

**SCHEDULE 15  
FINANCING AGREEMENT OBLIGATIONS**

**1. DEFINITIONS AND INTERPRETATION.**

**1.1 Definitions.** In this Schedule 15, in addition to the terms defined in Schedule 1 [Definitions and Interpretation], capitalized terms shall have the meaning set out in this Schedule 15, or if not defined herein, the meaning set out in Exhibit A to the Collateral Agency and Account Agreement (the "**Collateral Agency Agreement**"), dated as of September 1, 2015, by and among Project Co, each Trustee, the Collateral Agent and the Securities Intermediary.

**1.2 Interpretation.** Except to the extent the context or the express provisions of this Schedule 15 otherwise require, this Schedule 15 will be interpreted, *mutatis mutandis*, according to (a) the interpretation provisions set forth in Exhibit A to the Collateral Agency Agreement, as such exhibit is amended from time to time in accordance with the Financing Documents, and the interpretation provisions, if any, set forth in the applicable Financing Document to which such provision of this Schedule 15 relates and (b) the interpretation provisions set forth in Schedule 1 [Definitions and Interpretation] of this Project Implementation Agreement, but in each case solely to the extent the application of such provisions does not result in a different outcome than would otherwise apply to Project Co under the Financing Documents. For the avoidance of doubt, each reference to Exhibit A to the Collateral Agency Agreement and any Financing Document in this Schedule 15 shall include all amendments, supplements and modifications thereto. Nothing in this Schedule 15 will be interpreted to create a right of, or otherwise allow, either Project Co or Operations Co to take an action that is otherwise prohibited by the Financing Documents or to fail to take an action that is otherwise required by the Financing Documents, subject in each case to the applicable provisions regarding amendment, waiver and consent as set forth in the applicable Financing Documents.

**1.3 Updates to this Schedule 15.** It is the intent of the parties that at all times and to the extent applicable each of the Operations Co Financing Rights and Obligations and the Project Co Financing Rights and Obligations, each as defined and used in this Schedule 15, are in all respects equivalent to Project Co's similar rights and obligations or Operations Co's similar rights and obligations under the equivalent provisions of the Financing Documents, as such documents may be amended, modified or supplemented from time to time, without further action of the parties. Notwithstanding the foregoing, the parties hereby agree that from time to time upon mutual agreement of the parties, this Schedule 15 may be updated to expressly reflect (a) any amendments, modifications or supplements to the Financing Documents or (b) the delegation of any rights and obligations under any new Financing Documents between the parties.

**2. COPIES OF FINANCING DOCUMENTS; NEW FINANCING DOCUMENTS; AMENDMENTS TO FINANCING DOCUMENTS; COMMUNICATIONS; ENFORCEMENT OF PARALLEL FINANCING ISSUES**

**2.1 Copies of Financing Documents.** Operations Co acknowledges that it has in its possession a copy of each Financing Document in effect as of the Closing Date and the Continuing Disclosure Agreement and is familiar with the terms of each such Financing Document and the Continuing Disclosure Agreement, irrespective of whether Operations Co is a party thereto.

**2.2 New Financing Documents; Amendments to Financing Documents.** Project Co agrees to (a) provide to Operations Co, no later than ten (10) Business Days prior to execution thereof, a draft copy of each amendment, modification or supplement to be entered into by Project Co with respect to each Financing Document to which Operations Co is not a party and each new Financing Document to the extent such amendment, modification or supplement or new Financing Document affects in any respect the Operations Co Financing Rights and Obligations and/or the Project Co Financing Rights and Obligations (other than Excluded Obligations and/or the Excluded Rights), (b) consult with Operations Co regarding the content of each such amendment, modification or supplement or new Financing Document and (c) execute such amendment, modification or supplement or new Financing Document solely upon the prior consent of Operations Co. To the extent Project Co enters into any amendment, modification or supplement with respect to any Financing Document to which Operations Co is not a party or any new Financing Document that relates solely to the Excluded Obligations and/or the Excluded Rights, Project Co shall provide to Operations Co, no later than three (3) Business Days after execution thereof, a copy of such document.

**2.3 Communications.** To the extent that any Communication is required or permitted to be given or made by Operations Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent, any other Secured Party or any other third party as part of the Operations Co Financing Rights and Obligations, Operations Co will provide a copy of the same to Project Co at the same time as giving or making the Financing Communication to such party. To the extent that any Communication is required or permitted to be given or made by Project Co directly to the Senior Bonds Trustee, the Subordinate Bonds Trustee, the Collateral Agent or any other Secured Party as part of the Project Co Financing Rights and Obligations, Project Co will provide a copy of the same to Operations Co at the same time as giving or making the Financing Communication to such party. Project Co will (a) make all Communications required to be made by Project Co to Operations Co under this Schedule 15 and the Financing Documents, (b) provide a copy of all Communications made to Project Co (but not Operations Co) by any Secured Party or any third party in connection with any Operations Co Financing Rights and Obligations and (c) cause all Communications to be made by any Secured Party to Operations Co under the Financing Documents to be made, in each case of clauses (a), (b) and (c), in a timely manner so as to permit Operations Co to exercise and comply with the Operations Co Financing Rights and Obligations. Project Co will consult with Operations Co in respect of all Communications made by Project Co to any Secured Party or any other third party, other than Communications with respect to the Excluded Obligations and/or the Excluded Rights.

**2.4 Enforcement of Parallel Financing Issues.**

(a) Project Co will preserve, protect and pursue under the Financing Documents such rights, remedies and relief as may relate to Operations Co Financing Rights and Obligations, including Operations Co's right to receive payments under Sections 10.5 and 10.6 of this Project Implementation Agreement (a "Parallel Financing Issue") in order to secure a favorable resolution of the Parallel Financing Issue, provided that:

(1) Project Co has received written notice from Operations Co of the Parallel Financing Issue;

- (2) Operations Co will not be entitled to recover from Project Co any Direct Financing Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf other than any amounts received in respect of such Parallel Financing Issue; and
  - (3) Operations Co will indemnify Project Co in respect of any Direct Financing Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Financing Issue on Operations Co's behalf in accordance with this Section 2.4(a), provided that such indemnification will, unless Project Co has no entitlement to any amount received in respect of such Parallel Financing Issue, be proportionate to the ultimate entitlements of each party derived from pursuing resolution of such Parallel Financing Issue.
- (b) Subject to Section 2.4(c), Project Co consents to Operations Co pursuing the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 in the name of Project Co, which may, subject to the provisions of the Financing Documents, include the defense of claims where Operations Co is required to provide an indemnity to Project Co in accordance with the indemnity provisions in this Project Implementation Agreement. Operations Co will be responsible for the cost and expense of pursuing such rights, remedies and relief, provided that, if Operations Co is successful in pursuing any claim in respect thereof, such cost and expense will be allocated equitably between the parties in proportion to their ultimate entitlements to same. Project Co will, at the sole cost and expense of Operations Co, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Operations Co may reasonably request in connection with the pursuit of such Parallel Financing Issue by Operations Co.
- (c) No later than 7 days following receipt of the notice referred to in Section 2.4(a)(1), Project Co may take conduct of the Parallel Financing Issue and pursue the rights, remedies and relief under the Financing Documents described in Section 2.4(a) of this Schedule 15 on behalf of Operations Co and in accordance with the reasonable directions of Operations Co.
- (d) Project Co will not enter into any compromise or settlement of a Parallel Financing Issue which affects, in any respect, Operations Co's rights, remedies and relief under this Schedule 15, without the prior written consent of Operations Co, in its sole discretion.
- (e) Where Project Co pursues a Parallel Financing Issue in accordance with this Section 2.4, Operations Co will be kept informed of Project Co's progress under this Section 2.4 and will be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 2.4.
- (f) If Project Co does not, after having been given written notice in accordance with Section 2.4(a), take steps to pursue such Parallel Financing Issue within 2 Business Days or prior to that date being 10 Business Days prior to the expiration or other extinguishment of Project Co's right to pursue such Parallel

Financing Issue, Operations Co may, in the name of and on behalf of Project Co, pursue such Parallel Financing Issue itself subject to this Section 2.4, at its sole cost and expense, and

- (g) Operations Co will, at its own cost and within the time frame contemplated by any relevant dispute resolution procedure, use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with the pursuit of any Parallel Financing Issue.
- (h) Any claims in respect of a Parallel Financing Issue and any recoveries obtained by Project Co or Operations Co in respect of any Parallel Financing Issue under the Financing Documents will be subject to the provisions of Section 2.5 of this Schedule 15 with respect to Equivalent Financing Relief.

## **2.5 Equivalent Financing Relief.**

- (a) Except to the extent of any entitlement of Project Co (including any rights, remedies or relief) that relates solely to the Excluded Obligations and Excluded Rights, Operations Co will be entitled to receive the benefit of any such entitlement from Project Co (in accordance with and subject to the provisions of Section 2.5(c)), including the benefit of:
  - (1) any compensation, damages or other payment of any kind on the same or substantially the same grounds as Project Co is entitled to compensation, damages or other payment of any kind under the Financing Documents;
  - (2) any other relief (including any extension of time) from the performance of its obligations under, or from termination of, this Schedule 15 of the Project Implementation Agreement on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Financing Documents;
  - (3) any entitlement of Operations Co under this Schedule 15 of the Project Implementation Agreement; and
  - (4) any certificate, consent or approval granted under this Schedule 15, the Financing Documents or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Operations Co Financing Rights and Obligations, including any entitlement of Project Co to request or apply for such certificate, consent or approval, or any other person under this Schedule 15 or the Financing Documents,

but excluding any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included in any amount claimed by Operations Co.

Project Co's entitlement under the Financing Documents in respect of the matters set out in this Section 2.5 is referred to in this Schedule 15 as "Equivalent Financing Relief".

- (b) Operations Co will not be entitled to any relief from, or waiver in respect of performance of its obligations under this Schedule 15 other than:
  - (1) to the extent Project Co receives Equivalent Financing Relief; or
  - (2) to the extent expressly provided for in this Schedule 15.
- (c) Operations Co will be entitled to the benefit of any Equivalent Financing Relief to the extent that Project Co is or becomes entitled to such Equivalent Financing Relief only if, when and to the same extent that Project Co has received Equivalent Financing Relief in connection with the Financing Documents.
- (d) For purposes of Project Co asserting a claim under the Financing Documents in respect of Equivalent Financing Relief, where Operations Co has suffered Direct Financing Losses or otherwise claims relief in respect of any event or circumstance in respect of which Project Co is entitled to claim Equivalent Financing Relief, Project Co acknowledges that it will be obligated to include such Direct Financing Losses or relief claimed by Operations Co in its claim and to make such claim under the Financing Documents, provided that Operations Co's recourse against Project Co and Project Co's liability to Operations Co in respect of any such Direct Financing Losses or relief will be subject to, and strictly limited by, the provisions of Sections 2.5(a) through 2.5(c) above and that Project Co will not be required to reimburse Operations Co to the extent that such Direct Financing Losses or relief arise as a result of any failure on the part of any party (other than Project Co or Operations Co) to perform its obligations under the Financing Documents, unless and until Project Co has received compensation from or on behalf of such party under the Financing Documents, in which case, the provisions of this Section 2.5 shall apply.
- (e) For the purposes of this Schedule 15, "Direct Financing Losses" means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs, expenses (including the reasonable cost of legal or professional services), demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:
  - (1) net of related insurance proceeds and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Schedule 15 or any policy of insurance maintained or required to be maintained under the Project Implementation Agreement and the Financing Documents;
  - (2) excluding any Indirect Losses, except to the extent included in a third party claim; and
  - (3) in the case of Operations Co, without limiting the foregoing, including the full amount of the related loss or reduction of any Operations Co Payments, net of Avoidable Costs related to such condition, event or omission.

### 3. PROJECT CO FINANCING RIGHTS AND OBLIGATIONS.

The rights and obligations set forth in this Section 3 and the rights and obligations of Project Co under Section 2 are collectively referred to herein as the "Project Co Financing Rights and Obligations".

**3.1 Excluded Rights and Excluded Obligations.** The rights and obligations set forth in this Section 3.1 are solely for the benefit of, and are the responsibility of, Project Co; the parties hereto expressly agree and acknowledge that to the extent that (i) Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any obligation in connection with the following obligations, Project Co is obligated to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents (collectively, the "Excluded Obligations") and (ii) Project Co has or is granted under the Financing Documents any entitlement (including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto) in connection with the following rights, Project Co is granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of the Excluded Obligations on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents (collectively, the "Excluded Rights"):

- (a) **Debt Service, Indemnifications and Fees, Costs and Expenses.** Project Co shall have the sole responsibility with respect to its financial obligations as Borrower under the Financing Documents, including without limitation:
  - (1) its obligations to pay debt service under the Senior Loan Agreement and the Subordinate Loan Agreement, and any other Permitted Indebtedness entered into by Project Co from time to time;
  - (2) its indemnification obligations, including under Section 2.10, Section 7.02 and Section 9.10(b) of the Collateral Agency Agreement, Section 7.02 of the Senior Loan Agreement, Section 7.02 of the Subordinate Loan Agreement, Section 13.18 of the Senior Indenture and Section 13.18 of the Subordinate Indenture; and
  - (3) its obligations to pay Project Costs, including fees, costs and expenses under Section 7.01 of the Collateral Agency Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Senior Loan Agreement, Section 4.01(b), Section 6.31 and Section 8.06 of the Subordinate Loan Agreement, Section 6.1(g) and Section 6.4 of the Senior Indenture and Section 6.1(f) and Section 6.4 of the Subordinate Indenture, other than Operations Co's obligation to pay Project Costs (A) with certain portions of the payments to be made to it under Section 10.5 and 10.6 of this Project Implementation Agreement by the Borrower and (B) with the proceeds of the Capital Contributions to be made to Operations Co pursuant the Capital Contribution Agreement.

For the avoidance of doubt, Operations Co is not an obligor or guarantor with respect to Project Co's debt obligations and its financial obligations to the Secured Parties (and the obligations of Pledgor and the Sponsors) are limited solely to the Operations Co Security Documents and capital contributions securing Operations Co's obligations under this Project Implementation Agreement.

- (b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds.** Subject to the terms of the Financing Documents, Project Co shall have sole discretion and sole responsibility with respect to its obligations under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests as and when required, so as to ensure Series 2015B-2 Bonds and Series 2015C Bonds are drawn at the times and in the amounts as required or necessary to finance Project Costs.
- (c) **Investment of Project Accounts.** Project Co shall have sole discretion regarding exercising its rights under Section 5.08 of the Collateral Agency Agreement to invest and reinvest amounts on deposit in the Project Accounts and shall have sole responsibility with respect to its obligations under Section 5.08 of the Collateral Agency Agreement. Project Co agrees that it shall use commercially reasonable efforts to invest and reinvest amounts on deposit in the Project Accounts to maximize investment returns.
- (d) **Continuing Disclosure Agreement.** Project Co shall have sole responsibility with respect to non-compliance with its obligations under the Continuing Disclosure Agreement.
- (e) **Refinancing and Additional Bonds.** Project Co shall have sole discretion and sole responsibility with respect to entering into a Refinancing or accepting a loan of the proceeds of Additional Bonds.

**3.2 Other Financing Rights and Obligations of Project Co.** In furtherance of the purposes of this Schedule 15, including the grant and delegation of the Operations Co Financing Rights and Obligations:

- (a) **Project Costs of Project Co.** The parties acknowledge that, pursuant and subject to the Pass-Down Provisions of this Project Implementation Agreement, Project Co has passed down its rights and obligations under the Project Agreement to Operations Co and, pursuant to this Schedule 15, subject to the Project Co Financing Rights and Obligations, Project Co has granted rights with respect to, and delegated the administration of, its rights and obligations under the Financing Documents to Operations Co. Project Co acknowledges and agrees that, in furtherance of the foregoing, (1) it will not incur costs with respect to the Project, other than in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs, without the prior written consent of Operations Co, including, without limitation, pursuant to Section 2.06 of the Collateral Agency Agreement; (2) it will pay, or cause payment of, all costs incurred in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs; and (3) it will use commercially reasonable efforts to minimize the costs it incurs in connection with the Project Co Financing Rights and Obligations, including its own non-profit costs.

- (b) **Construction Account Withdrawal Certificate.** Project Co hereby agrees to request a requisition under Section 5.03(d) of the Collateral Agency Agreement of the amounts and to the accounts and/or payees set forth in a duly completed and executed Operations Co Construction Account Withdrawal Certificate upon receipt thereof, provided that to the extent such Operations Co Construction Account Withdrawal Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs during the Construction Period payable directly by Project Co, Project Co may include such Project Costs in its Construction Account Withdrawal Certificate.
- (c) **Funds Transfer Certificate.** Project Co hereby agrees to instruct the Collateral Agent to transfer under Section 5.09(a) of the Collateral Agency Agreement on each applicable Transfer Date (or such other date in accordance with the Collateral Agency Agreement) at least the amounts set forth in a duly completed and executed Operations Co Funds Transfer Certificate delivered to Project Co prior to such date, provided that to the extent such Operations Co Funds Transfer Certificate does not adequately provide for payment of Project Co's non-profit costs and other costs after the System Completion Date payable at clause *First* of Section 5.02(b) of the Collateral Agency Agreement, Project Co may include such Project Costs in its Funds Transfer Certificate.
- (d) **Restricted Payment Release Certificate.** Project Co hereby agrees to execute and deliver to the Collateral Agent as required a duly completed Restricted Payment Release Certificate executed by Operations Co prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.
- (e) **Reporting.** Pursuant to Section 6.05(c)(11) of the Senior Loan Agreement and the Subordinate Loan Agreement, Project Co hereby agrees to deliver within ninety (90) days after the end of each fiscal year of Project Co, to the Issuer and each Trustee a certification indicating whether or not Project Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act, the remedies Project Co intends to implement to cure such condition, event or act (including a timeline for such efforts), attached to which shall be the similar certification by Operations Co pursuant to Section 4.1(c)(11) of this Schedule 15.
- (f) **Project Co Concurrent Obligations.** Project Co hereby agrees that it will perform as set forth in the Project Implementation Agreement and the Financing Documents all of its obligations associated with, in connection with, arising from, or giving rise to, the Operations Co Financing Rights and Obligations, including executing, acknowledging or delivering such documents or taking such actions as Operations Co may request to facilitate its role as administrator under this Schedule 15.



4. **OPERATION CO FINANCING RIGHTS AND OBLIGATIONS.**

The rights and obligations set forth in this Section 4, including the Pass-Through Financing Rights and Obligations and the Operations Co Concurrent Rights and Obligations, and the rights and obligations of Operations Co under Section 2 are collectively referred to herein as the "**Operations Co Financing Rights and Obligations**". Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co is subject to certain covenants, restrictions, limitations and other obligations, each as set forth more fully therein, accepted by Project Co in consideration of the loans provided under the Senior Loan Agreement and the Subordinate Loan Agreement and Operations Co acknowledges and agrees that, pursuant to the Financing Documents to which Project Co is a party, Project Co has been granted certain entitlements and benefits, each as set forth more fully therein, with respect to its obligations thereunder.

4.1 **Pass-Through Financing Rights and Obligations.**

Other than with respect to Project Co's obligations under Section 3 of this Schedule 15, Project Co hereby delegates to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such delegation in its capacity as an administrator of, Project Co's obligations under the Financing Documents to which Project Co is a party and to the extent that Project Co is or becomes obligated under the Financing Documents to take any action, do anything or perform any such obligation, Operations Co agrees that it will be obligated as an administrator to take any such action, do any such thing or perform any such obligation hereunder in the manner and to the standard specified in the applicable Financing Documents; and other than with respect to Project Co's rights under Section 3 of this Schedule 15, Project Co hereby grants to Operation Co in its capacity as an administrator, and Operation Co hereby accepts such grant in its capacity as an administrator of, the benefit of Project Co's rights under the Financing Documents to which Project Co is a party and to the extent that Project Co has or is granted under the Financing Documents any entitlement, including, without limitation, any rights, remedies or relief, whether pursuant to the terms of the Financing Documents or any waiver or consent with respect thereto (other than the Excluded Rights), Project Co agrees that Operations Co shall be granted the benefit of such entitlements hereunder to the full extent set forth in the Financing Documents, including the benefit of any relief (including the extension of time) from the performance of Operations Co's obligations under Section 4 of this Schedule 15 on the same or substantially the same grounds as Project Co is entitled to be relieved from performance of equivalent obligations under the Financing Documents, including, in each case, without limiting the generality of the foregoing (collectively, the "**Pass-Through Financing Rights and Obligations**"):

- (a) **Payment of Project Costs.** Operations Co hereby agrees to pay Project Costs (1) with the payments to be made to it under Sections 10.5 and 10.6(a), (b) and (c) of this Project Implementation Agreement and (2) with the proceeds of the capital contributions to be made to Operations Co pursuant the Capital Contribution Agreement (including any draws from the Capital Contribution Letters of Credit).
- (b) **Accounts.** Operations Co shall keep proper records and books of accounts in which complete and correct entries shall be made of its transactions in

accordance with GAAP. Such records and books shall, to the extent permitted by Law, be subject to the inspection of Project Co, solely to the extent required for Project Co to comply with Section 6.05 of the Senior Loan Agreement and Section 6.05 of the Subordinate Loan Agreement. Project Co may take copies and extracts from such books, and records, and Operations Co will from time to time furnish, or cause to be furnished, to Project Co such information and statements as Project Co may reasonably request, all as may be reasonably necessary for the purpose of (1) Issuer or any Trustee determining performance or observance by Project Co of its obligations under the Senior Loan Agreement or the Subordinate Loan Agreement or (2) Project Co determining performance or observance by Operations Co of its obligations under this Schedule 15; provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and reports referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.

- (c) **Reporting.** Pursuant to Section 6.05(c) of the Senior Loan Agreement and Section 6.05(c) of the Subordinate Loan Agreement, Operations Co shall deliver the following information to each Trustee (or other party as specified below):
- (1) audited financial statements of Operations Co produced in accordance with GAAP and certified by its auditors within one hundred and twenty (120) days after the end of each fiscal year of Operations Co and unaudited financial statements of Operations Co produced in accordance with GAAP (except for the absence of footnotes and year-end adjustments) certified by the president, CFO or treasurer of Operations Co, within sixty (60) days after the end of each fiscal quarter of Operations Co;
  - (2) prior to the System Completion Date, monthly progress reports within twenty-eight (28) days of the relevant monthly reporting date, which progress reports shall (i) provide an assessment of the overall progress of the Design and Construction since the date of the last report (or, with respect to the first such report, the Closing Date) and setting forth a reasonable estimate as to the completion date for the applicable work, and (ii) provide a reasonably detailed description of any material delays encountered or anticipated in connection with such work, and a reasonably detailed description of the proposed course of action with respect to such delay;
  - (3) prompt notice of any proposal to suspend or abandon the Project (except to the extent the suspension is as a result of an emergency or otherwise permitted under the Transaction Documents);
  - (4) details of any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or Governmental Authority against Operations Co in connection with the Project in which the amount involved exceeds \$5,000,000 and is not covered by insurance;
  - (5) details of any "event of default" as defined in any Material Project Contract (to which Project Co is a party) or event of which it is actually

aware which with the passing of time or the giving of notice shall become an "event of default" thereunder;

- (6) prompt notice, and in no event more than five (5) Business Days after actual knowledge thereof by Operations Co, of any Operations Co Financing Default;
- (7) details of any penalties or damages due from or to Operations Co under any Material Project Contract (to which Project Co is a party);
- (8) copies of all notices of: (A) termination delivered to Operations Co with respect to any Material Project Contract; (B) any material insurance claims in excess of \$5,000,000; (C) the occurrence of any Supervening Event or any other termination or relief event, however defined, under any Material Project Contract; (D) any new or historical Release of Project Co Hazardous Substances (other than previously disclosed in writing by Project Co or Operations Co) that could reasonably be expected to cause or does cause a Material Adverse Effect; (E) any Governmental Approval that will not be granted or renewed at all, or in time to allow continued operation of the Project, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended, and that could be reasonably expected to have a Material Adverse Effect; and (F) the occurrence of any other event or condition which could reasonably be expected to have a Material Adverse Effect;
- (9) as soon as available and in any event at least thirty (30) days prior to the beginning of each fiscal year, the Annual Operating Budget for such fiscal year;
- (10) not later than sixty (60) days after the end of each fiscal quarter of Project Co occurring after the System Completion Date, Operations Co shall prepare and deliver to Project Co and each Trustee, pursuant to Section 6.17 of the Senior Loan Agreement and Section 6.17 of the Subordinate Loan Agreement, a report showing (a) the operating data for the Project for the previous quarter, including total Project Revenues, total operating, maintenance and capital expenditures incurred and Deductions accumulated during the period, (b) the variances for such periods between the actual Project Revenues and the budgeted Project Revenues, as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more and (c) the variances for such period between the actual routine operating, maintenance and capital expenditures incurred and the budgeted routine operating, maintenance and capital expenditures as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more; and
- (11) within ninety (90) days after the end of each fiscal year of Project Co, Operations Co shall furnish to Project Co a certification indicating whether or not Operations Co is aware of any condition, event or act which constitutes an "event of default", or which would constitute an "event of default" with the giving of notice or passage of time, or both, under either

of the Senior Indenture or the Senior Loan Agreement, or either of the Subordinate Indenture or the Subordinate Loan Agreement, and if it is aware of any such condition, event or act that constitutes (or would constitute) an Operations Co Financing Default, the remedies Operations Co intends to implement to cure such condition, event or act (including a timeline for such efforts);

provided, that the above requirements shall not require that Operations Co produce a separate record or report to the extent that the records and records referred to in Schedule 14 [Records and Reports] are sufficient to comply with the Financing Documents.

- (d) **Continuing Disclosure Agreement.** Operations Co hereby agrees to provide any information required to be provided by Operations Co under Section 4.1(c) (other than clause (10)) of this Schedule 15 to the Dissemination Agent as required under the Senior Loan Agreement, the Subordinate Loan Agreement and the Continuing Disclosure Agreement and to provide any other information known or in the control of Operations Co that is required to be delivered by Project Co pursuant to the Continuing Disclosure Agreement upon the reasonable request of Project Co.
- (e) **Agents and Auditors.** Operations Co hereby agrees to retain on behalf of Project Co, if not retained directly by Project Co, any agents, independent auditors or other third parties required to be retained by Project Co in order to comply with the Financing Documents to which Project Co is a party.
- (f) **Sale of Assets.** Pursuant to Section 6.13(b) of the Senior Loan Agreement and Section 6.13(b) of the Subordinate Loan Agreement, Operations Co agrees not to sell, transfer, lease or assign or otherwise dispose of any of the assets of the Project with a fair market value in excess of \$5,000,000 per year in the aggregate except for the following:
  - (1) sales or other dispositions of damaged, obsolete, worn out or defective equipment in the ordinary course of business;
  - (2) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Project Agreement and this Project Implementation Agreement;
  - (3) sales or other dispositions of surplus property not required for the construction or operation of the Project in the ordinary course of business; and
  - (4) sales that would constitute a Permitted Security Interest.
- (g) **Arms Length Transactions.** Pursuant to Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement, Operations Co agrees not to enter into any material transactions with any Affiliates (except to the extent such non-arm's-length agreements are contemplated in the Transaction Documents) unless such transaction is fair and commercially reasonable to Operations Co on an arm's length basis and contains terms no

less favorable, taken as a whole, to such entity than those which would be included in an arm's-length transaction with a non-Affiliate.

- (h) **Access to the Project.** Pursuant to Section 6.19 of the Senior Loan Agreement and Section 6.19 of the Subordinate Loan Agreement, Operations Co agrees to use its best efforts to give the Trustee, the Issuer and their consultants and representatives access to the Lands and the NG-KIH System, at the sole cost of such Persons, at any reasonable time and as often as may reasonably be requested, and, upon reasonable prior notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project or the ongoing business of the Lands and the NG-KIH System, and permit the Trustee, the Issuer and their respective consultants and representatives to discuss the Project and the business, accounts, operations, properties and financial and other conditions of Project Co and Operations Co with officers of Project Co and Operations Co and to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Contract, subject in all cases to all applicable confidentiality undertakings and operational or contractual requirements or limitations. Operations Co further agrees to offer all reasonable assistance to such Persons in connection with any such visit.
- (i) **Permitted Security Interests.** Pursuant to Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement, Operations Co agrees to not create or permit to exist any Security Interest on any property or asset, including its revenues (including accounts receivable) or rights in respect of any thereof, now owned or hereafter acquired by it, except Permitted Security Interests, solely to the extent such unpermitted Security Interest would otherwise cause Project Co to fail to comply with its obligations under Section 6.20 of the Senior Loan Agreement and Section 6.20 of the Subordinate Loan Agreement.
- (j) **Rating Agencies.** Pursuant to Section 6.21 of the Senior Loan Agreement and Section 6.21 of the Subordinate Loan Agreement, Operations Co agrees to use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds, in connection with any review which may be undertaken by such Nationally Recognized Rating Agency and facilitate compliance by Project Co with its obligations to enter into and comply with a reasonable and customary "ratings surveillance" agreement with at least one Nationally Recognized Rating Agency rating the Series 2015 Senior Bonds and, if applicable, any Additional Parity Bonds.
- (k) **Material Project Contracts.** Pursuant to Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to not amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in such Section 6.22(a) of the Senior Loan Agreement and Section 6.22(a) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior

Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing:

- (1) *Change Orders.* Pursuant to Section 6.22(a)(i) of the Senior Loan Agreement and Section 6.22(a)(i) of the Subordinate Loan Agreement, Project Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement, Project Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Project Co (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars (\$10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Project Co (directly or indirectly through Operations Co) to exceed the ten million dollars (\$10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, the Borrower may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by the Borrower (directly or indirectly through Operations Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars (\$1,000,000) in the aggregate. Operations Co agrees to coordinate with Technical Advisor to cause Technical Advisor to provide such certifications as required.
- (2) *Permitted Amendments, Waivers and Terminations.* Pursuant to Section 6.22(a)(ii) of the Senior Loan Agreement and Section 6.22(a)(ii) of the Subordinate Loan Agreement, Project Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material

Project Contract to which it is a party (other than the Project Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect and, solely with respect to termination of the Implementation Agreement, will not adversely impact the rights of the Senior Secured Parties under the Borrower Direct Agreement. In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Project Co is a party is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, Operations Co on behalf of Project Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.

- (l) **Third Party Infrastructure Agreements.** Pursuant to Section 6.22(a)(iii) of the Senior Loan Agreement and Section 6.22(a)(iii) of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co may enter into agreements or other contractual arrangements with Third Party Infrastructure Providers as contemplated in the Project Agreement without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds, and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds. Operations Co hereby agrees to assist Project Co with negotiating, finalizing and entering into such contractual arrangements with such Third Party Infrastructure Providers in compliance with the terms of the Project Agreement and the parties hereby acknowledge and agree that the rights and obligations under such arrangements, when effective, form part of the Pass-Through Financing Rights and Obligations.
- (m) **Performance and Enforcement of the Material Project Contracts.** Pursuant to Sections 6.22(b) of the Senior Loan Agreement and Sections 6.22(b) of the Subordinate Loan Agreement, Operations Co agrees to perform all requirements, duties and obligations under the Material Project Contracts to which it is a party, except where the failure to so perform such requirements, duties and obligations could not reasonably be expected to have a Material Adverse Effect; provided that the parties acknowledge that this provision is solely to facilitate compliance by Project Co and Operations Co with the Financing Documents and shall not otherwise limit or affect or be construed to limit or affect the obligations and liabilities of either Project Co or Operations Co under any Material Project Contract. Pursuant to Sections 6.22(c) of the Senior Loan Agreement and Sections 6.22(c) of the Subordinate Loan Agreement, Operations Co agrees to (i) enforce against the relevant counterparty (other than Operations Co) each covenant or obligation of the Material Project Contract to which it is a party in accordance with its terms and (ii) protect and defend its rights under each Material Project Contract to which it is a party and any matters related thereto, except in each case under clauses (i) and (ii) above, to the extent that failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.
- (n) **No Distributions or Payments on Subordinate Secured Obligations.** Pursuant to Section 6.23 of the Senior Loan Agreement and Section 6.23 of the

Subordinate Loan Agreement, Operations Co agrees to not deliver an Operations Co Funds Transfer Certificate that requests the transfer of funds:

- (1) (A) from the Lock-up Account to any other account or payee or (B) from the Revenue Account at clause *Thirteenth* of Section 5.02(b) of the Collateral Agency Agreement to any account or payee other than to the Lock-up Account, in each case, unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement; and
  - (2) to cause the repayment of any Subordinate Secured Obligations from the Revenue Account at clauses *Eighth* or *Ninth* of Section 5.02(b) of the Collateral Agency Agreement unless the Restricted Payment Conditions are satisfied or waived in accordance with the terms of the Collateral Agency Agreement.
- (o) **Project Revenues.** Pursuant to Section 6.24 of the Senior Loan Agreement and Section 6.24 of the Subordinate Loan Agreement, Operations Co acknowledges that all Project Revenues received by Project Co shall be applied in accordance with the Financing Documents and agrees to not change the irrevocable instructions of the Authority to deposit all Project Revenues with the Collateral Agent in accordance with the Financing Documents, except to the extent consistent with the terms of the Financing Documents.
- (p) **Public Purpose Covenants and First Amendment.** Pursuant to Sections 6.29 and 6.30 of the Senior Loan Agreement and Sections 6.29 and 6.30 of the Subordinate Loan Agreement, solely to the extent required for Project Co to comply with or cause compliance with such covenants, Operations Co agrees to comply with, or cause compliance with, such covenants.
- (q) **Refinancing and Additional Bonds.** In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to any Refinancing of Senior Secured Obligations and/or the issuance of any Additional Senior Bonds, Operations Co agrees to coordinate and facilitate compliance with the applicable conditions (if any) to any such Refinancing and/or issuance of such Additional Senior Bonds pursuant to the definitions of "Other Permitted Senior Secured Indebtedness" and "Other Permitted Senior Secured Indebtedness Conditions" set forth in Exhibit A to the Collateral Agency Agreement.
- (r) **Compliance with Laws.** Pursuant to Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement, Operations Co acknowledges that Project Co has agreed to obtain on a reasonably timely basis, maintain and comply with, in each case in all material respects, or in the case of such permits as are required to be obtained by Operations Co or other third parties, to the extent possible, use reasonable efforts to cause Operations Co or such other third parties to obtain and thereafter maintain in full force and effect, all required Permits and all applicable Laws except for which failure to comply would not reasonably be expected to have a Material Adverse Effect. Operations Co hereby agrees to coordinate and facilitate Project Co's compliance with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate



Loan Agreement. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.07 of the Senior Loan Agreement and Section 6.07 of the Subordinate Loan Agreement.

- (s) **Taxes.** Pursuant to Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement, Operations Co agrees to coordinate and facilitate Project Co's obligation to timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings and Project Co has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge could not reasonably be expected to have a Material Adverse Effect. Operations Co agrees to comply, *mutatis mutandis*, with Section 6.11 of the Senior Loan Agreement and Section 6.11 of the Subordinate Loan Agreement.
- (t) **Limitation of Fundamental Changes.** Pursuant to Section 6.13(a) of the Senior Loan Agreement and Section 6.13(a) of the Subordinate Loan Agreement, Operations Co agrees, *mutatis mutandis*, that it shall not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of Operations Co, as the case may be.
- (u) **Limitations on Indebtedness.** Pursuant to Section 6.27 of the Senior Loan Agreement and Section 6.27 of the Subordinate Loan Agreement, Operations Co agrees that, *mutatis mutandis*, it shall not create, incur or be liable for any Indebtedness, except Permitted Indebtedness.

#### 4.2 Operations Co Concurrent Rights and Obligations.

The parties acknowledge that, pursuant to the Financing Documents to which Project Co is a party, Operations Co has been granted express consent rights and other rights, each as set forth more fully therein, and the parties hereby agree that Operations Co may enforce each such right as if each such right were set forth expressly herein, and the parties further acknowledge that, pursuant to the Financing Documents to which Project Co is a party, Operations Co has express obligations to perform or refrain from performing certain actions, each as set forth more fully therein, and Operations Co hereby agrees to comply with such obligations as if each such obligation were set forth expressly herein, including, in each case, without limiting the generality of the foregoing (collectively, the "Operations Co Concurrent Rights and Obligations"):

- (a) **Consent to Appointment of Trustees and Other Agents.** To the extent Project Co has a right to consent to the appointment of any successor, replacement, concurrent or new Trustee, Collateral Agent, Securities Intermediary or other agent or advisor pursuant to the terms of the Financing Documents, Project Co agrees not to consent to the appointment of any such agent or advisor without the prior consent of Operations Co (such consent not to be unreasonably withheld or delayed). The parties acknowledge the express rights granted to Operations Co pursuant to Section 2.11(a) (consent rights with respect to appointment of successor Collateral Agents) and Section 5.11(d) (consent rights with respect to appointment of replacement Securities Intermediaries) of the Collateral Agency Agreement, Section 8.4(b) (consent

rights with respect to appointment of successor Trustees) of the Senior Indenture and the definition of "Bond Counsel" therein, and Section 8.4(b) (consent rights with respect to appointment of successor Trustees) of the Subordinate Indenture and the definition of "Bond Counsel" therein, and Operations Co acknowledges its obligations under Section 2.11(b) of the Collateral Agency Agreement to execute and deliver all instruments necessary to appoint any Person as a Co-Collateral Agent or substitute Collateral Agent.

- (b) **Refinancing and Additional Bonds.** Reference is hereby made to the provisions of Section 5.3 and Section 5.4 of this Project Implementation Agreement.
- (c) **Operations Co Funds Transfer Certificate.** Operations Co acknowledges and agrees to provide to Project Co a duly completed and executed funds transfer certificate, substantially in the form of Exhibit B-2 attached to the Collateral Agency Agreement, setting forth the transfers required from the Revenue Account under Section 5.02(b) of the Collateral Agency Agreement, the Lock-up Account under Section 5.05 of the Collateral Agency Agreement and/or the Insurance Proceeds Account under Section 5.06 of the Collateral Agency Agreement, as applicable, no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred (or such other time as is sufficient for such transfers to be made on the proposed date). Operations Co agrees to provide to Project Co a written request, setting forth the transfers required from any other Project Account and sufficient in accordance with the terms of the Collateral Agency Agreement, containing the requested transfer amount and payees, by such time as is required for such transfers to be made on the proposed date. Each written request under this Section 4.2(c) is an "Operations Co Funds Transfer Certificate". Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate when required to support transfers pursuant to sub-clause (iii) of clause *Third* of Section 5.02(b) of the Collateral Agency Agreement for the payment of excess operating, maintenance and capital expenditures.
- (d) **Operations Co Construction Account Withdrawal Certificate.** Operations Co acknowledges and agrees to provide to Project Co a duly completed certificate signed by a Responsible Officer of Operations Co, substantially in the form of Exhibit E-2 attached to the Collateral Agency Agreement (each, an "Operations Co Construction Account Withdrawal Certificate"), setting forth the Project Costs to be paid from time to time prior to the System Completion Date in accordance with Section 5.03(d) of the Collateral Agency Agreement, no later than the third (3<sup>rd</sup>) Business Day prior to the proposed date of disbursement (or such other time as is sufficient for such disbursements to be made on the proposed date). Operations Co shall coordinate with the Technical Advisor in order to cause the Technical Advisor to deliver a duly completed and executed certificate, substantially in the form of Exhibit E-3 attached to the Collateral Agency Agreement, when required to support requisitions for the payment of construction costs; provided that no such certificate shall be required to be delivered for requisitions solely for payment of interest.

- (e) **Restricted Payment Release Certificate.** Operations Co agrees to execute and deliver to Project Co as required a duly completed and executed Restricted Payment Release Certificate in accordance with Section 5.05(c) of the Collateral Agency Agreement prior to each Transfer Date and each other date as required to make the transfers from the Revenue Account and the Lock-up Account in accordance with the Collateral Agency Agreement.
- (f) **Insurance.** Operations Co shall cause Collateral Agent to be named as an "additional insured" under any insurance policies related to "All Risk" Builder's Risk Insurance" and "Project Finance Commercial General Liability Insurance" (as such terms are used in the Project Agreement, including Schedule 5 thereto) maintained by Operations Co pursuant to Section 6.1 of this Project Implementation Agreement.
- (g) **Use of Insurance Proceeds.** Reference is hereby made to the provisions of Section 6.5 of this Project Implementation Agreement. Operations Co shall deposit, or cause to be deposited, to the Insurance Proceeds Account all Insurance Proceeds (other than, for the avoidance of doubt, proceeds received in respect of delayed start-up and business interruption insurance or loss of advance profits insurance) received or entitled to be received by Operations Co. To the extent that, at any time following deposit of Insurance Proceeds into the Insurance Proceeds Account, Project Co has the right to determine whether or not to use such funds to restore the Project because the terms of the Project Agreement, the Project Implementation Agreement and the Financing Documents do not require that the Project be restored or reinstated, Project Co agrees to elect not to restore the affected property only so long as Operations Co has provided its written consent.
- (h) **Termination of Project Accounts.** Pursuant to Section 5.10 of the Collateral Agency Agreement, upon the satisfaction in full of the Secured Obligations, Project Co may request that the Collateral Agent close certain Project Accounts and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by Project Co. Project Co agrees not to give any of the foregoing requests or directions without the prior written consent of Operations Co.
- (i) **Inadequately Identified Amounts and Other Requests for Instruction.** Pursuant to Section 5.12 of the Collateral Agency Agreement, Project Co has the right to give instructions to the Collateral Agent regarding transfers that have been inadequately identified. Upon receipt of any request from Collateral Agent for instruction from Project Co pursuant to Section 5.12 of the Collateral Agency Agreement or any other request from Collateral Agent to Project Co under the Financing Documents for information, clarification or instruction (other than in connection with the Excluded Rights and/or Excluded Obligations), Project Co shall not provide such information, clarification or instruction without the prior written consent of Operations Co.
- (j) **Supplemental Indentures and Amendments to the Financing Documents.** Pursuant to Section 9.02(a) of the Collateral Agency Agreement, Section 9.05 of the Senior Loan Agreement, Section 9.4 and Article X of the Senior Indenture, Section 9.05 of the Subordinate Loan Agreement, and Section 9.4 and Article X

of the Subordinate Indenture, Project Co agrees not to (A) consent to such Supplemental Indentures or any amendment, modification or supplement to the Financing Documents or (B) execute and deliver any amendment, modification or supplement to any of the Financing Documents to which Project Co is a party, in each case, that may adversely affect Operations Co without the prior written consent of Operations Co.

- (k) **Additional Senior Bonds.** Pursuant to Section 3.5(d)(3) of the Senior Indenture, no Additional Senior Bonds shall be issued without the written consent of Operations Co, dated the date of issuance of such proposed Additional Senior Bonds, subject to Section 5.3 of this Project Implementation Agreement.
- (l) **Material Project Contracts.** Pursuant to Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement, Operations Co acknowledges that it is not permitted to amend, assign, waive or modify in any material respect or terminate any Material Project Contracts or enter into any other material agreement (other than in the ordinary course or as set forth in Section 6.22(d) of the Senior Loan Agreement and Section 6.22(d) of the Subordinate Loan Agreement) without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds). Notwithstanding the foregoing, the parties acknowledge and agree as follows:
  - (1) *Change Orders relating to the Project Agreement.* Operations Co may enter into change orders or amendments to implement change orders under the Material Project Contracts to which it is a party or new agreements, in each case, required for compliance with the Project Agreement (including, without limitation, with respect to Authority Changes, other written directives issued under the Project Agreement or to implement a System Refresh) or applicable law or regulation. In addition to the foregoing, with respect to the Design-Build Agreement, Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Design-Build Agreement if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of Project Co) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, ten million dollars (\$10,000,000) in the aggregate; provided, that any change order or amendment to implement change orders, as applicable, the cost of which causes Operations Co (on behalf of Project Co) to exceed the ten million dollars (\$10,000,000) threshold with respect to the Design-Build Agreement will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that (A) in its reasonable belief, sufficient funds are available to the Borrower to pay the aggregate amount of Project Costs required to be incurred by the Borrower for the Design and Construction of the Project (including the

cost of the change order or amendment to implement change orders at issue); and (B) there is a reasonable expectation of the System Completion Date occurring on or prior to the Bond Holder Long Stop Deadline; and with respect to the Services Contract, Operations Co may enter into change orders or amendments to implement change orders, as applicable, under any of the Material Project Contracts to which it is a party in respect of the Services Contract if such change order or amendments, as applicable, will not require the payment by Operations Co (on behalf of the Borrower) in any fiscal year to exceed, net of any payments received from the Authority or any other party in respect of any such change order or amendment, as applicable, one million dollars (\$1,000,000) in the aggregate.

- (2) *Permitted Amendments, Waivers and Terminations.* Operations Co may amend or waive any Material Project Contract to which it is a party, or terminate any Material Project Contract to which it is a party (other than this Project Implementation Agreement), if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect. The parties acknowledge and agree that the termination of either the Design-Build Agreement or the Services Contract, as applicable, prior to the satisfaction of the corresponding design, construction or services obligations of Project Co under the Project Agreement, as applicable, is permitted pursuant to Section 6.22(d)(iii) of the Senior Loan Agreement and Section 6.22(d)(iii) of the Subordinate Loan Agreement so long as Operations Co enters into a replacement agreement with an Acceptable Substitute (or another counterparty upon the prior written consent of the Required Owners (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds)). In all cases, if a Material Project Contract or counterparty to a Material Project Contract to which Operations Co is a party is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, Operations Co will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any replacement counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced.
- (3) *Acceptable Substitute.* Reference is hereby made to the provisions of Section 4.8 of this Project Implementation Agreement. In each case, solely to the extent required for Project Co to comply with the Financing Documents with respect to replacement contractors for the Design-Builder or the Service Provider, as applicable, and replacement contracts in place of the Design-Build Agreement or the Services Contract, as applicable, Operations Co agrees to (A) contract with replacement contractors that comply with the requirements set forth in the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement and (B) submit to the Collateral Agent the certificates and opinions required by the definition of "Acceptable Substitute" set forth in Exhibit A to the Collateral Agency Agreement.

- (m) **Wholesaler Arrangements.** Pursuant to Section 6.22(d)(iv) of the Senior Loan Agreement and Section 6.22(d)(iv) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into the Wholesaler Agreement or other contractual arrangement with the Wholesaler without the prior written consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if such arrangement:
- (1) complies with Section 6.15 of the Senior Loan Agreement and Section 6.15 of the Subordinate Loan Agreement;
  - (2) does not expressly modify the obligations of Project Co, Operations Co, the Design-Builder and/or the Service Provider under the Material Project Contracts to which such entity is a party with respect to the Project and the Project Agreement;
  - (3) provides that all amounts payable to Operations Co shall be paid in arrears with customary payment terms, including invoicing;
  - (4) contains customary indemnity provisions for the benefit of Operations Co; and
  - (5) would not otherwise cause, or be reasonably expected to cause, a Material Adverse Effect.
- (n) **Permitted Change Orders and other Actions with respect to the Wholesaler Arrangements.** Pursuant to Section 6.22(d)(ii) of the Senior Loan Agreement and Section 6.22(d)(ii) of the Subordinate Loan Agreement, Operations Co agrees that it is permitted to enter into change orders or amendments to implement change orders, as applicable, under the Wholesaler Agreement, and initiate Enhancement Requests or amendments to implement Enhancement Requests under the Design-Build Agreement or the Services Contract, as applicable, or enter into new agreements, in each case, with respect to Wholesaler Enhancements or Wholesaler Services, so long as:
- (1) the costs of implementing such change order, Enhancement Request or amendment, as applicable, will be paid for by Wholesaler in arrears with customary payment terms, including invoicing; and
  - (2) such change order, Enhancement Request or amendment, as applicable:
    - (A) is not contrary to Law;
    - (B) does not render the insurance policies required under the Project Agreement void or voidable unless the Wholesaler agrees to provide replacement security satisfactory to the Technical Advisor, acting reasonably;
    - (C) does not cause the revocation of any Permit required by Project Co to perform its obligations under the Project Agreement, which

Permit would not, using reasonable efforts, be capable of amendment or renewal;

- (D) does not require a new Permit for Project Co to perform its obligations under the Project Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; and
- (E) does not cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under the Project Agreement, provided that such Permit was previously required but, at the time of such change order, Enhancement Request or amendment, as applicable, had not been obtained, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable.

Operations Co acknowledges and agrees that the costs of implementing change orders, Enhancement Requests or amendments to implement the foregoing with respect to the Wholesaler Agreement shall not exceed five million dollars (\$5,000,000) in the aggregate per fiscal year; provided, that any change order, Enhancement Request or amendment to implement the foregoing, as applicable, the cost of which causes Operations Co to exceed the five million dollars (\$5,000,000) threshold will be permitted without the consent of the Required Owners of Outstanding Series 2015 Senior Bonds (and if no Senior Bonds are Outstanding then the prior written consent of the Owners of not less than a majority of the aggregate principal amount of Outstanding Subordinate Bonds) if the Technical Advisor certifies that such Wholesaler Enhancements and/or Wholesaler Services, as applicable (and the undertakings by Operations Co and the Design-Builder and/or the Service Provider, as applicable, with respect thereto) in its reasonable belief, would not materially and adversely affect the risk allocation and payment regime under the Project Agreement and the Financing Documents with respect to the Design, Construction or Services. Operations Co also hereby agrees that, other than with respect to the foregoing amendments to implement change orders, it may otherwise amend, waive or terminate the Wholesaler Agreement if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect.

**4.3 Other Financing Rights and Obligations of Operations Co.** In furtherance of the purposes of this Schedule 15:

- (a) **Investment of Project Accounts.** In accordance with Section 5.08(g) of the Collateral Agency Agreement, Project Co may consult with Operations Co regarding Permitted Investments and its investment strategies for the amounts on deposit in the Project Accounts and Operations Co may suggest Permitted Investments and investment strategies to Project Co to assist Project Co in making its investment decisions.
- (b) **Drawing of Series 2015B-2 Bonds and Series 2015C Bonds.** Operations Co agrees to communicate and consult with Project Co regarding expected future Project Costs to facilitate Project Co's compliance with Project Co's obligations

under the Senior Loan Agreement and the Subordinate Loan Agreement to deliver Draw Requests.

- (c) **Enforcement of Parallel Financing Issues.** Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 2.4 of this Schedule 15 to pursue any rights, remedies or relief under the Financing Documents in the name of Project Co, including the right to enforce any issuance or draw obligations of the Senior Purchaser or the Subordinate Purchasers, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.
- (d) **Maintenance of Existence.** Pursuant to Section 6.03 of the Senior Loan Agreement and Section 6.03 of the Subordinate Loan Agreement, Operations Co hereby agrees to (i) maintain (a) its legal existence as a limited liability company, (b) its good standing and qualification to do business in the Authority and in every jurisdiction where such qualification is required by applicable Law and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and (ii) not amend or modify its constitution documentation in a manner that is materially adverse to the Secured Parties.

**4.4 Operations Co Security Documents.** In accordance with Section 3.04 of the Senior Loan Agreement and Section 3.04 of the Subordinate Loan Agreement:

- (a) **Operations Co Security Agreement.** Operations Co shall execute and deliver a security agreement in the form of Exhibit A hereto (the "Operations Co Security Agreement") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Operations Co Security Agreement must be provided by no later than the Closing Date.
- (b) **Pledge Agreement.** Operations Co shall cause the Pledgor to execute and deliver a pledge agreement in the form of Exhibit B hereto (the "Pledge Agreement") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Such Pledge Agreement must be provided by no later than the Closing Date.
- (c) **Operations Co Direct Agreements.** Operations Co shall execute and deliver, and shall cause the Design-BUILDER and each Design-BUILDER Guarantor to each execute and deliver, the Design-BUILDER Direct Agreement in the form of Exhibit C-1 hereto. Operations Co shall execute and deliver, and shall cause the Service Provider and the Service Provider Guarantor to each execute and deliver, the Service Provider Direct Agreement in the form of Exhibit C-2 hereto. Such Design-BUILDER Direct Agreement and Service Provider Direct Agreement must be provided by no later than the Closing Date.
- (d) **Operations Co Operating Account.** Operations Co confirms that an operating account (the "Operations Co Operating Account") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, in its capacity as a deposit account bank (the "Deposit Account Bank"), and such account shall be maintained in the name of Operations Co.



The Operations Co Operating Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. The Operations Co Operating Account shall be subject to an Deposit Account Control Agreement (substantially in the form attached as Exhibit G to the Collateral Agency Agreement) (each a "Deposit Account Control Agreement"). Each disbursement of funds from the Construction Account (and any sub-account thereof) in accordance with Section 5.03(d) of the Collateral Agency Agreement that is to be paid to Operations Co directly for the payment or reimbursement of Project Costs shall be made to the Operations Co Operating Account. There shall also be transferred to the Operations Co Operating Account (A) amounts transferred from the Revenue Account in accordance with clause *Third* of Section 5.02(b) of the Collateral Agency Agreement and (B) Capital Contributions in accordance with the Capital Contribution Agreement. Withdrawals from the Operations Co Operating Account will not require compliance with any conditions, other than that Project Revenues on deposit therein must be applied to Project Costs. The Operations Co Operating Account shall at all times be maintained with a single Deposit Account Bank.

- (e) **Operations Co Distribution Account.** Operations Co confirms that a distribution account (the "Operations Co Distribution Account") has been established or shall be established no later than the Closing Date with U.S. Bank National Association, and such account (with such bank or any replacement or successor institution) shall be maintained in the name of Operations Co. The Operations Co Distribution Account shall not be subject to any Security Interest pursuant to any Operations Co Security Document and shall not (including any funds on deposit therein) constitute any part of the Operations Co Collateral and no Secured Party (including the Collateral Agent) shall have any right with respect thereto. The Operations Co Distribution Account shall be funded with the Operations Co Availability Payments due and owing to Operations Co from time to time under Section 10.6 of this Project Implementation Agreement in accordance with clause *Tenth* of Section 5.02(b) of the Collateral Agency Agreement and Section 5.05(b) of the Collateral Agency Agreement. Operations Co will have the exclusive right to withdraw or otherwise dispose of funds on deposit in the Operations Co Distribution Account to any other account or to such other Person as directed by Operations Co in its sole discretion without any restriction or condition at any time.
- (f) **Capital Contribution Agreement and Capital Contribution Letters of Credit.** Operations Co shall execute and deliver, and cause the other parties thereto to execute and deliver, a Capital Contribution Agreement in the form of Exhibit E hereto (the "Capital Contribution Agreement") as security for all obligations of Operations Co under this Schedule 15 and the Project Implementation Agreement. Operations Co shall cause each Capital Contribution Letter of Credit, each in the form and subject to the requirements set forth in the Capital Contribution Agreement, to be delivered to the Collateral Agent as contemplated in the Capital Contribution Agreement. Such Capital Contribution Agreement and Capital Contribution Letters of Credit must be provided by no later than the Closing Date. The parties hereto agree that, as compensation for providing the Capital Contribution Letters of Credit, Operations Co shall pay to the Sponsors, on a monthly basis commencing on the Closing Date, an amount equal to the

amount for such fees for each such month set forth in the Base Case Model delivered on the Closing Date (the "Capital Contribution LC Fees").

- (g) **Capital Cash Collateral Accounts.** On behalf of the Sponsors, Operations Co hereby agrees to establish cash collateral accounts (each a "Capital Cash Collateral Account") with the Deposit Account Bank and each such Capital Cash Collateral Account shall be maintained in the name of Operations Co. Each Capital Cash Collateral Account (including any funds on deposit therein from time to time) shall be subject to the Security Interest granted pursuant to the Operations Co Security Agreement and shall constitute part of the Operations Co Collateral. Operations Co shall establish a Capital Cash Collateral Account on behalf of a Sponsor prior to any draw on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement. Prior to the deposit of any amounts into any Capital Cash Collateral Account, the Collateral Agent, Operations Co and the Deposit Account Bank shall have executed a Deposit Account Control Agreement with respect to the Capital Cash Collateral Account. Amounts deposited in any Capital Cash Collateral Account pursuant to a draw made by the Collateral Agent on such Sponsor's Capital Contribution Letter of Credit pursuant to Section 2.3(b) or (c) of the Capital Contribution Agreement shall constitute cash collateral security for the performance by the Sponsor whose Capital Contribution Letter of Credit was drawn of its obligations under the Capital Contribution Agreement. Amounts shall be transferred from any such Capital Cash Collateral Account in accordance with the terms of the Capital Contribution Agreement.
- (h) **Change of Deposit Account Bank.** Operations Co may change the Deposit Account Bank with respect to the Operations Co Operating Account and/or any Capital Cash Collateral Accounts at its sole discretion upon ten (10) Business Days written notice to each Trustee, the Collateral Agent and Project Co, to another bank; provided that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than \$500,000,000. If the Deposit Account Bank at any time gives notice that it no longer wishes to act as a Deposit Account Bank or that it will no longer be subject to the terms of an Deposit Account Control Agreement, or that it will no longer act upon the instructions of Operations Co or the Collateral Agent in accordance with the applicable Deposit Account Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason (a "Termination Notice"), Operations Co shall promptly (and, to the extent possible, prior to the effective date of such Termination Notice) appoint a replacement Deposit Account Bank; provided that Operations Co delivers an opinion of counsel to the effect that after the appointment of such replacement Deposit Account Bank, the Collateral Agent will remain perfected in any accounts held thereunder; provided, further, that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the Authority having a combined capital and surplus of not less than \$500,000,000. Operations Co shall notify each Trustee, the Collateral Agent, and Project Co of any Termination Notice promptly upon receipt thereof by Operations Co. The new Deposit Account Bank shall be required, prior to becoming the Deposit Account Bank, to (i) enter into one or more Deposit Account Control Agreements, substantially in the form of Exhibit G

to the Collateral Agency Agreement or in such other form as may be approved by the Instructing Trustee and the Collateral Agent (such approval not to be unreasonably withheld, delayed or conditioned), with Operations Co and the Collateral Agent and carry out such further acts as the Collateral Agent may reasonably request in order to perfect the security interest of the Collateral Agent in the Operations Co Operating Account and/or any Capital Cash Collateral Account, as applicable, and (ii) agree to provide the reports with respect to such account(s) similar to the reports required to be provided pursuant to Section 2.12(b) and (c) of the Collateral Agency Agreement.

- (i) **Further Assurances.** Operations Co will, at Project Co's cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Project Co's right, title and interest in and to this Project Implementation Agreement and the Project, including executing and delivering the Lenders' Remedies Agreement in the form of Exhibit D hereto. Such Lenders' Remedies Agreement must be provided by no later than the Closing Date. Operations Co will, at its own cost and expense, execute and deliver to the Collateral Agent (with a copy to each Trustee and Project Co) all such reasonable acknowledgements, agreements, undertakings and other documents as the Collateral Agent or Project Co may require in connection with their taking security over Operations Co's right, title and interest in and to this Project Implementation Agreement, the other Material Project Contracts to which Operations Co is a party and the Project as performance security as set forth herein.

A-1

**EXHIBIT A**

**OPERATIONS CO SECURITY AGREEMENT**

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**OPERATIONS CO SECURITY AGREEMENT**

Dated as of September 3, 2015

between

KENTUCKYWIRE OPERATIONS COMPANY, LLC, as Operations Co

and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

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THIS OPERATIONS CO SECURITY AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Agreement"), dated as of September 3, 2015, is made by and between KENTUCKYWIREED OPERATIONS COMPANY, LLC, a Delaware limited liability company (the "Operations Co") and U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors in such capacity, the "Collateral Agent") for the benefit of the Secured Parties.

### RECITALS

WHEREAS, pursuant to that certain Senior Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented, amended and restated and/or otherwise modified from time to time, the "Senior Indenture") between the Kentucky Economic Development Finance Authority, a public body corporate and politic, constituting an instrumentality of the Commonwealth of Kentucky, as Issuer ("Issuer") and U.S. Bank National Association, as trustee, Issuer has authorized the issuance of \$\_\_\_\_\_ aggregate principal amount of Kentucky Economic Development Finance Authority Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015A and Taxable Senior Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015B, the proceeds from the sale of which will be loaned to Borrower pursuant to the terms of that certain Senior Loan Agreement (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Senior Loan Agreement"), dated as of September 1, 2015, between Issuer and Borrower, to be used to finance a portion of the costs of the Project, as hereinafter defined;

WHEREAS, pursuant to that certain Subordinate Indenture of Trust, dated as of September 1, 2015 (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Indenture"), (a) the Issuer has authorized the issuance of not to exceed \$\_\_\_\_\_ Kentucky Economic Development Finance Authority Subordinate Revenue Bonds (Next Generation Kentucky Information Highway Project), Series 2015C, the proceeds from the sale of which will be loaned to the Borrower pursuant to the terms of a Subordinate Loan Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Subordinate Loan Agreement"), dated as of September 1, 2015, between the Issuer and the Borrower, to be used to finance a portion of the costs of the Project and (b) the Subordinate Bonds Trustee, on behalf of the Subordinate Secured Parties, has subordinated the Subordinate Secured Obligations and all liens securing the Subordinate Secured Obligations to the payment in full of the Senior Secured Obligations in the manner and to the extent set forth in this Agreement and the Subordinate Indenture;

WHEREAS, pursuant to that certain Project Implementation Agreement (as amended, supplemented and/or otherwise modified from time to time, the "Implementation Agreement"), dated as of September 3, 2015, Borrower has contracted with Operations Co to, among other things, implement Borrower's obligations with respect to the Project pursuant to the Project Agreement and manage the obligations undertaken by the Design-Builder and the Service Provider, respectively, pursuant to the terms of the Design-Build Agreement and Services Contract, respectively;

WHEREAS, Operations Co, through the Implementation Agreement, will derive substantial direct and indirect benefit from the financing arrangements referenced in these recitals; and

WHEREAS, in consideration for the rights granted to Operations Co pursuant to the Implementation Agreement, and as a condition precedent to the above-described financing

transactions, Operations Co has agreed to secure the Secured Obligations (as defined herein) as set forth herein.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

#### SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Collateral Agency Agreement. All capitalized terms used in this Agreement but not otherwise defined herein shall have the respective meanings set forth in Exhibit A to the Collateral Agency and Account Agreement dated as of September 1, 2015 among Borrower, the Senior Bonds Trustee, as defined therein, the Subordinate Bonds Trustee, as defined therein, the Securities Intermediary, as defined therein and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Collateral Agency Agreement").

(b) Certain Defined Terms. As used in this Agreement, terms defined in the preamble and recitals hereto shall have the meanings set forth therein and the following terms shall have the following meanings:

"Accession" has the meaning given such term in Section 9-102 of the UCC.

"Account Debtor" shall mean a person obligated on an Account, Chattel Paper or General Intangible.

"Accounts" means any and all accounts, as such term is defined in Section 9-102 of the UCC.

"As-Extracted Collateral" means any and all as-extracted collateral, as such term is defined in Section 9-102 of the UCC.

"Books" means all books, Records and other written, electronic or other documentation in whatever form maintained now or hereafter, including: (i) ledgers; (ii) Records indicating, summarizing, or evidencing assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals and spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement with any service bureau, computer or data processing company or other Person charged with preparing or maintaining any books or Records or with credit reporting, including with regard to Accounts.

"Cash Proceeds" has the meaning given such term in Section 9-102 of the UCC.

"Chattel Paper" means any and all chattel paper, as such term is defined in Section 9-102 of the UCC, including all Electronic Chattel Paper.

"Collateral" has the meaning set forth in Section 2 of this Agreement.

**"Commercial Tort Claims"** means any and all commercial tort claims, as such term is defined in Section 9-102 of the UCC, including any described under the heading "Commercial Tort Claims" in Schedule 1 to this Agreement.

**"Commodity Account"** means all commodity accounts, as such term is defined in Section 9-102 of the UCC.

**"Commodity Contract"** means all commodity contracts, as such term is defined in Section 9-102 of the UCC.

**"Control Agreement"** means any control agreement or other agreement with any Securities Intermediary, bank or other Person establishing the Collateral Agent's control with respect to any Deposit Account, Investment Property or Letter-of-Credit Right, for purposes of UCC Section 9-104, 9-106 or 9-107.

**"Deposit Account"** means any deposit account, as such term is defined in Section 9-102 of the UCC, whether or not restricted or designated for a particular purpose.

**"Documents"** means any and all documents, as such term is defined in Section 9-102 of the UCC.

**"Electronic Chattel Paper"** means any and all electronic chattel paper, as such term is defined in Section 9-102 of the UCC.

**"Equipment"** means any and all equipment, as such term is defined in Section 9-102 of the UCC, including any and all Fixtures.

**"Excluded Contracts"** means the Project Agreement and any Third Party Infrastructure Agreements, as each may be amended, supplemented, amended and restated or otherwise modified and in effect from time to time.

**"Financial Asset"** means all financial assets, as such term is defined in Section 8-102 of the UCC.

**"Fixture Filing"** means any fixture filing, as such term is defined in Section 9-102 of the UCC.

**"Fixtures"** means any and all fixtures, as such term is defined in Section 9-102 of the UCC.

**"General Intangibles"** means any and all general intangibles, as such term is defined in Section 9-102 of the UCC.

**"Goods"** means any and all goods, as such term is defined in Section 9-102 of the UCC.

**"Instruments"** means any and all instruments, as such term is defined in Section 9-102 of the UCC.

**"Intellectual Property Collateral"** means the following properties and assets now or hereafter owned or held by Operations Co or in which Operations Co otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the patents, patent applications and patent licenses described under the corresponding headings in Schedule 1 to this Agreement), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the copyrights and copyright applications described under the corresponding headings in Schedule 1 to this Agreement), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the marks, names, applications and licenses described under the corresponding headings in Schedule 1 to this Agreement), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential and proprietary information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by Operations Co connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all other proprietary rights, all other intellectual or other similar property and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

"Inventory" means any and all inventory, as such term is defined in Section 9-102 of the UCC.

"Investment Property" means any investment property, as such term is defined in Section 9-102 of the UCC.

**"Letter-of-Credit Rights"** means any and all letter-of-credit rights, as such term is defined in Section 9-102 of the UCC.

**"Motor Vehicles"** means motor vehicles, tractors, trailers and other like property, if the title thereto is governed by a certificate of title or ownership.

**"Operations Co Financing Default"** has the meaning given to such term in the Collateral Agency Agreement.

**"Pledged Agreements"** means all contracts and agreements included in the Collateral, as amended, modified, renewed or extended from time to time, including (i) all rights of Operations Co to receive moneys and other payments and distributions due or to become due thereunder or with respect thereto, (ii) all rights of Operations Co to receive proceeds of any insurance, indemnity, warranty, letter of credit or guaranty with respect thereto, (iii) all claims of Operations Co for damages arising out of any breach or default thereunder or in respect thereof; and (iv) the right of Operations Co to terminate, amend, supplement or modify any such agreement, contract, instrument or other document, to perform thereunder and to compel performance and otherwise exercise all rights and remedies thereunder or in respect thereof.

**"Proceeds"** means all proceeds, as such term is defined in Section 9-102 of the UCC.

**"Promissory Note"** means any and all promissory notes, as such term is defined in Section 9-102 of the UCC.

**"Records"** has the meaning given such term in Section 9-102 of the UCC.

**"Rights to Payment"** means any and all of Operations Co's Accounts and any and all of Operations Co's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

**"Secured Obligations"** means all obligations of Operations Co under the Implementation Agreement, the Financing Documents to which it is a party and the Material Project Contracts to which it is a party.

**"Securities"** means all securities, as such term is defined in Section 8-102 of the UCC, and all stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

**"Securities Account"** means each securities account, as such term is defined in Section 8-501 of the UCC.

**"Securities Intermediary"** means each securities intermediary, as such term is defined in Section 8-102 of the UCC.

"Security Entitlement" means all security entitlements, as such term is defined in Section 8-102 of the UCC.

"Supporting Obligations" means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

"UCC" means the Uniform Commercial Code from time to time in effect in the State of New York or, as the context may require, the State of Delaware or, as the context may require, in effect in the State or States in which any Collateral is located.

(c) Interpretation. For purposes of this Agreement, except as otherwise expressly provided and except where the context otherwise requires: (i) the incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Section 25 hereof; (ii) any of the terms defined herein may be used in the singular or the plural, depending on the reference; (iii) references in this Agreement to any Article, Section, Schedule or Exhibit shall be to an Article, Section, Schedule or Exhibit, as the case may be, of this Agreement unless otherwise specifically provided; (iv) the use in this Agreement of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter; (v) the terms lease and license shall include sub-lease and sub-license, as applicable; (vi) all references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the UCC; (vii) the words "herein," "hereof," "hereto," "hereby," "hereunder" and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision and, if this Agreement has been amended, then such words shall refer to this Agreement as so amended; (viii) the term "money" includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder; and (ix) all references to any contract or agreement in this Agreement shall include all amendments, supplements and modifications thereto.

## SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the full and prompt payment and performance when due of the Secured Obligations, Operations Co hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in and continuing lien on all of Operations Co's right, title and interest in, to and under all of its personal property, tangible and intangible, wherever located and whether now owned, leased or licensed or hereafter acquired, leased or licensed and whether now existing or hereafter arising (subject to Section 2(b) hereof), including Operations Co's right, title and interest in, to and under the following property (collectively, the "Collateral"):

- (i) all Accounts;
- (ii) all As-Extracted Collateral;
- (iii) all Chattel Paper;

- (iv) all Commercial Tort Claims;
- (v) all Documents;
- (vi) all Equipment (including all right, title and interest in and to the Project);
- (vii) all Fixtures;
- (viii) all General Intangibles;
- (ix) all Goods;
- (x) all Instruments, including all Promissory Notes;
- (xi) all Intellectual Property Collateral;
- (xii) all Inventory;
- (xiii) to the maximum extent assignable (including by operation of Sections 9-406 et seq. of the UCC, or otherwise) all Permits now or hereafter held in the name, or for the benefit, of Operations Co (provided that any Permit which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary to avoid such voidness, voidability, terminability or revocability);
- (xiv) all money, cash, cash equivalents and Deposit Accounts, including, without limitation, the Operations Co Operating Account, together with all amounts on deposit from time to time in such Deposit Accounts;
- (xv) all Investment Property, including all Securities, all Securities Accounts, and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts;
- (xvi) all Letter-of-Credit Rights;
- (xvii) all Material Project Contracts to which Operations Co is a party, including, without limitation, the Implementation Agreement;
- (xviii) to the maximum extent assignable (including by operation of Sections 9-406 or 9-408 of the UCC, or otherwise), all agreements and contracts (other than agreements and contracts covered by paragraph (viii) or (xvii) above), in each case, to which Operations Co is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time), including (i) all contracts and agreements related to the Project to which Operations Co is a party or of which it is a beneficiary and (ii) each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the

foregoing (provided that any such agreement, contract or document which by its terms or by operation of law would become void, voidable, terminable, or revocable if mortgaged, pledged or assigned hereunder or if a security interest therein was granted hereunder is expressly excepted and excluded from the lien and terms of this Agreement to the extent necessary so as to avoid such voidness, avoidability, terminability or revocability); and

- (xix) all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books.

(b) Excluded Assets. Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the Security Interest granted under Section 2(a) hereof attach to:

- (i) the Operations Co Distribution Account or any monies, securities, Instruments or other investments on deposit in such account from time to time;
- (ii) to the extent the Borrower has rights to the following or the power to transfer rights in the following, the Excluded Contracts; and
- (iii) any agreements or other contractual arrangements with Wholesaler to which Operations Co is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time) and each and every bond, indemnity, warranty guaranty and other similar document relating to the performance by any party (other than Operations Co) of any of the foregoing, and all products, Proceeds, rents and profits of or in respect of any and all of the foregoing, including proceeds of insurance policies and of condemnation proceedings, all collateral security and guarantees given by any Person with respect to any and all of the foregoing, all Accessions to and substitutions and replacements for any of the foregoing, all Supporting Obligations of any and all of the foregoing and all Books with respect thereto.

(c) Operations Co Remains Liable. Anything herein to the contrary notwithstanding, (i) Operations Co shall remain liable for all obligations under and in respect of the Collateral and nothing contained herein is intended as or shall be a delegation of duties to Collateral Agent or the other Secured Parties, (ii) Operations Co shall remain liable under each of the agreements included in the Collateral, including the Pledged Agreements to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed in accordance with and pursuant to the terms and provisions thereof, (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release Operations Co from any of its duties or obligations under such Pledged Agreements, and (iv) the Collateral Agent shall not have any obligation or liability under any Pledged Agreements by reason of this Agreement, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of Operations



Co thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

(d) Continuing Security Interest. Operations Co agrees that this Agreement shall create a continuing Security Interest in the Collateral which shall remain in effect until terminated in accordance with Section 25 of this Agreement.

(e) Reserved.

(f) No Fee Interest. Operations Co hereby acknowledges and agrees that the Security Interest created hereby in the Collateral is not, in and of itself, to be construed as a grant of a fee interest (as opposed to security interest) in any copyright, patent or trademark owned by Operations Co.

(g) Security Interest in Amounts Paid. Notwithstanding anything to the contrary in the foregoing, any and all amounts paid or distributed by Operations Co in accordance with the Financing Documents and/or the Project Implementation Agreement (as applicable) shall be free of the Security Interests granted and created herein upon, from and after such payment or distribution.

(h) Use of Proceeds. So long as no Operations Co Financing Default shall have occurred and be continuing, Operations Co shall be entitled to use and, except with respect to Collateral required by this Agreement to be delivered to the Collateral Agent, possess, all Collateral and to exercise its rights, title and interest in all contracts, agreements and licenses, subject to the rights, remedies, powers and privileges of the Collateral Agent under this Agreement. Nothing herein shall limit or restrict the rights of Operations Co in respect of funds available for distributions and other transfers contemplated and permitted pursuant to the Collateral Agency Agreement.

(i) Partial Release. Upon the sale by Operations Co of any assets permitted by, and in accordance with, the Financing Documents, any lien created by this Agreement on such assets shall be released (provided, however that Security Interests granted and created herein shall continue in any proceeds, as defined in the UCC, of such sale, conveyance, transfer, assignment or other disposition) and, upon the written request of Operations Co, Collateral Agent shall execute such documents as Operations Co may reasonably request evidencing such release of such Security Interest.

### SECTION 3 Perfection and Priority.

(a) Financing Statements. Operations Co hereby authorizes the Collateral Agent to file at any time and from time to time, any financing statements describing the Collateral, all amendments to financing statements, continuation statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, Fixture Filings, affidavits, reports, notices and other documents and instruments, in form reasonably satisfactory to the Collateral Agent, and Operations Co shall execute and deliver to the Collateral Agent such of the foregoing documents as the Collateral Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, Operations Co ratifies and authorizes the filing by the Collateral Agent of any financing statements filed prior to the date hereof in connection with security interests granted hereunder.

(b) Bailees. Any Person (other than the Collateral Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Collateral Agent. At any time and from time to time, the Collateral Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Collateral Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, Operations Co will join with the Collateral Agent in notifying any Person who has possession of any Collateral of the Collateral Agent's security interest therein and will use its commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Collateral Agent. If such Person fails to deliver such an acknowledgment within fourteen (14) days of request therefor or refuses, at any time, to deliver such an acknowledgment then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with the last two sentences of this paragraph.

(c) Control. Operations Co will promptly, from time to time, enter into such control agreements, each in form and substance reasonably acceptable to the Collateral Agent, as may be required to perfect the security interest created hereby in any and all Deposit Accounts, Electronic Chattel Paper, Investment Property and Letter-of-Credit Rights, and will promptly furnish to the Collateral Agent true copies thereof.

(d) Intellectual Property Collateral. Operations Co will promptly from time to time upon the request of the Collateral Agent, execute and deliver such short-form security agreements as the Collateral Agent may reasonably deem necessary or advisable to protect the interests of the Collateral Agent in respect of Intellectual Property Collateral.

(e) Motor Vehicles. Operations Co will, promptly upon the reasonable request of the Collateral Agent, cause the Collateral Agent to be listed as the lienholder on any certificate of title or ownership covering any Motor Vehicle (other than Motor Vehicles constituting Inventory) and within ninety (90) days of such request deliver evidence of the same to the Collateral Agent. A request by the Collateral Agent under the preceding sentence shall be deemed reasonable if the relevant Motor Vehicles have an aggregate book value in excess of \$100,000.

(f) Books. Operations Co will keep full and accurate Books relating to the Collateral, and stamp or otherwise mark such Books in such manner as the Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement, and permit representatives of the Collateral Agent, upon reasonable notice, at reasonable times during normal business hours to inspect and make abstracts from its Books pertaining to the Collateral subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations; provided, however, that, unless an Operations Co Financing Default has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(g) Access; Right of Inspection. Subject in all cases and at all times to the rights of access to the Lands and the NG-KIH System granted to Operations Co pursuant to the Implementation Agreement, the Collateral Agent and its representatives shall, at any reasonable time and as often as may be reasonably requested, and, upon reasonable notice to Operations Co, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by Operations Co or any other party of its obligations with respect to the construction and operation of the Project, have the

right to enter any premises of Operations Co and inspect any property of Operations Co where any of the Collateral of Operations Co is located for the purpose of inspecting the same, observing its use or otherwise protecting Collateral Agent's interests therein; provided, however, that, unless an Operations Co Financing Default has occurred and is continuing, Operations Co shall not be responsible for the cost of any such inspection.

(h) Further Assurances. Operations Co agrees that from time to time, at its expense, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any Security Interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Operations Co shall furnish the Collateral Agent with such information regarding the Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time. Operations Co hereby authorizes the Collateral Agent to modify this Agreement after obtaining Operations Co's approval of or signature to such modification by amending Schedule 1 (as such schedule may be amended or supplemented from time to time) to include reference to any additional information of which Operations Co has given notice to Collateral Agent.

**SECTION 4 Representations and Warranties.** Operations Co represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that, as of the date hereof and as of the Financial Close:

(a) Location of Chief Executive Office and Collateral. Operations Co's chief executive office and principal place of business is located at the address set forth, and designated as such, under the corresponding heading in Schedule 1 to this Agreement; and all other locations where Operations Co conducts business or where Collateral is kept are set forth under the heading "Locations of Collateral" in Schedule 1 to this Agreement.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for Operations Co, are set forth under the heading "Locations of Books, etc." in Schedule 1 to this Agreement.

(c) Jurisdiction of Organization and Names. Operations Co's mailing address, jurisdiction of organization and organizational ID number is set forth under the corresponding heading in Schedule 1 to this Agreement, and Operations Co's exact legal name is as set forth in the first paragraph of this Agreement. Except as set forth under the heading "Historical Matters" in Schedule 1 to this Agreement, Operations Co has not, at any time prior to the date hereof: (i) been known as or used any other corporate, trade or fictitious name; (ii) changed its name, jurisdiction or organization, chief executive office or sole place of business or corporate structure; (iii) been the surviving or resulting entity in a merger or consolidation; (iv) acquired through asset purchase or otherwise any business of any Person; or (v) become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person. Operations Co has been duly organized and is validly existing as a limited liability company solely under the laws of the State of Delaware and remains duly existing as such. Operations Co has not filed any certificate of dissolution or liquidation or any certificate of domestication, transfer or continuance in any other jurisdiction.

(d) Collateral. Operations Co has rights in and, upon compliance with the limitations in the Project Agreement, the power to transfer, the Collateral, and Operations Co is, and, except as permitted by the Financing Documents, will continue to be, the sole owner of the Collateral (or, in the case of after-acquired Collateral, at the time Operations Co acquires rights in such Collateral, will be the sole owner thereof), free from any Security Interest other than Permitted Security Interests.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a security interest which is enforceable against the Collateral in which Operations Co now has rights and will create a security interest which is enforceable against the Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights and to the extent thereof, in each case to the extent that the same may be created under Article 9 of the UCC by execution and delivery of a written security agreement (the "Article 9 Collateral"); and (ii) the Collateral Agent shall have a perfected and first priority security interest in the Article 9 Collateral in which Operations Co hereafter acquires rights at the time Operations Co acquires any such rights, in each case securing the payment and performance of the Secured Obligations, and in each case to the extent that the same may be perfected by the filing of UCC-1 financing statements.

(f) Other Financing Statements. Other than (i) financing statements related to Permitted Security Interests and (ii) financing statements in favor of the Collateral Agent for the benefit of the Secured Parties, no effective financing statement naming Operations Co as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(g) Rights to Payment. Operations Co has not assigned any of its rights under the Rights to Payment except to the Collateral Agent pursuant to the Financing Documents.

(h) Inventory. No Inventory is stored with any bailee, warehouseman or similar Person or on any premises leased to Operations Co, nor has any Inventory been consigned to Operations Co or consigned by Operations Co to any Person or is held by Operations Co for any Person under any "bill and hold" or other arrangement, except in each case as set forth under the heading "Inventory Matters" in Schedule 1 to this Agreement.

(i) Intellectual Property.

(i) Except as set forth under the heading "Intellectual Property" in Schedule 1 to this Agreement, Operations Co does not own, possess or use under any licensing arrangement, any patents, copyrights, trademarks, service marks or trade names, nor is there currently pending before any Governmental Authority any application for registration of any patent, copyright, trademark, service mark or trade name;

(ii) All patents, copyrights, trademarks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(iii) No infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person; and

(iv) Operations Co is the sole and exclusive owner of the Intellectual Property Collateral and the use of such Intellectual Property Collateral by Operations Co has not and does not infringe or violate any right, privilege or license agreement of or with any other Person.

(j) Investment Property; Instruments; and Chattel Paper. All Securities Accounts of Operations Co and other Investment Property of Operations Co are set forth under the corresponding headings in Schedule 1 to this Agreement, and all Instruments and Chattel Paper held by Operations Co are also set forth under the corresponding headings in Schedule 1 to this Agreement.

(k) Control Agreements. No Control Agreements exist with respect to any Collateral other than any Control Agreements in favor of the Collateral Agent.

(l) Letter-of-Credit Rights. Operations Co does not have any Letter-of-Credit Rights except as set forth in Schedule 1 to this Agreement.

(m) Commercial Tort Claims. Operations Co does not have any Commercial Tort Claims except as set forth in Schedule 1 to this Agreement.

(n) Leases. Operations Co is not, and will not become, a lessee under any real property lease or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Operations Co's right to remove any Collateral from the premises at which such Collateral is situated, except for restrictions in favor of the Collateral Agent.

SECTION 5 Covenants. So long as any of the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) remain unsatisfied, and without limiting any restrictions or prohibitions set forth in the other Financing Documents with respect to any of the following, Operations Co agrees that:

(a) Change in Name, Identity or Structure. Operations Co will give at least thirty (30) days' prior written notice to the Collateral Agent of (i) any change in its name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new such registration); and (iv) any changes in its identity or structure which might make any financing statement filed pursuant to this Agreement seriously incorrect or misleading; provided that Operations Co shall not change its jurisdiction of organization to a jurisdiction outside of the United States and shall not make any of the changes in clauses (i) through (iv) of this Section unless it shall have taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's Security Interest in the Collateral intended to be granted herein.

(b) Expenses. Operations Co will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral.

(c) Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. Operations Co will use its commercially reasonable efforts to obtain from each Person from whom Operations Co leases any premises, and from each other Person at whose premises any Collateral is at any time present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Collateral Agent may require. If any such Person fails to deliver such an agreement, in form and substance reasonably satisfactory to the Collateral Agent, within fourteen (14) days of request therefor or refuses, at any time, to deliver such an agreement

then, upon request by the Collateral Agent, Operations Co shall take possession of such Collateral or deliver the same to another Person and again comply with this paragraph.

(d) Instruments, Investment Property, Etc. Operations Co will (i) promptly deliver to the Collateral Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property, all letters of credit, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments (other than checks and other payment instruments received in the ordinary course of business, each of which shall be promptly deposited with the Collateral Agent in accordance with the Financing Documents), in each case in which Operations Co has rights or the power to transfer rights, (ii) cause any Securities Intermediaries to show on their books that the Collateral Agent is the entitlement holder with respect to any Investment Property, and/or (at Operations Co's option) obtain Control Agreements in favor of the Collateral Agent from such Securities Intermediaries, in form and substance satisfactory to the Collateral Agent, with respect to any Investment Property, as requested by Collateral Agent, and (iii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights, as the Collateral Agent shall reasonably specify; in the case of each of clauses (i), (ii) and (iii) in order to create, perfect and/or maintain the validity, perfection or priority of, provide notice of, and/or protect, the Collateral Agent's Security Interest hereunder or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder.

(e) Inventory. Operations Co will:

(i) (A) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (B) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, furnish to the Collateral Agent a report of all Inventory in which Operations Co has rights or the power to transfer rights; and

(ii) except as otherwise permitted by the Financing Documents, not (A) store any Inventory in which Operations Co has rights or the power to transfer rights with a bailee, warehouseman or similar Person or on premises leased to, or otherwise not owned in fee simple by, Operations Co, without complying with Section 5(c) hereof with respect thereto nor (B) dispose of any such Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Collateral Agent prior written notice thereof.

(f) Equipment. Operations Co will (i) if no Operations Co Financing Default shall have occurred and be continuing, within fifteen (15) days after written request by the Collateral Agent, or (ii) if an Operations Co Financing Default shall have occurred and is continuing, within five (5) days after written request by the Collateral Agent, deliver to the Collateral Agent a report with respect to all Equipment in which Operations Co has rights or the power to transfer rights.

(g) Intellectual Property Collateral. Operations Co will:

(i) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice;

(ii) promptly give the Collateral Agent notice of any rights Operations Co may obtain to any new patentable inventions, material copyrightable works or other new Intellectual Property Collateral prior to the filing of any application for registration thereof; and

(iii) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral.

(h) Notices, Reports and Information. Operations Co will promptly notify the Collateral Agent of any other modifications of or additions to the information contained in Schedule 1 to this Agreement.

(i) Chattel Paper. Operations Co will not create any Chattel Paper without placing a legend on the Chattel Paper reasonably acceptable to the Collateral Agent indicating that the Collateral Agent has a security interest in the Chattel Paper. Operations Co will give the Collateral Agent prompt notice if Operations Co at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper. Operations Co shall promptly take all actions necessary so that the Collateral Agent has "control" of all Electronic Chattel Paper constituting Collateral in accordance with Section 9-105 of the UCC.

(j) Commercial Tort Claims. Operations Co will give the Collateral Agent notice within ten (10) Business Days if at any time Operations Co obtains knowledge that it holds or has any Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of \$5,000,000 or more.

(k) Letter-of-Credit Rights. Operations Co will give the Collateral Agent notice within ten (10) Business Days if Operations Co shall at any time hold or acquire any Letter-of-Credit Rights in respect of a letter of credit with a stated amount of \$5,000,000 or more.

(l) Pledged Agreements. Operations Co will furnish to the Collateral Agent promptly upon written request therefor copies of the Pledged Agreements.

(m) Timing and Notice. With respect to any Collateral in existence on the date hereof, Operations Co shall comply with the requirements of Section 5(c), (d), (g), (h) and (i) on the date hereof and, with respect to any Collateral hereafter owned or acquired, Operations Co shall comply with such requirements within 20 days of Operations Co acquiring rights therein. Operations Co shall promptly inform the Collateral Agent of its acquisition of any Collateral for which any action is required by Section 5 hereof. Upon Operations Co obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that may have a material adverse effect on the value of the Collateral or any portion thereof, the ability of Operations Co or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any portion thereof.

**SECTION 6 Investment Property and Instruments.** At the request of the Collateral Agent, upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall be entitled to receive all distributions and payments of any nature with respect to any Investment Property or Instruments, and all such distributions or payments

received by Operations Co shall be held in trust for the Collateral Agent and, in accordance with the Collateral Agent's instructions, remitted to the Collateral Agent or deposited to an account with the Collateral Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence and during the continuance of an Operations Co Financing Default any such distributions and payments with respect to any Investment Property held in any Securities Account shall be held and retained in such Securities Account, in each case as part of the Collateral hereunder. Additionally, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Operations Co Financing Default, following prior written notice to Operations Co, to vote and to give consents, ratifications and waivers with respect to any Investment Property and Instruments, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Collateral Agent were the absolute owner thereof; provided that the Collateral Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so.

**SECTION 7 Authorization; Collateral Agent Appointed Attorney-in-Fact.** The Collateral Agent shall have the right, but not the obligation, to, in the name of Operations Co, or in the name of the Collateral Agent or otherwise, without notice to or assent by Operations Co, and Operations Co hereby constitutes and appoints the Collateral Agent (and any of the Collateral Agent's officers or employees or agents designated by the Collateral Agent) as Operations Co's true and lawful attorney-in-fact, with full power and authority in the place and stead of Operations Co to:

- (i) file any financing statements, including any amendments to financing statements and any continuation statements, and execute and file and/or record, as applicable, any and all such other documents and instruments, which the Collateral Agent may deem necessary or reasonably advisable to perfect or continue perfected, maintain the priority of or provide notice of the Collateral Agent's security interest in the Collateral;
- (ii) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security constituting, and collect any Proceeds of any, Collateral;
- (iii) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors, in each case in respect of the Collateral;
- (iv) send requests for verification of Rights to Payment to the customers or other obligors of Operations Co;
- (v) contact, or direct Operations Co to contact, any or all Account Debtors and other obligors on the Rights to Payment and instruct such Account Debtors and other obligors to make all payments directly to the Collateral Agent;
- (vi) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment to remit all amounts representing collections on the Rights to Payment directly to the Collateral Agent;



(vii) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing the Rights to Payment and other Collateral, and otherwise file any claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Collateral Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Collateral Agent with respect to the Collateral;

(viii) execute any and all applications, documents, papers and instruments necessary for the Collateral Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(ix) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(x) execute and deliver to any Securities Intermediary or other Person any entitlement order or other notice, document or instrument which the Collateral Agent may reasonably deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property and the Collateral Agent's security interest therein;

(xi) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of Operations Co, which the Collateral Agent may deem necessary or in its reasonable judgment advisable to maintain, protect, realize upon and preserve the Collateral and to accomplish the purposes of this Agreement; and

(xii) act pursuant to (and in accordance with) Section 2.11(b) of the Collateral Agency Agreement.

Operations Co also hereby acknowledges and consents to the authorization and direction of the Senior Bonds Trustee and the Subordinate Bonds Trustee on behalf of the Secured Parties with respect to the Collateral Agent pursuant to Section 2.01 of the Collateral Agency Agreement. The Collateral Agent agrees that, except upon the occurrence and during the continuance of an Operations Co Financing Default, it shall not exercise the power of attorney, or any rights granted to the Collateral Agent, pursuant to clauses (ii) through (xiv). The foregoing power of attorney is coupled with an interest and irrevocable so long as the Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted) have not been paid and performed in full. Operations Co hereby ratifies, to the extent permitted by law, all that the Collateral Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

**SECTION 8 Collateral Agent Performance of Operations Co Obligations.** The Collateral Agent may perform or pay any obligation which Operations Co has agreed to perform or pay under or in connection with this Agreement if Operations Co fails to do so when required hereunder, and Operations Co shall reimburse the Collateral Agent on demand for any reasonable amounts paid by the Collateral Agent pursuant to this Section 8.

**SECTION 9 Collateral Agent's Duties.** Notwithstanding any provision contained in this Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or

powers afforded to it and shall not be responsible to Operations Co or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Collateral Agent's possession and the accounting for moneys actually received by the Collateral Agent hereunder, the Collateral Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral. The provisions of Section 9.10 of the Collateral Agency Agreement ("Collateral Agent's Rights") are incorporated herein by reference as if such Section were set forth herein in its entirety.

**SECTION 10 Remedies.** For the avoidance of doubt, any action by Collateral Agent under this Section 10 shall be taken at the direction of the Instructing Trustee (acting in accordance with Section 2.19 of the Collateral Agency Agreement) in good faith, in a commercially reasonable manner and in compliance with the applicable terms of the UCC.

(a) **Remedies.** Upon the occurrence and during the continuance of any Operations Co Financing Default, the Collateral Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Indentures, the Senior Loan Agreement or any other Financing Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, Operations Co agrees that:

(i) The Collateral Agent may peaceably and without notice enter any premises of Operations Co, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of Operations Co or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Collateral Agent may determine.

(ii) The Collateral Agent may require Operations Co to assemble all or any part of the Collateral and make it available to the Collateral Agent, at any place and time reasonably designated by the Collateral Agent.

(iii) The Collateral Agent may use or transfer any of Operations Co's rights and interests in any Intellectual Property Collateral, by license, by sublicense or otherwise, on such conditions and in such manner as the Collateral Agent may determine.

(iv) The Collateral Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law).

(v) The Collateral Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or Securities Accounts.

(vi) The Collateral Agent may sell, resell, lease, license, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable storage, preparation and/or processing (utilizing in connection therewith any of Operations Co's assets, without charge to, or liability of, the Collateral Agent therefor) at public or private sale, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Collateral Agent deems advisable; provided, however, that Operations Co shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Collateral Agent. The Collateral Agent shall have the right upon any such public sale, and, to the extent not prohibited by law, upon any such private sale, to purchase the whole or any part

of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption Operations Co hereby releases, to the extent permitted by law. The Collateral Agent shall give Operations Co such notice of any public or private sale as may be required by the UCC or other applicable law. Operations Co agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Operations Co of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Operations Co agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Operations Co hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Operations Co recognizes that the Collateral Agent may be unable to make a public sale of any or all of the Investment Property, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(vii) Neither the Collateral Agent nor any Secured Party shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Collateral Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Collateral Agent may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Collateral Agent's rights against Operations Co. Operations Co waives any right it may have to require the Collateral Agent to pursue any third Person for any of the Secured Obligations. The Collateral Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If the Collateral Agent sells any of the Collateral upon credit, Operations Co will be credited only with payments actually made by the purchaser, received by the Collateral Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Operations Co shall be credited with the proceeds of the sale as and when received and applied.

(b) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated (including with respect to undrawn amounts under any letters of credit) at such time as there may exist an Operations Co Financing Default, the Collateral Agent may, at its election, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Collateral Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Collateral Agent may elect to apply such proceeds to the Secured Obligations; (ii) in any manner elected by the Collateral Agent, estimate the

liquidated amount of any such contingent, unmatured or unliquidated claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable Law and not prohibited by the Financing Documents. Operations Co agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, Operations Co shall not have any right of withdrawal with respect to such funds. Accordingly, Operations Co irrevocably waives until the termination of this Agreement in accordance with Section 25 the right to make any withdrawal from the Proceeds Account and the right to instruct the Collateral Agent to honor drafts against the Proceeds Account.

(c) Application of Proceeds. The provisions of Section 6.06 of the Collateral Agency Agreement ("Application of Proceeds") are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(d) Remedies of the Secured Parties. The provisions of Section 6.04 ("Remedies of the Secured Parties") of the Collateral Agency Agreement are incorporated herein by reference as if such Section were set forth herein in its entirety, mutatis mutandis.

(e) Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent, during the continuance of an Operations Co Financing Default, to exercise rights and remedies under Section 10 hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, Operations Co hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired by Operations Co, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations.

#### SECTION 11 Certain Waivers.

(a) Operations Co waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Collateral Agent (A) to proceed against any Person, (B) to exhaust any other collateral or security for any of the Secured Obligations, (C) to pursue any remedy in Collateral Agent's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all claims, damages, and demands against the Collateral Agent arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral in compliance with all material applicable legal requirements.

SECTION 12 Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in the Collateral Agency Agreement. All such notices and other communications shall be effective as and when specified in the Collateral Agency Agreement.

SECTION 13 Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**SECTION 14 Survival of Provisions.** All representations and warranties contained herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement. All statements contained in any certificate or other instrument delivered by or on behalf of Operations Co pursuant to this Agreement shall be deemed representations and warranties of Operations Co under this Agreement.

**SECTION 15 No Waiver; Cumulative Remedies.** No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Collateral Agent.

**SECTION 16 Costs and Expenses; Indemnification; Other Charges.** Reference is hereby made to Article VII of the Collateral Agency Agreement with respect to Operations Co's obligations set forth therein.

**SECTION 17 Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

**SECTION 18 Governing Law; Consent to Jurisdiction.** Reference is made to Section 5-1401 of the New York General Obligations Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the State of New York, except as required by mandatory provisions of law relating to the law governing perfection or the effect of perfection of the security interests hereunder. Each of the parties hereto hereby (i) irrevocably consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (ii) waives, to the fullest extent permitted by law, the right to move or dismiss or transfer any action brought in such court on the basis of any objection to personal jurisdiction, venue or inconvenient forum.

**SECTION 19 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

**SECTION 20 Amendment or Waiver.** Except as otherwise provided herein, neither this Agreement nor any of the terms hereof may be amended, changed or waived unless such amendment, change or waiver is in writing and signed by Operations Co and the Collateral Agent and then any such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

SECTION 21 Entire Agreement. This Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

SECTION 22 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 23 Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and/or by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or "pdf" signature page shall constitute an original for purposes hereof.

SECTION 24 No Inconsistent Requirements. Operations Co acknowledges that this Agreement and the other Financing Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and each shall be performed and satisfied in accordance with its respective terms.

SECTION 25 Termination. Upon payment and performance in full of all Secured Obligations (other than contingent indemnification and other reimbursement obligations to the extent that no claim giving rise thereto has been asserted), the Collateral Agent shall promptly execute and deliver to Operations Co such documents and instruments reasonably requested by Operations Co as shall be necessary to evidence termination of all security interests given by Operations Co to the Collateral Agent hereunder and shall return any Collateral in its possession to Operations Co.

SECTION 26 Reinstatement. Following the Termination Date, this Agreement, any Security Interest created hereunder and the obligations of Operations Co hereunder shall continue to be effective or be automatically be reinstated, as the case may be, if and to the extent that for any reason any payment by or on behalf of Operations Co in respect of the Secured Obligations is rescinded or must otherwise be restored by any holder of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise and Operations Co agrees that it will indemnify the Collateral Agent on demand for all reasonable costs and expenses (including fees and expenses of counsel, whether incurred in a third party action or in an action to enforce this Agreement) incurred by the Collateral Agent in connection with such rescission or restoration.

SECTION 27 Limitation of Liability. No claim shall be made by Operations Co against the Collateral Agent or any of its affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and Operations Co hereby waives, releases and agrees not to sue upon any such claim for any such

damages, whether or not accrued and whether or not known or suspected to exist in its favor; nothing in this Section 27 shall limit or affect or be construed to limit or affect the obligations and liabilities of the Collateral Agent arising from any liability pursuant to any applicable Law for such fraudulent actions, gross negligence, bad faith or willful misconduct of the Collateral Agent. Additionally:

(a) No covenant, agreement or obligation contained herein or in any Operations Co Security Document shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of Operations Co in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Financing Documents, the Secured Parties will have full recourse to Operations Co and all of its assets and properties for the respective liabilities and obligations of Operations Co under the Financing Documents, but in no event will the Authority or any Affiliates of Operations Co or any officer, director or holder of any interest in Operations Co, the Authority or any Affiliates of Operations Co be liable or obligated for such liabilities and obligations of Operations Co, other than to the extent arising directly as a result of Pledgor's pledge of its ownership interests in Operations Co pursuant to the Pledge Agreement and the Pledgor and each Sponsors' obligations under the Capital Contribution Agreement, as applicable.

(c) Notwithstanding anything in paragraph (b) above of this Section 27, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of the Authority or any Affiliate of Operations Co (1) arising under any Financing Document or Project Contract to which the Authority or such Affiliate of Operations Co is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of the Authority or any Affiliate of Operations Co.

**SECTION 28 No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Collateral Agent, for the benefit of the Secured Parties, and Operations Co and the respective successors and permitted assigns of the foregoing, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that, subject to Section 6.04 of the Collateral Agency Agreement, the Secured Parties shall be express third party beneficiaries of this Agreement.

**SECTION 29 PATRIOT Act Notification.** The Collateral Agent hereby notifies Operations Co that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "PATRIOT Act"), the Collateral Agent may be required to obtain, verify and record information that identifies Operations Co, which information includes the name, address, tax identification number and other information regarding Operations Co that will allow the Collateral Agent to identify Operations Co in accordance with the PATRIOT Act.

*[Remainder of page intentionally left blank; signatures follow.]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

**OPERATIONS Co:**

**KENTUCKYWIRE OPERATIONS COMPANY, LLC**

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

**COLLATERAL AGENT:**

**U.S. BANK NATIONAL ASSOCIATION, AS  
COLLATERAL AGENT**

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