior to the Effective Date.

(c) On the Effective Date, the following statements shall be true and the Agent shall have received a certificate signed by a duly authorized officer of the Borrower, dated the Effective Date, stating that:

(i) The representations and warranties contained in Section 4.01 are true and correct on and as of the Effective Date, and

(ii) No event has occurred and is continuing that constitutes a Default.

(d) The Agent shall have received on or before the Effective Date the following, each dated such day, in form and substance satisfactory to the Agent and the Lenders:

(i) Receipt by the Agent of executed counterparts of this Agreement properly executed by a duly authorized officer of the Borrower and by each Lender.

(ii) The Notes, payable to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16.

(iii) The articles of incorporation of the Borrower certified to be true and complete as of a recent date by the appropriate governmental authority of the state or other jurisdiction of its incorporation and certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(iv) The bylaws of the Borrower certified by a secretary, assistant secretary or associate secretary of the Borrower to be true and correct as of the Effective Date.

(v) Certified copies of the resolutions of the Board of Directors of the Borrower approving this Agreement and the Notes, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Notes.

(vi) A certificate of the secretary, assistant secretary or associate secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the Notes and the other documents to be delivered hereunder.

(vii) A certificate as of a recent date from the Borrower's state of incorporation evidencing that the Borrower is in good standing in its state of organization or formation.

(viii) A favorable opinion of counsel for the Borrower, in form and substance reasonably acceptable to the Lenders.

(ix) A favorable opinion of Sidley Austin LLP, counsel for the Agent, in form and substance reasonably acceptable to the Lenders.

(e) Concurrently with or before the Effective Date, (i) all principal, interest and other amounts outstanding under the Borrower's Existing Credit Agreement shall be repaid and satisfied in full, (ii) all commitments to extend credit under the Existing Credit Agreement shall be terminated and (iii) any letters of credit outstanding under the Existing Credit Agreement shall have been terminated, canceled, transferred or replaced; and the Agent shall have received evidence of the foregoing satisfactory to it, including an escrow agreement or payoff letter executed by the lenders or the agent under the Existing Credit Agreement if applicable.

(f) The Agent shall have received evidence satisfactory to it that that certain \$200,000,000 Five-Year Credit Agreement dated as of May 13, 2016 by and among PWCC as borrower, the lenders from time to time parties thereto and Barclays Bank PLC, as administrative agent, shall have been terminated and cancelled and all indebtedness and other amounts due and unpaid thereunder shall have been (or shall concurrently with the effectiveness of this Agreement be) fully repaid on terms and conditions reasonably acceptable to the Agent.

(g) The Agent shall have received reasonably satisfactory evidence that that certain \$200,000,000 Five-Year Credit Agreement, dated as of July 12, 2018, by and among PWCC, as borrower, the lenders from time to time parties thereto and Barclays Bank PLC, as administrative agent, shall be effective prior to or substantially concurrently with the effectiveness of this Agreement.

(h) PATRIOT Act. At least five days prior to the Effective Date, the Borrower shall have provided to the Agent and the Lenders the documentation and other information reasonably requested by the Agent, and reasonably available to the Borrower, in order to comply with requirements of the PATRIOT Act.

(i) In the event that the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Borrower shall deliver, at least five days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower.

Section 3.02 Conditions Precedent to Each Credit Extension and Commitment Increase. The obligation of each Lender to make an Advance (other than an L/C Advance or an Advance made pursuant to Section 2.03(c) or Section 2.03A(c)) on the occasion of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit, and each Commitment Increase shall be subject to the conditions precedent that the Effective Date shall have occurred and on the date of such Borrowing or such issuance (as the case may be), or the applicable Increase Date, the following statements shall be true (and each of the giving of the applicable Notice of Borrowing or request for issuance and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or date of such issuance such statements are true):

(a) the representations and warranties contained in Section 4.01 (other than Section 4.01(k)), and in the case of a Borrowing or issuance of a Letter of Credit, Section 4.01(e)(ii) and Section 4.01(f)(ii) are correct on and as of such date, before and after giving effect to such Borrowing or issuance of a Letter of Credit, or such Commitment Increase and to the application of the proceeds therefrom, as though made on and as of such date;

(b) no event has occurred and is continuing, or would result from such Borrowing or issuance of a Letter of Credit, or such Commitment Increase or from the application of the proceeds therefrom, that constitutes a Default;

(c) all required regulatory authorizations including the 2013 Order and/or any Subsequent Order in respect of such Credit Extension have been obtained and are in full force and effect and, before and after giving effect to such Borrowing or such issuance of a Letter of Credit and to the application of the proceeds therefrom, the Borrower is in compliance with the provisions of the applicable order; and

(d) before and after giving effect to such Credit Extension and to the application of the proceeds therefrom, as though made on and as of such date, the Indebtedness of the Borrower does not exceed that permitted by (i) applicable resolutions of the Board of Directors of the Borrower, (ii) applicable Arizona Law, or (iii) the 2013 Order or any Subsequent Order, whichever is in force and effect at such time.

Each request for Credit Extension (which shall not include a Conversion or a continuation of Eurodollar Rate Advances) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 3.02(a) through (d) have been satisfied on and as of the date of the applicable Credit Extension.

Section 3.03 Determinations Under Section 3.01. For purposes of determining compliance with the conditions specified in Section 3.01 and the satisfaction of each Lender with respect to letters delivered to it from the Borrower as set forth in Section 4.01(a), Section 4.01(e) and Section 4.01(f), each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by

this Agreement shall have received notice from such Lender prior to the date that the Borrower designates as the proposed Effective Date, specifying its objection thereto. The Agent shall promptly notify the Lenders and the Borrower of the occurrence of the Effective Date.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) Each of the Borrower and each Material Subsidiary: (i) is a corporation or other entity duly organized and validly existing under the Laws of the jurisdiction of its incorporation or organization; (ii) has all requisite corporate or if the Material Subsidiary is not a corporation, other comparable power necessary to own its assets and carry on its business as presently conducted; (iii) has all governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as presently conducted, if the failure to have any such license, authorization, consent or approval is reasonably likely to have a Material Adverse Effect and except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion) and except that (A) the Borrower from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (B) from time to time communities served by the Borrower may become incorporated and considerable time may elapse before such a franchise is procured, (C) certain such franchises may have expired prior to the renegotiation thereof, (D) certain minor defects and exceptions may exist which, individually and in the aggregate, are not material and (E) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope); and (iv) is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify is reasonably likely to have a Material Adverse Effect.

(b) The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, and the consummation of the transactions contemplated hereby and thereby, are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not or did not (i) contravene the Borrower's articles of incorporation or by-laws, (ii) contravene any Law (including without limitation the 2013 Order and/or any Subsequent Order), decree, writ, injunction or determination of any Governmental Authority, in each case applicable to or binding upon the Borrower or any of its properties, (iii) contravene any contractual restriction binding on or affecting the Borrower or (iv) cause the creation or imposition of any Lien upon the assets of the Borrower or any Material Subsidiary, except for Liens created under this Agreement and except where such contravention or creation or imposition of such Lien is not reasonably likely to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the Notes to be delivered by it, except for the 2013 Order or any Subsequent Order, which has been duly obtained and is in full force and effect, and any notices or compliance filings required therein.

(d) This Agreement has been, and each of the other Loan Documents upon execution and delivery will have been, duly executed and delivered by the Borrower. This Agreement is, and each of the other Loan Documents upon execution and delivery will be, the legal, valid and binding obligation of the

Borrower enforceable against the Borrower in accordance with their respective terms, subject, however, to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally.

(e) (i) The Consolidated balance sheet of the Borrower as of December 31, 2017, and the related Consolidated statements of income and cash flows of the Borrower for the fiscal year then ended, accompanied by an opinion thereon of Deloitte & Touche LLP, independent registered public accountants and the Consolidated balance sheet of the Borrower as of March 31, 2018, and the related Consolidated statements of income and cash flows of the Borrower for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to the Agent, fairly present in all material respects, subject, in the case of said balance sheet at March 31, 2018, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower as at such dates and the Consolidated results of the operations of the Borrower for the periods ended on such dates, all in accordance with GAAP (except as disclosed therein), and (ii) except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion), since December 31, 2017, there has been no Material Adverse Effect.

(f) There is no pending or, to the knowledge of an Authorized Officer of the Borrower, threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby or (ii) would be reasonably likely to have a Material Adverse Effect (except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion)) and there has been no adverse change in the status, or financial effect on the Borrower or any of its Subsidiaries, of such disclosed litigation that would be reasonably likely to have a Material Adverse Effect.

(g) No proceeds of any Advance will be used to acquire any equity security not issued by the Borrower of a class that is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

(h) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, in any case in violation of Regulation U. After application of the proceeds of any Advance, not more than 25% of the value of the assets subject to any restriction under this Agreement on the right to sell, pledge, transfer, or otherwise dispose of such assets is represented by margin stock.

(i) The Borrower and its Subsidiaries have filed all United States of America Federal income Tax returns and all other material Tax returns which are required to be filed by them and have paid all Taxes due pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries, except to the extent that (i) such Taxes are being contested in good faith and by appropriate proceedings and that appropriate reserves for the payment thereof have been maintained by the Borrower and its Subsidiaries in accordance with GAAP or (ii) the failure to make such filings or such payments is not reasonably likely to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its

Material Subsidiaries as set forth in the most recent financial statements of the Borrower delivered to the Agent pursuant to Section 4.01(e) or Section 5.01(h)(i) or Section 5.01(h)(ii) hereof in respect of Taxes and other governmental charges are, in the opinion of the Borrower, adequate.

(j) Set forth on Schedule 4.01(j) hereto (as such schedule may be modified from time to time by the Borrower by written notice to the Agent) is a complete and accurate list of all the Subsidiaries of the Borrower and, as of the Effective Date, no such Subsidiary of the Borrower is a Material Subsidiary.

(k) Set forth on Schedule 4.01(k) hereto is a complete and accurate list identifying any Indebtedness of the Borrower outstanding in a principal amount equal to or exceeding \$5,000,000 and which is not described in the financial statements referred to in Section 4.01(e).

(l) The Borrower is not an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

(m) No report, certificate or other written information furnished by the Borrower or any of its Subsidiaries to the Agent, any Arranger or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) at the time so furnished, when taken together as a whole with all such written information so furnished, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except as would not reasonably be expected to result in a Material Adverse Effect; provided that with respect to any projected financial information, forecasts, estimates or forward-looking information, the Borrower represents only that such information and materials have been prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such forecasts, and no representation or warranty is made as to the actual attainability of any such projections, forecasts, estimates or forward-looking information.

(n) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Affiliates over which any of the foregoing exercises management control (each, a “Controlled Affiliate”) or any director or officer of the Borrower, any of its Subsidiaries or any of their respective Controlled Affiliates (each, a “Manager”) is a Prohibited Person, and the Borrower, its Subsidiaries and, to the knowledge of the Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(o) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective Controlled Affiliates or Managers: (i) is the target of Sanctions; (ii) is owned or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; (iii) is, or is owned or controlled by, a Person who is located, organized or resident in a country, region or territory that is, or whose government is, the subject of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria, or (iv) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State, or any other applicable Governmental Authority.

(p) None of the Borrower’s or its Subsidiaries’ assets constitute property of, or are beneficially owned, directly or indirectly, by any Person that is the target of Sanctions, including but not limited to, the

International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the “Trading With the Enemy Act”), any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the “Foreign Assets Control Regulations”) or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which includes, without limitation, (i) Executive Order No. 13224, effective as of September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “Executive Order”) and (ii) the PATRIOT Act), if the result of such ownership would be that any Credit Extension made by any Lender would be in violation of law (“Embargoed Person”); (a) no Embargoed Person has any interest of any nature whatsoever in the Borrower if the result of such interest would be that any Credit Extension would be in violation of law; (b) the Borrower has not engaged in business with Embargoed Persons if the result of such business would be that any Credit Extension made by any Lender would be in violation of law; (c) the Borrower will not, directly or indirectly, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions or Anti-Corruption Laws by any Person (including any Person participating in the Credit Extensions, whether as a Lender or otherwise), and (d) neither the Borrower nor any Controlled Affiliate (i) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) to the knowledge of the Borrower, engages in any dealings or transactions, or be otherwise associated, with any such “blocked person”. For purposes of determining whether or not a representation is true under this Section 4.01(p) with respect to the securities of the Borrower, the Borrower shall not be required to make any investigation into (x) the ownership of publicly traded stock or other publicly traded securities or (y) the beneficial ownership of any collective investment fund.

(q) Neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Borrower and its Subsidiaries, any of their respective Managers, has failed to comply with the U.S. Foreign Corrupt Practices Act, as amended from time to time (the “FCPA”), or any other applicable Anti-Corruption Laws, and it and they have not made, offered, promised or authorized, and will not make, offer, promise or authorize, whether directly or indirectly, any payment, of anything of value to a Government Official while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity or (c) securing an improper advantage, in each case in order to obtain, retain or direct business.

(r) If Borrower is required to deliver a Beneficial Ownership Certificate, as of the Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

(s) The Borrower is not an EEA Financial Institution.

ARTICLE V

COVENANTS OF THE BORROWER

Section 5.01 Affirmative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall:

(a) Compliance with Laws, Etc. (i) Comply, and cause each of its Material Subsidiaries to comply, in all material respects, with all applicable Laws of Governmental Authorities, such compliance to include, without limitation, compliance with ERISA and Environmental Laws, unless the failure to so comply is not reasonably likely to have a Material Adverse Effect and (ii) comply at all times with the 2013 Order, any Subsequent Order, Arizona Revised Statutes, Section 40-302 and all similar or comparable Laws, orders, decrees, writs, injunctions or determinations of any Governmental Authority relating to the incurrence or maintenance of Indebtedness by the Borrower, such compliance to include, without limitation, compliance with the PATRIOT Act, all applicable orders, rules and regulations of OFAC, the FCPA, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970 and other Anti-Corruption Laws, except (other than in the case of the PATRIOT Act, the applicable orders, rules and regulations of OFAC, or the FCPA, or any similar applicable laws) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, all Taxes imposed upon it or upon its property; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such Tax (i) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained in accordance with GAAP or (ii) if the failure to pay such Tax is not reasonably likely to have a Material Adverse Effect.

(c) Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates; provided, however, that the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises (other than “franchises” as described in Arizona Revised Statutes, Section 40-283 or any successor provision) reasonably necessary in the normal conduct of its business, if the failure to maintain such rights or privileges is reasonably likely to have a Material Adverse Effect, and will use its commercially reasonable efforts to preserve and maintain such franchises reasonably necessary in the normal conduct of its business, except that (i) the Borrower from time to time may make minor extensions of its lines, plants, services or systems prior to the time a related franchise, certificate of convenience and necessity, license or permit is procured, (ii) from time to time communities served by the Borrower may become incorporated and considerable time may elapse before such a franchise is procured, (iii) certain such franchises may have expired prior to the renegotiation thereof, (iv) certain minor defects and exceptions may exist which, individually and in the aggregate, are not material and (v) certain franchises, certificates, licenses and permits may not be specific as to their geographical scope; provided, however, that the Borrower and its Subsidiaries may consummate any merger or consolidation permitted under Section 5.02(b).

(e) Visitation Rights. At any reasonable time and from time to time, permit and cause each of its Subsidiaries to permit the Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any of their officers or directors; provided, however, that the Borrower and its Subsidiaries reserve the right to restrict access to any of its properties in accordance with reasonably adopted

procedures relating to safety and security; and provided further that the costs and expenses incurred by such Lender or its agents or representatives in connection with any such examinations, copies, abstracts, visits or discussions shall be, upon the occurrence and during the continuation of a Default, for the account of the Borrower and, in all other circumstances, for the account of such Lender.

(f) Keeping of Books. Keep, and cause each of its Material Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in a manner that permits the preparation of financial statements in accordance with GAAP.

(g) Maintenance of Properties, Etc. Keep, and cause each Material Subsidiary to keep, all property useful and necessary in its business in good working order and condition (ordinary wear and tear excepted), if the failure to do so is reasonably likely to have a Material Adverse Effect, it being understood that this covenant relates only to the working order and condition of such properties and shall not be construed as a covenant not to dispose of properties.

(h) Reporting Requirements. Furnish to the Agent:

(i) as soon as available and in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2018, (A) for each such fiscal quarter of the Borrower, Consolidated statements of income and cash flows of the Borrower for such fiscal quarter and the related Consolidated balance sheet of the Borrower as of the end of such fiscal quarter, setting forth in each case in comparative form the corresponding figures for the corresponding fiscal quarter in (or, in the case of the balance sheet, as of the end of) the preceding fiscal year and (B) for the period commencing at the end of the previous fiscal year and ending with the end of such fiscal quarter, Consolidated statements of income and cash flows of the Borrower for such period setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year; provided that so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(i), its report on Form 10-Q for such fiscal quarter. Each set of financial statements provided under this Section 5.01(h)(i) shall be accompanied by a certificate of an Authorized Officer, which certificate shall state that said Consolidated financial statements fairly present in all material respects the Consolidated financial condition and results of operations and cash flows of the Borrower in accordance with GAAP (except as disclosed therein), as at the end of, and for, such period (subject to normal year-end audit adjustments) and shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03 ;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2018, audited Consolidated statements of income and cash flows of the Borrower for such year and the related Consolidated balance sheet of the Borrower as at the end of such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year; provided that, so long as the Borrower remains subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Borrower may provide, in satisfaction of the requirements of this first sentence of this Section 5.01(h)(ii), its report on Form 10-K for such fiscal year. Each set of financial statements provided pursuant to this Section 5.01(h)(ii) shall be accompanied by (A) an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that said Consolidated financial statements fairly present in all material respects the Consolidated

financial condition and results of operations of the Borrower as at the end of, and for, such fiscal year, in accordance with GAAP (except as disclosed therein) and (B) a certificate of an Authorized Officer, which certificate shall set forth reasonably detailed calculations demonstrating compliance with Section 5.03;

(iii) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence of each Default continuing on the date of such statement, a statement of an Authorized Officer of the Borrower setting forth details of such Default and the action that the Borrower has taken and proposes to take with respect thereto;

(iv) promptly after the sending or filing thereof, copies of all reports and registration statements (other than exhibits thereto and registration statements on Form S-8 or its equivalent) that the Borrower or any Subsidiary files with the Securities and Exchange Commission;

(v) promptly after an Authorized Officer becomes aware of the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 4.01(f), except, with respect to any matter referred to in Section 4.01(f)(ii), to the extent disclosed in a report on Form 8-K, Form 10-Q or Form 10-K of the Borrower;

(vi) promptly after (A) any amendment or modification of the 2013 Order, (B) any amendment or modification of Arizona Revised Statutes, Section 40-302, or the promulgation, amendment or modification of any successor or similar statute, or (C) the promulgation, amendment or modification of any Subsequent Order by the Arizona Corporation Commission or any successor thereto, in any case if such amendment, modification or promulgation could affect the validity or enforceability of the indebtedness of the Borrower pursuant to this Agreement, a copy thereof;

(vii) promptly after an Authorized Officer becomes aware of the occurrence thereof, notice of any change by Moody's or S&P of its respective Public Debt Rating or of the cessation (or subsequent commencement) by Moody's or S&P of publication of their respective Public Debt Rating;

(viii) promptly after the occurrence thereof, notice of the occurrence of any ERISA Event, together with (x) a written statement of an Authorized Officer of the Borrower specifying the details of such ERISA Event and the action that the Borrower has taken and proposes to take with respect thereto, (y) a copy of any notice with respect to such ERISA Event that may be required to be filed with the PBGC and (z) a copy of any notice delivered by the PBGC to the Borrower or an ERISA Affiliate with respect to such ERISA Event;

(ix) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence thereof, notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

(x) promptly following request therefor, (a) such information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws; or (b) such other information respecting the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

Information required to be delivered pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv) above shall be deemed to have been delivered on the date on which the Borrower provides notice to the Agent that such information has been posted on the Borrower's parent's website on the Internet at www.pinnaclewest.com, at sec.gov/edaux/searches.htm or at another website identified in such notice and accessible by the Lenders without charge; provided that (i) such notice may be included in a certificate delivered pursuant to Section 5.01(h)(i) or Section 5.01(h)(ii) and (ii) the Borrower shall deliver paper copies of the information referred to in Section 5.01(h)(i), Section 5.01(h)(ii), and Section 5.01(h)(iv) to any Lender which requests such delivery.

(i) Change in Nature of Business. Conduct the same general type of business conducted on the date hereof.

Section 5.02 Negative Covenants. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower shall not:

(a) Liens, Etc.. Create or suffer to exist, or permit any of its Material Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Material Subsidiaries to assign, any right to receive income, other than:

(i) Permitted Liens;

(ii) Liens upon or in, or conditional sales agreements or other title retention agreements with respect to, any real or personal property acquired or held by the Borrower or any Subsidiary in the ordinary course of business to secure the purchase price of such property, or the construction of or improvements to such property, or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of such property to be subject to such Liens (including any Liens placed on such property within 180 days after the latest of the acquisition, completion of construction or improvement of such property), or Liens existing on such property at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such property) or extensions, renewals, refundings or replacements of any of the foregoing for the same or a lesser amount, provided, however, that no such Lien shall extend to or cover any properties of any character other than the property being acquired, constructed or improved and proceeds, improvements and replacements thereof and no such extension, renewal, refunding or replacement shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed, refunded or replaced;

(iii) assignments of the right to receive income, and Liens on property, of a Person existing at the time such Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower;

(iv) Liens with respect to the leases and related documents entered into by the Borrower in connection with PVNGS Unit 2 and Liens with respect to the leased interests and related rights if the Borrower reacquires ownership in any of those interests or acquires any of the equity or owner participants' interests in the trusts that hold title to such leased interests, whether or not it also directly assumes the Sale Leaseback Obligation Bonds, and Liens on the Borrower's interests in the trusts that hold title to such leased interests and related rights in the event that the Borrower acquires any of the equity or owner participants' interests in such trusts pursuant to a "special transfer" under the Borrower's existing PVNGS Unit 2 sale and leaseback transactions and any Liens resulting or deemed

to have resulted if the PVNGS Unit 2 leases are required to be accounted for as capital leases in accordance with GAAP;

(v) other assignments of the right to receive income and Liens securing Indebtedness or claims in an aggregate principal amount not to exceed 20% of the Borrower's total assets as stated on the most recent balance sheet of the Borrower provided pursuant to Section 4.01(e)(i) or 5.01(h)(ii) hereof at any time outstanding; and

(vi) the replacement, extension or renewal of any Lien permitted by clause (iii) or (iv) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby.

(b) Mergers, Etc. Merge or consolidate with or into any Person, or permit any of its Material Subsidiaries to do so, except that (i) any Material Subsidiary of the Borrower may merge or consolidate with or into any other Material Subsidiary of the Borrower, (ii) any Subsidiary of the Borrower may merge into the Borrower or any Material Subsidiary of the Borrower and (iii) the Borrower or any Material Subsidiary may merge with any other Person so long as the Borrower or such Material Subsidiary is the surviving corporation, provided, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Sales, Etc. of Assets. Sell, lease, transfer or otherwise dispose of, or permit any of its Material Subsidiaries to sell, lease, transfer or otherwise dispose of, any assets, or grant any option or other right to purchase, lease or otherwise acquire any assets to any Person other than the Borrower or any Subsidiary of the Borrower, except (i) dispositions in the ordinary course of business, including, without limitation, sales or other dispositions of electricity and related and ancillary services, other commodities, emissions credits and similar mechanisms for reducing pollution, and damaged, obsolete, worn out or surplus property no longer required or useful in the business or operations of the Borrower or any of its Subsidiaries, (ii) sale or other disposition of patents, copyrights, trademarks or other intellectual property that are, in the Borrower's reasonable judgment, no longer economically practicable to maintain or necessary in the conduct of the business of the Borrower or its Subsidiaries and any license or sublicense of intellectual property that does not interfere with the business of the Borrower or any Material Subsidiary, (iii) in a transaction authorized by subsection (b) of this Section, (iv) individual dispositions occurring in the ordinary course of business which involve assets with a book value not exceeding \$5,000,000, (v) sales, leases, transfers or dispositions of assets during the term of this Agreement having an aggregate book value not to exceed 30% of the total of all assets properly appearing on the most recent balance sheet of the Borrower provided pursuant to Section 4.01(e)(i) or Section 5.01(h)(ii) hereof, (vi) at any time following the consummation of the Four Corners Acquisition, which occurred on December 30, 2013, and the closure by the Borrower of Units 1, 2 and 3 of the Four Corners Power Plant near Farmington, New Mexico, as described in the SEC Reports, disposition of all or any portion of the Borrower's interests in such Units 1, 2 and 3, and (vii) any Lien permitted under Section 5.02(a).

Section 5.03 Financial Covenant. So long as any Advance shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower will maintain a ratio of (a) Consolidated Indebtedness to (b) the sum of Consolidated Indebtedness plus Consolidated Net Worth of not greater than 0.65 to 1.0.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01 Events of Default. If any of the following events (“Events of Default”) shall occur and be continuing:

(a) The Borrower shall fail to pay when due (i) any principal of any Advance, (ii) any drawing under any Letter of Credit, or (iii) any interest on any Advance or any other fees or other amounts payable under this Agreement or any other Loan Documents, and (in the case of this clause (iii) only), such failure shall continue for a period of three Business Days; or

(b) Any representation or warranty made by the Borrower herein or by the Borrower (or any of its officers) in any certificate or other document delivered in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made or furnished; or

(c) (i) The Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 2.17, Section 5.01(d) (as to the corporate existence of the Borrower), Section 5.01(h)(iii), Section 5.01(h)(vi), Section 5.02 or Section 5.03, or (ii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in Section 5.01(e) if such failure shall remain unremedied for 15 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender or (iii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender; or

(d) (i) The Borrower or any of its Material Subsidiaries shall fail to pay (A) any principal of or premium or interest on any Indebtedness that is outstanding in a principal amount of at least \$35,000,000 in the aggregate (but excluding Indebtedness outstanding hereunder), or (B) an amount, or post collateral as contractually required in an amount, of at least \$35,000,000 in respect of any Hedge Agreement, of the Borrower or such Material Subsidiary (as the case may be), in each case, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness or Hedge Agreement; or (ii) any event of default shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or

(e) The Borrower or any of its Material Subsidiaries shall fail to pay any principal of or premium or interest in respect of any operating lease in respect of which the payment obligations of the Borrower have a present value of at least \$35,000,000, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in such operating lease, if the effect of such failure is to terminate, or to permit the termination of, such operating lease; or

(f) The Borrower or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or

any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Debtor Relief Law, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower or any of its Material Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) Judgments or orders for the payment of money that exceeds any applicable insurance coverage (the insurer of which shall be rated at least "A" by A.M. Best Company) by more than \$35,000,000 in the aggregate shall be rendered against the Borrower or any Material Subsidiary and such judgments or orders shall continue unsatisfied or unstayed for a period of 45 days; or

(h) (i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 30% or more of the equity securities of PWCC entitled to vote for members of the board of directors of PWCC; or (ii) during any period of 24 consecutive months, a majority of the members of the board of directors of PWCC cease (other than due to death or disability) to be composed of individuals (A) who were members of that board on the first day of such period, (B) whose election or nomination to that board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or (C) whose election or nomination to that board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board; or (iii) PWCC shall cease for any reason to own, directly or indirectly, 80% of the Voting Stock of the Borrower; or

(i) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$35,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$35,000,000;

then, and in any such event, the Agent shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, (i) declare the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, (ii) declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, (A) the obligation of each Lender to make Advances (other than L/C Advances) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the

Borrower and (iii) exercise all rights and remedies available to it under this Agreement, the other Loan Documents and applicable Law.

Section 6.02 Actions in Respect of Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may with the consent, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, (a) make demand upon the Borrower to, and forthwith upon such demand the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Required Lenders, provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States of America, the Borrower will Cash Collateralize the aggregate Available Amount of all Letters of Credit then outstanding, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. If at any time the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or interest of any Person other than the Agent, the Issuing Banks and the Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Deposit Account that are free and clear of any such right and interest. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable Law, or each Lender to the extent such Lender has funded a Revolving Advance in respect of such Letter of Credit. The Borrower hereby grants to the Agent, for the benefit of the Issuing Banks and the Lenders, a Lien upon and security interest in the L/C Cash Deposit Account and all amounts held therein from time to time as security for the L/C Obligations, and for application to the Borrower's reimbursement obligations as and when the same shall arise. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. After all such Letters of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be promptly returned to the Borrower.

ARTICLE VII

THE AGENT

Section 7.01 Appointment and Authority. Each of the Lenders (for purposes of this Article, references to the Lenders shall also mean the Issuing Banks) hereby irrevocably appoints Barclays to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as set forth in Section 7.06, the provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any of its Affiliates shall have rights as a third party beneficiary of any of such provisions.

Section 7.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in

any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 7.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law; and

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

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 6.01 and Section 8.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent by the Borrower or a Lender.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 7.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Advance, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Agent shall have received notice to the contrary

from such Lender or such Issuing Bank prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in good faith in accordance with the advice of any such counsel, accountants or experts.

Section 7.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Section 7.06 Resignation of Agent. The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower so long as no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United States of America, or an Affiliate of any such bank with an office in the United States of America. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 45 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be as agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 8.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

Section 7.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 7.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Syndication Agents, Documentation Agents or other agents listed on the cover page hereof shall

have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

Section 7.09 Issuing Banks. Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities provided in this Article VII (other than Section 7.02) to the same extent as such provisions apply to the Agent.

Section 7.10 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Advances, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of,

the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agent or the Arrangers, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Advances, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent or any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Advances, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Advances, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Advances, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Advances, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments, Etc. Except as provided in Section 2.21 with respect to the extension of the then-existing Termination Date, no amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall

(a) unless agreed to by each Lender directly affected thereby, (i) reduce or forgive the principal amount of any Advance or the Borrower's obligations to reimburse any drawing on a Letter of Credit, reduce the rate of or forgive any interest thereon (provided that only the consent of the Required Lenders shall be required to waive the applicability of any post-default increase in interest rates), or reduce or forgive any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), (ii) extend the final scheduled maturity date or any other scheduled date for the payment of any principal of or interest on any Advance, extend the time of payment of any obligation of the Borrower to reimburse any drawing on any Letter of Credit or any interest thereon, extend the expiry date of any Letter of Credit beyond the Letter of Credit Expiration Date, or extend the time of payment of any fees hereunder (other than fees payable to the Agent, the Arrangers, any Issuing Bank or the Swingline Lender, if any, for their own respective accounts), or (iii) increase any Revolving Credit Commitment of any such Lender over the amount thereof in effect or extend the maturity thereof (it being understood that a waiver of any condition precedent set forth in Section 3.02 or of any Default, if agreed to by the Required Lenders or all Lenders (as may be required hereunder with respect to such waiver), shall not constitute such an increase);

(b) unless agreed to by all of the Lenders, (i) reduce the percentage of the aggregate Revolving Credit Commitments or of the aggregate unpaid principal amount of the Advances, or the number or percentage of Lenders, that shall be required for the Lenders or any of them to take or approve, or direct the Agent to take, any action hereunder or under any other Loan Document (including as set forth in the definition of "Required Lenders"), (ii) change any other provision of this Agreement or any of the other Loan Documents requiring, by its terms, the consent or approval of all the Lenders for such amendment, modification, waiver, discharge or termination thereof or any consent to any departure by the Borrower therefrom, or (iii) change or waive any provision of Section 2.15, any other provision of this Agreement or any other Loan Document requiring pro rata treatment of any Lenders, or this Section 8.01 or Section 2.19(b); and

(c) unless agreed to by the Issuing Banks, the Swingline Lender, if any, or the Agent in addition to the Lenders required as provided hereinabove to take such action, affect the respective rights or obligations of the Issuing Banks, the Swingline Lender, if any, or the Agent, as applicable, hereunder or under any of the other Loan Documents.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) pursuant to an increase in the Revolving Credit Commitment pursuant to Section 2.18 with only the consents prescribed by such Section.

(e) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but

not obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, each Issuing Bank and the Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 8.07, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Section 2.11 and Section 2.14, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 8.04(e) had the Advances of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

Section 8.02 Notices, Etc.

(a) All notices and other communications provided for hereunder shall be either (x) in writing (including facsimile communication) and mailed, faxed or delivered or (y) as and to the extent set forth in Sections 8.02(b) and (c) and in the proviso to this Section 8.02(a), if to the Borrower, at the address specified on Schedule 8.02; if to any Lender, at its Domestic Lending Office; if to the Agent, at the address specified on Schedule 8.02; if to the Swingline Lender, at the address specified by the Swingline Lender to the Borrower and the Agent, and if to any Issuing Bank, at the address specified on Schedule 8.02 or, as to the Borrower or the Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Agent. All such notices and communications shall, when mailed or faxed, be effective when deposited in the mails or faxed, respectively, except that notices and communications to the Agent pursuant to Article II, Article III or Article VIII shall not be effective until received by the Agent. Delivery by facsimile of an executed counterpart of any amendment or waiver of any provision of this Agreement or the Notes or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b). Upon request of the Borrower, the Agent will provide to the Borrower (i) copies of each Administrative Questionnaire or (ii) the address of each Lender.

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

communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Borrower agrees that the Agent may make materials delivered to the Agent pursuant to Section 5.01(h)(i), Section 5.01(h)(ii) and Section 5.01(h)(iv), as well as any other written information, documents, instruments and other material relating to the Borrower or any of its Subsidiaries and relating to this Agreement, the Notes or the transactions contemplated hereby, or any other materials or matters relating to this Agreement, the Notes or any of the transactions contemplated hereby (collectively, the “Communications”) available to the Lenders by posting such notices on Intralinks or a substantially similar electronic system (the “Platform”). The Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent or any of its Affiliates in connection with the Platform.

(d) Each Lender agrees that notice to it (as provided in the next sentence) (a “Notice”) specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender the Agent shall deliver a copy of the Communications to such Lender by e-mail, facsimile or mail. Each Lender agrees (i) to notify the Agent in writing of such Lender’s e-mail address to which a Notice may be sent by electronic transmission (including by electronic communication) on or before the date such Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Agent has on record an effective e-mail address for such Lender) and (ii) that any Notice may be sent to such e-mail address.

(e) The Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that (w) all Communications that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Communications “PUBLIC,” the Borrower shall be deemed to have authorized the Agent, the Arrangers and the Lenders to treat such Communications as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States of America federal and state securities laws; (y) all Communications marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor;” and (z) the Agent and the Arrangers shall be entitled to treat any Communications that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Communications “PUBLIC.” Notwithstanding anything to the contrary herein, the Borrower and the Agent need not provide to any Public Lender any information, notice, or other document hereunder that is not public information, including without limitation, the Notice of Borrowing and any notice of Default.

Section 8.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, any Issuing Bank or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any

right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Article VI for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 8.05 (subject to the terms of Section 2.15), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 8.04 Costs and Expenses; Indemnity; Damage Waiver.

(a) The Borrower agrees to pay on demand all costs and expenses of the Agent in connection with the administration, modification and amendment of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, the reasonable fees and expenses of one law firm acting as counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Notes and the other Loan Documents to be delivered hereunder, including, without limitation, reasonable fees and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this Section 8.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Agent (and any sub-agent thereof), each Lender, each Arranger, the Syndication Agent, the Co-Documentation Agents and each Related Party of any of the foregoing (each, an “Indemnified Party”) from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith, whether based on contract, tort or any other theory), (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of any Advance or Letter of Credit (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent (a) such fees and expenses are expressly stated in this Agreement to be payable by the Indemnified Party, included expenses payable under Section 2.14, Section 5.01(e) and

Section 8.07(b) or (b) such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence, willful misconduct or material breach of its obligations under this Agreement, in which case any fees and expenses previously paid or advanced by the Borrower to such Indemnified Party in respect of such indemnified obligation will be returned by such Indemnified Party. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated, provided that if the Borrower and such Indemnified Party are adverse parties in any such litigation or proceeding, and the Borrower prevails in a final, non-appealable judgment by a court of competent jurisdiction, any amounts under this Section 8.04(b) previously paid or advanced by the Borrower to such Indemnified Party pursuant to this Section 8.04(b) will be returned by such Indemnified Party.

(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing (and without limiting its obligation to do so), each Lender severally agrees to pay to the Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity.

(d) Without limiting the rights of indemnification of the Indemnified Parties set forth in this Agreement with respect to liabilities asserted by third parties, each party hereto also agrees not to assert any claim for special, indirect, consequential or punitive damages against the other parties hereto, or any Related Party of any party hereto, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any other Loan Document, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or the Letters of Credit. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems (including Intralinks, SyndTrak or similar systems) in connection with this Agreement or the other Loan Documents, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent such damages are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

(e) If any payment of principal of, or Conversion of, any Eurodollar Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Revolving Advance, as a result of a payment or Conversion pursuant to Section 2.08(d) or (e), Section 2.10 or Section 2.12, acceleration of the maturity of the Revolving Advances pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Revolving Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 2.19, the Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss

(excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Revolving Advance.

(f) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Section 2.02(c), Section 2.11, Section 2.14 and Section 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

Section 8.05 Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Advances due and payable pursuant to the provisions of Section 6.01, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or Issuing Bank, whether or not such Lender or Issuing Bank shall have made any demand under this Agreement or such Note and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness. Each Lender and each Issuing Bank agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and each Issuing Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender may have.

Section 8.06 Effectiveness; Binding Effect. Except as provided in Section 3.01, this Agreement shall become effective when it shall have been executed by the Borrower and the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders (and any purported assignment without such consent shall be null and void).

Section 8.07 Successors and Assigns.

(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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (and any purported assignment or transfer without such consent shall be null and void) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees (other than to an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and the Revolving Advances (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment and the Revolving Advances at the time owing to it or in the case of an assignment to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Revolving Advances outstanding thereunder) or, if the Revolving Credit Commitment is not then in effect, the principal outstanding balance of the Revolving Advances of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to which such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Advances, L/C Obligations, Swingline Exposure or the Revolving Credit Commitment assigned, and each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received written notice thereof) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender;

(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(D) the consent of the Swingline Lender, if any, (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the

obligation of the assignee to participate in exposure under Swingline Advances (whether or not then outstanding).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that no such fee shall be payable in the case of an assignment made at the request of the Borrower to an existing Lender. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Ineligible Institutions. No such assignment shall be made to any Ineligible Institution.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section and notice thereof to the Borrower, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Agent shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitments of, and principal amounts of the Advances and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than an Ineligible Institution) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment, Swingline Exposure and/or the Revolving Advances (including such Lender's participations in L/C Obligations) 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, the Agent, the Lenders and the Issuing Banks shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Note, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal

of, or interest on, any Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification addressing the matters set forth in clause (iv) above to the extent subject to such participation. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.11, Section 2.14 and Section 8.04(e) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 8.05 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Advances or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.11 or Section 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.14 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.14(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as an Issuing Bank after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Issuing Bank assigns all of its Revolving Credit Commitment and Revolving Advances pursuant to subsection (b) above, such Issuing Bank may, upon 30 days' notice to the Borrower and the Lenders, resign as an Issuing Bank. If any Issuing Bank resigns, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Advances or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)).

(h) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 8.08 Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of the Borrower furnished to the Agent or the Lenders by the Borrower (such information being referred to collectively herein as the “Borrower Information”), except that each of the Agent and each of the Lenders may disclose Borrower Information (i) to its and its Affiliates’ employees, officers, directors, agents and advisors having a need to know in connection with this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential on substantially the same terms as provided herein), (ii) to the extent requested by any regulatory authority or self-regulatory body, (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 8.08, (A) to any assignee or participant or prospective assignee or participant, (B) to any direct, indirect, actual or prospective counterparty (and its advisor) to any swap, derivative or securitization transaction related to the obligations under this Agreement and (C) to any credit insurance provider relating to the Borrower and its Obligations, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 8.08 by the Agent or such Lender or their Related Parties, or (B) is or becomes available to the Agent or such Lender on a nonconfidential basis from a source other than the Borrower (provided that the source of such information was not known by the recipient after inquiry to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other Person with respect to such information) and (viii) with the consent of the Borrower. The obligations under this Section 8.08 shall survive for two calendar years after the date of the termination of this Agreement.

Section 8.09 Governing Law. This Agreement and the Notes shall be governed by, and construed in accordance with, the Laws of the State of New York.

Section 8.10 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 8.11 Jurisdiction, Etc.

(a) Each of the parties hereto hereby submits to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of

the parties hereto hereby agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by Law, in such federal court.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Notes in any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 8.12 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 8.13 Patriot Act and Beneficial Ownership Regulation. The Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each borrower (including the Borrower), guarantor or grantor (the “Loan Parties”), which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Agent or any Lender in order to assist the Agent and such Lender in maintaining compliance with the PATRIOT Act and the Beneficial Ownership Regulation.

Section 8.14 Waiver of Jury Trial. EACH OF THE BORROWER, THE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF THE BORROWER, THE AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

Section 8.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm’s-length commercial transaction between the Borrower, on the one hand, and the Agent, each of the Lenders and each of the Arrangers, on the other hand, and the Borrower is capable of evaluating and understanding

and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each of the Agent, the Lenders and the Arrangers is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Agent nor any Lender or Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Agent or any Lender or Arranger has advised or is currently advising the Borrower or any of its Affiliates on other matters) and neither the Agent nor any Lender or Arranger has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Agent, each of the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Agent nor any Lender or Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Agent and each Lender and Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against the Agent and each Lender and Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with the Loan Documents.

Section 8.16 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf, and shall continue in full force and effect as long as any Advance or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 8.17 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.18 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ARIZONA PUBLIC SERVICE COMPANY, as the Borrower

By: /s/ Lee R. Nickloy

Name: Lee R. Nickloy

Title: Vice President and Treasurer

ADMINISTRATIVE AGENT:

BARCLAYS BANK PLC , as Agent, Issuing Bank and Lender

By: /s/ Sydney G. Dennis
Name: Sydney G. Dennis
Title: Director

LENDERS:

MIZUHO BANK, LTD., as a Lender and as an Issuing Bank

By: /s/ Tracy Rahn

Name: Tracy Rahn

Title: Authorized Signatory

LENDERS:

BANK OF AMERICA, N.A., as a Lender and as an Issuing
Bank

By: /s/ Maggie Halleland

Name: Maggie Halleland

Title: Vice President

LENDERS:

JPMORGAN CHASE BANK, N.A, as a Lender and as an
Issuing Bank

By: /s/ Nancy R. Barwig
Name: Nancy R. Barwig
Title: Credit Risk Director

LENDERS:

SUNTRUST BANK, as a Lender and as an Issuing Bank

By: /s/ Arize Agumadu

Name: Arize Agumadu

Title: Vice President

LENDERS:

MUFG BANK,LTD., as a Lender and as an Issuing Bank

By: /s/ Maria Ferracias

Name: Maria Ferracias

Title: Director

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a
Lender and as an Issuing Bank

By: /s/ Matthew Kerr

Name: Matthew Kerr

Title: Vice President

LENDERS:

BNP PARIBAS, as a Lender and as an Issuing Bank

By: /s/ Francis Delaney

Name: Francis Delaney

Title: Managing Director

By: /s/ Theodore Sheen

Name: Theodore Sheen

Title: Director

LENDERS:

CITIBANK, N.A., as a Lender

By: /s/ Hans Lin

Name: Hans Lin

Title: Senior Vice President

LENDERS:

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Keven D. Smith

Name: Keven D. Smith

Title: Senior Vice President

LENDERS:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Madeline L. Pleskovic

Name: Madeline L. Pleskovic

Title: Vice President

LENDERS:

TD BANK, N.A., as a Lender

By: /s/ Vijay Prasad

Name: Vijay Prasad

Title: Senior Vice President

LENDERS:

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Mark W. Rogers

Name: Mark W. Rogers

Title: Vice President

LENDERS:

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Nick Giarratano

Name: Nick Giarratano

Title: Director

LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Michael Temnick

Name: Michael Temnick

Title: Vice President

LENDERS:

BRANCH BANKING & TRUST COMPANY, as a Lender

By: /s/ Sarah Salmon

Name: Sarah Salmon

Title: Senior Vice President

LENDERS:

ZB, N.A. DBA NATIONAL BANK OF ARIZONA, as a
Lender

By: /s/ Sabina Aaronson

Name: Sabina Aaronson

Title: Vice President

SCHEDULE 1.01
COMMITMENTS AND RATABLE SHARES

Bank	Revolving Credit Commitment	Ratable Share
Barclays Bank PLC	\$35,000,000.00	7%
Mizuho Bank, Ltd.	\$35,000,000.00	7%
Bank of America, N.A.	\$35,000,000.00	7%
JPMorgan Chase Bank, N.A.	\$35,000,000.00	7%
SunTrust Bank	\$35,000,000.00	7%
Wells Fargo Bank, National Association	\$35,000,000.00	7%
MUFG Bank, Ltd.	\$35,000,000.00	7%
BNP Paribas	\$35,000,000.00	7%
Citibank, N.A.	\$24,375,000.00	4.875%
KeyBank National Association	\$24,375,000.00	4.875%
PNC Bank, National Association	\$24,375,000.00	4.875%
Royal Bank of Canada	\$24,375,000.00	4.875%
TD Bank, N.A.	\$24,375,000.00	4.875%
The Bank of New York Mellon	\$24,375,000.00	4.875%
The Bank of Nova Scotia	\$24,375,000.00	4.875%
U.S. Bank National Association	\$24,375,000.00	4.875%
Branch Banking & Trust Company	\$12,500,000.00	2.5%
ZB, N.A. dba National Bank of Arizona	\$12,500,000.00	2.5%
TOTAL	\$500,000,000.00	100.0%

SCHEDULE 4.01(j)
SUBSIDIARIES

Bixco, Inc.
Axiom Power Solutions, Inc.
PWE Newco, Inc.

SCHEDULE 4.01(k)
EXISTING INDEBTEDNESS

None.

**SCHEDULE 8.02
CERTAIN ADDRESSES FOR NOTICES**

BORROWER:

Arizona Public Service Company
400 North 5th Street
Mail Station 9040
Phoenix, AZ 85004
Attention: Treasurer
Telephone: (602) 250-3300
Telecopier: (602) 250-3902
Electronic lee.nickloy@pinnaclewest.com

AGENT :

Agent's Office

(for payments and Requests for Credit Extensions):

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Rajeev Nagpuria
Telephone: (302) 286-2263
Email: rajeev.nagpuria@barclays.com

with copies to:

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Patrick Shields
Telephone: (212) 526-9531
Email: Patrick.Shields@barclays.com

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019
Attention: Bank Debt Management
Telephone: (212) 526-9531
Email: tmny@barclays.com

Agent's Account/Barclays Bank Agency Service Wiring Information

Barclays Bank PLC
New York, New York
ABA: 026002574
Account Number: 050-019104
Account Name: Clad Control Account
Ref: Pinnacle West Capital Corporation

Other Notices as Agent :

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attention: Patrick Shields
Telephone: (212) 526-9531
Email: Patrick.Shields@barclays.com

Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019
Attention: Bank Debt Management
Telephone: (212) 526-9531
Email: tmny@barclays.com

ISSUING BANKS:

Barclays Bank PLC
Barclays Bank PLC
745 Seventh Avenue
New York, NY 10019 USA
Attn. US Letter of Credit Team
Email xraletterofcredit@barclays.com

Mizuho Bank, Ltd.

Mizuho Bank, Ltd.
1800 Plaza Ten
Harborside Financial Ctr.
Jersey City, NJ 07311
Attention: Hyunsook (Sophia) Hwang
Telephone: 201-626-9416
Facsimile: 201-626-9941
Email: LAU_USCORP3@MIZUHOCBUS.COM

Bank of America, N.A.

Bank of America, N.A.
100 N. Tryon Street
Charlotte, NC 28255-0001
Attention: William A. Merritt, III
Telephone: (980) 386-9762
Facsimile: (980) 683-6339
E-mail: william.merritt@baml.com

BNP Paribas

BNP Paribas
c/o BNP Paribas RCC, Inc.
Newport Tower – Suite 188
525 Washington Boulevard

Jersey City, New Jersey 07310
Attn: Letters of Credit
E-mail: nyls.agency.support@us.bnpparibas.com
With a cc to: NYTFStandby@us.bnpparibas.com

JPMorgan Chase Bank, N.A.

JPMorgan Chase Bank, N.A.
10 South Dearborn, 9th Floor
Mail Code: IL1-0364
Chicago, IL 60603
Attention: Nancy R. Barwig
Telephone: (312) 732-1838
Facsimile: (312) 732-1762
E-mail: nancy.r.barwig@jpmorgan.com
With a cc to: jpm.standbylc.ccb@jpmorgan.com
With a cc to: Kavita.x.ujjni@jpmorgan.com

MUFG Bank, Ltd.

MUFG Bank, Ltd.
1221 Avenue of the Americas
New York, NY 10020-1104
Facsimile: 201-521-2304; 201-521-2305
E-Mail: 2015212304@njhr2163.btmna.com; irisuscb@us.mufg.jp

SunTrust Bank

SunTrust Robinson Humphrey, Inc.
SunTrust Bank
3333 Peachtree Road
Atlanta, GA 30326
Attention: Andrew Johnson
Telephone: (404) 439-7451
Facsimile: (404) 439-7470
E-mail: andrew.johnson@suntrust.com

Wells Fargo Bank, National Association

Wells Fargo Bank, N.A.
Wholesale Loan Services
7711 Plantation Road
MAC R4058-010
Roanoke, VA 24019
Attention: Tammy Pentecost
Telephone: 540-759-3118
Facsimile: 866-270-7214
E-mail: tammy.pentecost@wellsfargo.com
With a cc to: sheila.shaffer@wellsfargo.com

**EXHIBIT A — FORM OF
PROMISSORY NOTE**

_____, 20__

FOR VALUE RECEIVED, the undersigned, ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation (the “Borrower”), hereby promises to pay to the order of _____ or its registered assigns (the “Lender”), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Advance from time to time made by the Lender to the Borrower pursuant to the Five-Year Credit Agreement dated as of July 12, 2018 among the Borrower, the Lender and certain other lenders parties thereto, Barclays

Bank PLC, as Agent for the Lender and such other lenders, and the issuing banks and other agents party thereto (as amended or modified from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined) outstanding on such date.

The Borrower promises to pay interest on the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to the Agent for the account of the Lender in same day funds at the address and account specified on Schedule 8.02. Each Advance owing to the Lender by the Borrower pursuant to the Credit Agreement, and all payments made on account of principal thereof, shall be recorded by the Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Promissory Note.

This Promissory Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement. The Credit Agreement, among other things, (i) provides for the making of Advances by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time the Lender’s Unused Commitment, the indebtedness of the Borrower resulting from each such Advance being evidenced by this Promissory Note and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

THIS PROMISSORY NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

ARIZONA PUBLIC SERVICE COMPANY

By _____

Name: _____

Title: _____

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount of Advance	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By
------	-------------------	-------------------------------------	--------------------------	------------------

EXHIBIT B — FORM OF NOTICE OF BORROWING

Barclays Bank PLC, as Agent
for the Lenders parties
to the Credit Agreement
referred to below

Attention: Loan Operations

[Date]

Ladies and Gentlemen:

The undersigned, Arizona Public Service Company, refers to the Five-Year Credit Agreement, dated as of July 12, 2018 (as amended or modified from time to time, the “Credit Agreement”, the terms defined therein being used herein as therein defined), among the undersigned, certain Lenders parties thereto, Barclays Bank PLC, as Agent for said Lenders and the Issuing Banks and other agents party

thereto, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the “ Proposed Borrowing ”) as required by Section 2.02(a) of the Credit Agreement:

- (i) The Business Day of the Proposed Borrowing is _____, 20__.
- (ii) The Type of Revolving Advances comprising the Proposed Borrowing is [Base Rate Advances] [Eurodollar Rate Advances].
- (iii) The aggregate amount of the Proposed Borrowing is \$_____.
- [(iv) The initial Interest Period for each Eurodollar Rate Advance made as part of the Proposed Borrowing is [one week] [__month[s].]

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties contained in Section 4.01 (other than Sections 4.01(k), 4.01(e)(ii) and 4.01(f)(ii)) of the Credit Agreement are correct, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date;

(B) no event has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default;

(C) all required regulatory authorizations including the 2013 Order and/or any Subsequent Order in respect of the Proposed Borrowing have been obtained and are in full force and effect and, before and after giving effect to the Proposed Borrowing and to the application of

the proceeds therefrom, the Borrower is in compliance with the provisions of the applicable order; and

(D) before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date, the Indebtedness of the Borrower does not exceed that permitted by (i) applicable resolutions of the Board of Directors of the Borrower, (ii) applicable Arizona Laws, or (iii) the 2013 Order or any Subsequent Order, whichever is in force and effect at such time.

Very truly yours,

ARIZONA PUBLIC SERVICE COMPANY

By _____

Name: _____

Title: _____

**EXHIBIT C — FORM OF
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “ Assignment and Assumption ”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “ Assignor ”) and [Insert name of Assignee] (the “ Assignee ”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “ Credit Agreement ”), receipt of a copy of which is hereby acknowledged by the Assignee. Annex 1 attached hereto (the “ Standard Terms and Conditions ”) is hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date referred to below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity related to the rights and

obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “ Assigned Interest ”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor. Assignee shall deliver (if it is not already a Lender) to the Agent an Administrative Questionnaire.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate of [identify Bank]]
3. Borrower: Arizona Public Service Company
4. Agent: Barclays Bank PLC, as the administrative agent under the Credit Agreement
5. Credit Agreement: The Five-Year Credit Agreement dated as of July 12, 2018, by and among the Borrower, the Lenders party thereto, the Agent and the Issuing Banks and other agents party thereto.
6. Assigned Interest:

Aggregate Amount of Commitment for all Lenders	Amount of Commitment Assigned	Percentage Assigned of Commitment	CUSIP Number
\$ _____	\$ _____	_____ %	

[7. Trade Date:]

Effective Date: ____, 20__ **[TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By _____

Name: _____

Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By _____

Name: _____

Title: _____

[Consented to and] Accepted:
BARCLAYS BANK PLC, as Agent

By _____
Name:

Title:

[Consented to:]
[BARCLAYS BANK PLC, as Issuing Bank]

By _____

Name:

Title:

[MIZUHO BANK, LTD., as Issuing Bank]

By _____

Name:

Title:

[BANK OF AMERICA, N.A., as Issuing Bank]

By _____

Name:

Title:

[BNP PARIBAS, as Issuing Bank]

By _____

Name:

Title:

[JPMORGAN CHASE BANK, N.A., as Issuing Bank]

By _____

Name:

Title:

[MUFG BANK, LTD., as Issuing Bank]

By _____

Name:

Title:

[SUNTRUST BANK, as Issuing Bank]

By _____

Name:

Title:

[WELLS FARGO BANK, NATIONAL ASSOCIATION, as Issuing Bank]

By _____

Name:

Title:

ARIZONA PUBLIC SERVICE COMPANY

By _____

Name:

Title:

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower of any of its obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under Section 8.07 of the Credit Agreement (subject to such consents, if any, as may be required under Section 8.07 of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 4.01(e) or delivered pursuant to Section 5.01(h), as applicable, thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a foreign lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other

amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the Law of the State of New York.

REFORMED COPY
FOUR CORNERS PROJECT
CO-TENANCY AGREEMENT

Including Amendment No. 11

Dated

June 30, 2018

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY
NAVAJO TRANSITIONAL ENERGY COMPANY, LLC
PUBLIC SERVICE COMPANY OF NEW MEXICO
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT
TUCSON ELECTRIC POWER COMPANY

(Includes 3 Bills of Sale)

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ATTACHMENT C

CO-TENANCY AGREEMENT

1. PARTIES :

The parties to this agreement are: ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation (hereinafter referred to as “Arizona”); PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (hereinafter referred to as “New Mexico”); SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district, organized and existing under the laws of the State of Arizona (hereinafter referred to as “Salt River Project”); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation currently known as Tucson Electric Power Company (hereinafter referred to as “Tucson”); and Navajo Transitional Energy Company, a limited liability company wholly owned by the Navajo Nation or a wholly owned subsidiary of Navajo Transitional Energy Company that is still unnamed (hereinafter referred to as “NTEC”).

2. RECITALS :

This agreement is made with reference to the following facts, among others:

- 2.1. Arizona is an Arizona corporation engaged in the generation of electric power and energy in the State of New Mexico and the generation, transmission and distribution of electric power and energy as an electric utility in part of the State of Arizona.
- 2.2. 4CA is limited liability company in the business of directly and indirectly constructing, investing in, acquiring and holding interests in electric generation facilities.

- 2.3. On May 15, 2015, the Participants and El Paso Electric Company (“El Paso”) entered into Amendment No. 8 of this Agreement, which reflected the sale of El Paso’s interest in the Four Corners Project and Facilities Switchyard (the “Interest”) to Arizona under that certain Purchase and Sale Agreement, dated as of February 17, 2015 (the “Purchase Agreement”). On May 15, 2015, the Participants entered into Amendment No. 9 of this Agreement. At the time Amendment No. 8 and No. 9 were executed Arizona intended that it or one of its affiliates would be the party to the Purchase Agreement. Prior to or contemporaneously with the Effective date of Amendment No. 10 of this Agreement, Arizona assigned the Purchase Agreement to 4C Acquisition, LLC. (“4CA”), an Arizona affiliate, and El Paso sold the Interest to 4CA. Among other things, Amendment No. 10 replaces Arizona with 4CA as the owner of the Interest.
- 2.4. El Paso Electric Company (hereinafter referred to as “El Paso”) is an electric utility engaged in the generation, transmission and distribution of electric power and energy in parts of the States of Texas and New Mexico. Amendment No. 8 to this Agreement (“Amendment No. 8”) provides, among other things, for updated ownership percentages as they existed following the consummation of the transfer to Arizona by El Paso of El Paso’s interests in the Four Corners Project pursuant to that certain Purchase and Sale Agreement, dated as of February 17, 2015. As of the effective date of Amendment No. 8, El Paso is no longer a party to this Agreement, and all references to El Paso, as well as El Paso’s designation as a Participant, as

that term is defined in Section 5.27 herein, are limited to facts or matters occurring or agreements entered into prior to the effective date of Amendment No. 8.

2.5. NTEC is a limited liability company in the business of directly and indirectly constructing, investing in, acquiring and holding interests in electric generation facilities. Amendment No. 11 to this Agreement (“Amendment No. 11”) provides, among other things, for updated ownership percentages as they exist following the consummation of the transfer to NTEC by 4CA of 4CA’s interests in the Four Corners Project pursuant to that certain Purchase and Sale Agreement, the form of which will be filed by 4CA in FERC Docket No. EC15-159 in May 2018.

As of the effective date of Amendment No. 11, 4CA is no longer a party to this Agreement, and all references to 4CA, as well as 4CA’s designation as a Participant, as that term is defined in Section 5.27 herein, are limited to facts or matters occurring or agreements entered into prior to the effective date of Amendment No. 11.

2.6. New Mexico is an electric utility engaged in the generation, transmission and distribution of electric power and energy in a part of the State of New Mexico.

2.7. Salt River Project is an agricultural improvement district organized and existing under the laws of the State of Arizona and is engaged in the generation, transmission and distribution of electric power and energy in part of the State of Arizona.

- 2.8. Southern California Edison Company, a California corporation (hereinafter referred to as “Edison”) is an electric utility engaged in the generation of electric power and energy in the States of California and Arizona and in the transmission and distribution of electric power and energy in parts of the States of California and Nevada. Amendment No. 7 to this Agreement (“Amendment No. 7”) provides, among other things, for updated ownership percentages as they existed following the consummation of the transfer to Arizona by Edison of Edison’s interests in the Four Corners Project pursuant to that certain Purchase and Sale Agreement, dated as of November 8, 2010 (the “Purchase Agreement”). As of the effective date of Amendment No. 7, Edison is no longer a party to this Agreement, and all references to Edison as well as Edison’s designation as a Participant, as that term is defined in Section 5.27 herein, are limited to facts or matters occurring or agreements entered into prior to the effective date of Amendment No. 7.
- 2.9. Tucson is an electric utility engaged in the generation, transmission and distribution of electric power and energy in part of the State of Arizona.
- 2.10. On the 27th day of May, 1966, the Participants executed and delivered an application and form of grant of rights-of-way and easements pursuant to which the Secretary of Interior will grant to the Participants rights-of-way and easements pursuant to the §323 Grant for the construction, reconstruction, use, operation, maintenance, relocation and removal of the Four Corners Project in, over, under, on, along and across the Granted Lands.

- 2.11. On the 27th day of May, 1966, Arizona executed and delivered an application and form of grant of rights-of-way and easements pursuant to which the Secretary of Interior will grant to Arizona rights-of-way and easements pursuant to the Arizona §323 Grant pursuant to which it will reconstruct, use, operate, maintain, relocate and remove the Initial Four Corners Plant.
- 2.12. On the 27th day of May, 1966, the Navajo Tribe of Indians, as Lessor, and Arizona, El Paso, New Mexico, Salt River Project, Edison and Tucson, all as Lessees, entered into the Supplemental Lease wherein the Participants are leased certain rights in and to certain real property located within the Navajo Reservation, including the Leased Lands, for the construction, reconstruction, use, operation, maintenance, relocation and removal of the Four Corners Project, and which amends, supplements and revises the Original Lease.
- 2.13. On the 6th day of July, 1966, the Secretary of Interior approved the application for and form of the §323 Grant and the Arizona §323 Grant subject to the Participants' acceptance of modifications in certain of the terms and conditions therein contained, which such modifications were accepted by the Participants on the 19th day of July, 1966.
- 2.14. The §323 Grant, the Arizona §323 Grant, the Supplemental Lease and this Co- Tenancy Agreement will be recorded concurrently in the office of the County Clerk of San Juan County, New Mexico.
- 2.15. The parties hereto desire by this Co-Tenancy Agreement to establish certain terms and conditions relating to their ownership and operation of the Four

Corners Project, and relating to the rights afforded them under the Project Agreements.

3. AGREEMENT :

The parties, for and in consideration of the mutual covenants to be by them kept and performed, agree as follows:

4. EFFECTIVE DATE :

This Co-Tenancy Agreement shall become effective when:

4.1. It has been duly executed and delivered on behalf of all of the Participants.

4.2. The §323 Grant becomes effective; provided, however, that the effective date and time of this Co-Tenancy Agreement shall be contemporaneous with the effective date and time of said §323 Grant.

5. DEFINITIONS :

The following terms, when used herein, shall have the meaning specified:

5.0(a). Accounting Practice : Generally accepted accounting principles, in accordance with FERC Accounts, applicable to electric utility operations.

5.1. Additional Fuel Agreement : Four Corners Fuel Agreement No. 2 between the Participants and Utah Mining relating to fuel for Units 4 and 5.

5.2. Amended Original Lease : The Original Lease, as amended, supplemented and revised by the Supplemental Lease.

5.3. Arizona §323 Grant : Grant of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. §323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. §485), as amended, and the Acts of July 9, 1832 and July 27, 1868 (4 Stat. 564, 15 Stat. 228, 25 U.S.C. §2), and such

regulations promulgated thereunder as are applicable, including 25 CFR §12 and Part 161, to Arizona, pursuant to which it will reconstruct, use, operate, maintain, relocate and remove the Initial Four Corners Plant.

- 5.4. Capital Additions: Any Units of Property which are added to the Four Corners Project, to the Common Facilities or to the Related Facilities which serve in connection with the Initial Four Corners Plant, which do not substitute for any existing Units of Property constituting a part of the Four Corners Project, or for the Common Facilities or the Related Facilities which serve in connection with the Initial Four Corners Plant, and any land or land rights which are added to the Four Corners Project, or to the Common Facilities or to the Related Facilities which serve in connection with the Initial Four Corners Plant, which do not substitute for any existing land or land rights constituting a part of the Four Corners Project, or for the Common Facilities or for the Related Facilities which serve in connection with the Initial Four Corners Plant, and which, in accordance with Accounting Practice, would be capitalized.
- 5.5. Capital Betterments: The improvement of land or land rights or the enlargement or improvement of any structures, facilities or equipment constituting a part of the Four Corners Project or of the Common Facilities or the Related Facilities which serve in connection with the Initial Four Corners Plant, or the substitution of other structures, facilities or equipment constituting a part of the Four Corners Project, or of the Common Facilities or the Related Facilities which serve in connection with the Initial Four

Corners Plant, where the substitution constitutes an enlargement or improvement as compared with that for which it is substituted, and which, in accordance with Accounting Practice would be capitalized.

- 5.5(a). Capital Improvements: Those additions, betterments and replacements of the Initial Four Corners Plant or the Four Corners Project.
- 5.5(b). Capital Items: Any, some, or all of Capital Additions, Capital Betterments, Capital Improvements and Capital Replacements.
- 5.6. Capital Replacements: The substitution of any Units of Property, land or land rights constituting a part of the Four Corners Project, or of the Common Facilities or the Related Facilities which serve in connection with the Initial Four Corners Plant, for other Units of Property or land or land rights, where the substitution does not constitute an enlargement or improvement of the thing for which it is substituted, and which, in accordance with Accounting Practice, would be capitalized.
- 5.7. Coal Lease: The lease between the Tribe and Utah Mining dated as of July 26, 1957, and recorded in Book 480, page 74, in the office of the County Clerk of San Juan County, New Mexico, and amended by amendment dated October 18, 1957, and recorded in Book 480, page 75-V, and amended by amendment dated October 24, 1961, and recorded in Book 663, page 276, and amended by amendment dated March 29, 1965, and recorded in Book 663, page 277, all in the office of the County Clerk of San Juan County, New Mexico.

- 5.8. Common Facilities : Those existing facilities, more particularly described in Exhibit 1 hereto, which are located on the real property described in Exhibit 5 of the Co-Tenancy Agreement, and which will serve in connection with the operation and maintenance both of Units 4 and 5 and of the existing three units of the Initial Four Corners Plant.
- 5.9. Conditional Partial Assignment : An assignment dated September 2, 1966 between Utah Mining, as Assignor, and the Participants, as Assignees, whereby Utah Mining conditionally transfers and assigns to the Participants its rights, title and interest in, to and under the Coal Lease, insofar as it pertains to the coal lands dedicated pursuant to the Original Fuel Agreement and the Additional Fuel Agreement, and its right, title and interest in and to that portion of the Utah Mining Leased Lands dedicated pursuant to said agreements; which assignment was recorded on March 2, 1967 in Book 650, page 2, of Official Records in the office of the County Clerk of San Juan County, New Mexico.
- 5.9(a). Connection to 345 KV Switchyard Facilities : Connection to positions No. 1 and No. 3 of the 345 KV switchyard from the existing 345 KV bushings of the Reserve Auxiliary Power Source.
- 5.10. Construction Agreement : The Four Corners Project Construction Agreement between the Participants, which provides for the construction of the Four Corners Project, with the exception of the Common Facilities allocated thereto.

- 5.11. Contingent Sale Agreement : Contingent Sale Agreement between Arizona, as First Party, and El Paso, New Mexico, Salt River Project, Edison and Tucson, as Second Parties, wherein Arizona has agreed to sell on a contingent basis an undivided interest in the Common Facilities to Second Parties.
- 5.11(a). Co-Tenancy Agreement : The Co-Tenancy Agreement among the Participants which was recorded on July 21, 1966, in Book 636, page 1, of official records, in the office of the County Clerk of San Juan County, New Mexico; as amended by Amendment No. 1 to Co-Tenancy Agreement dated March 28, 1967, which was recorded on June 8, 1967, in Book 652, page 493, of official records, in the office of said County Clerk; and as amended from time to time. References in the Co-Tenancy Agreement to the effective date thereof or of a particular provision or instrument shall mean the effective date of the original Co-Tenancy Agreement or of the particular provision or instrument when first referenced in the original Co-Tenancy Agreement as then amended.
- 5.12. Date of Firm Operation : The date established in accordance with the Project Agreements in each case for Units 4 and 5 which will follow the start-up period of a generating Unit during which any necessary adjustments and/or alterations will be made to provide for the Unit's safe and dependable operation, and which is the date on which the Unit is determined to be reliable as a source of generation and upon which the Unit can be reasonably expected to operate continuously at its rated capacity.

- 5.13. Enlarged Four Corners Generating Station: The Initial Four Corners Plant and the Four Corners Project.
- 5.14. Exchange Agreement: Exchange Agreement (to be recorded contemporaneously herewith in the offices of the County Clerks of San Juan County and McKinley County, New Mexico), dated March 28, 1967, between Arizona, as First Party, and El Paso, New Mexico, Salt River Project, Edison and Tucson, as Second Parties, wherein Arizona conditionally agreed to exchange an undivided interest in the Common Facilities for an undivided interest in the New Facilities; as amended by letter of agreement among the Participants dated March 28, 1967, a copy of which is attached as Exhibit 6 hereto.
- 5.14(a). Existing New Facilities: Those facilities, or portions thereof, described in Exhibit 4 hereto and which are located on the real property described in Exhibit 5 of the Co-Tenancy Agreement on the effective date of this instrument.
- 5.14(b). Existing Related Facilities: Those facilities, or portions thereof, described in Exhibit 3 hereto, which are located on the real property described in Exhibit 5 of the Co-Tenancy Agreement on the effective date of this instrument. Such facilities will serve in connection with the operation and maintenance both of Units 4 and 5 and of the existing three units of the Initial Four Corners Plant.
- 5.15. Four Corners: The site of the Enlarged Four Corners Generating Station located on the Navajo Reservation near Shiprock, New Mexico.

- 5.16. Four Corners Project: Unit 4 and Unit 5, each to be 755 MW (nameplate), all facilities and structures used therewith or related thereto, the Switchyard Facilities therefor, and the respective undivided interests in the Common Facilities and the Related Facilities allocated thereto (all as described in Exhibits 1, 2 and 3 attached to the Co-Tenancy Agreement as amended), to be constructed and acquired at Four Corners by the Participants on the Granted Lands and the Leased Lands.
- 5.16(a). Future New Facilities: Those facilities, or portions thereof described in Exhibit 4 hereto and which become located on the real property described in Exhibit 5 of the Co-Tenancy Agreement after the effective date of this instrument.
- 5.16(b). Future Related Facilities: Those facilities, or portions thereof, described in Exhibit 3 hereto, which become located on the real property described in Exhibit 5 of the Co-Tenancy Agreement after the effective date of this instrument. Such facilities will serve in connection with the operation and maintenance both of Units 4 and 5 and the existing three units of the Initial Four Corners Plant.
- 5.17. Granted Lands: The Amended Original Plant Site, New Plant Site, Pumping Plant Site, Dam Site, Common and Related Facilities Area, Ash Disposal Area, and the Reservation Lands located within the rights-of-way and easements described in the §323 Grant as such terms are defined in the §323 Grant, which said defined areas are described in Exhibit 5 hereto attached.

- 5.18. Initial Four Corners Plant : The existing generating station of Arizona, located on the Navajo Reservation near Shiprock, New Mexico, on lands leased by Arizona pursuant to the Amended Original Lease, consisting of Units 1 and 2, each 175 MW (nameplate), and Unit 3, 225 MW (nameplate), all facilities and structures used therewith or related thereto, the related switchyard and substation facilities therefor, and the respective undivided interests in the Common Facilities and the Related Facilities allocated thereto, which are located on the real property more particularly described in the Amended Original Lease.
- 5.18(a). Initial Generation Date : The date upon which Unit 4 or Unit 5, respectively, is synchronized and electrical generation is first available from that unit for transmission to any Participant.
- 5.19. Leased Lands : The Amended Original Plant Site, New Plant Site, Pumping Plant Site, Dam Site, Common and Related Facilities Area and Ash Disposal Area, as such terms are defined in the Supplemental Lease, and which said defined areas are described in Exhibit 5 hereto attached.
- 5.20. Minimum Coal Storage Pile : The Minimum Coal Storage Pile, as determined by the Participants, for Units 4 and 5, to be drawn upon when fuel deliveries from Utah Mining may be interrupted.
- 5.21. Net Effective Generating Capacity : The maximum continuous ability of each Unit of the Enlarged Four Corners Generating Station to produce power, which shall be determined for each Unit of the Enlarged Four Corners Generating Station in accordance with the Operating Agreement.

- 5.22. New Facilities: Existing New Facilities and Future New Facilities.
- 5.23. New Lease: The provisions of the Supplemental Lease which are applicable to the Four Corners Project and under which the Participants will acquire leasehold rights to construct, reconstruct, use, operate, maintain, relocate and remove the Four Corners Project.
- 5.24. Operating Agreement: Operating Agreement between the Participants providing for the operation and maintenance of the Four Corners Project.
- 5.25. Original Fuel Agreement: Fuel Agreement dated August 18, 1960, as amended and supplemented by five supplements, including the Fifth Supplement, between Utah Mining and Arizona, relating to fuel for the Initial Four Corners Plant.
- 5.26. Original Lease: Indenture of Lease dated December 1, 1960, between the Tribe and Arizona, leasing to Arizona certain leasehold rights pursuant to which it has constructed the Initial Four Corners Plant, said Original Lease being of record in Book 474, page 187, in the office of the County Clerk of San Juan County, New Mexico, and supplemental exhibits to said Original Lease recorded in Book 511, page 65, in the office of the County Clerk of San Juan County, New Mexico.
- 5.27. Participant(s): One or more entities, including Arizona, NTEC, New Mexico, Salt River Project and Tucson, with an ownership interest in the Four Corners Project, and, when referring specifically to facts or matters occurring or agreements entered into prior to the effective date of Amendment No. 8, El Paso. The term “Original Participants” shall refer to “Arizona, El Paso, New

Mexico, Salt River Project, Edison and Tucson”. Except with respect to any rights, benefits, duties, or obligations expressly provided for in any Project Agreement, a Participant’s rights, benefits, duties, and obligations under this Agreement are expressly limited to those rights, benefits, duties, and obligations involving that portion of the Four Corners Project in which the Participant has an ownership interest.

5.28. Project Agreements: The §323 Grant, the New Lease, the Co-Tenancy Agreement, the Construction Agreement, the Operating Agreement, the Additional Fuel Agreement, the Conditional Partial Assignment, the Recorded Memorandum, the Exchange Agreement and the Contingent Sale Agreement.

5.28(a). Recorded Memorandum: The Memorandum dated September 2, 1966, between Utah Mining and the Participants pursuant to Sections 13 and 17.14 of the Additional Fuel Agreement evidencing the principal obligations of Utah Mining and providing also for the imposition of an equitable servitude and covenant running with the land with respect to Utah Mining’s interest in that portion of Utah Mining Leased Lands which have been dedicated or designated as a supply of fuel for the Four Corners Project; which was recorded on March 2, 1967, in Book 650, page 1, of Official Records, in the office of the County Clerk of San Juan County, New Mexico.

5.29. Related Facilities: Existing Related Facilities and Future Related Facilities.

5.30. Reservation Lands: The lands of the Tribe located within the Navajo Reservation.

- 5.30(a). Reserve Auxiliary Power Source: The No. 1 and No. 2 230/345 KV bus tie transformers as described in Exhibit 2 attached hereto.
- 5.31. §323 Grant: Grant of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. §323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. §485), as amended, and the Acts of July 9, 1832 and July 27, 1868 (4 Stat. 564, 15 Stat. 228, 25 U.S.C. §2), and such regulations promulgated thereunder as are applicable, including 25 CFR §1.2 and Part 161, to Arizona, Edison, New Mexico, El Paso, Tucson and Salt River Project, pursuant to which they will construct, reconstruct, use, operate, maintain, relocate and remove the Four Corners Project.
- 5.32. Supplemental Lease: The Supplemental and Additional Indenture of Lease dated the 27th day of May 1966, which combines the amendments and supplements to and the revisions of the Original Lease, and the New Lease.
- 5.33. Switchyard Facilities: The 345 KV and 500 KV switchyards and facilities related thereto to be utilized by Units 4 and 5, described in Exhibit 2 hereto attached.
- 5.34. Tribe: The Navajo Tribe of Indians.
- 5.35. Unit 4: Steam Electric Generating Unit with a nameplate rating of 755 MW described in Exhibit 2 hereto attached.
- 5.36. Unit 5: Steam Electric Generating Unit with a nameplate rating of 755 MW described in Exhibit 2 hereto attached.
- 5.36(a). Units of Property: Units of property as described in the Federal Energy Regulatory Commissions "List of Units of Property for use in Connection

with the Uniform System of Accounts Prescribed for Public Utilities and Licensees,” in effect as of the date of this Amendment No. 3 to the Co-Tenancy Agreement and as such list may be amended from time to time.

5.37. Utah Mining: Utah Construction & Mining Co., a Delaware corporation.

Utah Mining Leased Lands: The lands leased to Utah Mining under the terms of the Coal Lease.

6. OWNERSHIPS AND TITLES:

6.1. The Participants shall construct the Four Corners Project in accordance with the Project Agreements and their rights, titles and interests therein shall be as provided in this Co-Tenancy Agreement, the §323 Grant and the New Lease.

6.1.1. For those Participants in the Enlarged Four Corners Generating Station who have made or are committed to make, as of December 31, 1981, those Capital Items shown on Exhibit 7 or Exhibit 8 hereto on any of the Leased Lands, such Participants are hereby granted an easement or easements for such uses of the occupied Leased Lands on which such Capital Items are located or are to be located, for the term of the Co-Tenancy Agreement. The ownership of each Participant in such Capital Items and the right of such Participant to occupy a portion of such Leased Lands shall be equal to the percentage cost of investment in such Capital Items paid by such Participant. At the request of a Participant, approved easements will be evidenced

by separate easement documents in recordable form setting forth the approved uses and approved locations.

6.1.2. Any of the Participants in the Enlarged Four Corners Generating Station shall have the right, at its own expense, to add any Capital Item on the Leased Lands and to use the portion of the Leased Lands occupied by such Capital Item for the term of this Co-Tenancy Agreement; provided that approval has been obtained pursuant to Section 8.6 of the Four Corners Project Operating Agreement.

6.1.3. Any Participant owning an interest in a Capital Item shall have the right to affix its name to such Capital Item in a manner and at a location to be approved pursuant to Section 8.6 of the Operating Agreement.

6.1.4. If any Capital Item is severed or removed from such Leased Lands, at the request of the grantor Participant of such Leased Lands, such severance or removal shall be evidenced by bills of sale from the grantee Participant to the grantor Participant.

6.2. The Participants shall hold title to and own as tenants in common all the facilities forming part of the Four Corners Project (excluding the Common Facilities, the Switchyard Facilities, the New Facilities, the Related Facilities not included in the New Facilities, and the Reserve Auxiliary Power Source) as follows:

6.2.1. Arizona shall own an undivided 63% interest therein.

6.2.2. NTEC shall own an undivided 7% interest therein.

6.2.3. New Mexico shall own an undivided 13% interest therein.

6.2.4. Salt River Project shall own an undivided 10% interest therein.

6.2.5. Tucson shall own an undivided 7% interest therein.

6.2(a). The Participants shall hold title to and own as tenants in common the Related Facilities not included in the New Facilities existing on the effective date of Amendment No. 8 as follows:

6.2(a)1. Arizona shall own an undivided 73.20% interest therein.

6.2(a)2. NTEC shall own an undivided 5.07% interest therein.

6.2(a)3. New Mexico shall own an undivided 9.42% interest therein.

6.2(a)4. Salt River Project shall own an undivided 7.24% interest therein.

6.2(a)5. Tucson shall own an undivided 5.07% interest therein.

The Participants shall hold title to and own as tenants in common all Related Facilities, including improvements thereto, acquired or constructed after the effective date of Amendment No. 8 as follows:

6.2(a)6. Arizona shall own an undivided 63% interest therein.

6.2(a)7. NTEC shall own an undivided 7% interest therein.

6.2(a)8. New Mexico shall own an undivided 13% interest therein.

6.2(a)9. Salt River Project shall own an undivided 10% interest therein.

6.2(a)10. Tucson shall own an undivided 7% interest therein.

6.3. The Participants shall hold title to and own as tenants in common the Existing New Facilities (excluding Existing Related Facilities) as follows:

6.3.1. Arizona shall own an undivided 63% interest therein.

6.3.2. NTEC shall own an undivided 7% interest therein.

6.3.3. [Reserved]

6.3.4. New Mexico shall own an undivided 13% interest therein.

6.3.5. Salt River Project shall own an undivided 10% interest therein.

6.3.6. Tucson shall own an undivided 7% interest therein.

6.3(a). Until such time as the exchange of the Future New Facilities provided for in the last sentence of Section 3 of the Exchange Agreement shall have occurred, the following Participants shall receive title to and own as tenants in common the Future New Facilities, as follows:

6.3(a)1. Arizona shall own an undivided 56.47% interest therein.

6.3(a)2. NTEC shall own an undivided 8.24% interest therein.

6.3(a)3. New Mexico shall own an undivided 15.29% interest therein.

6.3(a)4. Salt River Project shall own an undivided 11.76% interest therein.

6.3(a)5. Tucson shall own an undivided 8.24% interest therein.

6.4. From and after the date upon which the exchange or sale shall have occurred, pursuant to the terms and conditions of the Exchange Agreement or the Contingent Sale Agreement, as the case may be, the Participants shall hold title to and own as tenants in common the New Facilities, excluding the Related Facilities, as follows:

6.4.1. Arizona shall own an undivided 63% interest therein.

6.4.2. NTEC shall own an undivided 7% interest therein.

6.4.3. [Reserved]

6.4.4. New Mexico shall own an undivided 13% interest therein.

6.4.5. Salt River Project shall own an undivided 10% interest therein.

6.4.6. Tucson shall own an undivided 7% interest therein.

- 6.5. The Participants shall hold title to and own as tenants in common the Common Facilities and the Existing Related Facilities included in the New Facilities, in both cases, existing on the effective date of Amendment No. 8 as follows:
- 6.5.1. Arizona shall own an undivided 73.20% interest therein.
 - 6.5.2. NTEC shall own an undivided 5.07% interest therein.
 - 6.5.3. New Mexico shall own an undivided 9.42% interest therein.
 - 6.5.4. Salt River Project shall own an undivided 7.24% interest therein.
 - 6.5.5. Tucson shall own an undivided 5.07% interest therein.

The Participants shall hold title to and own as tenants in common all Future Related Facilities, including improvements thereto, acquired or constructed after the effective date of Amendment No. 7 as follows:

- 6.5.6. Arizona shall own an undivided 63% interest therein.
 - 6.5.7. NTEC shall own an undivided 7% interest therein.
 - 6.5.8. New Mexico shall own an undivided 13% interest therein.
 - Salt River Project shall own an undivided 10% interest therein.
 - 6.5.9. Tucson shall own an undivided 7% interest therein.
- 6.6. The Participants shall receive title to and own as tenants in common the Minimum Coal Storage Pile for the Four Corners Project as follows:
- 6.6.1. Arizona shall own an undivided 63% interest therein.
 - 6.6.2. NTEC shall own an undivided 7% interest therein.
 - 6.6.3. [Reserved]
 - 6.6.4. New Mexico shall own an undivided 13% interest therein.
 - 6.6.5. Salt River Project shall own an undivided 10% interest therein.

- 6.6.6. Tucson shall own an undivided 7% interest therein.
- 6.7. The ownerships and titles described in Sections 6.2 and 6.6 shall vest simultaneously in Arizona, NTEC, New Mexico, Salt River Project and Tucson so that the estate of each is concurrent as to time, right and priority.
- 6.8. The ownerships and titles described in Section 6.3 shall vest simultaneously in NTEC, New Mexico, Salt River Project and Tucson so that the estate of each is concurrent as to time, right and priority, subject to the terms and conditions of the Exchange Agreement and the Contingent Sale Agreement.
- 6.9. From and after the date upon which the exchange or sale shall have occurred, pursuant to the terms and conditions of the Exchange Agreement or the Contingent Sale Agreement, as the case may be, the estates of NTEC, Arizona, New Mexico, Salt River Project and Tucson in and to the Common Facilities and the New Facilities shall be deemed to be concurrent as to time, right and priority.
- 6.10. Within eighteen (18) months following the Date of Firm Operation of Unit 5, the Participants shall jointly make, execute and deliver a supplement to this Co-Tenancy Agreement in recordable form, which shall describe with particularity and detail the facilities, equipment and other property then constituting the Four Corners Project not specifically described in the exhibits hereto or deleted therefrom, and such supplement, when prepared, shall be and become a part of this Co-Tenancy Agreement. The percentage undivided ownership interests of the Participants in and to the various facilities

described in such supplement shall be as provided in this Co-Tenancy Agreement.

- 6.11. In the event that any Participant transfers or assigns any of its right, title or interest (collectively, “interest”) in and to the Four Corners Project in accordance with the terms and conditions of this Co-Tenancy Agreement, the Participant assigning or transferring such interest shall, upon completion of such transfer or assignment, provide written notice to the other Participants and the Operating Agent, as defined in the Operating Agreement, of any changes in the interests of that Participant in the Four Corners Project. Upon receipt of such notice, the Operating Agent shall prepare for signature by the Participants an amendment to the Co-Tenancy Agreement reflecting such changes.

7. OWNERSHIP OF SWITCHYARD FACILITIES :

- 7.1. The Participants shall receive title to and own as tenants in common the 500 KV Switchyard Facilities described in Exhibit 2 hereto attached, as follows:
- 7.1.1. Arizona shall own an undivided 81.50% interest therein.
 - 7.1.2. NTEC shall own an undivided 3.50% interest therein.
 - 7.1.3. [Reserved]
 - 7.1.4. New Mexico shall own an undivided 6.50% interest therein.
 - 7.1.5. Salt River Project shall own an undivided 5.00% interest therein.
 - 7.1.6. Tucson shall own an undivided 3.50% interest therein.
- 7.2. The Participants shall receive title to and own as tenants in common the 345 KV Switchyard Facilities described in Exhibit 2 hereto attached, as follows:

- 7.2.1. Arizona shall own an undivided 59.32% interest therein.
- 7.2.2. NTEC shall own an undivided 8.94% interest therein.
- 7.2.3. [Reserved]
- 7.2.4. New Mexico shall own an undivided 19.26% interest therein.
- 7.2.5. Salt River Project shall own an undivided 8.52% interest therein.
- 7.2.6. Tucson shall own an undivided 3.96% interest therein.
- 7.3. The Participants shall receive title to and own as tenants in common that portion of the Switchyard Facilities described in Exhibit 2 hereto attached as the 345-500 KV transformer and the Connection to Reserve Auxiliary Power Source, as follows:
 - 7.3.1. Arizona shall own an undivided 63% interest therein.
 - 7.3.2. NTEC shall own an undivided 7% interest therein.
 - 7.3.3. [Reserved]
 - 7.3.4. New Mexico shall own an undivided 13% interest therein.
 - 7.3.5. Salt River Project shall own an undivided 10% interest therein.
 - 7.3.6. Tucson shall own an undivided 7% interest therein.
- 7.4. APS shall have title and own the newly installed second 345/500 KV transformer
- 7.5. The Participants shall receive title to and own as tenants in common the Reserve Auxiliary Power Source as follows:
 - 7.5.1. Arizona shall own an undivided 63.00% interest therein.
 - 7.5.2. NTEC shall own an undivided 7.00% interest therein.
 - 7.5.3. [Reserved]

7.5.4. New Mexico shall own an undivided 13.00% interest therein.

7.5.5. Salt River Project shall own an undivided 10.00% interest therein.

7.5.6. Tucson shall own an undivided 7.00% interest therein.

7.6. The Participants shall receive title to and own as tenants in common the Connection to 345 KV Switchyard Facilities as follows:

7.6.1 Arizona shall own an undivided 53.95% interest therein.

7.6.2 NTEC shall own an undivided 6.00% interest therein.

7.6.3 [Reserved]

7.6.4 New Mexico shall own an undivided 25.49% interest therein.

7.6.5 Salt River Project shall own an undivided 8.56% interest therein.

7.6.6 Tucson shall own an undivided 6.00% interest therein.

7.7. Pursuant to separate agreement, and by separate instrument, Arizona shall transfer and convey to the other Participants their respective interests in the Reserve Auxiliary Power Source. These interests shall be referred to in the supplement described in Section 6.10 hereof.

7.8. The ownerships and titles described in Sections 7.1, 7.2, 7.3, 7.4 and 7.6 hereof shall vest simultaneously in Arizona, NTEC, New Mexico, Salt River Project and Tucson so that the estate of each is concurrent as to time, right and priority.

8. ENTITLEMENT TO PLANT CAPACITY AND ENERGY :

8.1. Subject to the provisions of Section 20.2, Participants shall own and be entitled to the following percentages of the Net Effective Generating Capacity of Units 4 and 5, as follows:

- 8.1.1. Arizona shall own an undivided 63% interest therein.
 - 8.1.2. NTEC shall own an undivided 7% interest therein.
 - 8.1.3. [Reserved]
 - 8.1.4. New Mexico shall own an undivided 13% interest therein.
 - 8.1.5. Salt River Project shall own an undivided 10% interest therein.
 - 8.1.6. Tucson shall own an undivided 7% interest therein.
 - 8.2. The electrical capacity in the Switchyard Facilities shall be made available to the Participants in the manner and in the amounts as set forth in the Operating Agreement.
 - 8.3. Arizona shall retain the entire capacity and shall receive the entire output of the Initial Four Corners Plant, except to the extent that it has agreed to provide the requirements for the operation of the Four Corners Project from the output of the Initial Four Corners Plant in accordance with the terms and conditions of the Operating Agreement.
9. COORDINATION COMMITTEE :
- 9.1. As a means of securing effective cooperation and interchange of information and of providing consultation on a prompt and orderly basis among the Participants in connection with various administrative and technical problems, which may arise from time to time in connection with the terms and, conditions of this Co-Tenancy Agreement, the parties hereto hereby establish a Coordination Committee.
 - 9.2. The Coordination Committee shall consist of one representative from each Participant, who shall be an officer of the Participant, except in the case of

Salt River Project, in which case the representative shall be either the General Manager or the General Manager's designee. It shall be the function and responsibility of the Coordination Committee to consider such matters as are herein specifically provided and as may be provided from time to time by amendment of or supplement to this Co-Tenancy Agreement

- 9.3. The Coordination Committee shall have no authority to modify any of the provisions of this Co-Tenancy Agreement.
- 9.4. Each Participant shall notify the other Participants promptly of the designation of its representative or representatives on the Coordination Committee and of any subsequent change in such designation. Any of the Participants may, by written notice to the other Participants, designate an alternate or substitute to act as its representative on the Coordination Committee in the absence of the regular member of the Coordination Committee or to act on specified occasions or with respect to specified matters.
- 9.5. Any action or determination of the Coordination Committee shall require the following vote:
 - (a) The affirmative vote of the Participants owning at least 75% of the Net Effective Generating Capacity; and
 - (b) The affirmative vote of at least 60% of the individual Participants. For purposes of this Section 9.5(b) and any other provisions requiring the vote of a committee, for any two or more Participants where: (i) one of the Participants directly or indirectly controls the other Participant(s)

or (ii) the Participants are under common control (*e.g.* , subsidiaries or affiliates), such two or more Participants shall be deemed one individual Participant and represent one individual vote.

- 9.6. Notwithstanding Section 9.5, any actions or determinations of the Coordination Committee related to the matters set forth below shall require the unanimous vote of the Participants:
- (a) Any change in a Participant’s share of Net Effective Generating Capacity or energy, or ancillary services therefrom, except as provided in Section 20.2, or increase of a Participant’s share of the operating expenses or capital expenditures of the Four Corners Project;
 - (b) Except as set forth in Section 9.9, approval of a Capital Improvement with an estimated cost, at the time of consideration by the Coordination Committee, in excess of \$200,000,000, as adjusted for increases or decreases in the Consumer Price Index occurring after July 16, 2016; or
 - (c) A decision to rebuild Unit 4 or Unit 5 of the Four Corners Project if all or substantially all of Unit 4 or Unit 5 is destroyed or damaged.
- 9.7. For purposes of Section 9, a “Capital Improvement” shall have the meaning set forth in Section 5.5(a), but also mean a singular project for which the total aggregate cost, which may include multiple purchase orders and multiple contractors, exceeds \$200,000,000.00. In the event a Capital Project involves Unit 4 or Unit 5, each unit shall be treated separately and the \$200,000,000 amount shall apply per unit and not be aggregated.

- 9.8. In no event may the Operating Agent, as that term is defined in the Operating Agreement, claim that a Capital Improvement meeting the definitions set forth in Section 5.5(a) and Section 9.7, is necessary to operate the Four Corners Project in accordance with Prudent Utility Practice, as provided for in Section 14.4 of the Operating Agreement.
- 9.9. Beginning on July 6, 2016, Section 9.6(b) shall not apply to the installation of selective catalytic reduction equipment on either Unit 4 or Unit 5, as required by federal law (“SCR Projects”) and SCR Projects shall be subject to the voting requirements of Section 9.5.
- 9.10. In the event that the Coordination Committee does not approve a Capital Project subject to the voting requirements of Section 9.6(b), the Participant(s) that voted against the Capital Project shall work in good faith with the Participants that voted in favor of the Capital Project, in order to assure the continued operation of the Four Corners Project, including commercially reasonable efforts by the Participants that voted against the Capital Improvements Project to sell their interests in the Four Corners Project. If the Participants cannot agree on a sale or transfer of their respective rights, titles and interests to the Four Corners Project, pursuant to Section 13, the Participants agree that each of them shall have the right to seek equitable relief, without being subject to the dispute resolution requirements of Section 19.
- 9.11. In the event one or more Participants abstains from a vote governed by Section 9.5, does not participate in consideration of a particular matter,

notwithstanding the opportunity to do so, or is not entitled to vote pursuant to Section 20.2 of this Co-Tenancy Agreement, actions or determinations brought before the Coordination Committee shall require the affirmative vote of: (a) the Participants owning at least 75% of the remaining Net Effective Generating Capacity (after subtracting the percentage of Net Effective Generating Capacity owned by the abstaining, non-participating, or defaulting Participant(s)) and (b) at least 60% of the individual Participants that are voting.

- 9.12. In the event one or more Participants abstains from or does not participate in a vote governed by Section 9.6, or cannot vote as a result of a default, actions or determinations brought before the Coordination Committee shall require the unanimous affirmative vote of the voting Participants.
- 9.13. A Participant shall abstain from voting on any matter if the Participant has a conflict of interest with respect to that matter.
- 9.14. Each Participant shall advise the Coordination Committee if the Participant has a conflict of interest with respect to any matter being considered by the Coordination Committee, provided that the failure of a Participant to advise the Coordination Committee of a conflict of interest shall not relieve that Participant of its obligation to abstain from voting on the matter. A conflict of interest shall include matters relating to the new uses of land or other property rights for the Four Corners Project and contracts or other agreements to provide goods or services (other than the services provided by the Operating Agent), including fuel, to the Four Corners Project, where such

Participant or such Participant's parent or an affiliate of such Participant is the counterparty to such contract or agreement. The determination of whether a conflict of interest exists shall be made by the Coordination Committee.

9.15. For the avoidance of doubt, in the event of matters involving directly or indirectly the permanent shutdown of the operations of the Four Corners Project and/or the termination of the 2016 Four Corners Coal Supply Agreement (the "CSA"), NTEC affirmatively agrees and acknowledges that it will or may have a conflict of interest in such matter(s), and expressly agrees that it: (i) shall not oppose or object to such matter(s) and (ii) shall abstain from any vote as to such matter(s). This provision overrides and supersedes anything contrary to, or directly or indirectly inconsistent with, this provision in the Project Agreements, the CSA, or any other related documents.

10. USE OF COMMON FACILITIES AND RELATED FACILITIES DURING CURTAILMENTS :

10.1. If, because of emergency or planned shutdowns of Common Facilities or Related Facilities or the curtailment for any cause in the use thereof, Units 1, 2, 3 (prior to their respective retirements), 4 and 5 are not all operable simultaneously and continuously at their Net Effective Generating Capacity, then the reduced capacity entitlement of each Participant, because of the inability to operate said Units simultaneously and continuously at their Net Effective Generating Capacity, shall be determined as follows:

Reduced Capacity Entitlement of
Initial Four Corners Plant

$$C = \frac{N \times \text{NEGC}_1}{\text{NEGC}_2}$$

Reduced Capacity Entitlement of
Four Corners Project

$$\text{CD1U} = N \times \frac{(\text{NEGC}_2 - \text{NEGC}_1)}{\text{NEGC}_2} \times P$$

Where:

C = Reduced capacity entitlement of Arizona in Initial Four Corners Plant.

CD1U = With respect to each Participant, the reduced capacity entitlement of such Participant in the Four Corners Project.

N = Reduced Net Effective Generating Capacity of the Enlarged Four Corners Generating Station.

NEGC₁ = The Net Effective Generating Capacity of the Initial Four Corners Plant at the time of such emergency or planned shutdown or curtailment.

NEGC₂ = The Net Effective Generating Capacity of the Enlarged Four Corners Generating Station at the time of such emergency or planned shutdown or curtailment.

P = With respect to each Participant, such Participant's percentage of Net Effective Generation under Section 8.1.

- 10.2. Curtailments in capacity entitlements necessitated by reason of shortages in the supply of fuel, water or other supplies or services affecting all of the five Units of the Enlarged Four Corners Generating Station commonly shall be treated in the same manner as curtailments necessitated because of emergency or planned shutdowns of Common Facilities or Related Facilities; provided, however, that nothing contained in this Section 10 shall be construed to

diminish the respective rights of the Participants in the Minimum Coal Storage Pile.

10.3. Except as otherwise provided in Section 10, no Participant shall exercise its rights relating to the Common Facilities or Related Facilities so as to endanger or unreasonably interfere with the operation of the Initial Four Corners Plant (prior to the retirement of each of Units 1, 2 and 3 of the Initial Four Corners Plant) or the Four Corners Project.

11. WAIVER OF RIGHT TO PARTITION:

11.1. The Participants, and each of them, accept title to the Four Corners Project and title in the Granted Lands and Leased Lands as tenants in common, and agree that their interests therein shall be held in such tenancy in common for the duration of the term of this Co-Tenancy Agreement, including any extension thereof. During the term of this Co-Tenancy Agreement, each Participant agrees as follows:

11.1.1. That it hereby waives the right to partition the Four Corners Project or the Granted Lands and Leased Lands (whether by partitionment in kind or by sale and division of the proceeds thereof); and

11.1.2. That it will not resort to any action at law or in equity to partition (in either such manner) the Four Corners Project or the Granted Lands and Leased Lands, and waives the benefits of all laws that may now or hereafter authorize such partition.

11.2. During the term of this Co-Tenancy Agreement, Arizona waives the right to partition (whether by partitionment in kind or by sale and division of the

proceeds thereof) and agrees that it will not resort to any action at law or in equity to partition (in either such manner) and waives the benefits of all laws that may now or hereafter authorize such partition of the Common Facilities and the Related Facilities allocated to the Initial Four Corners Plant from the Common Facilities and the Related Facilities allocated to the Four Corners Project.

- 11.3. During the term of this Co-Tenancy Agreement, the Participants waive the right to partition (whether by partitionment in kind or by sale and division of the proceeds thereof) and agree that they will not resort to any action at law or in equity to partition (in either such manner) and waive the benefits of all laws that may now or hereafter authorize such partition of the Common Facilities and the Related Facilities allocated to the Four Corners Project from the Common Facilities and the Related Facilities allocated to the Initial Four Corners Plant.

12. MORTGAGE AND TRANSFER OF PARTICIPANTS' INTERESTS :

- 12.1. The Participants, and each of them, shall have the right at any time and from time to time to mortgage, create or provide for a security interest in or convey in trust their respective rights, titles and interests in the Four Corners Project, their respective rights, titles and interests in, to and under the Project Agreements and/or their rights, titles and interests in the Granted Lands and Leased Lands, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any

successors or assigns thereof, without need for the prior written consent of any other Participants, and without such mortgagee, trustee or secured party assuming or becoming in any respect obligated to perform any of the obligations of the Participants.

- 12.2. Any mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or security agreements of any of the Participants and any successor or assign thereof, and any receiver, referee, or trustee in bankruptcy or reorganization of any on the Participants, and any successor by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior written consent of the other Participants, succeed to and acquire all the rights, titles and interests of such Participant in the Four Corners Project, in, to and under the Project Agreements and/or the rights, titles and interests of such Participant in the Granted Lands and Leased Lands, and may take over possession of or foreclose upon said property, rights, titles and interests of such Participant.
- 12.3. Each Participant shall have the right to transfer or assign all or any portion of its respective rights, undivided titles and interests in the Four Corners Project, in, to and under the Project Agreements and/or in the Granted Lands and Leased Lands, without the need for prior written consent of any other Participant, at any time to any of the following:
 - 12.3.1. To any corporation or other entity acquiring all or substantially all of the property of such Participant; or

- 12.3.2. To any corporation or entity into which or with which such Participant may be merged or consolidated; or
- 12.3.3. To any corporation or entity the stock or ownership of which is wholly owned by a Participant; or
- 12.3.4. To any third party transferee in connection with a financing by such Participant involving or relating to such Participant's rights, titles and interests in the Four Corners Project, in, to and under the Project Agreements and/or in the Granted Lands and Leased Lands, without such third party transferee assuming or becoming obligated in any respect to perform any of the obligations of such Participant pursuant to this Co-Tenancy Agreement, provided that any and all such rights, titles and interests transferred to such third party transferee are immediately re-purchased by such Participant and are thereupon subject to all of the provisions of this Co-Tenancy Agreement, including, but not limited to, the "right of first refusal" provisions of Section 13 hereof; or
- 12.3.5. To the Salt River Valley Water Users' Association, an Arizona corporation, in the case of a transfer by Salt River Project; or
- 12.3.6. To any corporation which owns all of the outstanding common stock of a Participant, or in the case of a Participant which has no common stock, to an entity which owns all of the ownership interest of the Participant (the corporation or entity shall be referred to herein as the "Parent"); or

- 12.3.7. To any corporation or entity the common stock or other ownership interest of which is wholly owned by the Parent of such Participant.
- 12.4. Except as otherwise provided in Sections 12.1, 12.2, 12.3.4 and 24.4 hereof, any successor to the rights, titles and interests of a Participant in the Four Corners Project, to the rights, titles and interests of a Participant in, to and under the Project Agreements and/or in the Granted Lands and Leased Lands shall assume and agree to fully perform and discharge all of the obligations hereunder of such Participant, and such successor shall notify each of the other Participants in writing of such transfer, assignment or merger. Any such successor shall specifically agree in writing with the remaining Participants at the time of such transfer, assignment or merger that it will not transfer or assign any rights, titles and interests acquired from a Participant without complying with the terms and conditions of Section 13 hereof.
- 12.5. No Participant shall be relieved of any of its obligations and duties under the Project Agreements by an assignment under this Section 12 without the express prior written consent of all of the remaining Participants.
- 12.6. Except as otherwise provided in Section 12.4 hereof, any transfer, assignment or merger made pursuant to the provisions of this Section 12 shall not be subject to the terms and conditions set forth and contained in Section 13 hereof.
- 12.7. Without implying that any provision other than Article 6 and Article 7 herein allows a Participant to own an undivided ownership interest in any component of the Four Corners Project which is not the same as the undivided ownership

interest such Participant owns in every other component, each Participant shall own the same undivided percentage interest in Unit 4 as in Unit 5.

13. RIGHT OF FIRST REFUSAL :

13.1. Except as provided in Section 12 hereof should any Participant desire to assign, transfer, convey or otherwise dispose of (hereinafter collectively referred to as “Assign”) its rights, titles and interests in the Four Corners Project, or its rights, titles and interests, in, to and under the Project Agreements, or its rights, titles and interests in the Granted Lands or Leased Lands, or any part thereof or interest therein (hereinafter referred to as “Transfer Interest”), to any person, company, corporation, governmental agency or sovereign entity, or any other Participant (hereinafter referred to as “Outside Party”), the remaining Participants, or any one or more of them, shall have the right of first refusal, as hereinafter described, to purchase such Transfer Interest on the basis of the greater of the following amounts:

13.1.1. The amount of a bona fide written offer from a buyer ready, willing and able to purchase the Transfer Interest after the expiration of the periods for giving notices specified in Sections 13.3 to 13.7 inclusive hereof; or

13.1.2. The fair market value of the Transfer Interest. As used herein, the term “fair market value” is defined as the amount of money which a purchaser, willing but not obligated to buy the property, will pay to an owner, willing but not obligated to sell it, taking into consideration all of the uses to which the Transfer Interest is adapted

and might in reason be applied. Such value need not be computed upon the basis of a cash sale, but may be computed on the basis of the terms offered in Section 13.1.1.

- 13.2. Such right of first refusal shall exist as of the effective date of this Co-Tenancy Agreement and shall continue for the term of this Co-Tenancy Agreement.
- 13.3. At least one hundred eighty (180) days prior to its intended date to Assign, and after its receipt of a bona fide written offer of the type described in Section 13.1 above, the Participant desiring to Assign its Transfer Interest shall serve written notice of its intention to do so upon the remaining Participants who have an interest in that portion of the Four Corners Project that is the subject of the Transfer Interest in accordance with Section 23 of this Co-Tenancy Agreement. Such notice to the remaining Participants shall contain the approximate proposed date to Assign, the terms and conditions of said bona fide written offer received by such Participant, and the terms and conditions of the proposed assignment. The terms and conditions contained in such notice shall be at least as favorable to the remaining Participants as the terms and conditions of said bona fide written offer, or may be the same terms and conditions as set forth in said offer.
- 13.4. Each remaining Participant having an ownership interest in the portion of Four Corners Project that is the subject of the Transfer Interest, including the Outside Party if such Outside Party is a Participant, shall signify its desire to purchase the entire Transfer Interest, or any percentage interest therein, or not to purchase all or any percentage interest therein, by serving written

notice of its intention upon the Participant desiring to Assign and upon the remaining Participants pursuant to Section 23 hereof within one hundred twenty (120) days after such service pursuant to Section 13.3 of the written notice of intention to Assign. Failure by a Participant to serve notice as provided hereunder within the time period specified shall be conclusively deemed to be notice of its intention not to purchase any portion of the Transfer Interest.

- 13.5. If all or some of the remaining Participants should signify their intention under Section 13.4 to purchase in aggregate more than the entire Transfer Interest, the percentage ownership of the Transfer Interest to be acquired by each such remaining Participant shall be limited to the percentage determined by the formula set forth in Section 13.10.1 hereof.
- 13.6. If the remaining Participants, or any one or more of them, should signify its or their intention under Section 13.4 to purchase less than the entire Transfer Interest, the Participant desiring to Assign shall serve written notice of this fact upon the remaining Participants in accordance with Section 23 hereof within ten (10) days after its receipt of the last of the written notices given pursuant to Section 13.4 hereof, or after the expiration of the one hundred twenty (120) day period referred to in Section 13.4 hereof, whichever is earlier.
- 13.7. The one or more remaining Participants who signify an intention to purchase less than the entire Transfer Interest may signify the intention to purchase the remainder of the Transfer Interest by serving written notice pursuant to

Section 23 hereof of its or their intention to do so upon the Participant desiring to Assign within thirty (30) days after the receipt of written notice given pursuant to Section 13.6 hereof.

13.8. When intention to purchase the entire Transfer Interest has been indicated by notices duly given hereunder by the applicable Participant(s) desiring to purchase the Transfer Interest, the Participants shall thereby incur the following obligations:

13.8.1. The Participant desiring to Assign and the Participant(s) desiring to purchase the Transfer Interest shall be obligated to proceed in good faith and with diligence to obtain all required authorizations and approvals to Assign;

13.8.2. The Participant desiring to Assign shall be obligated to obtain the release of any liens imposed by or through it upon any part of the Transfer Interest, and to Assign the Transfer Interest at the earliest practicable date thereafter; and

13.8.3. The Participant(s) desiring to purchase the Transfer Interest shall be obligated to perform all terms and conditions required of it or them to complete the purchase of the Transfer Interest. The purchase of the Transfer Interest shall be fully consummated within eighteen (18) months following the date upon which all notices required to be given under this Section 13 have been duly served, unless the Participant(s) are then diligently pursuing applications to appropriate regulatory bodies (if any) for required authorizations

to effect such assignment or are then diligently prosecuting or defending appeals from orders entered or authorizations issued in connection with such application, in which case the purchase of the Transfer Interest shall be fully consummated at the earliest possible date following issuance of the requested authorization(s) or the resolution of any appeal.

- 13.9. If the intention to purchase the entire Transfer Interest has not been indicated by notices given within the time periods specified in this Section 13 by the Participant(s) desiring to purchase the Transfer Interest, the Participant desiring to Assign shall be free to Assign all but not less than all of its Transfer Interest to the Outside Party that made the bona fide written offer of the type described in Section 13.1.1 upon the terms and conditions set forth in said bona fide written offer. If such assignment of the entire Transfer Interest to the Outside Party is not completed within eighteen (18) months after the approximate proposed date to assign specified in the notice given pursuant to Section 13.3, the Participant desiring to Assign its Transfer Interest must, unless it is then diligently pursuing its applications to appropriate regulatory bodies (if any) for required authorizations to effect such assignment, or is then diligently prosecuting or defending appeals from orders entered or authorizations issued in connection with such applications, give another complete new right of first refusal to the remaining Participants pursuant to the provisions of this Section 13, before such Participant shall be free to Assign a Transfer Interest to said Outside Party.

13.10. The Participant(s) who purchase the Transfer Interest shall receive title to and shall own the Transfer Interest as tenants in common, subject to the same rights and obligations as are applied to the Transfer Interest in the hands of the assigning Participant, and shall acquire the Transfer Interest as follows:

13.10.1. Unless otherwise agreed to by the purchasing Participants, if there is more than one purchasing Participant, the percentage interest of each such purchasing Participant in the Transfer Interest shall be determined by the following formula:

$$T = \frac{A}{B} \times C$$

Where:

T = The percentage of the Transfer Interest to be purchased by each Participant desiring to purchase.

A = The existing undivided percentage interest of such Participant in the capacity entitlement of the Four Corners Project.

B = The total undivided percentage interests in the capacity entitlement of the Four Corners Project of all Participants desiring to purchase the Transfer Interest.

C = The percentage interest in the Four Corners Project of the Transfer Interest.

13.10.2. If there is only one purchasing Participant, it shall acquire title to and own the entire Transfer Interest.

- 13.11. No assignment of a Transfer Interest, whether to another Participant or to an Outside Party, shall relieve the assigning Participant from full liability and financial responsibility for performance after any such assignment:
- 13.11.1. Of all obligations and duties incurred by such Participant prior to such assignment under the terms and conditions of the Project Agreements; and/or
- 13.11.2. Of all obligations and duties provided and imposed after such assignment upon such assigning Participant under the terms and conditions of the Project Agreements; unless and until the assignee shall agree in writing with the remaining Participants to assume such obligations and duties; provided further, however, that such assignor shall not be relieved of any of its obligations and duties by an assignment under this Section 13, without the express prior written consent of all of the remaining Participants. [See note below.]
- 13.12. Any transferee, successor or assignee, or any party who may succeed to the Transfer Interest pursuant to this Section 13, shall specifically agree in writing with the remaining Participants at the time of such transfer or assignment that it will not transfer or assign all or any portion of the Transfer Interest so acquired without complying with the terms and conditions of this Section 13.
- 13.13. Nothing contained in this Section 13 shall be deemed to apply to or limit the right of Arizona to assign, transfer, convey or otherwise dispose of its rights,

titles and interests in the Initial Four Corners Plant, or its rights, titles and interests in, to and under the Project Agreements insofar as they relate to the Initial Four Corners Plant, or its rights, titles and interests in the Granted Lands or Leased Lands, or any part thereof or interest therein, insofar as such lands are granted or leased to Arizona under the Amended Original Lease and the Arizona §323 Grant.

- 13.14. Any assignment of a Transfer Interest to an Outside Party that is not then a Participant that is a governmental or sovereign entity, agency or instrument of a governmental or sovereign entity or a foreign person shall not be effective unless the assumption by such Outside Party of the obligations of the transferring Participant includes a waiver of sovereign immunity, a consent to the dispute resolution provisions of Section 19 of this Co-Tenancy Agreement, a consent to the governing law provisions of Section 25.4 of this Co-Tenancy Agreement, and any other consents or waivers the Participants deem necessary, sufficient to assure the remaining Participants of the enforceability of the obligations of such Outside Party under the Project Agreements.
- 13.15. A Party shall be prohibited from assigning its Transfer Interest to an Outside Party unless such Outside Party, concurrently with such transfer, provides to the Operating Agent any financial assurance or guarantee required by the Financial Assurance Policy, attached as Exhibit 1 to Amendment No. 16 of the Operating Agreement, as then in effect, and the transferring Participant provides evidence, to the reasonable satisfaction of the non-transferring

Participants, that the transferee, successor or assignee, or any party who may succeed to the Transfer Interest pursuant to this Section 13 is financially capable, or provides reasonable financial assurances, of fulfilling the obligations under the Co-Tenancy Agreement.

14. SEVERANCE OF IMPROVEMENTS FROM LEASEHOLD :

14.1. With the exception of any of the “non-removable buildings” defined in the

Original Lease as follows:

- Office Building
- Warehouse Building
- Laboratory
- Machine Shop
- Cafeteria and Kitchen Building
- Recreation Building

that have been constructed as a part of the Initial Four Corners Plant, or that may hereafter be constructed as a part of the Four Corners Project, Participants agree that all other facilities, structures, improvements, equipment and property of whatever kind and nature constructed, placed or affixed by Participants hereafter on the Reservation Lands under the rights-of-way and easements granted in the §323 Grant, or pursuant to the rights leased under the New Lease or Amended Original Lease, expressly including but not being limited to Units 4 and 5, all facilities and structures used therewith and related thereto, the Switchyard Facilities and all Common Facilities and Related Facilities, as against the Tribe and all other parties and persons whomsoever (including without limitation any party acquiring any interest in the Leased Lands or the Granted Lands or any interest in or lien,

claim or encumbrance against any of such facilities, structures, improvements, equipment and property of whatever kind and nature), shall be deemed to be and remain personal property of the Participants, not affixed to the realty, and, with the exception of the Common Facilities and Related Facilities, shall be removable by the Participants at any time prior to or within one hundred twenty (120) days after the expiration of the later to terminate or expire of the §323 Grant and the New Lease; and the Common Facilities and Related Facilities (exclusive of any non-removable buildings) shall be removable by the Participants at any time prior to or within one hundred twenty (120) days after the expiration of the later to terminate or expire of the §323 Grant, the Arizona §323 Grant, the New Lease and the Amended Original Lease.

15. CAPITAL ADDITIONS, CAPITAL BETTERMENTS, CAPITAL REPLACEMENTS AND RETIREMENTS OF FOUR CORNERS PROJECT :

- 15.1. The Participants hereto recognize that from time to time it may be necessary or desirable to make Capital Additions or Capital Betterments to, Capital Replacements of and retirements of facilities comprising the Four Corners Project, including Common Facilities and Related Facilities.
- 15.2. Any such Capital Additions, Capital Betterments, Capital Replacements and retirements shall be noted in or supplement to the appropriate exhibits attached hereto or through procedures established by the Operating Agent and approved by the Coordination Committee.

- 15.3. The rights, titles and interests, including percentage ownership interests, of any Participant in and to any Capital Additions, Capital Betterments or Capital Replacements of facilities shall be as provided for the respective classes of property described in Sections 6 or 7 hereof, as the case may be. The Participants shall be obligated for the costs of such Capital Additions, Capital Betterments or Capital Replacements in the same percentages as their percentage ownership interests therein.
- 15.4. In the event of the removal or retirement of any facilities comprising part of the Four Corners Project, any proceeds realized from the salvage of such facilities shall be distributed to the Participants in accordance with their percentage ownership interests therein, or shall be applied on account of the Participant's obligations to pay for Capital Additions, Capital Betterments or Capital Replacements replacing facilities removed or retired.
- 15.5. Each Participant shall have the right, at its own expense, to add facilities to the Leased Lands including the Switchyard Facilities and to use the portion of the Leased Lands occupied by such facilities, subject to approval pursuant to Section 8.6 of the Operating Agreement; provided, however, the facilities shown on Exhibit 7 and Exhibit 8 hereto shall be deemed to have been so approved. However, if such additions of facilities involve a new interconnection to the Switchyard Facilities, approval to interconnect to the Switchyard Facilities shall be set forth in a written agreement among the Participants. Such agreement shall specify the terms and conditions for the

additions of facilities and charges, if any, to the Participants, including the interconnecting Participant.

15.6. Each Participant shall have the right at its own expense to add protective relay or communication equipment to facilities solely owned by it, if the Participant determines the protective relay or communication equipment is needed for the protection of its electric system.

16. DESTRUCTION, DAMAGE OR CONDEMNATION OF THE FOUR CORNERS PROJECT :

16.1. If all, or substantially all of Unit 4 or Unit 5 of the Four Corners Project should be destroyed, damaged or condemned, then the Participants may elect to repair, restore or reconstruct the damaged, destroyed or condemned facilities in such a manner as to restore the facilities to substantially the same general character or use as the original, or to such other character or use as the Participants may then agree. In the event of such election, it shall be the obligation of the Participants to pay for the costs of such repair, restoration or reconstruction in accordance with the percentage ownership interests of the respective Participants in such facilities, and, upon completion thereof, the Participants' rights, titles and interests therein shall be as provided in this Co- Tenancy Agreement.

16.2. If the Participants elect not to repair, restore or reconstruct the damaged, destroyed or condemned facilities, the proceeds from any insurance or from any award shall be distributed to the Participants in accordance with their respective percentage ownership interests in and to such facilities. The

facilities not destroyed, damaged or condemned shall be disposed of in a manner agreed upon by the Participants, and the proceeds from such disposition shall be distributed in accordance with the percentage ownership interests of the respective Participants in such facilities.

- 16.3. In the event that less than substantially all of Unit 4 or Unit 5 of the Four Corners Project shall be destroyed, damaged or condemned, then it shall be the obligation of the Participants to repair, restore or reconstruct the damaged, destroyed or condemned facilities in such a manner as to restore such facilities to substantially the same general character or use as the original. Each Participant shall be obligated to pay its proportionate share of the costs of such repair, restoration or reconstruction. The requirements set forth above shall similarly apply to all or any portion of the Common Facilities or the Related Facilities necessary for the operation of Unit 4 or Unit 5, as the case may be.

17. RIGHTS OF PARTICIPANTS UPON TERMINATION :

- 17.1. Within one hundred twenty (120) days after the termination of the New Lease and the §323 Grant, the facilities forming the Four Corners Project (exclusive of the Common Facilities and Related Facilities) shall be disposed of by the Participants in a manner to be mutually agreed upon, and the proceeds from such disposition shall be distributed to the Participants in accordance with their respective percentage ownership interests in such facilities, but the Common Facilities and Related Facilities shall not be so disposed of until one hundred twenty (120) days after the later to terminate or expire of the

§323 Grant, the Arizona §323 Grant, the New Lease and the Amended Original Lease.

17.2. In the event the Participants by mutual agreement abandon the Four Corners Project prior to the termination of this Co-Tenancy Agreement, the Facilities forming the Four Corners Project (exclusive of the Common Facilities) shall be disposed of by the Participants in a manner to be mutually agreed upon and the proceeds from such disposition shall be distributed to such Participants in accordance with their respective percentage ownership interests in such facilities.

18. RIGHTS OF PARTICIPANTS IN WATER AND COAL :

18.1. If, pursuant to the terms and conditions of the Original Fuel Agreement, the Additional Fuel Agreement or the Conditional Partial Assignment, the Participants succeed to some or all of the rights of Utah Mining under the Coal Lease and in the Utah Mining Leased Lands, the rights, titles and interests of the Participants therein, and the rights, titles and interests of the Participants in the water rights assigned pursuant to the terms and conditions of the Original Fuel Agreement and the Additional Fuel Agreement shall be held as tenants in common, with each Participant having the same undivided percentage ownership interests therein as provided in Section 6.5 hereof, and such rights, titles and interests shall be subject to all the terms and conditions set forth and contained in this Co-Tenancy Agreement.

19. ARBITRATION :

- 19.1. In the event that any Unresolved Dispute between some or all of the Participants should arise under the Project Agreements, any of such Participants may call for resolution of such Unresolved Dispute in the manner hereinafter set forth, which call shall be binding upon all Participants.
- 19.2. An Unresolved Dispute shall mean a disagreement, dispute, controversy or claim arising under or relating to the Project Agreements that has been identified as the same by a Participant in a written Notice submitted to all other involved Participants.
- 19.3. The Participants, through the Coordination Committee, agree to use diligent efforts to attempt to resolve all Unresolved Disputes, equitably and in good faith, and further agree to provide each other, in a timely manner, with reasonable non-privileged records, information and data pertaining to any such Unresolved Dispute.
- 19.4. If the Unresolved Dispute has not been resolved within 90 days after notice of the Unresolved Dispute has been given pursuant to Section 19.2, and a Participant has determined in its sole discretion that it has exhausted opportunities to settle any such Unresolved Dispute in accordance with Section 19.3 and has determined that it desires to commence arbitration, it may initiate arbitration in accordance with Section 19.5 (“Arbitration”) hereof by serving upon the other involved Participants a formal demand for arbitration.
- 19.5. The arbitration procedure shall follow the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as modified

herein, and excluding the mediation rules. Unless agreed to otherwise among the Participants, the optional rules for emergency measures of protection are also excluded. Unresolved Disputes that require emergency relief shall be brought in the federal or, if jurisdiction does not lie in the federal courts, the state courts of New Mexico.

19.5.1. Within twenty (20) business days after the later of receipt of the notice or the availability of the documentation, the other Participants involved in the dispute may issue to the initiating Participants, and file with the American Arbitration Association, their own statement of the matter at issue, in adequate detail, and address additional related matters or issues to be arbitrated. If documentation is material, the notice delivered to the other Participants shall be accompanied by a copy or a description by category of the documents and tangible things that the Participant providing notice has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment. Any documents that do not accompany the notice shall be made available for review within five (5) business days at a mutually convenient location.

19.5.2. Within ten (10) business days after the later of receipt of the statement of additional matters or issues to be arbitrated or the availability of documentation, the initiating Participant(s) may

issue to the Participants and file with the American Arbitration Association a rebuttal, along with any additional pertinent relevant documentation.

19.6. The Participants shall agree on arbitrator(s) within fifteen (15) business days after receipt of the notice initiating arbitration; otherwise they shall follow the procedures in AAA rules for selection, as modified herein.

19.6.1. The arbitrators must be impartial and independent, as well as experienced in issues arising in jointly owned industrial projects.

19.6.2. All decisions of the arbitrators regarding discovery are to be consistent with the principles of proportionality, set forth in Rule 26(b)(2)(C) of the Federal Rules of Civil Procedure, as it is then in effect.

19.7. The time allowed for discovery shall be set by the arbitrators, consistent with the expedited nature of arbitration and the principles of proportionality set forth in the Federal Rules of Civil Procedure; provided that in no event shall the time for discovery (other than of experts) be more than forty-five (45) days.

19.7.1. Documents to be produced shall include electronically stored information (1) with the consent of the Participants, subject to such limitations as they shall agree, or (2) otherwise, only if permitted by the arbitrators, for good cause shown.

(a) Electronically stored information shall be produced in native format, unless the Participants agree otherwise or the arbitrators decide otherwise, for good cause shown.

19.7.1. Requests for documents in addition to the initial disclosures may be permitted by the arbitrators, for good cause shown.

19.7.2. Depositions are discouraged, but up to three (3) depositions of up to one day each per side may be permitted by the arbitrators, for good cause shown.

(a) If depositions are permitted, witnesses who are employees or consultants of Participants shall be made to appear voluntarily, by the respective Participants.

19.7.3. Disclosures shall be made consistent with FRCP 26(a)(2)(B), for any witness who will be providing evidence as an expert.

19.7.4. Depositions of expert witnesses of up to two days each may be permitted by the arbitrators, for good cause shown.

19.7.5. If depositions of experts are allowed, the arbitrators shall apply the principles of FRCP 26(b)(4)(E).

19.8. Not less than five (5) days before the beginning of the hearing, the arbitrators will set the number of days of testimony to be permitted for the hearing.

19.8.1. The arbitrators will seek to set sufficient hearing time to allow for the presentation of each Participant's reasonably material and pertinent evidence, consistent with the expedited nature of arbitration and the principle of proportionality to the complexity of the matters

at issue and the amount or type of relief requested; but in no event shall there be more than five (5) days of hearings unless consented to by all involved Participants.

(a) In setting the length of the hearing, the arbitrators may consider, but need not follow, the recommendations of the Participants, as to the number of days required.

(b) The time set for the hearing will not be expanded during the hearing except for circumstances that could not reasonably have been anticipated by the Participants and the Panel.

19.8.2. The time for the hearing will be divided substantially evenly among the respective sides. In determining the allocation, time for cross-examination by a Participant will be included with time for direct examination by that Participant.

19.8.3. A decision of the Panel shall be determined by a majority of the Panel.

19.8.4. Unless the Participants agree otherwise, the award will be accompanied by a statement describing the factors considered by the panel and how the panel reached its decision.

19.8.5. Unless the Participants agree otherwise, the award shall have a precedential effect on future disputes and the conduct of the Participants.

19.8.6. Awards of fees and expenses may be made only to a substantially prevailing party, as may be determined by the arbitrators on an issue-by-issue basis.

20. DEFAULTS AND COVENANTS REGARDING OTHER AGREEMENTS :

- 20.1. Each Participant hereby agrees with all of the other Participants that it shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by it pursuant to all of the terms and conditions set forth and contained in the Project Agreements, and a default by any Participant in the covenants and obligations to be by it kept and performed pursuant to the terms and conditions set forth and contained in any of the Project Agreements shall be an act of default under this Co-Tenancy Agreement.
- 20.2. Upon: (a) a default in the payment by a Participant of any amount due pursuant to the monthly bill from the Operating Agent, (b) a default by a Participant of any other amount due from such Participant (subsentences (a) and (b) hereinafter collectively referred to as a “Payment Default”), or (c) an event of default for any other reason, then:
- 20.2.1. [Reserved]
- 20.2.2. The Operating Agent shall, and any non-defaulting Participant may, give written notice of such default to each member of the Coordination Committee.
- 20.2.3. If the default is a Payment Default, and provided that the defaulting Participant has received fifteen (15) days prior written notice of the Payment Default, pursuant to Section 20.2.2, the Operating Agent or such other entity designated by the Coordination Committee shall draw on or seek payment under the Financial Assurance Policy,

with respect to the defaulting Participant, for the amount in default. If adequate funds are not available under the Financial Assurance Policy, the Operating Agent is authorized to include in the next monthly bills to the non-defaulting Participants the amount required to fund any shortfall resulting from the Payment Default, such amount to be allocated among the non-defaulting Participants as follows:

$$\text{NP Share} = \text{NEGC of NP} / (100 - \text{NEGC of DP})$$

where:

“NP Share” is the share of the shortfall to be funded by a non-defaulting Participant;

“NEGC of NP” is the percentage of Net Effective Generating Capacity of that Participant;

“NEGC of DP” is the percentage of Net Effective Generating Capacity of the defaulting Participant;

provided that the aggregate shortfall to be funded by the non-defaulting Participants at any time shall not exceed \$250,000,000, as adjusted to reflect changes in the Consumer Price Index after July 6, 2016.

- 20.2.4. If the Operating Agent or such other entity designated by the Coordination Committee draws on or seeks payment under the Financial Assurance Policy, the Operating Agent shall give written notice of the same to each member of the Coordination Committee.

- 20.2.5. For a Payment Default that remains uncured, the Operating Agent or such other entity designated by the Coordination Committee, shall, on the sixtieth (60th) day following the original written notice of default, as set forth in Section 20.2.2, suspend the defaulting Participant's voting rights and its entitlement to its Net Effective Generating Capacity from the Four Corners Project. The suspension of a defaulting Participant's rights shall not suspend its obligations under the Project Agreements.
- 20.2.6. For a performance default that is not being disputed, the Operating Agent or such other entity designated by the Coordination Committee, may, on the sixtieth (60th) day following the original written notice of default, as set forth in Section 20.2.2, suspend the defaulting Participant's voting rights. The suspension of a defaulting Participant's voting rights shall not suspend its obligations under the Project Agreements. A suspension under this Section 20.2.6 shall require the approval of the Coordination Committee.
- 20.2.7. Upon a suspension for a Payment Default, as set forth in Section 20.2.5, the non-defaulting Participants, through the Coordination Committee, may either reduce the energy generation of the Four Corners Project or one or more non-defaulting Participants may elect to take additional generation from the Four Corners Project. If more than one non-defaulting Participant elects to take additional

generation from the Four Corners Project, the amount of additional generation shall be apportioned in accordance with their respective Net Effective Generating Capacity or as they may otherwise agree. Any non-defaulting Participant that takes additional generation from the Four Corners Project shall be responsible for the non-capital operating expenses, including fuel costs, associated with such additional generation.

- 20.2.8. For a period of 180 days from the notice of a Payment Default, set forth in Section 20.2.2, the defaulting Participant may reinstate its entitlement to its Net Effective Generating Capacity by paying to the respective non-defaulting Participants the total amount of money (and/or the reasonable equivalent in money for services or property provided) paid by each non-defaulting Participant, together with interest thereon at a rate of interest 2 percent greater than the “prime rate.” The right of a defaulting Participant to reinstate its entitlement to its Net Effective Generating Capacity, shall be limited to three times during the term of the Project Agreements (provided such right may be exercised only once in any five (5) year period), unless the Coordination Committee consents to an additional number of times that a defaulting Participant may reinstate its entitlement to its Net Effective Generating Capacity.

20.2.9. If the defaulting Participant has not cured a Payment Default during the 180-day cure period set forth in Section 20.2.8, such event of default shall be deemed incurable and the non-defaulting Participants shall have the right to continue to exercise their rights under Section 20.2.7 and shall have the right to permanently transfer the defaulting Participant's Net Effective Generating Capacity to one or more of the other Participants or a third party (such party being a "Permanent Transferee" and such transfer being a "Permanent Transfer"), who shall: (a) pay the non-capital operating expenses, including fuel costs, and capital expenditures associated with such Net Effective Generating Capacity following the Permanent Transfer and (b) reimburse the other non-defaulting Participants the pro-rata share of any capital expenditures associated with the additional generation used by the Permanent Transferee (as set forth in Section 20.2.7) and funded by the other non-defaulting Participants prior to the Permanent Transfer. Such agreement by a Permanent Transferee shall not relieve the defaulting Participant from any other liabilities under the Project Agreements for the remainder of the term of the Project Agreements.

20.3. [Reserved]

20.4. In the event that any Participant shall dispute an asserted default by it, then such Participant shall pay the disputed payment or perform the disputed

obligation, but may do so under protest. The protest shall be in writing, shall accompany the disputed payment, or precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. Copies of such protest shall be mailed by such Participant to all other Participants. Payments not made under protest shall be deemed to be correct, except to the extent that periodic or annual audits may reveal over or under payment by Participants or may necessitate adjustments. In the event it is determined by arbitration, pursuant to the provisions of this Co-Tenancy Agreement or otherwise, that the protesting Participant is entitled to a refund of all or any portion of a disputed payment or payments, or is entitled to the reasonable equivalent in money of non-monetary performance of a disputed obligation theretofore made, then, upon such determination, the non-protesting Participants shall pay such amount to the protesting Participant, together with interest thereon at the rate of six percent (6%) per annum from the date of payment or of the performance of a disputed obligation to the date of reimbursement. Reimbursement of the amount so paid shall be made by the non-protesting Participants in the ratio of their respective capacity entitlements to the total capacity entitlement of all non-protesting Participants.

20.5. [Reserved]

20.6. No waiver by a Participant of its rights with respect to a default under this Co-Tenancy Agreement, or with respect to any other matter arising in connection with this Co-Tenancy Agreement, shall be effective unless all

non-defaulting Participants waive their respective rights and any such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

20.7. The rights and remedies provided in this Co-Tenancy Agreement shall be in addition to the rights and remedies of the Participants as set forth and contained in any other of the Project Agreements.

20.8. Other Remedies Available to Non-Defaulting Participants. The Coordination Committee may elect to impose any one or more of the alternative remedies set forth below, in lieu of or in addition to the remedy set forth in Section 20.2:

20.8.1. Extend the time for the defaulting Participant to cure the default, before the defaulting Participant's Net Effective Generating Capacity is temporarily or permanently transferred to the non-defaulting Participants.

20.8.2. Seek injunctive relief against or specific performance by the defaulting Participant to compel performance by the defaulting Participant of its obligations hereunder to permit the non-defaulting Participants to exercise their remedies herewith.

21. TERM:

21.1. This Co-Tenancy Agreement shall terminate on July 7, 2041, provided, however, that all liabilities and obligations of the Participants arising under the Project Agreements, as well as the sections of the Project Agreements

related thereto or relevant to the resolution or apportionment of such liabilities and obligations (including, without limitation, the voting/governance provisions and the dispute resolution provisions) shall survive the termination of the Project Agreements.

22. RELATIONSHIP OF PARTIES :

22.1. The duties, obligations and liabilities of the Participants hereto are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or impose a trust or partnership duty, obligation or liability on or with regard to any one or more of the Participants hereto. Each Participant hereto shall be individually responsible for its own obligations as herein provided. No Participant or group of Participants shall be under the control of or shall be deemed to control any other Participant or the Participants as a group. No Participant shall have a right or power to bind any other Participant(s) without its or their express written consent, except as expressly provided in this Co-Tenancy Agreement, the Construction Agreement or the Operating Agreement.

22.2. The Participants intend that the Project Agreements, including this Co-Tenancy Agreement, are to be part of an integrated transaction and that the Project Agreements may not be individually or selectively disaffirmed by a bankruptcy trustee.

23. NOTICES :

23.1. Any notice, demand or request provided for in this Co-Tenancy Agreement, or served, given or made in connection with it, shall be deemed properly served, given or made if delivered in person or sent by Registered or Certified Mail, postage prepaid, to the persons specified below:

23.1.1. Arizona Public Service Company
c/o Secretary
P. O. Box 2591
Phoenix, Arizona 85002

23.1.2. Navajo Transitional Energy Company, LLC
Attn: Chief Executive Officer
P.O. Box 11
Farmington, NM 87499
Phoenix, Arizona 85002

23.1.3 Public Service Company of New Mexico
c/o Secretary
Main Offices
Albuquerque, New Mexico 87103

23.1.4 Salt River Project Agricultural
Improvement and Power District
c/o Secretary
Mail Station PAB215
P. O. Box 52025
Phoenix, Arizona 85072-2025

23.1.5 [Reserved]

23.1.6 Tucson Electric Power Company
c/o Secretary
P. O. Box 711
Tucson, Arizona 85702

23.2 Any Participant may at any time or from time to time, by written notice to all other Participants, change the designation or address of the person so

specified as the one to receive notices pursuant to this Co-Tenancy Agreement.

24. COVENANTS RUNNING WITH THE LAND :

24.1. Except as otherwise provided in Section 24.4 hereof, all of the respective covenants and obligations of each of the Participants set forth and contained in the Project Agreements shall bind and shall be and become the respective obligations of:

24.1.1. Each such Participant;

24.1.2. All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, and security agreements which are or may become a lien upon any of the properties of such Participant;

24.1.3. All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of such Participant;

24.1.4. All other persons, firms, partnerships or corporations claiming through or under any of the foregoing; and

24.1.5. Any successors or assigns of any of those mentioned in Sections 24.1.1 to 24.1.4, inclusive, and shall be obligations running with the Participants' rights, titles and interests in the Four Corners Project, with all of the rights, titles and interests of each Participant, in, to and under the Project Agreements and with their rights, titles and interests in the Granted Lands and Leased Lands, excluding the Amended Original Plant Site except to the extent that it is subject

to the rights granted in the §323 Grant or leased in the New Lease for the Common Facilities and Related Facilities that may be located thereon. It is the specific intention of this provision that all of such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of any of the Participants in the Four Corners Project, in, to and under the Project Agreements, and/or in the Granted Lands or Leased Lands (except as aforesaid), and that all of the above-described persons and groups shall be obligated to use such Participant's rights, titles and interests in the Four Corners Project, in, to and under the Project Agreements, and in the Granted Lands and Leased Lands (except as aforesaid) for the purpose of discharging its covenants and obligations under the Project Agreements.

24.2. Except as otherwise provided in Section 24.4 hereof, all of the covenants and obligations of Arizona set forth and contained in the Project Agreements pertaining to the Common Facilities and the Related Facilities allocated to the Initial Four Corners Plant, subject to the terms and conditions set forth and contained in Arizona's existing ^{*} Indenture of Mortgage, shall bind and shall be and become the obligations of:

24.2.1. Arizona;

24.2.2. All mortgagees, trustees and secured parties under all present and future mortgages, indentures, deeds of trust and security

agreements which are or may become a lien upon any of the properties of Arizona;

24.2.3. All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of Arizona;

24.2.4. All other persons, firms, partnerships or corporations claiming through or under any of the foregoing; and

24.2.5. Any successors or assigns of any of those mentioned in Sections 24.2.1 to 24.2.4, inclusive, and shall, subject to said Indenture of Mortgage, be obligations running with the rights, titles and interests of Arizona, in, to and under the Project Agreements, in and to the Common Facilities and the Related Facilities allocated to the Initial Four Corners Plant, and in and to the Granted Lands and Leased Lands, excluding the Amended Original Plant Site except to the extent it is subject to the rights granted in the §323 Grant or leased in the New Lease for the Common Facilities and Related Facilities that may be located thereon. Except as herein otherwise provided, it is the specific intention of this provision that, subject to said Indenture of Mortgage, all of the covenants and obligations of Arizona set forth and contained in the Project Agreements pertaining to the Common Facilities and the Related Facilities allocated to the Initial Four Corners Plant shall be binding upon any party that acquires any of the rights, titles or interests of Arizona in and to the Common Facilities and the Related Facilities allocated

to the Initial Four Corners Plant in, to and under the Project Agreements, and/or in and to the Granted Lands and Leased Lands (except as aforesaid), and that all of the above-described persons and groups shall be obligated to use said rights, titles and interests for the purpose of discharging such covenants and obligations.

- 24.3. The rights, titles and interests of each Participant in the Four Corners Project, its rights, titles and interests in, to and under the Project Agreements and its rights, titles and interests in and to the Granted Lands and Leased Lands, shall inure to the benefit of its successors and assigns, including any successors and assigns of Arizona's rights, titles and interests in the Initial Four Corners Plant.
- 24.4. Any mortgagee, trustee or secured party, or any receiver or trustee appointed pursuant to the provisions of any present or future mortgage, deed of trust, indenture or security agreement creating a lien upon or encumbering the rights, titles or interests of any Participant in the Four Corners Project, in, to and under the Project Agreements and/or in the Granted Lands or Leased Lands, and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof, shall not be obligated to pay any monies accruing on account of any of the obligations or duties of such Participant under the Project Agreements incurred prior to the taking of possession or the initiation of foreclosure or other remedial proceedings by such mortgagee, trustee or secured party.

24.5. In the event that any or all of the provisions of this Section 24 shall not be legally effective as to any Participant, or its mortgagees, trustees, secured parties, receivers, successors or assigns, then such Participant shall not be deemed in violation of this Section 24 by reason thereof.

25. MISCELLANEOUS PROVISIONS :

25.1. Each Participant agrees, upon request by the other Participant, to make, execute and deliver any and all documents reasonably required to implement the terms of this Co-Tenancy Agreement.

25.2. No Participant shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of any of said Participants to pay costs and expenses) if failure of performance shall be due to uncontrollable forces. The term “uncontrollable forces” shall mean any cause beyond the control of the Participant affected, including but not limited to failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor dispute, sabotage and restraint by Court order or public authority, which by exercise of due diligence and foresight such Participant could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Participant to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

25.3. Any federal or state regulatory or legal prohibition that prevents performance by a Participant of its obligations hereunder shall constitute an “uncontrollable force” provided that such Participant shall have provided to the other Participants an opinion of independent counsel confirming the effect of the regulatory or legal prohibition. Such federal or state regulatory or legal prohibition shall not excuse the affected Participant from its payment obligations, including operating expenses, capital expenditures, decommissioning costs, or liabilities to the other Participants. If, after reasonably commercial efforts, the affected Participant is unable to mitigate the federal or state regulatory or legal prohibition to allow it to substantially perform its obligations under the Project Agreements, the affected Participant may meet its financial obligations through one or more of the following alternatives:

- (a) Transfer or sale of the affected Participant’s Net Effective Generating Capacity to an unregulated affiliate of the affected Participant or to a third party; or
- (b) Allow one or more of the other Participants to utilize the affected Participant’s Net Effective Generating Capacity until such federal or state regulatory or legal prohibition is removed; provided that the Participant(s) utilizing the affected Participant’s Net Effective Generating Capacity agree(s) to pay all associated non-capital operating costs.

- 25.4. The captions and headings appearing in this Co-Tenancy Agreement are inserted merely to facilitate reference and shall have no bearing upon the interpretation of the provisions hereof.
- 25.5. This Co-Tenancy Agreement is made under and shall be governed by the laws of the State of New Mexico.
- 25.6. This Co-Tenancy Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the Participants to the aggregated counterparts had signed the same instrument. Any signature page of this Co-Tenancy Agreement may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon and may be attached to any other counterpart of this Co-Tenancy Agreement identical in form thereto but having attached to it one or more additional pages.
- 25.7. The covenants and obligations set forth and contained in this Co-Tenancy Agreement are to be deemed to be independent covenants not dependent covenants, and the obligation of any Participant to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by the other Participants of all of the covenants and obligations to be kept and performed by them.
- 25.8. In the event that any of the terms or conditions of this Co-Tenancy Agreement, or the application of any such term or condition to any person or circumstance, shall be held invalid by any Court having jurisdiction in the premises, the remainder of this Co-Tenancy Agreement, and the application of such terms

or conditions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby

26. WAIVER OF SOVEREIGN IMMUNITY.

- 26.1. For purposes of this Section 26, the term “Project Agreements” means: (a) the Project Agreements, as defined in Section 5.28, (b) all agreements listed on Schedule 2.1(h) of the Purchase and Sale Agreement, by and between 4CA and NTEC, the form of which will be filed by 4CA in FERC Docket o. EC15-159 in May 2018, and (c) any future Amendments to the Project Agreements or other agreements executed by NTEC or approved by a vote of the Coordination Committee (in accordance with Section 9.5) that binds NTEC to obligations or entitles NTEC to rights related to the Four Corners Project.
- 26.2. If, in the judgment of the Operating Agent, an express waiver of sovereign immunity is required in any future Project Agreement executed by NTEC that binds NTEC to obligations or entitles NTEC to rights related to the Four Corners Project, NTEC agrees that it shall clearly, expressly, unequivocally, and irrevocably waive its sovereign immunity in such Project Agreement to the same extent it has done so in this Section 26.
- 26.3. NTEC agrees to waive and hereby waives its sovereign immunity and consents to arbitration and litigation proceedings as described in the Project Agreements, to the extent necessary to make the Project Agreements enforceable as to the Participants. All future references in this Section 26 to

“a Participant” or “the Participants” shall mean APS as the Operating Agent or as Participant, as the case may be, or one or more of the other Participants.

- 26.4. NTEC clearly, expressly, unequivocally, and irrevocably, waives its sovereign immunity and consents to arbitration and litigation proceedings as described in the Project Agreements for purposes of the Project Agreements, and in accordance with and as limited by, the terms of the Project Agreements, to the extent necessary to make the Project Agreements enforceable as to the Participants.
- 26.5. NTEC agrees that, to the extent it possesses sovereign immunity from suit by any third parties, the provisions of this Section 26 apply to NTEC’s liability to the Participants for: (a) Operating Work Liability, as that term is defined in Section 5.53 of the Operating Agreement, and (b) any other liability that NTEC, as a Participant, has or may have to the Participants under the Project Agreements, including without limitation any liability of NTEC under the Project Agreements arising from third party claims or suits; provided, nothing herein shall be construed as a waiver of NTEC’s sovereign immunity to any third party or to limit NTEC’s ability to intervene, or limitedly intervene, in any third-party proceeding, including for purposes of moving to dismiss such proceeding on the basis of NTEC’s sovereign immunity from suit by such third parties.
- 26.6. NTEC limitedly waives its sovereign immunity from suit in accordance with and for the limited purposes described in this Section 26, for arbitration and any litigation proceedings necessary to compel arbitration, or to enforce an

arbitral award, or for exigent or emergency equitable relief, pursuant to the terms and provisions of the Project Agreements, to the extent necessary to make the Project Agreements enforceable against NTEC as to the Participants. NTEC represents and agrees that NTEC expressly, unequivocally, and irrevocably waives its immunity from suit and consents to the dispute resolution mechanisms stated in the Project Agreements, and to permit enforcement of the terms and conditions of the Project Agreements, to the extent necessary to make the Project Agreements enforceable as to the Participants. To the extent necessary to make the Project Agreements enforceable as to the Participants, NTEC further expressly agrees that:

- 26.6.1. To the extent arbitration must be compelled, challenged, or sought to be enforced by a Participant, NTEC consents to such judicial proceedings in a New Mexico state court of competent jurisdiction, as necessary to compel a Participant's participation in arbitration, a Participant's challenge of award, or a Participant's enforcement of an award.
- 26.6.2. A Participant may seek and obtain specific performance, money damages, and injunctive relief.
- 26.6.3. NTEC waives any benefits, rights, immunities, privileges, or limitations in applicable Navajo Nation Law that would otherwise foreclose specific performance, injunctive relief, or money damages.

- 26.6.4. NTEC waives any otherwise existing right or claim of right to require exhaustion of tribal administrative or judicial remedies prior to exercise of the dispute resolution provisions of the Project Agreements, including with respect to arbitration and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award in a New Mexico state court of competent jurisdiction. NTEC's consent to the jurisdiction of a New Mexico state court of competent jurisdiction as provided in this Agreement is irrevocable. NTEC waives any rights to have any dispute heard in a Navajo Nation tribunal, in any Navajo Nation administrative or judicial body whatsoever.
- 26.6.5. NTEC agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to the Participants and its successors and assigns, and exclusively for the purposes the Project Agreement, to have binding arbitration conducted pursuant to and in accordance with the provisions of the Project Agreements or, if no dispute resolution provision exists in the applicable Project Agreement, this Co-Tenancy Agreement.
- 26.6.6. To the extent arbitration must be compelled, a Participant challenges an arbitration award, or a Participant seeks to enforce an arbitration award, NTEC clearly, expressly, unequivocally, and irrevocably consents to such judicial proceedings in a New Mexico state court of competent jurisdiction.

- 26.6.7. NTEC agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity and any right otherwise existing, but only to the Participants, to have a dispute between the Participants heard in any Navajo Nation adjudicatory tribunal, forum, or other bodies that may otherwise have exclusive or concurrent jurisdiction over any such dispute, whether or not the same now exist or are hereinafter created.
- 26.6.8. NTEC agrees and expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to the Participants, for recourse and enforcement against any and all of the assets of NTEC only. NTEC's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity shall not be asserted, interpreted, or applied to any other assets except NTEC's assets, [including any other assets owned directly by NTEC], the Navajo Nation or by any of the Navajo Nation's arms, entities or instrumentalities, or to permit or authorize the sale or transfer of any property held by NTEC or the Navajo Nation apart from NTEC's property, or any other property held by any other Navajo Nation arm, instrumentality or entity other than NTEC, whether such property is held in trust by the United States, or otherwise, and nothing herein shall be construed to create a lien of any kind in the property of NTEC, the Navajo Nation, or any other, arm, entity or instrumentality of the Navajo Nation.

26.6.9. NTEC clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for a Participant's disputes with NTEC, a Participant's claims against NTEC, or a Participant's causes of action against NTEC, but only for a Participant to enforce its rights and the obligations of NTEC created and existing pursuant to the Project Agreements. NTEC clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for the Participants to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, or a judge of a New Mexico state court of competent jurisdiction, for a Participant to obtain one or more of the following: (A) to interpret a Project Agreement; (B) to make NTEC perform a specific action NTEC is obligated to perform pursuant to a Project Agreement or to make NTEC discontinue some specific action that NTEC is precluded from performing pursuant to the Project Agreements; or (C) to require NTEC to comply with the duties and obligations clearly and expressly agreed to by NTEC within the Project Agreements.

26.6.10. NTEC clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity solely with respect to actions by a Participant in accordance with the terms of the Project Agreements, and NTEC's limited waiver shall survive the termination or expiration of the Project Agreements and remain effective until any applicable statute of limitations runs.

- 26.6.11. NTEC clearly, expressly, unequivocally, and irrevocably agrees that, to the extent NTEC changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by Navajo Nation Council resolution if necessary, provide all of the same limited waivers of sovereign immunity to the Participants as those set forth in this Section 26.
- 26.6.12. NTEC agrees that to the extent any later changes in Navajo Nation Law cause NTEC to be unable to comply with any provision(s) of a Project Agreement, NTEC shall nonetheless remain subject to all of its obligations under the applicable Project Agreement or Agreements notwithstanding any such changes in Navajo Nation Law, and NTEC's failure to comply with any provision(s) of a Project Agreement on the basis of any such change in Navajo Nation Law shall not be excused and shall constitute a breach of the applicable Project Agreement(s) and be actionable under the dispute resolution terms of the applicable Project Agreement(s).
- 26.6.13. NTEC agrees that the Navajo Nation's independent covenant not to regulate any aspects of the Four Corners Project remains unchanged and unaffected by the Project Agreements ;
- 26.7. NTEC's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity in the Project Agreements shall not apply, redound, or inure to, without limitation, any third-party (or non-Party) person or entity, shall apply only to the Participants and their successors and assigns, and

authorizes only the remedies provided by the Project Agreements against NTEC for only a claim, dispute, or cause of action brought by a Participant against NTEC to enforce its rights, and NTEC's obligations, created and existing pursuant to the Project Agreements.

26.8. The Participants agree that nothing in the Project Agreements shall be asserted, interpreted, or otherwise understood to constitute any waiver of the Navajo Nation's sovereign immunity, nor any waiver of any of the Navajo Nation's rights, powers, or authorities as a sovereign governmental institution, whether express or implied.

26.8.1. The Participants agree that although NTEC is a wholly-owned instrumentality of the Navajo Nation that otherwise possesses sovereign immunity, by virtue of its relationship to and with the Navajo Nation, NTEC is a company with its own particular assets, liabilities, rights, and obligations.

26.8.2. NTEC's limited waiver of sovereign immunity with respect to the Project Agreements extends only to the Participants, and only as described in this Section 26, and shall not be asserted, interpreted, implied or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from NTEC's property, whether such Navajo Nation property is held in trust for the Navajo Nation by the United States, or otherwise.

26.8.3. NTEC's limited waiver of sovereign immunity shall not be asserted, interpreted, implied or applied to permit or authorize the sale or

transfer of any property held by any Navajo Nation instrumentality, entity or enterprise other than NTEC.

26.8.4. NTEC agrees that the Navajo Nation's independent covenant not to regulate any aspects of the Four Corners Project pursuant to the Original Lease and the New Lease Amendments remains unchanged and unaffected by the Project Agreements; . Except for the Original Lease and the New Lease, the Navajo Nation is not a party to the Project Agreements.

27. AUTHORITY TO BIND AND OBLIGATE.

27.1. Each Participant represents and warrants that the person or persons executing the Project Agreements or who will in the future execute any Project Agreement on behalf of such Participant, are or will be, as the case may be, duly authorized by any and all necessary actions on the part of such Participant and, as necessary, such Participant's owner, as applicable, including the Navajo Nation as to NTEC, to execute the applicable Project Agreement, and that the person or persons are vested with all authorities necessary to bind and obligate such Participant to the terms of the applicable Project Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Co-Tenancy Agreement to be executed in Phoenix, Arizona as of the ___ day of _____, 2018.

Conformed copy of agreement does not contain signatures as signatories only sign individual amendments.

EXHIBIT 1
COMMON FACILITIES FOR ENLARGED FOUR CORNERS
GENERATION STATION

F.P.C.

Account

No. Description

- 310.2 Land Rights, Including Lease Payments During Construction,
 Right-of-Way Expense and Surveys

- 311.100 Clearing Site of Brush and Rough Grading
 - .103 Landscaping and Planting Adjacent to Service Building
 - .104 Yard Finish Grading of Plant Areas Not Requiring Paving or
 Gravel Surfacing
 - .1200 Plant Access Road, including Subbase, Surfacing, Auxiliary Dike
 Culverts and Asphalt Coat from San Juan bridge to BIA canal
 - .1201 River Access Road, including Subbase Gravel Surfacing, Pipeline
 Bridge Crossing, Culverts and Riprap
 - .1202 Plant Area Roads, including Asphaltic Surfaced, Gravel Based and
 Other Gravel Surfaced Roads
 - .121 Cement and Asphaltic Paving in Operating and Parking Areas,
 Including Curbing
 - .123 Concrete Walks at the Service Building, Warehouse and Circulating
 Water Intake Area
 - .124 Plant Area Chain Link Fence, Remote Controlled Main Gate,
 Manual Gates and Barbed Wire Fence

- 311.13 Yard Lighting Standards, Conduit, Cable Foundations and Lamps
 - .15 Fire Protection Pumps, Piping With Excavation and Backfill, Valves,
 Hydrants and Hose Carts with Hoses and Nozzles
 - .16 Sanitary Sewer System, including Cast Iron and Clay Sewer Lines

Manholes, Septic Tank and Accessories

- .2 Service Water System Chlorinator, Coagulator, Filters, Pumps, Yard Piping, Foundations and Domestic Water Lines (Accounts 311.22 through 311.27)

Ex. 1-2

F.P.C.

Account

<u>No.</u>	<u>Description</u>
.5	Service and Shop Building Foundation, Walls, Doors, Windows, Heating and Ventilating Equipment Plumbing, Toilet Facilities and Lighting (Accounts 311.50 through 311.594)
.6	Warehouse Foundation, Floor Slab Superstructure and Lighting (Accounts 311.60 through 311.62)
.7	Miscellaneous Buildings, Foundations, Floor Slabs, Superstructures and lighting.

312.1863 Coal Mobile Equipment, includes Hough D500 Paydozer

314.50	Cooling Pond Dam, Spillway, Blowdown Structure, Intake Canal, Curtain Wall and Temperature Recorders (Accounts 314.50 through 314.507)
.510	Concrete Intake Structure Excavation, Backfill Caissons and Concrete Structure for Service Water Pumps and Fire Pumps
.511	Hoist Structure and Hoist for Intake Area
.512	Screens and Stoplogs for Service Water and Fire Pumps
.513	Miscellaneous Equipment for Service Water and Fire Pumps
.515	Concrete Cribbing Between Intake Structure and Canal Bank
.541	Circulating Water Discharge Canal to Cooling Pond
.55	River Pumping Plant, Includes River Weir, Sluiceway Pump Chamber, Gates, Stop Logs, Pumps, Motors, Lube Water Cooling System, Freeze Protection, Switchgear, Motor Control Center, Transformers, Lighting, Equipment Building, 69 KV Transmission Line, Power Supply, Fence, Gates, Make-up Water Line, Metering Station and Canal (Accounts 314.550 through 314.563)

315.1113 Circulating and Service Water Intake Motor Control Center

315.204 General Services Transformer for Area Lighting, Service Water Pump No. 2 Freeze Protection, Fire Booster Pump, etc.

.206 Intake Area Transformer for Water Treatment Building, Fire Pump
No. 1, Service Water Pumps No. 1 and No. 3, Service Building,
Area Lighting, Freeze Protection, etc.

.207 Station Lighting Transformers

Ex. 1-4

F.P.C.

Account

<u>No.</u>	<u>Description</u>
.26	Station Grounding and Cathodic Protection Systems, including Rectifier, Anode Bed, Ground Rods and Ground Cable
.27	Freeze Protection Strip and Unit Heaters, Heating Cables, Controls and Panels
.5	Underground Manholes, Handholes and Conduit, including Excavation, Backfill and Concrete Envelope (Accounts 319.55 and 315.57)
316.	Miscellaneous Power Plant Equipment, including Portable Cranes and Hoists, Fire Extinguishers, Vacuum Cleaner, Weather Station, Office Equipment, Garage Equipment, Stores Equipment Shop Equipment, Laboratory Equipment, Small Tools, Kitchen Equipment, Testing Equipment and Forklift (Accounts 316.10, 316.20, 316.25, 316.26, 316.30 through 316.37 and 316.39)
352/353	69 KV and 230 KV Switchyard Common to River Pumping Station, Including Portion of Site Improvement, Structures, Bus Conductors, Transformers, Oil Circuit Breakers, Air Switches, Lightning Protection, Panels, Wiring, Conduits, Ducts, Manholes, Grounding and Shielding
316.23	Intra-site Communication (Gaitronic and PAX Telephones Serving Common Facilities) Spare Parts for Above Facilities

NOTE:

1. As actual design of Units 4 and 5 proceeds, there may be additions or deletions to the above list of Common Facilities. The list is subject to final adjustment, by mutual consent as a result of such additions or deletions.

EXHIBIT 2

STEAM ELECTRIC GENERATING UNITS 4 AND 5 AND ASSOCIATED SWITCHYARD FACILITIES

FOUR CORNERS

Steam Electric Generating Units 4 and 5 and their associated switchyard facilities shall consist principally of two 755 MW class 3500 psig, 1000 F with reheat to 1000 F, cross-compound, 3600/1800 rpm, double flow, outdoor turbine-generator units, complete with accessories; two pressurized type, super-critical-pressure steam generating units, designed for burning pulverized coal as primary fuel with natural gas available for ignition fuel, complete with accessories; 345 KV and 500 KV switchyards; 345-500 KV tie transformers; reserve auxiliary power source; and other items required for the complete generating installation and associated switchyards, excluding the Common Facilities and Related Facilities allocated thereto.

Included within the limits of the 345 KV switchyard, 500 KV switchyard, 345-500 KV tie transformer bank and the reserve auxiliary power source shall be the following facilities:

I. 345 KV Switchyard

The 345 KV switchyard shall be comprised of eleven breaker-and-a-half positions serving (as shown in Figure 1):

- 230/345 KV Tie Transformer No. 1.
- No. 1 APS 345 KV line.
- 230/345 KV Tie Transformer No. 2.
- No. 2 APS 345 KV Line.
- Generating Unit No. 4.
- No. 1 PSNM 345 KV line.
- 345/500 KV Tie Transformer.
- 345/500 KV Tie Transformer (100% APS ownership).
- No. 2 PSNM 345 KV line.
- Shiprock 345 KV line.
- Pinto 345 KV line

II. 500 KV Switchyard

The 500 KV switchyard shall be comprised of two bays of breaker and a half switchyard serving (as shown in Figure 1) :

The Moenkopi 500 KV line.
Generating Unit No. 5
One 345/500 KV Tie Transformer Bank
One 345/500 KV Tie Transformer Bank

III. 345-500 KV Transformer

One (1) 1025 MVA, 345/500 KV tie transformer bank comprised of four (4) single phase 341.7 MVA transformers together with any required bus work, taps and steel terminating towers for the 345 and 500 KV leads.

One (1) 1025 MVA, 345/500 KV tie transformer bank comprised of three (3) single phase 341.7 MVA transformers together with any required bus work, taps and steel terminating towers for the 345 and 500 KV leads.

IV. Reserve Auxiliary Power Source

The No. 4 and No. 8 230/345 KV bus tie transformers. The point of attachment to such transformers for the Connection to Reserve Auxiliary Power Source will be the tertiary bushings.

V. Connection to Reserve Auxiliary Power Source

Connection to Units 4 and 5 from the existing tertiary windings of the No. 4 and No. 8 230 KV/345 KV bus tie transformers including disconnect switches, power circuit breakers, underground cables and three 13.8 KV - 4.36 KV power transformers.

VI. Connection to 345 KV Switchyard :

Towers, foundations, conductors, insulators and necessary hardware to connect the existing 345 KV bushings of the Reserve Auxiliary Power Source to positions No. 4 and No. 8 of the 345 KV switchyard.

VII. All metering protective equipment, communication equipment, control, relay house, etc., associated with the facilities described in Paragraphs I, II, III, IV, V and VI above.

Ex. 2-3

FIGURE 1

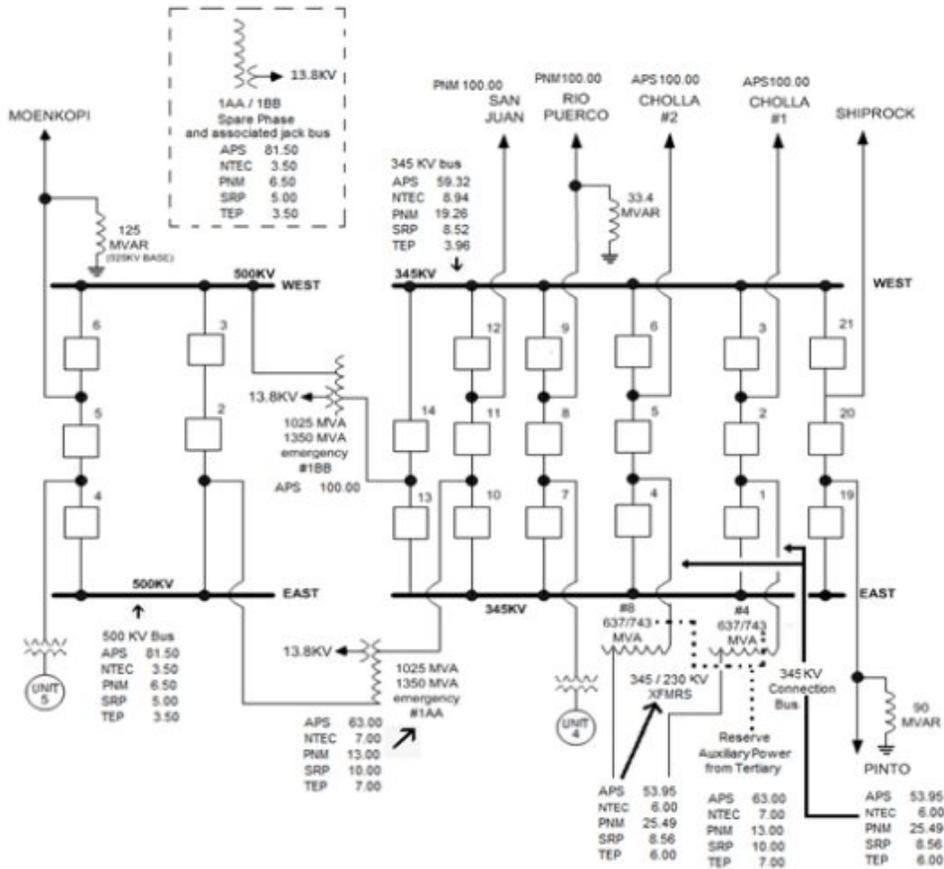


EXHIBIT 3

RELATED FACILITIES FOR FOUR CORNERS

EXISTING RELATED FACILITIES

1. Coal Handling System

From the point of the Utah Mining termination at the surge bins down to the gates in the bottom of the bins, including chutes, gates, motor control center enclosure, and surge bins. Includes wiring, lighting, foundations, dust control, CO2 blanketing, electrical feed and control, structure, stairs and platforms.

2. Machine Shop Structure

Structure, foundation, lighting, wiring doors, heating and ventilating equipment, and plumbing, toilet, and shower facilities.

3. Warehouse

Structure, floor slab, lighting, heating and ventilating equipment, plumbing and office facilities.

4. Modifications to Service Building

Structural changes, walls, doors, windows, heating and ventilating equipment lighting, and wiring.

5. Vehicle Bridge Over Intake Canal

Structure, guard rail, pipe supports and surfacing.

6. Reroute Access Road Through Units 4 and 5 Area

Subbase, base material, surfacing and culverts.

7. Modifications to River Pumping Station and Make-Up Pipeline

Structures, foundations, pumps, motors, electrical supply facilities, valves, piping and control apparatus for pump station and relocated section of 36-inch make-up pipeline, new 2-inch pipeline for river pump packing gland water, paving of roads and parking area and barricades for protection from earth slides.

8. Mobile Equipment Maintenance Building

Foundation, floor slab, superstructure and lighting and repair equipment.

9. Miscellaneous Power Plant Equipment

Small tools, machine shop tools, laboratory equipment, lockers, bins, shelving, portable firefighting equipment, etc.

10. Enlargement of Discharge Canal

Excavation to enlarge channel for discharging circulating water to lake and protection from erosion of channel walls.

11. Combustibles Storage Building

Foundation, floor slab, repairs to superstructure, and lighting.

12. Station Mobile Equipment

Hydraulic crane, forklift trucks, small electric vehicles, and bicycles.

13. Plant Access Road

Access road, including subbase preparation, base material, asphalt surfacing, culverts and drainage facilities from BIA Canal to the station gate.

FUTURE RELATED FACILITIES

14. Coal Sampling Building and Equipment

Sampling building structure from point of connection with the surge bin structure including foundations, stairs, lighting, power facilities, dust control facilities, heating and ventilating sampling equipment, sample preparation room with furnishings.

15. Wind Velocity and Direction Instruments

Wind velocity and direction instruments, wiring conduit and recorders.

16. River Water Solids Measuring Equipment

Flow recorder, conductivity recorder and cells, conduit, wiring and support.

17. New Administration Building

Structure, foundation, lighting, windows, heating and ventilating equipment.

18. Guardhouse - Main and Satellite
Structure, foundation, lighting, doors, heating and ventilating equipment.
19. Switchyard Shop
Structure, foundation, lighting, doors, heating and ventilating equipment and office facilities.
20. Shop 4 & 5
Structure, foundation, lighting, wiring, doors, heating and ventilating equipment, plumbing, toilet and shower facilities and office facilities.
21. Common Building
Structure, foundation, lighting, wiring, doors, heating and ventilating equipment, plumbing, toilet and shower facilities, office facilities and lunch room facilities.
22. Overhaul Shop
Structure, foundation, lighting, wiring, doors, heating and ventilating equipment, plumbing, toilet facilities and office facilities.
23. 150 Gallon Demineralizer
Structure, foundation, pumps, motors, electrical supply facilities and water treatment facilities.
24. National Pollution Discharge Elimination System (NPDES) Trench
Excavated canal and concrete lined trench.
25. Brine Concentrator and Related Capital Improvements
The brine concentrator and the capital improvements related thereto are part of the S02 removal project for Units 4 and 5 including the separator blowdown line and the chemical cleaning piping.
26. Construction Personnel Facility
Structure, foundation, lighting, windows, heating and ventilating equipment, plumbing, toilet facilities, warehouse, conference room and office facilities.

EXHIBIT 4

NEW FACILITIES

The New Facilities shall consist of steam-electric generating Units 4 and 5 of the Four Corners Generating Station, which consist principally of two 755 MW class 3500 psig 1000°F with reheat to 1000°F , cross-compound, 3600/1800 rpm, double flow, outdoor turbine-generator units, complete with accessories; two pressurized type, super-critical-pressure steam-generating units, designed for burning pulverized coal as primary fuel with natural gas required for ignition fuel, complete with accessories; all Related Facilities; and all structures and facilities used with or related to the foregoing; but excluding the following:

- A. This list of 74 items, which shall be acquired by the six Participants pursuant to Section 6.2 of the Co-Tenancy Agreement:
1. Elevator (to be installed by supplier).
 2. Heating, ventilating and air conditioning systems (to be installed by supplier).
 3. Landscaping (to be installed by supplier).
 4. Steam generators and accessories.
 5. Main turbine generators and accessories.
 6. Condensers, including condensate pumps, motor drives and air removal equipment.
 7. Condenser tubes.
 8. Boiler feed pump steam turbine drives, including couplings.
 9. High pressure feedwater heaters.
 10. Low pressure feedwater heaters.
 11. Flue gas duct precipitators, breeching and supports (to be installed by supplier).
 12. Main deaerators, including storage tanks.
 13. Evaporators, including evaporator condensers, preheaters and blowdown heat exchangers.
 14. Water treating equipment.
 15. Condensate polishing systems.
 16. Lube oil conditioners and storage tanks.
 17. Forced draft fans, including motor drives, couplings, vane and damper control.
 18. Ash disposal system, including pumps, drives, tanks, special piping and valves, and all related equipment from point of collection to storage bins for outloading into trucks.
 19. Coal handling facilities, including conveyors, supports, walkways, enclosures, motor drive equipment, scales, magnetic separators, feeders, metal hoppers, stackers, trippers, coal bunkers and supports, bunker house, dust collection equipment and all related equipment from point of coal delivery to entrance of pulverizer feeders.
 20. Air compressors, including drives.

21. Gantry cranes, excluding track.
22. Lube oil centrifuge.
23. Instrument air dryers.
24. Chlorinating equipment.
25. Lube oil for flushing and initial fill.
26. Chemicals for water treating, initial fill.
27. Hydrogen gas, initial fill.
28. Carbon dioxide gas, initial fill.
29. Nitrogen gas, initial fill.
30. Boiler feed pumps.
31. Boiler feed booster pumps, including drives.
32. Cooling water pumps, including drives.
33. Circulating water pumps, including drives.
34. River pumping plant pumps, including drives.
35. Chemical feed pumps, including drives.
36. Evaporator feed pumps, including drives.
37. Service water pumps, including drives.
38. Fire pumps, including drives.
39. Portable firefighting equipment, including hose and reels.
40. Lockers, bins, shelving and racks.
41. Office furniture.
42. Machine shop tools and equipment.
43. Permanent station portable tools and mobile equipment.
44. Laboratory test equipment.
45. Spare parts for plant permanent equipment.
46. Pulverizer motor drives.
47. Boiler recirculating fan motor drives.
48. Primary air booster fan motor drives.
49. Main power transformers, including lightning arresters, 22/500 KV and 22/345 KV.

50. Auxiliary power transformers, 22/4 KV.
 51. Power leads from generator terminals to low voltage side of transformers.
 52. Switchgear, 4160 volts.
 53. Switchgear, 440 volts.
 54. Auxiliary power unit substations.
 55. Motor control centers.
 56. Station batteries.
 57. Area load frequency control equipment.
 58. Oscillograph.
 59. Station annunciator.
 60. Battery chargers.
 61. Intercommunication equipment.
 62. Public address amplifier and equipment.
 63. Steam air heaters.
 64. Valves, butterfly.
 65. Valves, stainless steel.
 66. Valves, evaporator blowdown.
 67. Valves, large cast steel.
 68. Valves bronze.
 69. Valves, cast iron.
 70. Valves, high pressure.
 71. Valves, small forged steel.
 72. Valves, plug.
 73. Valves, motor operated.
 74. Valves, control and controllers, regulating, temperature, steam and feedwater sampling.
- B. Related Facilities included in items 19, 34, 39, 40, 41, 42, 43 and 44 of Section A above.
- C. The Common Facilities.
- D. The Minimum Coal Storage Pile.
- E. The 500 KV Switchyard Facilities.

- F. The 345 KV Switchyard Facilities.
- G. The portion of the Switchyard Facilities described in Exhibit 2 of the Co-Tenancy Agreement as the 345-500 KV transformer.
- H. Reserve Auxiliary Power Source.
- I. Connection to Reserve Auxiliary Power Source.
- J. The Connection to 345 KV Switchyard Facilities.

Ex. 4-5

EXHIBIT 5

AMENDED ORIGINAL PLANT SITE

Two parcels of land, Parcel "A" being located in Sections 25, 35 and 36, and Parcel "B" being located in Sections 25 and 36, Township 29 North, Range 16 West, New Mexico Principal Meridian and described by metes and bounds as follows: (Bearing reference is true North.)

(Parcel "A") Beginning at the northwest corner of Section 36, thence S 25° 50' 23" E, 1264.17 feet to the most southerly corner of Parcel "A", which is the true point of beginning; thence N 50° 37' E, 445.00 feet; thence N 39° 23' W, 292.00 feet; thence N 50° 37' E, 175.00 feet; thence N 39° 23' W, 34.00 feet; thence N 50° 37' E, 114.00 feet; thence N 39° 23' W, 25.00 feet; thence N 50° 37' E, 151.00 feet; thence N 39° 23' W, 391.37 feet to the north line of Section 36, from which the northwest corner of Section 36 bears N 89° 48' W, 763.98 feet; thence N 39° 23' W, 117.63 feet; thence S 50° 37' W, 142.36 feet to the south line of Section 25, from which the southwest corner of Section 25 bears N 89° 48' W, 579.31 feet; thence S 50° 37' W, 56.14 feet; thence N 84° 23' W, 121.62 feet; thence S 50° 37' W, 130.50 feet; thence N 39° 23' W, 139.28 feet to the north line of Section 36, from which the northwest corner of Section 36 bears N 89° 48' W, 225.65 feet; thence N 39° 23' W, 10.22 feet; thence N 84° 23' W, 79.90 feet; thence N 39° 23' W, 44.67 feet; thence S 50° 37' W, 78.31 feet to the south line of Section 25, from which the southwest corner of Section 25 bears N 89° 48' W, 50.77 feet; thence S 50° 37' W, 57.69 feet; thence S 39° 23' E, 127.67 feet; thence S 50° 37' W, 112.73 feet to the west line of Section 36, from which the northwest corner of Section 36 bears N 0° 01' W, 206.97 feet; thence S 50° 37' W, 24.77 feet; thence S 39° 23' E, 30.19 feet to the east line of Section 35, from which the northeast corner of Section 35 bears N 0° 01' W, 246.03 feet; thence S 39° 23' E, 147.81 feet; thence S 50° 37' W, 58.00 feet; thence S 39° 23' E, 151.50 feet; thence N 50° 37' E, 238.00 feet; thence S 39° 23' E, 53.00 feet; thence S 50° 37' W, 290.00 feet; thence S 39° 23' E, 47.00 feet; thence N 50° 37' E, 110.00 feet; thence S 39° 23' E, 6.00 feet; thence N 50° 37' E, 180.00 feet; thence S 39° 23' E, 53.00 feet; thence S 50° 37' W, 180.00 feet; thence S 39° 23' E, 41.00 feet; thence S 50° 37' W, 110.00 feet; thence S 39° 23' E, 112.00 feet; thence N 50° 37' E, 110.00 feet; thence S 39° 23' E, 6.00 feet; thence N 50° 37' E, 180.00 feet; thence S 39° 23' E, 53.00 feet; thence S 50° 37' W, 180.00 feet; thence S 39° 23' E, 41.00 feet; thence S 50° 37' W, 140.00 feet; thence S 39° 23' E, 327.50 feet to the true point of beginning.

(Parcel "B") Beginning at the northwest corner of Section 36, thence S 86° 32' 04" E, 1223.42 feet to the most southerly corner of Parcel "B", which is the true point of beginning; thence N 50° 37' E, 109.97 feet to the north line of Section 36, from which the northwest corner of Section 36 bears N 89° 48' W, 1306.18 feet; thence N 50° 37' E, 640.03 feet; thence N 39° 23' W, 176.63 feet; thence N 84° 23' W, 181.02 feet; thence S 65° 37' W, 295.05 feet; thence S 50° 7' W, 342.00 feet; thence S 5° 37' W, 152.73 feet; thence S 39° 23' E, 87.67 feet; thence N 62° 22' E, 115.42 feet; thence S 39° 23' E, 70.96 feet to the south line of Section 25, from which the southwest corner of Section 25 bears N 89° 48' W, 1163.54 feet; thence S 39° 23' E, 90.87 feet to the true point of beginning.

		<u>Parcel "A"</u>	<u>Parcel "B"</u>	<u>Total</u>
Section 25	Acres	0.30	6.22	6.52
Section 35	Acres	0.01	--	0.01
Section 36	Acres	<u>14.55</u>	<u>0.11</u>	<u>14.66</u>
Total	Acres	14.86	6.33	21.19

NEW PLANT SITE

A parcel of land located in Sections 25, 26, 35, and 36, Township 29 North, Range 16 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the northeast corner of Section 35, thence S 0° 01' E, 1557.04 feet, thence S 89° 37' W, 628.55 feet to the most westerly corner of the parcel of land which is the true point of beginning; thence S 39° 23' E, 990.95 feet to the east line of Section 35, from which the northeast corner of Section 35 bears N 0° 01' W, 2327.17 feet; thence S 39° 23' E, 1171.78 feet; thence N 89° 37' E, 1831.50 feet; thence N 0° 23' W, 2020.76 feet; thence S 89° 37' W, 414.44 feet; thence N 39° 23' W, 1338.30 feet; thence S 50° 37' W, 40.00 feet; thence N 39° 23' W, 30.00 feet; thence N 50° 37' E, 40.00 feet; thence N 39° 23' W, 182.87 feet to the north line of Section 36, from which the northwest corner of Section 36 bears N 89° 48' W, 1163.54 feet; thence N 39° 23' W, 70.96 feet; thence S 62° 22' W, 115.42 feet; thence N 39° 23' W, 87.67 feet; thence N 5° 37' E, 251.73 feet; thence S 50° 37' W, 288.00 feet; thence S 39° 23' E, 175.87 feet to the south line of Section 25, from which the southwest corner of Section 25 bears N 89° 48' W, 874.26 feet; thence S 39° 23' E, 321.13 feet; thence S 50° 37' W, 236.00 feet; thence S 39° 23' E, 25.00 feet; thence S 50° 37' W, 114.00 feet; thence S 39° 23' E, 34.00 feet; thence S 50° 37' W, 175.00 feet; thence S 39° 23' E, 292.00 feet; thence S 50° 37' W, 445.00 feet; thence N 39° 23' W, 610.00 feet; thence S 50° 37' W, 75.00 feet; thence N 39° 23' W, 166.75 feet to the west line of Section 36, from which the northwest corner of Section 36 bears N 0° 01' W, 584.99 feet; thence N 39° 23' W, 408.97 feet; thence N 16° 37' E, 281.21 feet to the north line of Section 35, from which the northeast corner of Section 35 bears S 89° 49' E, 178.91 feet; thence N 16° 37' E, 34.67 feet; thence N 73° 23' W, 120.00 feet; thence S 16° 37' W, 70.07 feet to the south line of Section 26, from which the southeast corner of Section 26 bears S 89° 49' E, 304.02 feet; thence S 16° 37' W, 375.96 feet; thence S 39° 23' E, 648.98 feet to the east line of Section 35, from which the northeast corner of Section 35 bears N 0° 01' W, 860.90 feet; thence S 39° 23' E, 142.67 feet; thence S 50° 37' W, 117.05 feet to the west line of Section 36, from which the northwest corner of Section 36 bears N 0° 01' W, 1045.44 feet; thence S 50° 37' W, 812.93 feet to the true point of beginning.

Section 25	1.02 Acres
Section 26	0.14 Acres
Section 35	12.32 Acres
Section 36	<u>138.77 Acres</u>

Total 152.25 Acres

PUMPING PLANT SITE

A parcel of land containing 1.35 acres, more or less, located in Section 7, Township 29 North, Range 15 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the southwest corner of Section 7, thence N 29° 01' E, 3250.46 feet to the southwest corner of the parcel of land, which is the true point of beginning; thence N 89° 39' E, 250.00 feet; thence N 0° 21' W, to the north boundary of the Navajo Reservation, being the San Juan River; thence along the north boundary of the Navajo Reservation to a point; thence S 89° 39' W, to a point from which the northwest corner of Section 7 bears N 35° 59' W, 2671.50 feet; thence S 0° 21' E, 300.00 feet, to the true point of beginning.

DAM SITE

A parcel of land containing 293.21 acres, more or less, located in Sections 23, 24, 25, 26 and 35, Township 29 North, Range 16 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the northwest corner of Section 35, thence S 89° 49' E 3200.91 feet, thence S 11° 30' W, 3.74 feet, thence S 0° 24' E, 1323.65 feet to the Southwest corner of the parcel of land, which is the true point of beginning; thence N 89° 37' E, 1407.45 feet, to a point common to the west boundary of the Common and Related Facilities Area; thence N 11° 30' E, 1339.34 feet to the north line of Section 35 from which the northeast corner of Section 35 bears S 89° 49' E, 362.48 feet; thence N 11° 30' E, 1813.91 feet to the east line of Section 26 from which the southeast corner of Section 26 bears S 0° 01' E, 1778.62 feet; thence N 11° 30' E, 3595.29 feet to the north line of Section 25 from which the northwest corner of Section 25 bears N 89° 49' W, 718.46 feet; thence N 11° 30' E, 930.37 feet; thence N 78° 29' W, 922.99 feet to the west line of Section 24 from which the southwest corner of Section 24 bears S 0° 01' E, 1093.61 feet; thence N 78° 29' W, 727.01 feet; thence S 11° 30' W, 1260.96 feet to the south line of Section 23 from which the southeast corner of Section 23 bears S 89° 50' E, 964.33 feet; thence S 11° 30' W, 5408.99 feet to the south line of Section 26 from which the southeast corner of Section 26 bears S 89° 49' E, 2045.23 feet; thence S 11° 30' W, 3.74 feet; thence S 0° 24' E, 1323.65 feet to the true point of beginning.

Section 23	22.63 Acres
Section 24	18.87 Acres
Section 25	29.05 Acres
Section 26	175.84 Acres
Section 35	<u>46.82 Acres</u>
Total	293.21 Acres

COMMON AND RELATED FACILITIES AREA

Parcel "A" located in Sections 25, 26, 35, 36, Township 29 North, Range 16 West, and Section 30, Township 29 North, Range 15 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the northeast corner of Section 35, thence S 0° 01' E, 1557.04 feet, thence S 89° 37' W, 628.55 feet to the southwest corner of the parcel of land which is the true point of beginning; thence S 39° 23' E, 990.95 feet to the east line of Section 35, from which the northeast corner of Section 35 bears N 0° 01' W, 2327.17 feet; thence S 39° 23' E, 1171.78 feet; thence N 89° 37' E, 1831.50 feet; thence N 0° 23' W, 2930.76 feet; thence N 89° 38' E, 1400.00 feet; thence N 0° 22' W, 267.72 feet, to the north line of Section 36 from which the northeast corner of Section 36 bears S 89° 48' E, 1291.85 feet; thence N 0° 22' W, 16.09 feet; thence N 71° 12' E, 1125.38 feet; thence N 42° 31' E, 336.04 feet, to the east line of Section 25 from which the southeast corner of Section 25 bears S 0° 03' W, 631.02 feet; thence N 42° 31' E, 695.89 feet; thence N 47° 29' W, 300.00 feet; thence S 42° 31' W, 368.16 feet, to the west line of Section 30 from which the southwest corner of Section 30 bears S 0° 03' W, 1075.35 feet; thence S 42° 31' W, 587.07 feet; thence S 71° 12' W, 790.56 feet; thence N 45° 22' W, 777.81 feet; thence S 89° 38' W, to a point 100.00 feet from the shoreline of the Storage Lake, the water level in the Storage Lake being 5327.50 feet above mean sea level, thence in a southwesterly direction along a line within the Storage Lake, parallel with and 100.00 feet from the shoreline of said Storage Lake, the water level in the Storage Lake being 5327.50 feet above mean sea level, cross the west line of Section 25 and continue to the east boundary of the Dam Site, thence along the east boundary of the Dam Site S 11° 30' W, to the south line of Section 26, from which the southeast corner of Section 26 bears S 89° 49' E, 362.48 feet; thence S 11° 30' W, 1339.34 feet, to the southeast corner of the Dam Site; thence S 0° 23' E, 250.00 feet to the true point of beginning, except those parcels described as Parcel "A" and Parcel "B" in the Amended Original Plant Site", and except that parcel described in the "New Plant Site."

Parcel "B" located in Section 25, Township 29 North, Range 16 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the southeast corner of Section 25, thence N 31° 19' W, 754.72 feet to a point on the north boundary line of the Common and Related Facilities Area as described in Parcel "A" which is the true point of beginning; thence N 13° 31' W, 1006.80 feet; thence N 70° 06' W, 1409.20 feet; thence S 49° 33' W, 290.00 feet; thence S 1° 14' E, 419.00 feet; thence S 26° 07' E, 624.77 feet to a point on the north boundary line of the Common and Related Facilities Area (Parcel "A"); thence easterly along said line N 89° 38' E, 195.13 feet; thence S 45° 22' E, 777.81 feet; thence N 71° 12' E, 790.56 feet to the true point of beginning, containing 43.08 acres.

Parcel "C" located in Sections 35, 36, Township 29 North, Range 16 West, New Mexico Principal Meridian, and described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the northeast corner of Section 35, thence S 25° 39' 13" W, 1454.64 feet to a point common to the west boundary line of the Common and Related Facilities Area (Parcel "A") and the southeast corner of the Dam Site; thence S 0° 23' E, 250.00 feet to the most westerly corner of the new plant site; thence S 39° 23' E, 990.95 feet along the westerly line of the new plant site to the east line of Section 35, from which the northeast corner of Section 35 bears N 0° 01' W, 2327.17 feet; thence continuing S 39° 23' E, 1171.78 feet; thence S 89° 37' W, 743.25 feet to the west line of Section 36 from which the northwest corner of Section 36 bears N 0° 01' W, 3237.83 feet; thence continuing S 89° 37' W, 3024.69 feet to a point common with the Ash Disposal Area; thence N 0° 24' W, along the boundary of the Ash Disposal Area 1930.47 feet; thence N 89° 36' E, 1000.00 feet to a point common to the Ash Disposal Area and the southwest corner of the Dam Site; thence N 89° 37' E, 1407.45 feet to the true point of beginning containing 132.95 acres.

		<u>Acres</u>			Parcel	Parcel	Parcel
		"A"	"B"	"C"	Total		
Section 25	T29N, R16W	70.00	43.08	-	113.08		
Section 26	T29N, R16W	148	-	-	1.48		
Section 35	T29N, R16W	11.76	-	125.18	136.94		
Section 36	T29N, R16W	37.51	-	7.77	45.28		
Section 30	T29N, R15W	<u>3.66</u>	-	-	<u>3.66</u>		
Total Acreage		124.41	43.08	132.95	300.44		

ASH DISPOSAL AREA

A parcel of land located in Sections 26, 27, 33, 34 and 35, Township 29 North, Range 16 West, and a portion of unsurveyed Township 28 North, Range 16 West, New Mexico Principal Meridian, described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the southwest corner of Section 34, thence S 89° 50' E, 38.07 feet to a point on the south line of Section 34; thence S 0° 25' E, 107.96 feet to the most southerly corner of the parcel of land which is the true point of beginning; thence N 89° 35' E, 2432.94 feet; thence N 0° 25' W, 83.19 feet to the south line of Section 34, from which the southwest corner of Section 34 bears N 89° 50' W, 2471.13 feet; thence N 0° 25' W, 1416.81 feet; thence N 89° 35' E, 2778.61 feet to the east line of Section 34, from which the northeast corner of Section 34 bears N 0° 05' W, 3859.17 feet; thence N 89° 35' E, 221.39 feet; thence N 0° 24' W, 1500.00 feet; thence N 89° 36' E, 2000.00 feet; thence N 0° 24' W, 1000.00 feet; thence N 89° 36' E, 1000.00 feet to a point that is common to the southwest corner of the Dam Site boundaries; thence along the west boundary of the Dam Site N 0° 24' W, 1323.65 feet; thence continuing along the west boundary of the Dam Site N 11° 30' E, 691.18 feet; thence S 89° 36' W, 3142.43 feet; thence N 0° 24' W, 1000.00 feet; thence S 89° 35' W, 190.87 feet to the west line of Section 26, from which the southwest corner of Section 26 bears S 0° 05' E, 1641.00 feet; thence S 89° 35' W, 4809.13 feet; thence S 0° 25' E, 1594.67 feet to the south line of Section 27, from which the southwest corner of Section 27 bears N 89° 52' W, 444.00 feet; thence S 0° 25' E, 405.33 feet; thence S 89° 35' W, 446.01 feet to the west line of Section 34, from which the northwest corner of Section 34 bears N 0° 08' W, 405.33 feet; thence S 89° 35' W, 1313.99 feet; thence S 30° 20' W, 283.00 feet; thence S 17° 26' W, 874.00 feet; thence S 7° 05' W, 751.00 feet; thence S 16° 05' W, 564.00 feet; thence S 23° 25' E, 297.00 feet; thence N 83° 35' E, 436.00 feet; thence S 83° 55' E, 347.00 feet; thence S 70° 25' E, 385.00 feet; thence S 52° 55' E, 503.00 feet; thence S 29° 55' E, 623.00 feet; thence S 4° 10' E, 69.85 feet to the east line of Section 33, from which the northeast corner of Section 33 bears N 0° 08' W, 4087.04 feet; thence S 4° 10' E, 478.15 feet; thence S 0° 25' E, 845.48 feet to the true point of beginning.

Section 26	T29N, R16W	53.73	Acres
Section 27	T29N, R16W	178.45	Acres
Section 33	T29N, R16W	111.57	Acres
Section 34	T29N, R16W	542.12	Acres
Section 35	T29N, R16W	157.03	Acres
Unsurveyed	T28N, R16W	<u>5.34</u>	Acres

Total Acreage 1048.24 Acres

ADDITIONAL ASH DISPOSAL AREA

A parcel of land located in Sections 34 and 35, Township 29 North, Range 16 West, and a portion of unsurveyed Township 28 North, Range 16 West, New Mexico Principal Meridian, described by metes and bounds as follows: (Bearing reference is true North.)

Beginning at the southwest corner of Section 34, Township 29 North, Range 16 West; thence S 89° 50' E, 38.07 feet to a point on the south line of Section 34; thence S 0° 25' E, 107.96 feet to a point in unsurveyed Township 28 North, Range 16 West, which is the most southerly corner of the parcel of land as described in Ash Disposal Area (Exhibit No. 6) and the true point of beginning of the parcel herein described: Thence continuing S 0° 25' E, 1996.97 feet; thence N 89° 35' E, 6036.47 feet to a point on the westerly right-of-way line of the Four Corners to Cholla 345 KV powerline thence N 34° 26' 42" E, 2442.34 feet along aforementioned powerline right-of-way; thence N 0° 24' W, 25.23 feet to a point on the township line between Township 28 North and Township 29 North from which the southwest corner of Section 35, Township 29 North, Range 16 West bears N 89° 50' W, 2229.49 feet; thence continuing N 0° 24' W, 2036.66 feet to a point which is common with the southwest corner of Parcel "C" of the Common and Related Facilities Area; thence continuing N 0° 34' W, 930.74 feet along the west line of Parcel "C" to a point common with Parcel "C" and the Ash Disposal Area thence S 89° 36' W, 2000.00 feet along the southerly line of Ash Disposal Area thence S 0° 24' E, 1500.00 feet; thence S 89° 35' W, 221.39 feet to the west line of Section 35 from which the northwest corner of Section 35 bears N 0° 05' W, 3859.17 feet; thence continuing S 89° 35' W, 2778.61 feet; thence S 0° 25' E, 1416.81 feet to a point on the south line of Section 34, Township 29 North, Range 16 West, from which the southwest corner of Section 34 bears N 89° 50' W, 2471.11 feet; thence continuing S 0° 25' E, 83.19 feet to a point in unsurveyed Township 28 North, Range 16 West; thence S 89° 35' W, 2432.94 feet to the true point of beginning containing 549.65 acres.

Section 34 T29N, R16W	91.14 Acres
Section 35 T29N, R16 W	143.26 Acres
Unsurveyed T28N, R16 W	<u>315.25 Acres</u>
Total Acreage	549.65 Acres

STORAGE LAKE

A parcel of land located in Sections 24, 25 and 26, Township 29 North, Range 16 West, and Sections 19 and 30, Township 29 North, Range 15 West, New Mexico Principal Meridian, and described as follows:

The area bounded by the shoreline of a storage lake (“Morgan Lake”) impounded by an earthfill dam located upon the Dam Site, the water level in the storage lake being 5327.50 feet above mean sea level, except an area along the south shoreline contained within the Common and Related Facilities Area, and except an area along the west shoreline contained within the Dam Site.

Net Area of Storage Lake as Described Herein	=	1119.94 Acres
Lake Area Contained Within Common and Related Facilities Area	=	54.08 Acres
Lake Area Contained Within Dam Site	=	<u>113.71</u> Acres
Gross Area of Lake	=	1287.73 Acres

PUMPING PLANT ACCESS ROAD AND WATER
PIPELINE RIGHT-OF-WAY

Portion “A” is situated in Section 7 Township 29 North, Range 15 West, New Mexico Principal Meridian and includes the right-of-way for the Pumping Plant Access Road, 36 inch water pipeline and 2 inch water pipeline. Portion “A” is described as follows: (Bearing reference is true North.)

Beginning at the southwest corner of Section 7, thence N 45° 14’ 57” E, 3112.63 feet, which is the true point of beginning (and a point common with the beginning of the centerline of Portion “B”) thence N 80° 32’ 00” W, 50.00 feet; thence N 28° 32’ 00” W, 44.00 feet; thence N 87° 21’ 22” W, 205.43 feet; thence N 40° 20’ 06’ W, 229.53 feet; thence N 10° 17’ 10” W, 136.53 feet; thence N 45° 36’ 10” W, 215.12 feet; thence N 0° 21’ 00” W, 135.12 feet to a point on the south line of the Pumping Plant Site from which the southwest corner of the Pumping Plant Site bears S 89° 39’ 00” W, 30.78 feet; thence N 89° 39’ 00” E, 219.22 feet along the south line of the Pumping Plant Site to the southeast corner of the site; thence S 47° 26’ 00” E, 114.03 feet; thence S 38° 03’ 00” E, 168.89 feet; thence S 28° 32’ 00” E, 513.02 feet; thence N 80° 32’ 00” W, 50.00 feet to the true point of beginning, containing 4.4216 acres.

Portion “B” 100 feet wide, extends from Portion “A” through or across Sections 7, 18, 19, Township 29 North, Range 15 West, New Mexico Principal Meridian, the centerline of Portion “B” being described as follows: (Bearing reference is true North.)

Beginning at the southwest corner of Section 7, thence N 45° 14' 57" E, 3112.63 feet to a point common with the beginning of Portion "A", which is the true point of beginning (Sta. 0+00); thence S 09° 28' 00" W, 147.11 feet; thence S 09° 18' 00" W, 194.10 feet; thence S 22° 02' 00" E, 280.00 feet; thence S 25° 11' 00" E, 847.87 feet; thence S 26° 01' 00" W, 499.63 feet; thence S 09° 06' 00" E, 382.99 feet, to a point on the south line of Section 7, from which the southwest corner of Section 7 bears S 89° 59' 00" W, 2462.19 feet; thence continuing S 09° 06' 00" E, 97.01 feet; thence S 42° 36' 00" E, 1024.10 feet; thence S 34° 50' 00" E, 1939.30 feet; thence S 10° 58' 00" E, 825.00 feet; thence S 10° 50' 00" W, 2089.76 feet to a point on the south line of Section 18, from which the southeast corner of Section 18 bears N 89° 59' 00" E, 1211.82 feet; thence continuing S 10° 50' 00" W, 2964.14 feet; thence S 21° 47' 00" W, 2208.78 feet to the end of Portion "B" (Sta. 134+99.79) from which the southwest corner of Section 19, Township 29 North, Range 15 West, bears S 82° 43' 00" W, 2696.72 feet.

Portion "C", 100 feet wide, extends from Portion "B" through or across Sections 19, 29, 30, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the Plant Access Road right-of-way, the centerline of said Portion "C" being described as follows:

Beginning at the southeast corner of Section 19 thence N 50° 13' 54" W, 2566.17 feet to a point common with the east boundary line of Portion "B" which is the true point of beginning (Sta. 0+00); thence S 45° 38' 22" E, 2347.84 feet, to a point on the south line of Section 19, from which the southeast corner of Section 19 bears east 293.86 feet; thence continuing S 45° 38' 22" E, 181.10 feet to (Sta. 25+28.94) to a point of intersection with the west boundary of the Plant Access Road right-of-way from which the northwest corner of Section 29, Township 29 North, Range 15 West, bears N 17° 22' 02" W, 433.76 feet.

Portion "A"	Metes & Bounds	4.4216 Acres
Portion "B"	Width = 100 Feet Length =	2.5568 Miles 30.9915 Acres
Portion "C"	Width = 100 Feet Length =	0.5568 Miles <u>6.7491 Acres</u>
		Total Acreage 42.1622 Acres

PLANT ACCESS ROAD

A right-of-way extending from the Common and Related Facilities Area through or across Section 36, Township 29 North, Range 16 West, Sections 31, 30, 29, 17, 16, 9 and 10, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the north boundary of the Navajo Indian Reservation, said right-of-way consisting of three portions described as follows: (Bearing reference is true North.)

Portion "A" is a right-of-way, 100 feet wide whose centerline is described as follows:

Beginning at the northeast corner of Section 36, Township 29 North, Range 16 West; thence S 51° 54' 40" W, 3374.45 feet to a point common with the east boundary of the Common and Related Facilities Area, which is the true point of beginning (Sta. 0+00); thence N 72° 54' 57" E, 84.34 feet; thence along a circular curve to the left, 232.80 feet, the radius of the curve being 577.71 feet and its angle of intersection being 23° 05' 18"; thence N 49° 49' 39" E, 1077.15 feet; thence along a circular curve to the right, 245.23 feet (Sta. 16+39.51), the radius of the curve being 353.12 feet and its angle of intersection being 39° 47' 22"; thence N 89° 37' 00" E, 1322.83 feet to a point on the east line of Section 36, from which the northeast corner of Section 36 bears N 0° 03' 00" E, 1159.08 feet; thence continuing N 89° 37' 00" E, 1971.08 feet; thence along a circular curve to the left, 812.91 feet (Sta. 57+46.33), the radius of the curve being 737.94 feet and its angle of intersection being 63° 07' 00" to a point common with the centerline of Portion "C" of this right-of-way. Portion "B" is a right-of-way, 100 feet wide, whose centerline is described as follows:

Beginning at the northeast corner of Section 36, Township 29 North, Range 16 West; thence S 55° 32' 38" W, 3222.99 feet to a point common with the east boundary of the Common and Related Facilities area which is the true point of beginning (Sta. 0+00); thence N 50° 32' 13" E, 879.73 feet; thence along a circular curve to the right 280.59 feet, the radius of the curve being 411.38 feet, and its angle of intersection being 39° 04' 47"; thence N 89° 37' 00" E, 395.85 feet, to a point common with the centerline of Portion "A" (Sta. 16+39.51) of this right-of-way.

Portion "C" is a right-of-way, 40 feet wide, whose centerline is described as follows:

Continuing from the point common with Portion "A" of this right-of-way (Sta. 57+46.33), N 26° 30' E, 6887.25 feet; thence N 25° 52' E, 94.64 feet; thence N 29° 08' E, 434.70 feet; thence N 30° 50' E, 872.50 feet; thence N 30° 41' E, 1399.10 feet; thence N 30° 59' E, 1800.16 feet; thence along a circular curve to the left, 510.79 feet (to Sta. 177+45.47), the radius of the curve being 2341.45 feet and its angle of intersection being 12° 30'; thence N 18° 29' E, 3538.15 feet; thence along a circular curve to the right 857.50 feet (to Sta. 221+41.12) the radius of the curve being 1212.21 feet and its angle of intersection being 40° 32'; thence N 59° 01' E, 325.29 feet; thence N 52° 27' E, 378.40 feet; thence N 43° 30' E, 2118.80 feet; thence N 43° 59' E, 1030.20 feet; thence N 63° 23' E, 100.00 feet; thence N 87° 19' E, 99.80 feet; thence S 76° 20' E, 100.00 feet; thence S 66° 15' E, 124.50 feet; thence S 59° 50' E, 509.70 feet; thence S 54° 55' E, 703.50 feet; thence S 60° 39' E, 396.00 feet; thence S 81° 16' E, 228.51 feet; thence along a circular curve to the right 301.84 feet, the radius of the curve being 959.09 feet

and its angle of intersection being $18^{\circ} 02'$; thence $S 63^{\circ} 14' E$, 271.94 feet; thence along a circular curve to the left 238.29 feet (to Sta. 290+67.89), the radius of the curve being 160.00 feet, and its angle of intersection being $85^{\circ} 20'$, to the point of tangency of this curve from which the northeast corner of Section 16, Township 29 North, Range 15 West, bears $N 41^{\circ} 51' E$, 607.03 feet; thence $N 31^{\circ} 26' E$, 2541.40 feet; thence along a circular curve to the right, 352.50 feet (to Sta. 319+61.79), the radius of the curve being 200.00 feet and its angle of intersection being $100^{\circ} 59'$; thence $S 47^{\circ} 35' E$, 889.00 feet; thence along a circular curve to the left, 278.27 feet, the radius of the curve being 200.00 feet and its angle of intersection being $79^{\circ} 44'$; thence $N 52^{\circ} 41' E$, 948.46 feet to a point (Sta. 340+77.52) at the south end of the San Juan County Bridge over the San Juan River, from which point the southeast corner of Section 10, Township 29 North, Range 15 West, bears $S 52^{\circ} 21' E$, 2955.00 feet.

Portion "A" Width = 100 Feet Length = 1.0883 Miles 13.1915 Acres
 Portion "B" Width = 100 Feet Length = 0.2947 Miles 3.5721 Acres
 Portion "C" Width = 40 Feet Length = 5.3658 Miles 26.0160 Acres

Total Acreage 42.7796 Acres

SIX INCH GAS PIPELINE

A right-of-way extending from the Common and Related Facilities area through or across Section 36, Township 29 North, Range 16 West and Section 31, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the El Paso Natural Gas Company's Four Corners Meter Station.

A 20 foot wide right-of-way whose centerline is described as follows:
 (Bearing reference is true North.)

Beginning at the Northeast corner of Section 36, Township 29 North, Range 16 West; thence $S 66^{\circ} 52' 26'' W$, 2894.60 feet, to a point common with the east boundary of the Common and Related Facilities area, which is the true point of beginning (Sta. 0+00); thence $N 89^{\circ} 37' 00'' E$, 846.56 feet to a point of intersection with the north boundary line of the Plant Overload Road right-of-way; thence continuing easterly within the Plant Access Road right-of-way 4156.60 feet to a point of intersection with the south right-of-way line of the Plant Access Road from which the northwest corner of Section 31, Township 29 North, Range 15 West bears $N 64^{\circ} 18' 00'' W$, 2598.14 feet; thence $S 63^{\circ} 20' 00'' E$, 48.62 feet to a point within the El Paso Natural Gas Company's Four Corners Meter Station.

Right-of-Way Width = 20 Feet = 0.1695 Miles = 0.4109 Acres

RIGHT-OF-WAY FOR ACCESS ROAD TO UTAH LEASED LANDS

A right-of-way, 150 feet wide, extending from the Common and Related Facilities Area through Section 36, Township 29 North, Range 16 West, and Section 31, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the Utah Construction and Mining Company Lease, the centerline of said right-of-way being described as follows: (Bearing reference is true North.)

Beginning at the northwest corner of Section 36, Township 29 North, Range 16 West, thence S 81° 52' E, 2582.51 feet, to a point common with the Common and Related Facilities Area, which is the true point of beginning; (Sta. 0+00) thence N 89° 38' E, 1400.00 feet (north boundary of right-of-way is common with south boundary of Common and Related Facilities Area between the above two points); thence N 87° 57' E, 1290.25 feet, to a point on the east line of Section 36, Township 29 North, Range 16 West, from which the northeast corner of Section 36 bears N 0° 03' E, 291.97 feet; thence continuing N 87° 57' E, 1879.38 feet; thence along a circular curve to the right, 874.07 feet, the radius of the curve being 1273.57 feet and its angle of intersection being 39° 20'; thence S 52° 43' E, 1550.00 feet (to Sta. 69+93.70) to a point on the west boundary of the Utah Construction and Mining Company Leased Area, from which the northeast corner of Section 31, Township 29 North, Range 15 West, bears N 43° 15' E, 1944.82 feet. Total Right-of-Way Width = 150 Feet Length = 1.3246 Miles

RIGHT-OF-WAY FOR WATER LINES TO UTAH MINING LEASED LANDS

Three rights-of-way described as follows:

(A) A right-of-way, common with the right-of-way for the Right-of-Way for Access Road to Utah Leased Lands, 150 feet wide, extending from the Common and Related Facilities Area through Section 36, Township 29 North, Range 16 West, and Section 31, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the Utah Construction and Mining Company Lease, the centerline of said right-of-way being described as follows: (Bearing reference is true North.)

Beginning at the northwest corner of Section 36, Township 29 North, Range 16 West, thence S 81° 52' E, 2582.51 feet, to a point common with the Common and Related Facilities Area, which is the true point of beginning; (Sta. 0+00) thence N 89° 38' E, 1400.00 feet (north boundary of right-of-way is common with south boundary of Common and Related Facilities Area between the above two points); thence N 87° 57' E, 1290.25 feet, to a point on the east line of Section 36, Township 29 North, Range 16 West, from which the northeast corner of Section 36 bears N 0° 03' E, 291.97 feet; thence continuing N 87° 57' E, 1879.38 feet; thence along a circular curve to the right, 874.07 feet, the radius of the curve being 1273.57 feet and its angle of intersection being 39° 20'; thence S

52° 43' E, 1550.00 feet (to Sta. 69+93.70) to a point on the west boundary of the Utah Construction and Mining Company Leased Area, from which the northeast corner of Section 31, Township 29 North, Range 15 West, bears N 43° 15' E, 1944.82 feet.

(B) A right-of-way, a portion of which is common with the right-of-way plotted and described as Portion "C" on Exhibit 9, 100 feet wide, extending from Portion "A" of the right-of-way plotted and described on Exhibit 9, through Sections 19, 20 and 29, Township 29 North, Range 15 West, New Mexico Principal Meridian, to the Utah Construction and Mining Company Lease Area, the centerline of said right-of-way being described as follows:

Beginning at the southeast corner of Section 19, thence N 63° 56' W, 2479.22 feet, to a point, which is the true point of beginning; (Sta. 0+00) thence S 68° 10' E, 2399.30 feet, to a point on the east line of Section 19 from which the southeast corner of Section 19 bears S 0° 04' W, 197.44 feet; thence continuing S 68° 10' E, 511.82 feet to the south line of Section 20, from which the southwest corner of Section 20 bears S 89° 09' W, 475.48 feet; thence continuing S 68° 10' E, 2136.62 feet, (to Sta. 50+47.74) to a point on the west boundary of the Utah Construction and Mining Lease Area, from which lease corner L-23 bears N 0° 04' E, 797.84 feet.

(C) A right-of-way, 100 feet wide, extending from the storage Lake, through Section 30, Township 29 North, Range 15 West, New Mexico Principal Meridian to the Utah Construction and Mining Company Lease Area, the centerline of said right-of-way being described as follows:

Beginning at the southeast corner of Section 30, thence N 50° 42' W, 2784.44 feet, to a point, which is the true point of beginning; (Sta. 0+00) thence S 69° 09' E, 2298.17 feet, (to Sta. 22+98.17) to a point on the west boundary of Utah Construction and Mining Company Lease Area, from which point lease corner L-33 bears N 0° 02' E, 347.08 feet.

Portion "A" Width = 150 Feet Length = 1.3246 Miles
Portion "B" Width = 100 Feet Length = 0.9560 Miles
Portion "C" Width = 100 Feet Length = 0.4353 Miles

Total Right-of-Way Length = 2.7159 Miles

PUMPING PLANT SITE POWER LINE RIGHT-OF-WAY

A right-of-way, 40 feet wide, extending from the Pumping Plant Site through or across Sections 7 and 18, Township 29 North, Range 15 West, and Sections 13 and 24, Township 29 North, Range 16 West, New Mexico Principal Meridian, to the north boundary of the Dam Site, the centerline of said

right-of-way being described as follows: (Bearing reference is true North.) Beginning at the northwest corner of Section 7, Township 29 North, Range 15 West, thence S 33° 07' E, 2938.30 feet to a point common with the Pumping Plant Site, which is the true point of beginning (Sta. 0+00); thence S 36° 42' W, 194.25 feet; thence S 28° 07' W, 3046.81 feet to a point on the south line of Section 7, from which the southwest corner of Section 7 bears S 89° 58' W, 57.08 feet; thence S 28° 07' W, 121.26 feet (to Sta. 33+62.32) to a point on the west line of Section 18, Township 29 North, Range 15 West, from which the northwest corner of Section 18 bears N 0° 03' E, 106.95 feet; thence S 28° 07' W, 5882.16 feet (to Sta. 92+44.48) to a point on the south line of Section 13, Township 29 North, Range 16 West, from which the southeast corner of Section 13 bears S 89° 49' E, 2768.12 feet; thence S 28° 07' W, 4814.37 feet, to the end point of the right-of-way described, (Sta. 140+58.85) said point being common with the north boundary of the Dam Site and from which point the southwest corner of Section 24, Township 29 North, Range 16 West bears S 11° 42' W, 1071.55 feet.

Total Right-of-Way Width = 40 Feet Length = 2.6627

Ex. 5-14

EXHIBIT 6*

*The conditions of Letter of Understanding No. 1, dated March 28, 1967 and Letter of Understanding No. 2, dated February 9, 1972, have been satisfied. Therefore such letters are not included in this exhibit. The original signed letters may be found with the original agreement

Ex. 6-1

EXHIBIT 7

APPROVED LOCATIONS OF EXISTING CAPITAL ITEMS
(AS OF DECEMBER 31, 1981)

<u>FACILITY</u>	<u>APPROVED</u> <u>LOCATION</u>	<u>SHOULD HAVE BEEN</u> <u>LOCATED ON</u> _____
1. Warehouse	FC Project	Common and Related
2. New Admin. Bldg.	“	“
3. Guardhouse Main & Satellite	“	“
4. Switchyard Shop	“	“
5. Shop for Units 4 & 5	“	“
6. Overhaul Shop	“	“
7. 150 Gallon Demineralizer	“	“
8. Common Building	1/3 on Initial FC Plant 2/3 on FC Project	“
9. National Pollution Discharge Elimination System (NPDES) Trench	part on Initial FC Plant part on Common & Rel.	Initial FC Plant
10. NPDES East Sump.	part on Common & Rel. part on FC Project	“
11. NPDES West Sump.	Common & Related	“
12. Scrubber Upgrade Control Bldg.	“	“
13. Thickener Tanks A & B	“	“
14. Original Lime Slaker	“	“
15. Lime Upgrade	“	“

- | | | | |
|----|--|---|--|
| 7. | Storage racks for the existing warehouse | “ | “ |
| 8. | Transmission line from Initial Four Corners Plant substation and switchyard over to the new substation and switchyard under construction for the PRP and S02 Removal Projects. | “ | Partly on Initial FC Plant (up to the canal)

Partly on FC Project (after the canal) |

ATTACHMENT A

BILL OF SALE FROM ARIZONA TO EL PASO, NEW MEXICO, SALT RIVER PROJECT, EDISON AND TUCSON :

1. The definition of Common Facilities in Section 5.8 of the CO-Tenancy Agreement shall apply to this Attachment A.
2. Arizona, for value received, hereby grants, bargains, sells and conveys to El Paso, New Mexico, Salt River Project, Edison and Tucson, hereinafter referred to as “Second Parties”, their successors and assigns, the following undivided interests in the Common Facilities, to wit:
 - El Paso as to 5.07%,
 - New Mexico as to 9.42%,
 - Salt River Project as to 7.24%,
 - Edison as to 34.76%, and
 - Tucson as to 5.07%,
 to have and to hold as tenants in common with Arizona.
3. Arizona binds itself and its successors and assigns to warrant and defend the rights, titles, interests and estates herein granted, bargained, sold and conveyed to Second Parties against the lawful claims and demands of all persons claiming or to claim said rights, titles, interests and estates, or any part thereof by, through or under Arizona, and no other.
4. This Bill of Sale is made upon the express condition that the rights, titles, interests and estates herein granted, bargained, sold and conveyed to Second Parties shall be held by Second Parties in accordance with the Co-Tenancy Agreement.
5. Arizona agrees that the 38.44% interest in the Common Facilities retained by Arizona shall be held by Arizona as a tenant in common with Second Parties, and shall be subject to the Co-Tenancy Agreement.
6. Arizona shall not be deemed to be in violation of Section 7 of the Exchange Agreement in the event that the provisions of

said Section 7 shall not be legally effective as to Arizona, its mortgagees, trustees, secured parties, receivers, successors or assigns.

ATTACHMENT B

BILL OF SALE FROM EL PASO, NEW MEXICO, SALT RIVER PROJECT, EDISON AND TUCSON TO ARIZONA

1. The definitions of Existing New Facilities and Existing Related Facilities in Sections 5.14(a) and 5.14(b) of the Co-Tenancy Agreement shall apply to this Attachment B.
2. El Paso, New Mexico, Salt River Project, Edison and Tucson (hereinafter collectively referred to in this Attachment B as “First Parties” and singularly as “First Party”), for value received, hereby respectively grant, bargain, sell and convey to Arizona, its successors and assigns, undivided 1.24%, 2.29%, 1.76%, 8.47% and 1.24% interests in the Existing New Facilities [being in total, an undivided 15% in the Existing New Facilities (except for the Existing Related Facilities)], and undivided 3.17%, 5.87%, 4.52%, 21.71% and 3.17% interests in the Existing Related Facilities (being in total an undivided 38.44% interest in the Existing Related Facilities (27.58% of which is allocated to the Initial Four Corners Plant and 10.86% of which is allocated to Arizona’s interest in the Four Corners Project)], to have and to hold as a tenant in common with First Parties.
3. First Parties, respectively, bind themselves and their successors and assigns to warrant and defend the rights, titles, interests and estates herein respectively granted, bargained, sold and conveyed to Arizona against the lawful claims and demands of all persons claiming or to claim said rights, titles, interests and estates, or any part thereof, by, through or under First Parties, respectively, and no other.
4. This Bill of Sale is made upon the express condition that the rights, titles interests and estates herein granted, bargained, sold and conveyed to Arizona shall be held by Arizona in accordance with the Co-Tenancy Agreement.
5. First Parties hereby agree that the following undivided interests in the Existing New Facilities (excepting the Existing Related Facilities), to wit: El Paso as to 7%, New Mexico as to 13%, Salt River Project as to 10%, Edison as to 48%, and Tucson as to 7%, and the following undivided interests in the Existing Related Facilities, to wit: El Paso as to 5.07%, New Mexico as to 9.42%, Salt River Project as to 7.24%, Edison as to 34.76%, and Tucson as to 5.07%, retained by First Parties, respectively, shall be held by First Parties as tenants in common with Arizona, and shall be subject to the Co-Tenancy Agreement.
6. No First Party shall be deemed to be in violation of Section 7 of the Exchange Agreement in the event that the provisions of said Section 7 shall not be legally effective as to it, its mortgagee, trustees, secured parties, receivers, successors or assigns.

ATTACHMENT C

BILL OF SALE FROM ARIZONA TO EL PASO, NEW MEXICO, SALT RIVER PROJECT, EDISON AND TUCSON

1. Arizona, for remuneration received pursuant to Section 3 hereof hereby grants, bargains, sells and conveys to El Paso, New Mexico, Salt River Project, Edison and Tucson, (hereinafter collectively referred to as “Purchasing Participants”), their successors and assigns, the following undivided interests in the brine concentrator and capital improvements thereto, to wit:
 - 1.1 El Paso as to 5.07%
 - 1.2 New Mexico as to 9.42%
 - 1.3 Salt River Project as to 7.24%
 - 1.4 Edison as to 34.76%
 - 1.5 Tucson as to 5.07%

to have and to hold as tenants in common with Arizona. Arizona shall retain a 38.44% undivided interest in said facilities.
2. The purchase price of the brine concentrator and capital improvements thereto has been computed by straight line depreciation of the replacement cost of such facilities to be \$4,479,922. Such determination was computed using the Handy Whitman Index for boiler plant in the Plateau Region from the date of installation (July 1, 1979) till June 1, 1983.
3. The Purchasing Participants have, prior to July 1, 1983, individually paid to Arizona the \$4,479,922 purchase price of the brine concentrator and capital improvements thereto, in the following amounts:
 - 3.1 El Paso \$ 368,960
 - 3.2 New Mexico 685,524
 - 3.3 Salt River Project 526,879
 - 3.4 Edison 2,529,599
 - 3.5 Tucson 368,960
4. The brine concentrator and the capital improvements thereto shall become a part of the SOD2U Removal Project for Units 4 and 5 at the Enlarged Four Corners Generating Station.
5. Arizona binds itself and its successors and assigns to warrant and defend the rights, titles, interests and estates herein granted, bargained, sold and conveyed to the Purchasing Participants against the lawful claims and demands of all persons claiming or attempting to claim said rights, titles, interests and estates, or any part thereof by, through or under Arizona, and no other.

6. This Bill of Sale is made upon the express condition that the rights, titles interests and estates herein granted, bargained, sold and conveyed to the Purchasing Participants shall be held by such Purchasing Participants in accordance with the Co-Tenancy Agreement.
7. Arizona agrees that the 38.44% interest in the brine concentrator and the capital improvements thereto retained by Arizona shall be held by Arizona as a tenant in common with the Purchasing Participants, and shall be subject to the Co-Tenancy Agreement.
8. The terms and conditions agreed to herein pertain only to the purchase of the brine concentrator and the capital improvements thereto and shall not establish a basis or set a precedent for any further transactions involving the sale of machinery or equipment or other ownership rights regarding the Enlarged Four Corners Generating Station.

Ex. 7-2

AMENDMENT NO. 1
TO
FIVE-YEAR CREDIT AGREEMENT

THIS AMENDMENT NO. 1 TO FIVE-YEAR CREDIT AGREEMENT (this “ Amendment ”) is made as of July 13, 2018, by and among ARIZONA PUBLIC SERVICE COMPANY (the “ Borrower ”), the lenders listed on the signature pages hereof (the “ Lenders ”), and BARCLAYS BANK PLC (“ Barclays ”), as Agent (the “ Agent ”), under that certain Five-Year Credit Agreement, dated as of June 29, 2017, by and among the Borrower, the lenders from time to time parties thereto and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the “ Credit Agreement ”). Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Credit Agreement.

WITNESSETH

WHEREAS, the Borrower, the Lenders and the Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has requested that the Agent and the Lenders amend the Credit Agreement on the terms and conditions set forth herein; and

WHEREAS, the Borrower, the Agent and the Lenders have agreed to amend the Credit Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed to the following:

1. Amendments to the Credit Agreement. Effective as of July 13, 2018 (the “ Amendment Effective Date ”) and subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement is hereby amended as follows:

(a) Section 1.01 of the Credit Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order:

“ Amendment No. 1 Effective Date ” means July 13, 2018.

“ Beneficial Ownership Certification ” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance acceptable to the Agent in its discretion.

“ Beneficial Ownership Regulation ” means 31 C.F.R. § 1010.230.

“ Benefit Plan ” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975

of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

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

(b)Section 1.01 of the Credit Agreement is hereby amended to amend and restate the following definitions in the appropriate alphabetical order:

“Ineligible Institution” means (a) a natural person, (b) an Affected Lender or any of its Subsidiaries, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof, or (e) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute an Affected Lender or a Subsidiary thereof.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc.

“SEC Reports” means the Borrower’s (i) Form 10-K Report for the year ended December 31, 2017, (ii) Form 10-Q Report for the quarter ended March 31, 2018 and (iii) Form 8-K Reports filed on January 9, 2018 and February 22, 2018.

“VIE Lessor Trusts” means the three (3) separate variable-interest entity lessor trusts that purchased from, and leased back to, the Borrower certain interests in the PVNGS Unit 2 and related common facilities, as described in Note 6 of Combined Notes to Condensed Consolidated Financial Statements in the Borrower’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018.

(c)The definition of “Interest Period” in Section 1.01 of the Credit Agreement is hereby amended by inserting the phrase “one week, or” immediately prior to the phrase “one, two, three or six months” now appearing in the second sentence thereof.

(d)The definition of “Sanctions” in Section 1.01 of the Credit Agreement is hereby amended by inserting the following at the end thereof:

“, or any other applicable Governmental Authority”

(e)Section 2.02(a) of the Credit Agreement is hereby amended by deleting the reference to “12:00 noon” in clause (y) thereof and replacing it with “1:00 p.m.”.

- (f) Section 2.03(b)(i) of the Credit Agreement is hereby amended by deleting the reference to “two” in the second sentence thereof and replacing it with “three”.
- (g) Section 2.03(b)(ii) of the Credit Agreement is hereby amended by deleting the reference to “by telephone or” therein.
- (h) Section 2.03(b)(iii) of the Credit Agreement is hereby amended by deleting the reference to “(which may be by telephone or in writing)” therein and replacing it with “(which shall be in writing)”.
- (i) Section 2.03(c)(i) of the Credit Agreement is hereby amended by deleting the reference to “by telephone if immediately confirmed” therein.
- (j) Section 2.03(g) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(g) Role of Issuing Bank. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower’s pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the applicable Issuing Bank, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(f); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank’s willful misconduct or gross negligence as determined by a final, non-appealable judgment by a court of competent jurisdiction or such Issuing Bank’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a

sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable Issuing Bank may accept documents that appear on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.”

(k)Section 2.03A(b) of the Credit Agreement is hereby amended by deleting the reference to “by telephone (confirmed by facsimile)” therein and replacing it with “in writing”.

(l)Section 2.08(b) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(b) (i) If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Advance or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Advance, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Advance does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Advance, the Agent will promptly so notify the Borrower and each Lender, whereupon each Eurodollar Rate Advance will automatically on the last day of the then existing Interest Period therefor Convert into a Base Rate Advance. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Advances shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of Eurodollar Rate Advances or, failing that, will be deemed to have Converted such request into a request for a Base Rate Advance in the amount specified therein.

(ii) Notwithstanding anything to the contrary herein, if at any time the Agent or the Required Lenders determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.08(b)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.08(b)(i) have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market

convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 8.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest, together with a copy of such amendment, is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.”

(m)Section 4.01(e) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(e) (i) The Consolidated balance sheet of the Borrower as of December 31, 2017, and the related Consolidated statements of income and cash flows of the Borrower for the fiscal year then ended, accompanied by an opinion thereon of Deloitte & Touche LLP, independent registered public accountants and the Consolidated balance sheet of the Borrower as of March 31, 2018, and the related Consolidated statements of income and cash flows of the Borrower for the three months then ended, duly certified by the chief financial officer of the Borrower, copies of which have been furnished to the Agent, fairly present in all material respects, subject, in the case of said balance sheet at March 31, 2018, and said statements of income and cash flows for the three months then ended, to year-end audit adjustments, the Consolidated financial condition of the Borrower as at such dates and the Consolidated results of the operations of the Borrower for the periods ended on such dates, all in accordance with GAAP (except as disclosed therein), and (ii) except as disclosed to the Agent in the SEC Reports or by means of a letter from the Borrower to the Lenders (such letter, if any, to be delivered to the Agent for prompt distribution to the Lenders) delivered prior to the execution and delivery of this Agreement (which, in each case, shall be satisfactory to each Lender in its sole discretion), since December 31, 2017, there has been no Material Adverse Effect.”

(n)Section 4.01(o) of the Credit Agreement is hereby amended by inserting the following at the end thereof:

“, or any other applicable Governmental Authority”

(o)Section 4.01 of the Credit Agreement is hereby amended by inserting the following new clauses (r) and (s) at the end thereof:

“(r) If Borrower is required to deliver a Beneficial Ownership Certificate, as of the Amendment No. 1 Effective Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

(s) The Borrower is not an EEA Financial Institution.”

(p) Section 5.01(a) of the Credit Agreement is hereby amended by deleting the parenthetical therein and replacing it with the following:

“(other than in the case of the PATRIOT Act, the applicable orders, rules and regulations of OFAC, or the FCPA, or any similar applicable laws)”

(q) Section 5.01(h) of the Credit Agreement is hereby amended by deleting clause (ix) therein and replacing it with the following new clauses (ix) and (x):

“(ix) as soon as possible and in any event within five days after any Authorized Officer of the Borrower knows of the occurrence thereof, notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

(x) promptly following request therefor, (a) such information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws; or (b) such other information respecting the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.”

(r) Section 7.03 of the Credit Agreement is hereby amended by deleting clause (ii) therein and replacing it with the following:

“(ii) in the absence of its own gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction.”

(s) Article VII of the Credit Agreement is hereby amended by inserting the following new Section 7.10 at the end thereof:

“Section 7.10 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Advances, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agent or the Arrangers, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c) (1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Advances, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent or any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Advances, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Advances, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Advances, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Advances, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees,

commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing."

(t) Section 8.07(b)(iii)(C) of the Credit Agreement is hereby amended and restated in its entirety as follows:

"(C) the consent of each Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and"

(u) Section 8.07(d) of the Credit Agreement is hereby amended by deleting each reference to "Loans" therein and replacing it with "Advances".

(v) Section 8.11(a) of the Credit Agreement is hereby amended by deleting the last sentence thereof in its entirety.

(w) Section 8.13 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Section 8.13 Patriot Act and Beneficial Ownership Regulation. The Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each borrower (including the Borrower), guarantor or grantor (the "Loan Parties"), which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Agent or any Lender in order to assist the Agent and such Lender in maintaining compliance with the PATRIOT Act and the Beneficial Ownership Regulation."

(x) Exhibit B to the Credit Agreement is hereby amended by inserting "[one week]" immediately before "[__ month[s]" in clause (iv) thereof.

2. Conditions of Effectiveness. This Amendment shall become effective as of the Amendment Effective Date upon the Agent's (or, in the case of clause (b), the applicable Lender's) receipt of:

(a) duly executed counterparts of the signature pages hereof by each of the Borrower, the Lenders and the Agent;

(b) in the event that the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower; and

(c) such other documents, instruments and agreements as the Agent shall reasonably request.

3. Representations and Warranties and Reaffirmations of the Borrower.

3.1. The Borrower hereby represents and warrants that (i) this Amendment and the Credit Agreement as previously executed and as modified hereby constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, subject, however, to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally, and (ii) no Default or Event of Default has occurred and is continuing.

3.2. Upon the effectiveness of this Amendment and after giving effect hereto, the Borrower hereby reaffirms all covenants, representations and warranties made in the Credit Agreement as modified hereby, and agrees that all such covenants, representations and warranties shall be deemed to have been remade as of the Amendment Effective Date, except that any such covenant, representation, or warranty that was made as of a specific date shall be considered reaffirmed only as of such date.

4. Reference to the Effect on the Credit Agreement.

4.1. Upon the effectiveness of Section 1 hereof, on and after the date hereof, each reference in the Credit Agreement (including any reference therein to “this Credit Agreement,” “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import referring thereto) or in any other Loan Document shall mean and be a reference to the Credit Agreement as modified hereby.

4.2. Except as specifically modified above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect, and are hereby ratified and confirmed.

4.3. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

4.4. Upon satisfaction of the conditions set forth in Section 2 hereof and the execution hereof by the Borrower, the Lenders and the Agent, this Amendment shall be binding upon all parties to the Credit Agreement.

4.5. This Amendment shall constitute a Loan Document.

5. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

6. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

7. Counterparts. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

ARIZONA PUBLIC SERVICE COMPANY, as the Borrower

By: /s/ Lee R. Nickloy

Name: Lee R. Nickloy

Title: Vice President and Treasurer

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

BARCLAYS BANK PLC, as Agent, a Lender and an Issuing
Bank

By: /s/ Sydney G. Denis
Name: Sydney G. Dennis
Title: Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

MIZUHO BANK, LTD., as a Lender and as an Issuing Bank

By: /s/ Tracy Rahn

Name: Tracy Rahn

Title: Authorized Signatory

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

BANK OF AMERICA, N.A., as a Lender and as an Issuing
Bank

By: /s/ Jerry Wells

Name: Jerry Wells

Title: Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

JPMORGAN CHASE BANK, N.A, as a Lender and as an
Issuing Bank

By: /s/ Nancy R. Barwig
Name: Nancy R. Barwig
Title: Credit Risk Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

SUNTRUST BANK, as a Lender and as an Issuing Bank

By: /s/ Arize Agumadu

Name: Arize Agumadu

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a
Lender and as an Issuing Bank

By: /s/ Matthew Kerr

Name: Matthew Kerr

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

MUFG UNION BANK, N.A., as a Lender and as an Issuing
Bank

By: /s/ Maria Ferracias

Name: Maria Ferracias

Title: Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

BNP PARIBAS, as a Lender and as an Issuing Bank

By: /s/ Christopher Sked

Name: Christopher Sked

Title: Managing Director

By: /s/ Nicole Rodriguez

Name: Nicole Rodriguez

Title: Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Mark W. Rogers

Name: Mark W. Rogers

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Nick Giarratano

Name: Nick Giarratano

Title: Director

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

CITIBANK, N.A., as a Lender

By: /s/ Kate Tu

Name: Kate Tu

Title: Senior Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Keven D. Smith

Name: Keven D. Smith

Title: Senior Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

ROYAL BANK OF CANADA, as a Lender

By: /s/ Frank Lambrinos

Name: Frank Lambrinos

Title: Authorized Signatory

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

TD BANK, N.A., as a Lender

By: /s/ Vijay Prasad

Name: Vijay Prasad

Title: Senior Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Michael Temnick

Name: Michael Temnick

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

BRANCH BANKING & TRUST COMPANY, as a Lender

By: /s/ Sarah Salmon

Name: Sarah Salmon

Title: Senior Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

COBANK, ACB, as a Lender

By: /s/ C. Brock Taylor

Name: C. Brock Taylor

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Madeline L. Pleskovic

Name: Madeline L. Pleskovic

Title: Vice President

Signature Page to Amendment No. 1 to Five-Year Credit Agreement
Arizona Public Service Company

PINNACLE WEST CAPITAL CORPORATION
RATIO OF EARNINGS TO FIXED CHARGES
(dollars in thousands)

	Six Months Ended June 30,		Twelve Months Ended December 31,			
	2018	2017	2016	2015	2014	2013
Earnings:						
Net income attributable to common shareholders	\$ 169,959	\$ 488,456	\$ 442,034	\$ 437,257	\$ 397,595	\$ 406,074
Income taxes	42,774	258,272	236,411	237,720	220,705	230,591
Fixed charges	124,628	228,377	213,973	202,465	208,226	206,089
Total earnings	\$ 337,361	\$ 975,105	\$ 892,418	\$ 877,442	\$ 826,526	\$ 842,754
Fixed Charges:						
Interest expense	\$ 119,662	\$ 219,796	\$ 205,720	\$ 194,964	\$ 200,950	\$ 201,888
Estimated interest portion of annual rents	4,966	8,581	8,253	7,501	7,276	4,201
Total fixed charges	\$ 124,628	\$ 228,377	\$ 213,973	\$ 202,465	\$ 208,226	\$ 206,089
Ratio of Earnings to Fixed Charges (rounded down)	2.70	4.26	4.17	4.33	3.96	4.08

ARIZONA PUBLIC SERVICE COMPANY
RATIO OF EARNINGS TO FIXED CHARGES
(dollars in thousands)

	Six Months Ended June 30,		Twelve Months Ended December 31,			
	2018	2017	2016	2015	2014	2013
Earnings:						
Net income attributable to common shareholders	\$ 187,423	\$ 504,309	\$ 462,141	\$ 450,274	\$ 421,219	\$ 424,969
Income taxes	47,882	269,168	245,842	245,841	237,360	245,095
Fixed charges	118,784	222,667	210,776	199,458	204,198	202,457
Total earnings	\$ 354,089	\$ 996,144	\$ 918,759	\$ 895,573	\$ 862,777	\$ 872,521
Fixed Charges:						
Interest charges	\$ 113,889	\$ 214,163	\$ 202,571	\$ 192,292	\$ 197,287	\$ 198,662
Estimated interest portion of annual rents	4,895	8,504	8,205	7,166	6,911	3,795
Total fixed charges	\$ 118,784	\$ 222,667	\$ 210,776	\$ 199,458	\$ 204,198	\$ 202,457
Ratio of Earnings to Fixed Charges (rounded down)	2.98	4.47	4.35	4.49	4.22	4.30

PINNACLE WEST CAPITAL CORPORATION
RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED
STOCK DIVIDEND REQUIREMENTS
(dollars in thousands)

	Six Months Ended June 30,	Twelve Months Ended December 31,				
	2018	2017	2016	2015	2014	2013
Earnings:						
Net income attributable to common shareholders	\$ 169,959	\$ 488,456	\$ 442,034	\$ 437,257	\$ 397,595	\$ 406,074
Income taxes	42,774	258,272	236,411	237,720	220,705	230,591
Fixed charges	124,628	228,377	213,973	202,465	208,226	206,089
Total earnings	\$ 337,361	\$ 975,105	\$ 892,418	\$ 877,442	\$ 826,526	\$ 842,754
Fixed Charges:						
Interest expense	\$ 119,662	\$ 219,796	\$ 205,720	\$ 194,964	\$ 200,950	\$ 201,888
Estimated interest portion of annual rents	4,966	8,581	8,253	7,501	7,276	4,201
Total fixed charges	\$ 124,628	\$ 228,377	\$ 213,973	\$ 202,465	\$ 208,226	\$ 206,089
Preferred Stock Dividend Requirements:						
Income before income taxes attributable to common shareholders	\$ 212,733	\$ 746,728	\$ 678,445	\$ 674,977	\$ 618,300	\$ 636,665
Net income from continuing operations attributable to common shareholders	169,959	488,456	442,034	437,257	397,595	406,074
Ratio of income before income taxes to net income	1.25	1.53	1.53	1.54	1.56	1.57
Preferred stock dividends	—	—	—	—	—	—
Preferred stock dividend requirements — ratio (above) times preferred stock dividends \$	—	\$ —	\$ —	\$ —	\$ —	\$ —
Fixed Charges and Preferred Stock Dividend Requirements:						
Fixed charges	\$ 124,628	\$ 228,377	\$ 213,973	\$ 202,465	\$ 208,226	\$ 206,089
Preferred stock dividend requirements	—	—	—	—	—	—
Total	\$ 124,628	\$ 228,377	\$ 213,973	\$ 202,465	\$ 208,226	\$ 206,089
Ratio of Earnings to Fixed Charges (rounded down)	<u>2.70</u>	<u>4.26</u>	<u>4.17</u>	<u>4.33</u>	<u>3.96</u>	<u>4.08</u>

CERTIFICATION

I, Donald E. Brandt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pinnacle West Capital Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2018

/s/ Donald E. Brandt

Donald E. Brandt

Chairman, President and Chief Executive Officer

CERTIFICATION

I, James R. Hatfield, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pinnacle West Capital Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2018

/s/ James R. Hatfield

James R. Hatfield

Executive Vice President and Chief Financial Officer

CERTIFICATION

I, Donald E. Brandt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Arizona Public Service Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2018

/s/ Donald E. Brandt

Donald E. Brandt

Chairman, President and Chief Executive Officer

CERTIFICATION

I, James R. Hatfield, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Arizona Public Service Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2018

/s/ James R. Hatfield

James R. Hatfield

Executive Vice President and Chief Financial Officer

**CERTIFICATION
OF
CHIEF EXECUTIVE OFFICER
AND
CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Donald E. Brandt, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Pinnacle West Capital Corporation for the quarter ended June 30, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Pinnacle West Capital Corporation.

Date: August 3, 2018

/s/ Donald E. Brandt

Donald E. Brandt
Chairman, President and
Chief Executive Officer

I, James R. Hatfield, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Pinnacle West Capital Corporation for the quarter ended June 30, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Pinnacle West Capital Corporation.

Date: August 3, 2018

/s/ James R. Hatfield

James R. Hatfield
Executive Vice President and
Chief Financial Officer

**CERTIFICATION
OF
CHIEF EXECUTIVE OFFICER
AND
CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Donald E. Brandt, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Arizona Public Service Company for the quarter ended June 30, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Arizona Public Service Company.

Date: August 3, 2018

/s/ Donald E. Brandt

Donald E. Brandt
Chairman, President and
Chief Executive Officer

I, James R. Hatfield, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Arizona Public Service Company for the quarter ended June 30, 2018 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Arizona Public Service Company.

Date: August 3, 2018

/s/ James R. Hatfield

James R. Hatfield
Executive Vice President and
Chief Financial Officer