
U.S. \$200,000,000

LOAN AND SERVICING AGREEMENT

Dated as of September 9, 2014

Among

WAYNE FUNDING LLC,
as the Borrower

WELLS FARGO SECURITIES, LLC,
as the Administrative Agent

EACH OF THE CONDUIT LENDERS AND INSTITUTIONAL LENDERS FROM TIME TO TIME PARTY HERETO,
as the Lenders

EACH OF THE LENDER AGENTS FROM TIME TO TIME PARTY HERETO,
as the Lender Agents

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as the Collateral Agent, Account Bank and Collateral Custodian

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THIS LOAN AND SERVICING AGREEMENT (as amended, modified, waived, supplemented, restated or replaced from time to time, this “Agreement”) is made as of September 9, 2014, among:

- (1) WAYNE FUNDING LLC, a Delaware limited liability company (together with its successors and assigns in such capacity, the “Borrower”);
- (2) EACH OF THE CONDUIT LENDERS FROM TIME TO TIME PARTY HERETO (together with its respective successors and assigns in such capacity, each a “Conduit Lender” and collectively, the “Conduit Lenders”);
- (3) EACH OF THE INSTITUTIONAL LENDERS FROM TIME TO TIME PARTY HERETO (together with its respective successors and assigns in such capacity, each an “Institutional Lender”, collectively, the “Institutional Lenders” and, together with the Conduit Lenders, the “Lenders”);
- (4) EACH OF THE LENDER AGENTS FROM TIME TO TIME PARTY HERETO (together with its respective successors and assigns in such capacity, each a “Lender Agent” and collectively, the “Lender Agents”);
- (5) WELLS FARGO SECURITIES, LLC, as Administrative Agent (together with its successors and assigns in such capacity, the “Administrative Agent”); and
- (6) WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Collateral Agent (together with its successors and assigns in such capacity, the “Collateral Agent”), the Account Bank (as defined herein) and the Collateral Custodian (together with its successors and assigns in such capacity, the “Collateral Custodian”).

PRELIMINARY STATEMENT

The Lenders have agreed, on the terms and conditions set forth herein, to provide a secured revolving credit facility which shall provide for Advances under the Variable Funding Note(s) from time to time in an aggregate principal amount not to exceed the Borrowing Base. The proceeds of the Advances will be used to finance the Borrower’s purchase of Eligible Loans either (i) from the Seller pursuant to the Purchase and Sale Agreement between the Borrower and the Seller or (ii) that the Borrower funds or acquires from a third party seller as approved by the Administrative Agent in accordance herewith. Accordingly, the parties agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01 Certain Defined Terms.

(a) Certain capitalized terms used throughout this Agreement are defined above or in this Section 1.01.

(b) As used in this Agreement and the exhibits, schedules and annexes thereto (each of which is hereby incorporated herein and made a part hereof), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“1940 Act” means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

“Account Bank” means Wells Fargo, in its capacity as the “Securities Intermediary” pursuant to the Securities Account Control Agreement.

“Action” has the meaning assigned to that term in Section 8.06.

“Additional Amount” has the meaning assigned to that term in Section 2.10(a).

“Adjusted Borrowing Value” means for any Eligible Loan on any date of determination, an amount equal to the Assigned Value of such Eligible Loan at such time multiplied by the Outstanding Balance of such Loan; provided that the parties hereby agree that the Adjusted Borrowing Value of any Loan that is no longer an Eligible Loan shall be zero.

"Administrative Agent" means Wells Fargo Securities, LLC, in its capacity as administrative agent for the Lender Agents, together with its successors and assigns, including any successor appointed pursuant to Article IX.

"Advance" means each loan advanced by the Lenders to the Borrower on an Advance Date pursuant to Article II.

"Advance Date" means, with respect to any Advance, the date on which such Advance is made.

"Advances Outstanding" means, on any date, the aggregate principal amount of all Advances outstanding on such date, after giving effect to all repayments of Advances and the making of new Advances on such date.

"Advisory Agreements" means (i) the Collateral Advisor Agreement and (ii) the Investment Sub-Advisory Agreement between the Collateral Advisor and the Collateral Sub-Advisor.

"Affected Party" has the meaning assigned to that term in Section 2.09(a).

"Affiliate" means, when used with respect to a Person, any other Person controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" means, when used with respect to any specified Person, the power to vote 20% or more of the voting securities of such Person or to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; provided, that for purposes of determining whether any Loan is an Eligible Loan,

the term Affiliate shall not include any Affiliate relationship which may exist solely as a result of direct or indirect ownership of, or control by, a common Financial Sponsor.

"Agented Loan" means any Loan other than a Third Party Agented Loan (i) originated by the Seller as a part of a syndicated loan transaction that has been closed (without regard to any contemporaneous or subsequent syndication of such Loan) prior to the Pledge of such Loan, (ii) with respect to which the Seller is the administrative agent, and (iii) with respect to which, upon an assignment of the promissory note under the Purchase and Sale Agreement to the Borrower, the Borrower, as assignee of the note, will have all of the rights but none of the obligations of the Seller with respect to such note and the Underlying Collateral.

"Aggregate Coupon" means, as of any date of determination, the sum of the products obtained by multiplying, in the case of each fixed-rate Loan, (i) the stated coupon on such Loan (excluding any unused fee on the unfunded portion of any Delayed Draw Loan) expressed as a percentage and (ii) the Outstanding Balance of such Loan.

"Aggregate Unfunded Exposure Amount" means, on any date of determination, the sum of the Unfunded Exposure Amounts of all Loans owned by the Borrower.

"Agreement" has the meaning assigned in the preamble hereto.

"Applicable Law" means for any Person all existing and future laws, rules, regulations (including temporary and final income tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders, licenses of and interpretations by any Governmental Authority applicable to such Person (including, without limitation, predatory and abusive lending laws, usury laws, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Federal Trade Commission Act, the Magnuson-Moss Warranty Act, the Federal Reserve Board's Regulations "B" and "Z", the Servicemembers Civil Relief Act of 2003 and state adaptations of the National Consumer Act and of the Uniform Consumer Credit Code and all other consumer credit laws and equal credit opportunity and disclosure laws) and applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial, or quasi-judicial tribunal or agency of competent jurisdiction.

"Applicable Concentration Percentage" means on any date of determination (i) if both (x) the Weighted Average Coupon is at least 7.00% and (y) such date is prior to the six-month anniversary of the

Closing Date, 30.0% and (ii) otherwise, 15.0%.

"Applicable Percentage" means, for each Eligible Loan, the corresponding percentage for the type of Loan (such type to be determined as of the Cut-Off Date of each Loan and set forth on the Approval Notice pertaining to such Loan) set forth below:

Loan Type	Applicable Percentage
Senior Secured Loan	65.0%
First Lien Energy Loan	65.0%
Senior Secured Bond	50.0%
Second Lien Energy Loan	35.0%
DIP Loan	To be agreed by the Administrative Agent and the Borrower as set forth in the Approval Notice pertaining to such Loan

"Applicable Spread" means, with respect to any Lender and/or Lender Agent, the "applicable spread" set forth in the applicable Lender Fee Letter.

"Approval Notice" means, with respect to any Eligible Loan, the written notice, in substantially the form attached hereto as Exhibit A, evidencing the approval by the Administrative Agent, in its sole discretion, of the acquisition of such Eligible Loan by the Borrower.

"Approval Right" has the meaning assigned to that term in Section 3.02(c).

"Approved Broker Dealer" means each of ABN Amro, Bank of America Merrill Lynch, The Bank of New York Company, Inc., Barclays, BNP Paribas SA, Citigroup, Inc., Credit Suisse, Deutsche Bank AG, The Goldman Sachs Group, Inc., HSBC, JPMorgan Chase & Co., Macquarie, Mitsubishi, Morgan Stanley, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Societe Generale, Suntrust, UBS and Wells Fargo.

"Approved Valuation Firm" means each of Duff & Phelps Corp., FTI Consulting, Inc., Houlihan Lokey Howard & Zukin, Lincoln International LLC, Valuation Research Corporation, American Appraisal Associates, Inc., Deloitte LLP, Ernst & Young, LLP, KPMG, Sterling Valuation Group, Murray Devine & Co., and any other nationally recognized accounting firm or valuation firm as approved by the Administrative Agent in its sole discretion.

"Asset Coverage Ratio" means, with respect to the Collateral Manager, the ratio, determined on a consolidated basis, without duplication, and in accordance with GAAP as required by and in accordance with, the 1940 Act as affected by any orders of the Securities and Exchange Commission issued to the Collateral Manager, to be determined by the Board of Directors of the Collateral Manager and reviewed by its auditors, of (a) the fair market value of the total assets of the Collateral Manager and its Subsidiaries less all liabilities (other than Indebtedness, including Indebtedness hereunder) of the Collateral Manager and its Subsidiaries, to (b) the aggregate amount of Indebtedness of the Collateral Manager and its Subsidiaries; provided, that the calculation of the Asset Coverage Ratio shall not include Subsidiaries that are not required to be included in consolidated reports by the 1940 Act (which includes any

subsidiary licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958).

"Assigned Value" means, with respect to each Loan, (i) prior to the occurrence of a Value Adjustment Event with respect to such Loan, the least of (A) the Purchase Price of such Loan (expressed as a percentage of par), (B) the value of such Loan (expressed as a percentage of par and exclusive of any post-

acquisition PIK Interest or other accrued and unpaid interest thereon) determined by the Administrative Agent in its sole discretion on the date such Loan was acquired by the Borrower and (C) the par value of such Loan, and (ii) after the occurrence of a Value Adjustment Event with respect to such Loan, as determined below:

(a) If a Value Adjustment Event of the type described in clauses (c), (e) or (g) of the definition thereof with respect to such Loan occurs, the Assigned Value of such Loan will be zero.

(b) If a Value Adjustment Event of the type described in clauses (a), (b), (d), (f), (h), (i) or (j) of the definition thereof with respect to such Loan occurs, the Assigned Value shall be determined by the Administrative Agent in its sole discretion.

(c) After the initial determination by the Administrative Agent of the Assigned Value of a Loan pursuant to clause (b), the Administrative Agent may only decrease the Assigned Value of such Loan upon the occurrence of the applicable Value Adjustment Event or upon the occurrence of another Value Adjustment Event.

(d) The Administrative Agent shall promptly notify the Borrower or the Collateral Manager of any change effected by the Administrative Agent to the Assigned Value of any Loan.

"Authorized Person" means, with respect to any Person, any other duly authorized Person by appropriate organizational process (a copy of which has been delivered to the Administrative Agent) to whom, with respect to a particular matter, such matter is referred because of such Person's knowledge of and familiarity with the particular subject.

"Available Collections" means all cash collections and other cash proceeds with respect to any Loan, including, without limitation, all Principal Collections, all Interest Collections, all proceeds of any sale or disposition (in part or in whole) with respect to such Loan, cash proceeds or other funds received by the Borrower or any Borrower Advisor with respect to any Underlying Collateral (including from any guarantors), all other amounts on deposit in the Controlled Accounts from time to time, and all proceeds of Permitted Investments with respect to the Controlled Accounts.

"Average Life" means, on any date of determination with respect to any Eligible Loan, the quotient obtained by dividing (i) the sum of the products of (a) the number of years (rounded to the nearest one hundredth thereof) from such date of determination to the respective dates of each successive Scheduled Payment of such Eligible Loan and (b) the respective amounts of principal of such Scheduled Payments by (ii) the sum of all successive Scheduled Payments on such Eligible Loan.

"Bankruptcy Code" means Title 11, United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time.

"Bankruptcy Event" means, with respect to a specified Person, (a) the filing of a decree or order for relief by a court having jurisdiction over such Person or any substantial part of its property in an involuntary case under any applicable Bankruptcy Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its property, or ordering the winding-up or liquidation of such Person's affairs, and such decree, order or appointment shall remain unstayed and in effect for a period of sixty (60) consecutive days, (b) the commencement by such Person of a voluntary case under any applicable Bankruptcy Law now or hereafter in effect, or the consent by such Person to the entry of an order for relief in an involuntary case under any such law, (c) the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its property, or the making by such Person of any general assignment for the benefit of creditors, or (d) the failure by such Person generally to pay its debts as such debts become due.

"Bankruptcy Laws" means the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Bankruptcy Proceeding" means any case, action or proceeding before any court or other Governmental Authority relating to any Bankruptcy Event.

"Base Rate" means, on any date, a fluctuating *per annum* interest rate equal to the higher of (a) the Prime Rate or (b) the Federal Funds Rate *plus* 0.5%; *provided* that, notwithstanding the foregoing, on any date LIBOR exceeds the higher of the rates specified in clauses (a) and (b), the Base Rate shall be increased by such excess for such date.

"Borrower" has the meaning assigned to that term in the preamble hereto.

"Borrower Advisors" means, collectively, the Collateral Manager, the Collateral Advisor and the Collateral Sub-Advisor.

"Borrower Parties" means, collectively, the Borrower, the Equityholder, the Seller and the Borrower Advisors.

"Borrowing Base" means, as of any date of determination, an amount equal to the least of:

(a) (i) the aggregate sum of the products of (A) the Applicable Percentage for each Eligible Loan as of such date and (B) the Adjusted Borrowing Value of such Eligible Loan as of such date, *plus* (ii) the amount on deposit in and the value of all Permitted Investments credited to the Principal Collection Account on such date, *minus* (iii) the Unfunded Exposure Equity Shortfall; or

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(b) (i) the aggregate sum of the Adjusted Borrowing Values of all Eligible Loans as of such date *minus* (ii) the Minimum Equity Amount, *plus* (iii) the amount on deposit in and the value of all Permitted Investments credited to the Principal Collection Account on such date, *minus* (iv) the Unfunded Exposure Equity Shortfall; or

(c) (i) the Maximum Facility Amount, *minus* (ii) the Unfunded Exposure Equity Shortfall;

provided that, for the avoidance of doubt, any Loan which is not an Eligible Loan shall not be included in any calculation of "Borrowing Base".

"Borrowing Base Certificate" means a certificate setting forth the calculation of the Borrowing Base as of the applicable date of determination substantially in the form of Exhibit C hereto, prepared by the Borrower or the Collateral Manager.

"Borrowing Base Deficiency" means, as of any date of determination, the extent to which the aggregate Advances Outstanding on such date exceeds the Borrowing Base.

"Breakage Fee" means, for Advances which are repaid (in whole or in part) on any date other than a Payment Date, the breakage costs, if any, related to such repayment, based upon the assumption that the applicable Lender funded its loan commitment in the London Interbank Eurodollar market and using any reasonable attribution or averaging methods which the Lender deems appropriate and practical, it hereby being understood that the amount of any loss, costs or expense payable by the Borrower to any Lender as Breakage Fee shall be determined in the respective Lender Agent's reasonable discretion and shall be conclusive absent manifest error.

"Business Day" means a day of the year other than (i) Saturday or a Sunday or (ii) any other day on which commercial banks in New York, New York, Columbia, Maryland or Charlotte, North Carolina are not open for business; *provided*, that, if any determination of a Business Day shall relate to an Advance bearing interest at LIBOR, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital Lease Obligations" means, with respect to any entity, the obligations of such entity to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such entity under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Interest Expense" means, with respect to any Obligor for any period, the amount which, in conformity with GAAP, would be set forth opposite the caption "interest expense" (exclusive of any PIK

Interest) or any like caption reflected on the most recent financial statements delivered by such Obligor to the Borrower for such period.

"Closing Date" means September 9, 2014.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral Advisor" means FS Investment Advisor, LLC, a Delaware limited liability company in its capacity as collateral advisor.

"Collateral Advisor Agreement" means the Investment Advisory and Administrative Services Agreement between the Collateral Manager and the Collateral Advisor.

"Collateral Agent" has the meaning assigned to that term in the preamble hereto.

"Collateral Agent Expenses" means the expenses set forth in the Wells Fargo Corporate Trust Fee Letter and any other accrued and unpaid reasonable and documented out-of-pocket expenses (including reasonable and documented attorneys' fees, costs and expenses) and indemnity amounts payable by the Borrower to the Collateral Agent under the Transaction Documents.

"Collateral Agent Fees" means the fees set forth in the Wells Fargo Corporate Trust Fee Letter, as such fee letter may be amended, restated, supplemented and/or otherwise modified from time to time.

"Collateral Agent Termination Notice" has the meaning assigned to that term in Section 10.05.

"Collateral Coverage Ratio" means, with respect to any Loan of an Energy-Related Obligor for any Relevant Test Period, the ratio of (a) the PDP PV-10 of such Obligor to (b) the aggregate outstanding Indebtedness of the related Obligor, in each case as calculated by the Borrower or the Collateral Manager in good faith using information from and calculations consistent with relevant compliance statements and financial reporting packages provided by the relevant Obligor.

"Collateral Custodian" means Wells Fargo, not in its individual capacity, but solely as collateral custodian pursuant to the terms of this Agreement.

"Collateral Custodian Expenses" means the expenses set forth in the Wells Fargo Corporate Trust Fee Letter and any other accrued and unpaid reasonable and documented out-of-pocket expenses (including reasonable and documented attorneys' fees, costs and expenses) and indemnity amounts payable by the Borrower to the Collateral Custodian under the Transaction Documents.

"Collateral Custodian Fees" means the fees set forth in the Wells Fargo Corporate Trust Fee Letter, as such fee letter may be amended, restated, supplemented and/or otherwise modified from time to time.

"Collateral Custodian Termination Notice" has the meaning assigned to that term in Section 11.05.

"Collateral File" means, for each Loan, (a) copies of each of the Required Loan Documents and (b) any other portion of the Loan File which is not part of the Required Loan Documents.

"Collateral Management Report" has the meaning assigned to that term in Section 6.07(b).

"Collateral Manager" means FS Energy and Power Fund or any other Person then authorized, pursuant to the Management Agreement, to service, administer, and collect on the Loans and exercise rights and remedies in respect of the same.

"Collateral Manager Event of Default" has the meaning assigned to that term in Section 6.11.

"Collateral Management Fee" has the meaning assigned to that term in the Management Agreement.

"Collateral Management Standard" means, with respect to any Loans included in the Collateral Portfolio, to service and administer such Loans on behalf of the Secured Parties in accordance with Applicable Law, the terms of this Agreement, the Underlying Instruments, all customary and usual servicing practices for loans like the Loans and, to the extent consistent with the foregoing, (i) with reasonable care, using a degree of skill and diligence not less than that with which the Borrower or Collateral Manager, as applicable, services and administers loans for its own account or for the account of its Affiliates having similar lending objectives and restrictions, and (ii) to the extent not inconsistent with clause (i), in a manner consistent with the customary standards, policies and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral Portfolio and without regard to any relationship that the Collateral Manager or any Affiliate thereof may have with any Obligor or any Affiliate of any Obligor. Solely pursuant to Section 6.11(a), the "Collateral Management Standard" shall apply to each Borrower Advisor.

"Collateral Manager Certificate" has the meaning assigned to that term in Section 6.07(c).

"Collateral Portfolio" means all right, title, and interest (whether now owned or hereafter acquired or arising, and wherever located) of the Borrower in the property identified below in clauses (a) through (e) and all accounts, cash and currency, chattel paper, tangible chattel paper, electronic chattel paper, copyrights, copyright licenses, equipment, fixtures, contract rights, general intangibles, instruments, certificates of deposit, certificated securities, uncertificated securities, financial assets, securities entitlements, commercial tort claims, deposit accounts, inventory, investment property, letter-of-credit rights, software, supporting obligations, accessions, or other property consisting of, arising out of, or related to any of the following (in each case excluding the Retained Interest and the Excluded Amounts):

(a) the Loans, and all monies due or to become due in payment under such Loans on and after the related Cut-Off Date, including, but not limited to, all Available Collections;

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(b) the Portfolio Assets with respect to the Loans referred to in clause (a);

(c) the Controlled Accounts and all Permitted Investments purchased with funds on deposit in the Controlled Accounts;

(d) the Borrower's equity interests in any Portfolio Subsidiary;

(e) any Loan or other asset received in exchange for an Eligible Loan in connection with any workout or other restructuring of such asset (it being understood, for the avoidance of doubt, that such Loan or other asset shall not be an Eligible Loan unless it meets each of the criteria set forth in such definition); and

(f) all income and Proceeds of the foregoing.

"Collateral Sub-Advisor" means GSO Capital Partners LP, a Delaware limited partnership, in its capacity as Collateral Sub-Advisor.

"Collection Account" means account number 48542600 at the Account Bank in the name of the Borrower subject to the Lien of the Collateral Agent for the benefit of the Secured Parties including any sub-account thereof; provided, that the funds deposited therein (including any interest and earnings thereon) from time to time shall constitute the property and assets of the Borrower, and the Borrower shall be solely liable for any Taxes payable with respect to the Collection Account.

"Collection Date" means the date on which the aggregate outstanding principal amount of the Advances have been repaid in full and all Yield and Fees and all other Obligations have been paid in full (other than contingent liability obligations as to which no claim has been made), and the Borrower shall have no further right to request any additional Advances.

"Collection Period" means, (i) as to the initial Payment Date, the period beginning on the Closing Date and ending on, and including, the Determination Date immediately preceding such Payment Date

and (ii) as to any subsequent Payment Date, the period beginning on the first day after the most recently ended Collection Period and ending on, and including, the Determination Date immediately preceding such Payment Date, or, with respect to the final Collection Period, the Collection Date.

"Commercial Paper Notes" means, any short-term promissory notes of any Conduit Lender issued by such Conduit Lender in the commercial paper market.

"Commitment" means, with respect to each Lender, (i) prior to the end of the Reinvestment Period, the dollar amount set forth opposite such Lender's name on Annex B hereto or the amount set forth as such Lender's "Commitment" on Schedule I to the Joinder Supplement relating to such Lender, as applicable (after giving effect to any decrease pursuant to Section 2.17 or increase pursuant to Section 2.20) and (ii) on or after the Reinvestment Period, such Lender's Pro Rata Share of the aggregate Advances Outstanding.

"Commitment Reduction Fee" means, with respect to any Lender and/or Lender Agent, the "Commitment Reduction Fee" set forth in the applicable Lender Fee Letter.

"Conduit Lender" means each commercial paper conduit as may from time to time become a Lender hereunder by executing and delivering a Joinder Supplement to the Administrative Agent and the Borrower as contemplated by Section 2.20.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

"Controlled Accounts" means the Collection Account, the Interest Collection Account, the Principal Collection Account and the Unfunded Exposure Account.

"Credit Risk Loan" means an Eligible Loan that, in the Borrower or the Collateral Manager's reasonable commercial judgment (as certified by the Borrower or the Collateral Manager to the Administrative Agent and the Lenders), is declining in value or has a significant risk of declining in credit quality or price in the near term.

"Cure Plan" means a plan submitted by the Borrower to the Administrative Agent satisfying the requirements of Section 2.06(c).

"Cure Plan Sale" means a sale of a Loan pursuant to an approved Cure Plan.

"Current Ratio" means, with respect to any Obligor, the ratio of (a) all assets of such Obligor that, in accordance with GAAP, would be included as current assets on a balance sheet as of the date of calculation, after deducting adequate reserves in each case in which a reserve is proper in accordance with GAAP divided by (b) all liabilities of such Obligor that, in accordance with GAAP, would be included as current liabilities on a balance sheet as of the date of calculation; provided that, such calculation shall (x) exclude any non-cash mark-to-market value and liability associated with Derivative Contracts pursuant to SFAS 133 Accounting for Derivative Instruments and Hedging Activities and (y) be made by the Borrower or the Collateral Manager in good faith using information from and calculations consistent with relevant compliance statements and financial reporting packages provided by the relevant Obligor.

"Cut-Off Date" means, with respect to each Loan, the date such Loan is Pledged hereunder.

"Defaulting Lender" means any Lender that has (or, with respect to clause (iv) of this definition, has a direct or indirect parent company that has) (i) failed to fund any portion of the Advances on the date required to be funded by it hereunder, (ii) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless such amount is the subject of a good faith dispute, (iii) notified the Borrower, the Administrative Agent or any other Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply or has failed to comply with its funding obligations under this Agreement or generally under other agreements in which it commits or is obligated to extend credit, or (iv) become or is not Solvent

or has become the subject of a Bankruptcy Proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Delayed Draw Loan" means a Loan that requires one or more future advances to be made by the Borrower and which does not permit the re-borrowing of any amount previously repaid by the related Obligor; provided that, such Loan shall only be considered a Delayed Draw Loan for so long as any future funding obligations remain in effect and any reference to a Delayed Draw Loan shall refer only to any portion of such Loan which constitutes a future funding obligation.

"Determination Date" means the 4th day of each March, June, September and December.

"DIP Loan" means any Loan (i) with respect to which the related Obligor is a debtor-in-possession as defined under the Bankruptcy Code, (ii) which has the priority allowed pursuant to Section 364 of the Bankruptcy Code, (iii) the terms of which have been approved by a court of competent jurisdiction (the enforceability of which is not subject to any pending contested matter or proceeding) and (iv) which is not a Senior Secured Bond or a Second Lien Energy Loan.

"Disbursement Request" means a disbursement request from the Borrower to the Administrative Agent and the Collateral Agent in the form attached hereto as Exhibit D in connection with a disbursement request from the Principal Collection Account in accordance with Section 2.19.

"Discretionary Sale" has the meaning set forth in Section 2.07(b).

"Dollars" means the lawful currency of the United States of America.

"EBITDA" means, with respect to any period and any Loan, the meaning of "EBITDA", "Adjusted EBITDA" or any comparable definition in the Underlying Instrument for each such Loan, together with all reasonable add-backs and exclusions as designated in such Underlying Instrument, and in any case that "EBITDA", "Adjusted EBITDA" or such comparable definition is not defined in such Underlying Instrument, an amount, for the principal obligor on such Loan and any of its parents or Subsidiaries that are obligated pursuant to the Underlying Instrument for such Loan (determined on a consolidated basis without duplication in accordance with GAAP) equal to earnings from continuing operations for such period *plus* interest expense, income taxes and unallocated depreciation and amortization for such period (to the extent deducted in determining earnings from continuing operations for such period), and any other item the Borrower and the Administrative Agent mutually deem to be appropriate.

"Eligible Assignee" means any commercial bank or insurance company.

"Eligible Loan" means each Loan (A) for which the Administrative Agent and/or the Collateral Agent have received (or, in accordance with the definition of "Required Loan Documents," will receive) the related Required Loan Documents; (B) with respect to which an Approval Notice has been executed by the Administrative Agent; and (C) that satisfies each of

the following eligibility requirements (unless the Administrative Agent, with the prior consent of the Required Lenders, agrees to waive any such eligibility requirement with respect to such Loan):

(a) such Loan is (i) a Senior Secured Loan (which may be a DIP Loan), a First Lien Energy Loan (which may be a DIP Loan) or a Second Lien Energy Loan or (ii) prior to the occurrence of the Required Sale Date, a Senior Secured Bond;

(b) after giving effect to such Loan as an Eligible Loan, as of the related Cut-Off Date, the aggregate Outstanding Balance of all Eligible Loans made to the applicable Obligor is not greater than \$17,500,000; provided that the aggregate Outstanding Balance of all Eligible Loans made to up to three (3) Obligors may be up to \$25,000,000 for each such Obligor; provided, further, that only the portion of the Loans in excess of this threshold will be deemed to have not satisfied this clause (b);

(c) such Loan is denominated and payable solely in Dollars;

- (d) such Loan does not constitute Margin Stock;
- (e) unless such Loan is a Delayed Draw Loan, such Loan does not require the Borrower to make advances in respect of such Loan at any time after the Borrower's purchase of such Loan;
- (f) the acquisition of such Loan will not cause the Borrower or the Collateral Portfolio to be required to register as an investment company under the 1940 Act;
- (g) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all Eligible Loans that are DIP Loans is not more than 5% of the aggregate Outstanding Balance of all Eligible Loans; provided that, only the portion of the Loans in excess of such threshold will be deemed to have not satisfied this clause (g);
- (h) the principal Underlying Collateral for such Loan is not real property;
- (i) such Loan, together with the Underlying Instrument related thereto, is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor and each guarantor thereof (if applicable), enforceable against such Obligor and each such guarantor in accordance with its terms, subject to customary bankruptcy, insolvency and equity limitations;
- (j) such Loan is in the form of and is treated as indebtedness of the related Obligor for U.S. federal income tax purposes;
- (k) as of the related Cut-Off Date, such Loan is not delinquent in payment of any amount under the related Underlying Instrument or other related transaction documents;

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- (l) none of the acquisition, sale, transfer or assignment of such Loan nor the granting of a security interest hereunder to the Collateral Agent will (i) violate, conflict with or contravene any Applicable Law or any contractual or other restriction, limitation or encumbrance binding on the Borrower or (ii) cause any Lender to fail to comply with any Applicable Law or request or directive (whether or not having the force of law) from any banking or other Governmental Authority having jurisdiction over such Lender;
- (m) such Loan is eligible under the applicable Underlying Instrument (giving effect to the provisions of Sections 9-406 and 9-408 of the UCC) to be sold, transferred or assigned to the Borrower and to have a security interest therein granted to the Collateral Agent, as agent for the Secured Parties (subject to the rights of any applicable agents under the terms of the related Underlying Instrument);
- (n) such Loan is not subject to, or the subject of any assertions in respect of, any litigation, dispute or offset, and contains provisions substantially to the effect that the Obligor's and each guarantor's (if applicable) payment obligations thereunder are absolute and unconditional without any right of rescission, setoff, counterclaim or defense for any reason against the Borrower or any assignee;
- (o) immediately after giving effect to its acquisition of such Loan and at all times it is owned by the Borrower, the Borrower (i) has good and marketable title to, and is the sole owner of, such Loan, and the Borrower has granted to the Collateral Agent for the benefit of the Secured Parties a valid and perfected first priority (subject to Permitted Liens) Lien in the Loan and related Underlying Instrument and (ii) has not granted a Lien in the Loan or the related Underlying Instrument to any Person other than to the Collateral Agent hereunder;
- (p) such Loan (or the acquisition thereof) is not subject to and will not subject any Secured Party or any Affiliate thereof to any Tax, fee or other governmental charge payable to any Governmental Authority;
- (q) the Obligor with respect to such Loan and each guarantor (if applicable) thereof had full legal capacity to execute and deliver the related Underlying Instrument;
- (r) all material consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority or any other Person required by the Borrower or under the Related Underlying Instrument under Applicable Law to be obtained, effected or given in connection with the

making, acquisition, transfer or performance of such Loan have been duly obtained, effected or given and are in full force and effect;

(s) such Loan requires the related Obligor to pay customary maintenance, repair, insurance and taxes, together with all other ancillary costs and expenses, with respect to the Underlying Collateral of such Loan;

(t) such Loan and any Underlying Collateral (i) comply in all respects with all Applicable Laws and (ii) have not, and will not, be used by the related Obligor in any manner or for any purpose that would result in any material risk of liability being imposed upon the Borrower or any Secured Party under any Applicable Law;

(u) (i) such Loan has a term to stated maturity that does not exceed eight (8) years and (ii) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all Eligible Loans with a term to stated maturity of greater than seven (7) years does not exceed 10% of the aggregate Outstanding Balance of all Eligible Loans; provided, that only the portion of the Loans in excess of this threshold will be deemed to have not satisfied this clause (u);

(v) the Underlying Instrument for such Loan does not contain a confidentiality provision that would prohibit any Secured Party from accessing all necessary information with regard to such Loan, so long as such Secured Party has agreed to maintain the confidentiality of such information in accordance with the provisions of such Underlying Instrument;

(w) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all fixed-rate Loans and Senior Secured Bonds is not more than the Applicable Concentration Percentage of the aggregate Outstanding Balance of all Eligible Loans; provided that, only the portion of the Loans in excess of such threshold will be deemed to have not satisfied this clause (w);

(x) reserved;

(y) such Loan, and any payment made with respect to such Loan, is not currently withholding any tax (or similar governmental charge) unless the Obligor thereon is making "gross-up" payments that cover the full amount of such withheld tax (or similar governmental charge) on an after-tax basis;

(z) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all Loans with an Obligor organized or incorporated in Canada is not more than 20% of the aggregate Outstanding Balance of all Eligible Loans; provided that, only the portion of the Loans in excess of such threshold will be deemed to have not satisfied this clause (z);

(aa) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all Eligible Loans that are Delayed Draw Loans is not more than 10% of the aggregate Outstanding Balance of all Eligible Loans; provided that, only the portion of the Loans in excess of such threshold will be deemed to have not satisfied this clause (aa);

(bb) to the actual knowledge of the Borrower, no written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Underlying Collateral, nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened, other than, in each case, as notified to the Administrative Agent in writing on or prior to the applicable Cut-Off Date or promptly after obtaining actual knowledge of any such notice or inquiry; provided that, unless otherwise permitted by the Administrative Agent, from and after the Borrower obtaining such actual knowledge, the related Loans will no longer be counted as Eligible Loans for purposes of calculating the Borrowing Base;

(cc) the Obligor with respect to such Loan is an Eligible Obligor; and

(dd) after giving effect to such Loan as an Eligible Loan, the aggregate Outstanding Balance of all Eligible Loans that are Second Lien Energy Loans is not more than 60% of the aggregate Outstanding Balance of all Eligible Loans; provided that, only the portion of the Loans in excess of such threshold will be deemed to have not satisfied this clause (dd).

"Eligible Obligor" means, on any date of determination, any Obligor that:

(a) is a business organization (and not a natural person) duly organized and validly existing under the laws of its jurisdiction of organization;

(b) is not a Governmental Authority;

(c) is not an Affiliate of the Borrower or any Borrower Advisor;

(d) is organized and incorporated in the United States or any State thereof or

Canada;

(e) as of the related Cut-Off Date, there are no proceedings pending or, to the best of the Borrower's or the Equityholder's knowledge, threatened (i) asserting that such Obligor is not Solvent or (ii) pursuant to which such Obligor, any other obligated party or any Governmental Authority has asserted that such Loan or the related Underlying Instrument is illegal or unenforceable;

(f) as of the related Cut-Off Date, is not the subject of and, to the best of the Borrower's or the Equityholder's knowledge is not threatened with any proceeding which would result in, a Bankruptcy Event with respect to such Obligor;

(g) to the actual knowledge of the Borrower, none of such Obligor's operations is the subject of a material Federal or state investigation evaluating whether any remedial action, involving expenditures, is needed to respond to a release of any Hazardous Materials into the environment, other than, in each case, as notified to the Administrative Agent in writing on or prior to the applicable Cut-Off Date or promptly after obtaining actual knowledge of any such investigation; provided that, unless otherwise permitted by the Administrative Agent, from and after the Borrower obtaining such actual knowledge, the related Loans will no longer be counted as Eligible Loans for purposes of calculating the Borrowing Base; and

(h) to the actual knowledge of the Borrower, such Obligor does not have any material contingent liability in connection with any release of any Hazardous Materials into the environment, other than, in each case, as notified to the Administrative Agent in writing on or prior to the applicable Cut-Off Date or promptly after obtaining actual knowledge of any such material contingent liability; provided that, unless otherwise permitted by the Administrative Agent, from and after the Borrower obtaining such actual knowledge, the related Loans will no longer be counted as Eligible Loans for purposes of calculating the Borrowing Base.

"Eligible Repurchase Obligations" means repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in the definition of Permitted Investments.

"Energy-Related Obligor" means any Obligor that is designated on the applicable Approval Notice as an Obligor engaged in the business of owning, operating, exploring, producing, drilling or managing oil and gas assets.

"Environmental Laws" means any and all foreign, federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, binding interpretations and orders of courts or Governmental Authorities, relating to the protection of human health from exposure to Hazardous Materials or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials. Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the

Hazardous Material Transportation Act (49 U.S.C. § 331 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300, *et seq.*), the Environmental Protection Agency's regulations relating to underground storage tanks (40 C.F.R. Parts 280 and 281), and the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), and the rules and regulations thereunder, each as amended or supplemented from time to time.

"Equityholder" means FS Energy and Power Fund, as the owner of 100% of the membership interests in the Borrower.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means (a) any corporation that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as the Borrower or the Collateral Manager, as applicable, (b) a trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Code) with the Borrower or the Collateral Manager, as applicable, or (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Code) as the Borrower or the Collateral Manager, as applicable, any corporation described in clause (a) above or any trade or business described in clause (b) above.

"Eurodollar Disruption Event" means occurrence of any of the following: (a) any Liquidity Bank or any Institutional Lender shall have notified the Administrative Agent in writing of a determination by such Liquidity Bank or any of its assignees or participants or such Institutional Lender that it would be contrary to law or to the directive of any central bank or other Governmental Authority (whether or not having the force of law) to obtain United States dollars in the London interbank market to fund any Advance, (b) the Administrative Agent is

unable to determine LIBOR for any reason, (c) any Liquidity Bank or any Institutional Lender shall have notified the Administrative Agent in writing of a determination by such Liquidity Bank or any of its assignees or participants or such Institutional Lender, as applicable, that the rate at which deposits of United States dollars are being offered to such Liquidity Bank or any of its assignees or participants or such Institutional Lender in the London interbank market does not accurately reflect the cost to such Liquidity Bank, such assignee or such participant or such Institutional Lender of making, funding or maintaining any Advance or (d) any Liquidity Bank or any Institutional Lender shall have notified the Administrative Agent in writing of the inability of such Liquidity Bank or any of its assignees or participants or such Institutional Lender, as applicable, to obtain United States dollars in the London interbank market to make, fund or maintain any Advance.

"Event of Default" has the meaning assigned to that term in Section 7.01.

"Excepted Persons" has the meaning assigned to that term in Section 12.13(a).

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Amounts" means (a) any amount received in any Controlled Account with respect to any Loan included as part of the Collateral Portfolio, which amount is attributable to the payment of any Tax, fee or other charge imposed by any Governmental Authority on such Loan or on any Underlying Collateral, or (b) any amount received in any Controlled Account representing (i) any amount representing a reimbursement of insurance premiums, (ii) any escrows relating to Taxes, insurance and other amounts in connection with Loans which are held in an escrow account for the benefit of the Obligor and the secured party pursuant to escrow arrangements under a Underlying Instrument and (iii) any amount received in any Controlled Account with respect to any Loan that is sold or transferred by the Borrower pursuant to Section 2.07, to the extent such amount is attributable to a time after the effective date of such replacement or sale.

"Excluded Taxes" has the meaning assigned to that term in Section 2.10(a).

"Facility Maturity Date" means the earliest to occur of (i) the Stated Maturity Date, (ii) the date of the declaration or automatic occurrence of the Facility Maturity Date pursuant to Section 7.01 and (iii) the Collection Date.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any law, regulation, legislation or practice adopted pursuant to an intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"Federal Funds Rate" means, for any period, a fluctuating interest rate *per annum* equal, for each day during such period, to the weighted average of the overnight federal funds rates as in Federal Reserve Board Statistical Release H.15(519) or any successor or substitute publication selected by the Administrative Agent (or, if such day is not a Business Day, for the

next preceding Business Day), or, if for any reason such rate is not available on any day, the rate determined, in the sole discretion of the Administrative Agent, to be the rate at which overnight federal funds are being offered in the national federal funds market at 9:00 a.m. on such day.

"Fees" means the Non-Usage Fee and all other fees payable to each Lender or Lender Agent pursuant to the terms of any Lender Fee Letter.

"Financial Asset" has the meaning specified in Section 8-102(a)(9) of the UCC.

"Financial Sponsor" means any Person, including any Subsidiary of such Person, whose principal business activity is acquiring, holding, and selling investments (including controlling interests) in otherwise unrelated companies that each are distinct legal entities with separate management, books and records and bank accounts, whose operations are not integrated with one another and whose financial condition and creditworthiness are independent of the other companies so owned by such Person.

"First Lien Energy Loan" means a Loan Asset that (i) is made to an Energy-Related Obligor, (ii) is not (and cannot by its terms become) subordinate in right of payment to any obligation of the Obligor in any bankruptcy, reorganization, insolvency, moratorium or liquidation proceedings, (iii) is secured by a pledge of collateral, which security interest is validly perfected and first priority under Applicable Law (subject to Liens described in clause (b) (other than clause (v) thereof) of the definition of Permitted Liens), and (iv) the Borrower or the Collateral Manager determines in good faith that the value of the collateral securing the loan (or the enterprise value of the underlying business) on or about the time of origination equals or exceeds the outstanding principal balance of the loan *plus* the aggregate outstanding balances of all other loans of equal or higher seniority secured by the same collateral.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"Governmental Authority" means, with respect to any Person, any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person.

"Hazardous Materials" means all hazardous or toxic materials subject to any Environmental Law, including, without limitation, materials listed in 49 C.F.R. § 172.010, materials defined as hazardous pursuant to § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, flammable, explosive or radioactive materials, hazardous or toxic wastes or substances, lead-based materials, petroleum or petroleum distillates or asbestos or material containing asbestos, polychlorinated biphenyls, radon gas, urea formaldehyde and any such materials classified as being "in inventory", "usable work in process" or similar classification that would, if classified as unusable, be included in the foregoing definition.

"Highest Required Investment Category" means (a) with respect to ratings assigned by Moody's, "Aa2" or "P-1" for one-month instruments, "Aa2" and "P-1" for three-

month instruments, "Aa2" and "P-1" for six-month instruments and "Aaa" and "P-1" for instruments with a term in excess of six-months, and (b) with respect to rating assigned by S&P, "A-1+" for short-term instruments and "AAA" for long-term instruments.

"Indebtedness" means (i) with respect to any Obligor under any Loan, the meaning of "Indebtedness" or any comparable definition in the Underlying Instrument for each such Loan, and in any case that "Indebtedness" or such comparable definition is not defined in such Underlying Instrument, without duplication, (a) all obligations of such entity for borrowed money, (b) all obligations of such entity evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such entity under conditional sale or other title retention agreements relating to property acquired by such entity, (d) all obligations of such entity in respect of the deferred purchase price of property or services (excluding current accounts payable and trade payables incurred in the ordinary course of business), (e) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such entity, whether or not the indebtedness secured thereby has been assumed, (f) all guarantees by such entity of indebtedness of others, (g) all Capital Lease Obligations of such entity, (h) all obligations, contingent or otherwise, of such entity as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such entity in respect of bankers' acceptances; and (ii) for all other purposes, with respect to any Person at any date, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current liabilities incurred in the ordinary course of business and payable in accordance with customary trade practices) or that is evidenced by a note, bond, debenture or similar instrument or other evidence of indebtedness customary for indebtedness of that type, (b) all Capital Lease Obligations of such Person, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (d) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, (e) all indebtedness, obligations or liabilities of that Person in respect of derivatives (on a net basis, to the extent the same are reported by such Person on a net basis), and (f) all obligations under direct or indirect guaranties in respect of obligations (contingent or otherwise) to purchase or otherwise acquire, or to otherwise assure a creditor against loss in respect of, indebtedness or obligations of others of the kind referred to in clauses (a) through (e) of this clause (ii).

"Indemnified Amounts" has the meaning assigned to that term in Section 8.01.

"Indemnified Party" has the meaning assigned to that term in Section 8.01.

"Indemnity Letter" means that certain Indemnity Letter, dated as of the date hereof, given by the Collateral Advisor to the Administrative Agent, on behalf of the Secured Parties.

"Independent Director" means a natural person who, (A) has not been for the three-year period prior to his or her appointment as an Independent Director, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, stockholder, member, manager, partner or officer of the Borrower or any of their respective Affiliates (other than his or her service as an Independent Director of the Borrower or other

Affiliates that are structured to be "bankruptcy remote" and does not hold, either directly or indirectly, any equity interests in the Borrower or in any direct or indirect parent or Subsidiary thereof); (ii) a customer, creditor, service provider (including a provider of professional services) or supplier of the Borrower or any of their Affiliates (other than his or her service as an Independent Director of the Borrower or other Affiliates of the Borrower that are structured to be "bankruptcy remote"); (iii) any member of the immediate family of a person described in (i) or (ii), or (iv) a Person that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii), (B) has, (i) prior experience as an Independent Director for a corporation or limited liability company whose charter documents required the unanimous consent of all Independent Directors thereof before such corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (ii) at least three years of employment experience with CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally-recognized company reasonably approved by the Administrative Agent, in each case that is

not an Affiliate of the Borrower and that provides professional Independent Directors and other corporate services in the ordinary course of its business and (C) is employed by a nationally recognized company that routinely provides professional Independent Directors and other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition and satisfies subparagraphs (i) and (ii) by reason of being the Independent Director of a "bankruptcy remote" Affiliate shall be qualified to serve as an Independent Director of the Borrower, provided that the fees that such individual earns from serving as an Independent Director of Affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

"Indorsement" has the meaning specified in Section 8-102(a)(11) of the UCC, and "Indorsed" has a corresponding meaning.

"Ineligible Portion" has the meaning assigned to that term in Section 1.05.

"Initial Advance" means the first Advance made pursuant to Article II.

"Initial Notice of Borrowing" means a Notice of Borrowing that (i) specifies a requested Advance of not less than \$1,000,000, (ii) specifies an Advance Date not more than sixty (60) days after the Closing Date and (iii) is revocable by the Borrower only if, at any time prior to the specified Advance Date, the Advances Outstanding exceed \$1,000,000.

"Institutional Lender" means (i) Wells Fargo and (ii) each financial institution other than a Conduit Lender which may from time to time become a Lender hereunder by executing and delivering a Joinder Supplement to the Administrative Agent and the Borrower as contemplated by Section 2.20.

"Instrument" has the meaning specified in Section 9-102(a)(47) of the UCC.

"Insurance Policy" means, with respect to any Loan, an insurance policy covering liability and physical damage to, or loss of, the Underlying Collateral.

"Insurance Proceeds" means any amounts received on or with respect to a Loan under any Insurance Policy or with respect to any condemnation proceeding or award in lieu of condemnation other than (i) any such amount received which is required to be used to restore, improve or repair the related property or required to be paid to the Obligor under the Underlying Instrument or (ii) any such amount for which the Borrower or the Collateral Manager has consented, in its reasonable business discretion, to be used to restore, improve or repair the related property or otherwise to be paid to the Obligor under the Underlying Instrument.

"Interest" means, with respect to any period and any Loan, for the Obligor on such Loan and any of its parents or Subsidiaries that are obligated under the Underlying Instrument for such Loan (determined on a consolidated basis without duplication in accordance with GAAP), the meaning of "Interest" or any comparable definition in the Underlying Instrument for each such Loan and in any case that "Interest" or such comparable definition is not defined in such Underlying Instrument, all interest in respect of Indebtedness (including the interest component of any payments in respect of Capital Lease Obligations) accrued or capitalized during such period (whether or not actually paid during such period).

"Interest Collection Account" means account number 48542601 at the Account Bank in the name of the Borrower subject to the Lien of the Collateral Agent for the benefit of the Secured Parties including any sub-account thereof; provided, that the funds deposited therein (including any interest and earnings thereon) from time to time shall constitute the property and assets of the Borrower, and the Borrower shall be solely liable for any Taxes payable with respect to the Interest Collection Account.

"Interest Collections" means, (i) with respect to any Loan, all payments and collections attributable to interest on such Loan, including, without limitation, all scheduled payments of interest and payments of interest relating to principal prepayments, all guaranty payments attributable to interest and proceeds of any liquidations, sales, dispositions or securitizations attributable to interest on such Loan and (ii) amendment fees, late fees, waiver fees, prepayment fees or other fees received in respect of Loans.

"Interest Coverage Ratio" means, with respect to any Loan for any Relevant Test Period, either (a) the meaning of "Interest Coverage Ratio" or comparable definition set forth in the related Underlying Instrument, or (b) in the case of any Loan with respect to which the related Underlying Instrument does not