

**CONFIDENTIAL**  
**PWRW&G DRAFT 12/22/2015**

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**ASSET PURCHASE AGREEMENT\*<sup>1</sup>**

**DATED AS OF [JANUARY \_\_], 2016**

**BY AND AMONG**

**[\_\_\_\_\_], AS BUYER,**

**WALTER ENERGY, INC., AS THE COMPANY**

**AND**

**[\_\_\_\_\_]<sup>2</sup>, AS SELLERS**

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\* This draft agreement is non-binding, and bracketed and/or footnoted items are subject to revision based on Lot(s) purchased by Buyer. The stalking horse agreement should be used as the model to submit a bid for Lot 1.

<sup>1</sup> Draft subject to change based on Lot(s) purchased by Buyer. References to Lot(s) numbers are to the Lots as described in Exhibit A to the Bidding Procedures and references to the "Mining Lots" are to Lots 2, 3, 4 and 8. If Lot 2 is purchased, Buyer will need to make arrangements with Walter Black Warrior Basin regarding the operation by WBWB of gas wells on the Lot 2 property.

<sup>2</sup> Name of Seller(s) to be added based on Lot(s) purchased by Buyer.



**TABLE OF CONTENTS**

**ARTICLE 1**

**DEFINITIONS**

1.1 Definitions.....2  
1.2 Other Definitions and Interpretive Matters.....18

**ARTICLE 2**

**PURCHASE AND SALE**

2.1 Purchase and Sale .....19  
2.2 Excluded Assets .....22  
2.3 Assumed Liabilities .....23  
2.4 Excluded Liabilities .....25  
2.5 Assignment and Assumption of Contracts.....26  
2.6 [Assignment and Assumption of Pardee Lease .....29  
2.7 Further Assurances.....30

**ARTICLE 3**

**PURCHASE PRICE**

3.1 Consideration .....31  
3.2 [Purchase Price Adjustment .....31  
3.3 Allocation of Purchase Price.....33  
3.4 Withholding .....34

**ARTICLE 4**

**CLOSING AND DELIVERIES**

4.1 Closing Date.....34  
4.2 Buyer’s Deliveries .....34  
4.3 Sellers’ Deliveries.....35

**ARTICLE 5**

**REPRESENTATIONS AND WARRANTIES OF SELLERS**

5.1 Organization and Good Standing.....37  
5.2 Authority; Validity; Consents .....37  
5.3 No Conflict.....38  
5.4 Real Property .....38  
5.5 Environmental Matters.....39  
5.6 Title to Acquired Assets.....41

5.7	Taxes .....	41
5.8	Legal Proceedings .....	41
5.9	Compliance with Legal Requirements; Permits .....	41
5.10	Labor Matters .....	43
5.11	Employee Benefits .....	44
5.12	[Sellers' Intellectual Property .....	45
5.13	Contracts .....	45
5.14	[RESERVED].....	46
5.15	Brokers or Finders.....	46
5.16	Affiliate Interests .....	46
5.17	[RESERVED] .....	46
5.18	Undue Influence.....	46
5.19	[Absence of Certain Changes.....	46
5.20	[Mining .....	47
5.21	[MSHA; ]OSHA. ....	48
5.22	[Coal Act; Black Lung Act .....	48
5.23	Warranties Exclusive .....	49

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES OF BUYER

6.1	Organization and Good Standing.....	49
6.2	Authority; Validity; Consents .....	50
6.3	No Conflict.....	50
6.4	Brokers or Finders.....	51
6.5	Legal Proceedings.....	51
6.6	Financing.....	51
6.7	Qualification .....	51
6.8	No Other Representations or Warranties; Condition of the Business; Buyer's Reliance. ....	52
6.9	Information .....	52

## ARTICLE 7

### ACTIONS PRIOR TO THE CLOSING DATE

7.1	Access and Reports; Confidentiality.....	53
7.2	Operations Prior to the Closing Date .....	54
7.3	Regulatory Matters; Cooperation.....	54
7.4	[RESERVED] .....	56
7.5	[RESERVED] .....	56
7.6	Notice of Developments .....	56
7.7	[RESERVED]. ....	56
7.8	Surety Bonds; Permits.....	56
7.9	[Overlapping Permits].....	63
7.10	Sale Free and Clear .....	64

7.11	[RESERVED] .....	64
7.12	Other Actions .....	64

## ARTICLE 8

### ADDITIONAL AGREEMENTS

8.1	Taxes .....	65
8.2	Bulk Sales .....	65
8.3	Payments Received .....	66
8.4	Assumed Contracts: Adequate Assurance and Performance .....	66
8.5	[Employee Matters] .....	66
8.6	Post-Closing Books and Records; Properties; and Personnel .....	68
8.7	Use of Name .....	68
8.8	No Successor Liability .....	68
8.9	[RESERVED] .....	69

## ARTICLE 9

### CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

9.1	Accuracy of Representations .....	69
9.2	Sellers' Performance .....	69
9.3	No Order .....	69
9.4	Governmental Authorizations .....	69
9.5	Sellers' Deliveries .....	70
9.6	Sale Order .....	70
9.7	Assumed Contracts .....	70
9.8	Material Adverse Effect .....	70

## ARTICLE 10

### CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

10.1	Accuracy of Representations .....	70
10.2	Buyer's Performance .....	71
10.3	No Order .....	71
10.4	Governmental Authorizations .....	71
10.5	Buyer's Deliveries .....	71
10.6	Sale Order .....	71

## ARTICLE 11

### TERMINATION

11.1	Termination Events .....	71
11.2	Effect of Termination .....	73

## ARTICLE 12

### GENERAL PROVISIONS

12.1	Survival .....	73
12.2	Confidentiality .....	73
12.3	Public Announcements .....	74
12.4	Notices .....	74
12.5	Waiver .....	76
12.6	Entire Agreement; Amendment .....	76
12.7	Assignment .....	76
12.8	Severability .....	76
12.9	Expenses .....	76
12.10	Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver .....	77
12.11	Counterparts .....	77
12.12	Parties in Interest; Third Party Beneficiaries; No Amendment .....	77
12.13	Remedies .....	78
12.14	Specific Performance .....	78
12.15	Sellers' Representative; Reliance .....	78

## **SCHEDULES**

Schedule 1.1(a)	Sellers' Knowledge Persons
Schedule 2.1(h)	Transferred Permits
Schedule 2.1(m)	Claims and Causes of Action
Schedule 2.2(a)	Certain Excluded Assets
Schedule 2.2(d)	Excluded Capital Stock and Equity
Schedule 2.3(f)	Employee Liabilities
Schedule 2.5(a)	Available Contracts
Schedule 5.2	Required Consents
Schedule 5.3	Conflicts
Schedule 5.4(a)(i)	Owned Real Property
Schedule 5.4(a)(ii)	Options and Rights of First Refusal
Schedule 5.4(b)	Lessor Leases
Schedule 5.4(c)	Leases (for Leased Real Property)
Schedule 5.5	Environmental Matters
Schedule 5.5(i)	Assumed Liabilities - Environmental
Schedule 5.5(k)	Underground Storage Tanks and Related Matters
Schedule 5.7	Taxes
Schedule 5.8	Legal Proceedings
Schedule 5.9(a)	Permits
Schedule 5.9(b)	Compliance with Legal Requirements, Orders and Permits
Schedule 5.9(c)	Adverse Environmental Actions
Schedule 5.10(a)	Collective Bargaining Agreements and Other Contracts
Schedule 5.10(b)	Labor Matters
Schedule 5.10(c)	WARN Act and Other Proceedings
Schedule 5.11(a)	Title IV Plans
Schedule 5.11(c)	Termination of Title IV Plans
Schedule 5.11(f)	Payments Becoming Due
Schedule 5.12	Patents, Trademarks and Copyrights
Schedule 5.13(i)	Material Contracts
Schedule 5.13(ii)	Effectiveness of Material Contracts
Schedule 5.13(iii)	Breaches and Defaults
Schedule 5.16	Affiliate Interests
Schedule 5.19(b)	Certain Changes
Schedule 5.21	MSHA; OSHA
Schedule 6.2	Buyer Consents
Schedule 7.2	Operations Prior to Closing

## **EXHIBITS**

[Exhibit A	Accounting Standards]
[Exhibit B	Form of JWW Assumption Agreement] <sup>3</sup>

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<sup>3</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of [January \_\_], 2016 (the “Execution Date”), is made and entered into by and among [\_\_\_\_], a [\_\_\_\_] organized under the laws of the State of [\_\_\_\_] (“Buyer”), Walter Energy, Inc., a Delaware corporation (the “Company”), and the Sellers (as hereinafter defined)[, and, solely for purposes of Section 2.6, J.W. Walter, Inc., a Delaware corporation (“JWW”)]<sup>4</sup>. Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article 1.

### RECITALS

**WHEREAS**, on July 15, 2015, the Company, Sellers and certain of their Affiliates (collectively, the “Debtors”) filed voluntary petitions (the “Bankruptcy Case”) under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Alabama (the “Bankruptcy Court”);

**WHEREAS**, in accordance with the Bidding Procedures and subject to the terms and conditions set forth in this Agreement and the entry of the Sale Order, Sellers desire to sell to Buyer all of the Acquired Assets and to assign to Buyer all of the Assumed Liabilities, Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, and the Parties intend to effectuate the transactions contemplated by this Agreement, upon the terms and conditions hereinafter set forth;

**WHEREAS**, the Acquired Assets and Assumed Liabilities shall be purchased and assumed by Buyer pursuant to the Sale Order, free and clear of all Encumbrances (other than Permitted Encumbrances), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

**WHEREAS**, Sellers’ ability to consummate the transactions set forth in this Agreement is subject to, among other things, the entry of the Sale Order by the Bankruptcy Court; and

**WHEREAS**, the board of directors (or similar governing body) of each Seller has determined that it is advisable and in the best interests of such Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and each has approved the same.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein made, and in consideration of the foregoing and of the representations, warranties, covenants, agreements and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

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<sup>4</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

## ARTICLE 1

### DEFINITIONS

#### 1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

“Accounting Referee” has the meaning set forth in Section 3.2(c).

“Accounting Standards” means the accounting standards, principles, policies, procedures, categorizations, definitions, methods, practices and techniques set forth on Exhibit A.

“Accounts Receivable” means, with respect to the Business, all accounts receivable, notes receivable, purchase orders, negotiable instruments, completed work or services that has not been billed, chattel paper, notes and other rights to payment, including those consisting of all accounts receivable in respect of services rendered or products sold to customers by Sellers relating solely to the Business, any other miscellaneous accounts receivable of the Business, and any claim, remedy or other right of such Sellers related to any of the foregoing, together with all unpaid financing charges accrued thereon and any payments with respect thereto.

“Acquired Assets” has the meaning set forth in Section 2.1.

“Acquired Lot[s]” means Lot[s] [\_\_\_]<sup>5</sup>.

“Action” means any action, suit, petition, plea, charge, claim, demand, hearing, inquiry, arbitration, complaint, grievance, summons, litigation, mediation, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, inquest, audit, examination, investigation or similar matter by or before any Governmental Authority.

“Affiliate” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

“Agreement” has the meaning set forth in the introductory paragraph.

[“Alabama Contract Mining Agreement” has the meaning set forth in Section 7.8(a)(iv).

“Alabama Mining License” has the meaning set forth in Section 7.8(a)(ii)(1).

“Alabama Mining Permits” has the meaning set forth in Section 7.8(a)(iii)(1).]<sup>6</sup>

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<sup>5</sup> Buyer to specify Lot(s) being purchased.

<sup>6</sup> Insert if Lot 2, 4 or 8 is purchased.



“Allocation Statement” has the meaning set forth in Section 3.3(b).

[“Antitrust Law” means, collectively, the HSR Act, Title 15 of the United States Code §§ 1-7 (the Sherman Act), Title 15 of the United States Code §§ 12-27 and Title 29 of the United States Code §§ 52-53 (the Clayton Act), the Federal Trade Commission Act (15 U.S.C. § 41 et seq.), and the rules and regulations promulgated thereunder, and any other Legal Requirements that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, as such of the foregoing are enacted and in effect as of the date hereof.]

“Applicant Violator System” has the meaning set forth in Section 5.9(c).

“Approved Budget” has the meaning set forth in the Cash Collateral Orders.

“Assumed Benefits” has the meaning set forth in Section 2.3(f).

“Assumed Contracts” has the meaning set forth in Section 2.5(a)(i).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

[“Assumed SMCRA Permit” has the meaning set forth in Section 7.9(a).]

“Assumption Agreement” means an Assignment and Assumption Agreement in customary form reasonably acceptable to the Parties.

“Available Contracts” has the meaning set forth in Section 2.5(a)(i).

“Avoidance Action” means any claim, right or cause of action of any Seller arising under chapter 5 of the Bankruptcy Code and any analogous state law claims relating to the Acquired Assets or the Business.

“Bankruptcy Case” has the meaning set forth in the recitals.

“Bankruptcy Code” means Title 11 of the United States Code, Sections 101 *et seq.*

“Bankruptcy Court” has the meaning set forth in the recitals.

“Benefit Plan” means any (i) “employee benefit plan” within the meaning of Section 3(3) of ERISA or (ii) other employee benefit plans, agreements, programs, policies, arrangements or payroll practices, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), including any plan, program, arrangement or agreement that is a pension, profit-sharing, savings, retirement, employment, consulting, severance pay, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity-based compensation, change in control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any Seller(s) is the owner, the beneficiary, or both), Code

Section 125 “cafeteria” or “flexible” benefit, employee loan, educational assistance or fringe benefit plan, program, arrangement or agreement, whether written or oral, in each case, that (x) is sponsored, maintained or contributed to by Sellers, or for which Sellers have any obligation to sponsor, maintain or contribute to, or for which Sellers have any direct or indirect liability, whether contingent or otherwise and (y) under which any current or former officer, director, employee, consultant (or their respective beneficiaries) of Sellers has any present or future right to benefits, except for any Multiemployer Plan.

“Bidding Procedures” means the bid procedures attached as Exhibit A to the Bidding Procedures Order.

“Bidding Procedures Order” means the Order of the Bankruptcy Court, dated November 25, 2015, approving the Bidding Procedures.

“Bill of Sale” means a bill of sale in customary form reasonably acceptable to the Parties.

[“Black Lung Act” means the Federal Coal Mine Safety and Health Act of 1969, the Black Lung Benefits Act of 1972, the MSHA, the Black Lung Benefits Reform Act of 1977, and the Black Lung Benefits Amendments of 1981, in each case as amended.

“Black Lung Assumed Liabilities” means all Black Lung Liability of the Buyer arising after the Closing.

“Black Lung Liability” means any liability or benefit obligations related to black lung claims and benefits under the Black Lung Act, and liabilities and benefits related to pneumoconiosis, silicosis, exposure to isocyanates or other lung disease arising under any federal or state law.]<sup>7</sup>

“Business” means the business and operations of Sellers (wherever such business and operations are situated or conducted) related solely to the Acquired Lots, other than with respect to such business and operations to the extent they relate to any Excluded Assets or Excluded Liabilities.<sup>8</sup>

“Business Day” means any day of the year on which national banking institutions in New York or Alabama are open to the public for conducting business and are not required or authorized to close.

“Buyer” has the meaning set forth in the introductory paragraph.

“Buyer Employees” has the meaning set forth in Section 8.5(a).

“Cash Collateral Orders” means, collectively, the (i) Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition

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<sup>7</sup> Definitions relating to Black Lung to be inserted if any Mining Lot or Lot 9 is purchased.

<sup>8</sup> Qualifying descriptions to be added depending on Lot(s) purchased.

Secured Parties, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (D) Granting Related Relief Docket No. 59 and (ii) Amended Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Granting Related Relief Docket No. 797, as may be further extended or amended.

“Cash Consideration” has the meaning set forth in Section 3.1(a).

“Claim” means a “claim” as defined in Section 101(5) of the Bankruptcy Code, against any Seller.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” means the date and time as of which the Closing occurs as set forth in Section 4.1.

“Closing Required Permits” means all Governmental Authorizations (including Permits) that are necessary for the operation and conduct of the Business or the Acquired Assets as of the Closing Date, other than any Governmental Authorizations or Permits the absence of which would be immaterial to the operation of the Business as of and after the Closing.

“Closing Statement” has the meaning set forth in Section 3.2(b).

[“Coal Act” means the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701, et seq.]<sup>9</sup>

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985.

“Code” means the Internal Revenue Code of 1986.

“Collective Bargaining Agreement” has the meaning set forth in Section 5.10(a).

“Company” has the meaning set forth in the introductory paragraph.

“Confidential Information” has the meaning set forth in Section 12.2.

“Contract” means any legally binding agreement, contract, obligation, promise, undertaking, lease (including Leases and Lessor Leases), sublease, purchase order, arrangement, license, commitment, or other binding arrangement or understanding (in each case whether written or oral), and any amendments, modifications or supplements thereto.

[“Contract Mining Agreement” has the meaning set forth in Section 7.8(a)(iv)<sup>10</sup>]

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<sup>9</sup> Insert bracketed language if any Mining Lots are purchased.

<sup>10</sup> Insert if Lots 2, 4 or 8 are purchased.

[“Copyrights” means all United States and foreign copyright rights in any original works of authorship, whether registered or unregistered, including all copyright registrations and applications.]

“Cure Costs” means all monetary liabilities, including pre-petition monetary liabilities, of Sellers that must be paid or otherwise satisfied to cure all of Sellers’ monetary defaults under the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code at the time of the assumption thereof and assignment to Buyer as provided hereunder as such amounts are determined by the Bankruptcy Court or approved pursuant to the assignment and assumption procedures provided for in the Bidding Procedures Order.

“Cure Notice” means, with respect to each Available Contract, the notice submitted by Sellers to the counterparty or counterparties thereto pursuant to the Bidding Procedures Order setting forth, among other things, the Cure Cost amount with respect thereto as calculated by Sellers.

[“Current Assets” means, as of the Closing Date, certain consolidated current assets of Sellers solely to the extent related to the Business, which current assets shall include only the line items set forth on Exhibit A attached hereto under the heading “Current Assets” and no other assets and determined in accordance with the Accounting Standards. For the avoidance of doubt, Current Assets shall not include any Excluded Assets.

“Current Liabilities” means, as of the Closing Date, certain consolidated current liabilities of Sellers solely to the extent related to the Business, which current liabilities include only the line items set forth on Exhibit A attached hereto under the heading “Current Liabilities” and no other liabilities and determined in accordance with the Accounting Standards. For the avoidance of doubt, Current Liabilities shall not include any Excluded Liabilities.]

“Deeds” means special (or limited) warranty deeds, or jurisdictional equivalents, as the case may be, in recordable form for the appropriate jurisdiction, reasonably acceptable to Buyer, transferring title to the Real Property other than Leased Real Property and Improvements thereon (subject only to Permitted Encumbrances).

“Determination Date” has the meaning set forth in Section 2.5(a)(i).

“Disclosure Schedules” means the disclosure schedules attached hereto, dated as of the date hereof, delivered or made available by Sellers to Buyer in connection with the execution of this Agreement.

“Disclosure Statement” means the Disclosure Statement for the Debtors’ Joint Plan of Reorganization filed under Chapter 11 of the Bankruptcy Code, filed by the Debtors with the Bankruptcy Court on August 26, 2015, as the same may be amended, supplemented, or restated from time to time prior to the Execution Date.

“Documents” means all of the documents that are used or useful in, or held for use in, the Business.

“Employees” means all of the individuals directly employed by Sellers on the Execution Date, as well as any additional persons who become employees of Sellers during the period from the Execution Date through and including the Closing Date.

“Encumbrance” means any “interest” as that term is used in Section 363(f) of the Bankruptcy Code, mortgage, deed of trust, pledge, security interest, encumbrance, easement, condition, reservation, lien (statutory or otherwise), mechanics lien, Claim, covenant, encroachment, lease, right of use or possession, or other similar third party interest, or other survey defect, charge, hypothecation, deemed trust, action, easement, right-of-way or covenant on real property, other than any license of Intellectual Property, whether imposed by Contract, Legal Requirement, equity or otherwise.

“Environmental Laws” means any and all current and future Legal Requirements concerning or relating to (a) public health and safety as may be affected by the Release of, or exposure to, Hazardous Substances or (b) pollution or protection of the environment, including those relating to (i) the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution, importing, labeling, testing, processing, discharge, Release, threatened Release, control, cleanup, or other action or failure to act involving pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes; (ii) human health as affected by hazardous or toxic substances[; and (iii) acid mine drainage, but not including any and all Legal Requirements concerning or relating to environmental provisions of any applicable Mining and Mining Safety Law]<sup>11</sup>.

“Environmental Permit” means any and all permits, licenses, approvals, consents, waivers, franchises, filings, accreditations, registrations, certifications, notifications, exemptions, clearances and any other authorization required under any applicable Environmental Law [or the environmental provisions of any applicable Mining and Mining Safety Law]<sup>12</sup>.

“Equipment” means all furniture, fixtures, equipment, computers, machinery, vehicles, apparatus, appliances, implements, telephone systems, signage, supplies and all other tangible personal property of every kind and description, and Improvements and tooling used, or held for use, in connection with the operation of the Business, wherever located, including communications equipment, information technology assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto.

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

“ERISA Affiliate” means any Person that would be considered a single employer with Sellers under Sections 414(b), (c), (m) or (o) of the Code.

“Exchange Act” means the Securities Exchange Act of 1934.

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<sup>11</sup> Insert bracketed language if any Mining Lots are purchased.

<sup>12</sup> Insert bracketed language if any Mining Lots are purchased.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Benefit Plans” means all Benefit Plans.

“Excluded Contracts” has the meaning set forth in Section 2.5(a)(i).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

[“Excluded NPDES Permit” has the meaning set forth in Section 7.9(a).]

“Execution Date” has the meaning set forth in the introductory paragraph.

“Extended Contract Period” has the meaning set forth in Section 2.5(a)(i).

“FASB 410” has the meaning set forth in Section 5.20(b).

“FCPA” has the meaning set forth in Section 5.18.

“Final Order” means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed (other than such modifications or amendments that are consented to by Buyer) and as to which (A) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (B) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have expired, as a result of which such Action or Order shall have become final in accordance with Bankruptcy Rule 8002; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause an Order not to be a Final Order.

“Financial Statements” means the consolidated balance sheets of the Company and its Subsidiaries as of, and consolidated statements of operations, comprehensive income, changes in stockholder’s equity and cash flows for the fiscal year ended December 31, 2014 and the unaudited condensed and consolidated balance sheets for the Company and its Subsidiaries as of September 30, 2015 and the condensed consolidated statements of operations, stockholder’s equity (deficit) and cash flows for the nine-month period ending September 30, 2015.

“FLSA” means Fair Labor Standards Act of the United States Department of Labor, and any state or local laws governing wages, hours, and/or overtime pay.

“Good Faith Deposit” has the meaning set forth in the Bidding Procedures.

“Governmental Authority” means any United States federal, state or local or any foreign government, multi-national organization, quasi-governmental authority, or other similar

recognized governmental authority or regulatory or administrative authority, agency or commission or any court, tribunal or judicial body having jurisdiction.

“Governmental Authorization” means any approval, consent, license, Permit, waiver or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

“Hazardous Substance” means any “hazardous waste,” “hazardous material” or “hazardous substance” under any Environmental Law or Mining and Mining Safety Law.

[“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations promulgated thereunder.]

“Improvements” means the buildings, plants, structures, fixtures, systems, facilities, infrastructure and other improvements affixed or appurtenant to the Owned Real Property or Leased Real Property.

“Incorporated Information” means and includes any and all matters disclosed in (i) the Company’s filings with the SEC, including, its annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, (ii) the Statements of Financial Affairs filed by the Debtors with the Bankruptcy Court on August 28, 2015, as the same may be amended or supplemented from time to time, (iii) the Schedules of Assets and Liabilities filed by the Debtors with the Bankruptcy Court on August 28, 2015, (iv) the Disclosure Statement, (v) any and all other filings made by or on behalf of any Debtor with the Bankruptcy Court in connection with the Bankruptcy Case, in each case prior to the Execution Date and (vi) the “dataroom,” access to which has been made available to Buyer.

“Indebtedness” means, at any time and with respect to any Person: (a) all indebtedness of such Person for borrowed money; (b) all indebtedness of such Person for the deferred purchase price of property or services (other than trade payables, other expense accruals and deferred compensation items arising in the Ordinary Course of Business); (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the Ordinary Course of Business in respect of which such Person’s liability remains contingent); (d) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), other than inventory or other property purchased by such Person in the Ordinary Course of Business; (e) all obligations of such Person under leases which have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases, to the extent required to be so recorded; (f) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities, in each case only to the extent drawn; (g) all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness; (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make

payment of such Indebtedness; (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered); or (iv) otherwise to assure a creditor against loss in respect of such Indebtedness; and (h) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

[“Intellectual Property” means all intellectual property, including all Copyrights, Patents, Trademarks and Trade Secrets, owned by Sellers and used or held for use in the Business or the Acquired Assets.]<sup>13</sup>

“Inventory” has the meaning set forth in Section 2.1(a).

“IRS” has the meaning set forth in Section 3.3(e).

[“JWW” means J.W. Walter, Inc., a Delaware corporation.

“JWW Assumption Agreement” has the meaning set forth in Section 2.6.]<sup>14</sup>

“Knowledge” means, with respect to any matter in question, in the case of Sellers, the actual knowledge of any of the individuals listed on Schedule 1.1(a).

“Lease” has the meaning set forth in the definition of “Leased Real Property.”

“Leased Real Property” means, specifically excluding any Excluded Asset, the interests in real property let, leased or subleased by Sellers, as tenant, subtenant, lessee or sublessee, to the extent relating solely to the Business, or in which a Seller, to the extent relating solely to the Business, has been granted a possessory interest or right to use or occupy all or any portion of the same (each such lease, a “Lease,” and collectively, the “Leases”).

“Legal Requirement” means any federal, state, provincial, local, municipal, foreign, international, or multinational law (statutory, common or otherwise), constitution, treaty, convention, ordinance, equitable principle, code, rule, regulation or Order enacted, adopted, promulgated, issued or applied by any Governmental Authority or other similar authority, including for the avoidance of doubt, OSHA [and any Mining and Mining Safety Law]<sup>15</sup>, as applicable.

“Lessor Leases” has the meaning set forth in Section 5.4(b).

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<sup>13</sup> Insert depending on Lot(s) purchased, including if Lot 4 is purchased and domain name Taftcoal.com is transferred.

<sup>14</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>15</sup> Insert bracketed language if any Mining Lots are purchased.



“Liability” means a Claim or Encumbrance of any kind or nature whatsoever (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Lot” has the meaning set forth in the Bidding Procedures.

“Material Adverse Effect” means any change, event, state of facts or occurrence that individually or in the aggregate (taking into account all other such changes, events, states of fact or occurrences) has had, or would be reasonably expected to have, a material adverse change in or material adverse effect on (1) the Acquired Assets or the assets, properties, prospects, financial condition or results of operations of the Business (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole or (2) the ability of Sellers to consummate the transactions contemplated by this Agreement or to perform any of their obligations under this Agreement, but excluding any change or effect to the extent that it results from or arises out of (i) any reasonably anticipated effects of the commencement or prosecution of the Bankruptcy Case; (ii) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby, including the effects of the transactions hereby on business relationships with suppliers and customers; (iii) changes in Legal Requirements or accounting regulations; (iv) any specific action required to be taken (or omitted) by this Agreement or taken (or omitted) at the written request of Buyer; (v) general industry changes in the industries in which Sellers compete; (vi) acts of God (including earthquakes, storms, severe weather, fires, floods and natural catastrophes); (vii) any failure of the Business to achieve external or internal forecasts or financial projections; (viii) any breach of this Agreement by Buyer; or (ix) any change or effect of economic or political conditions (including acts of terrorism, hostilities, sabotage, military actions or war, or any material worsening of such acts of terrorism, hostilities, sabotage, military actions or war), in each case of clauses (iii), (v) and (ix) to the extent that such conditions do not disproportionately affect Sellers, taken as a whole, as compared to other companies that are principally engaged in the same Business as Sellers.

“Material Contract” means any Contract of any Seller relating to the Acquired Assets pursuant to which any Seller is reasonably expected to incur potential aggregate Liabilities in an amount greater than or equal to \$[3,000,000] per annum and has a term of greater than [one] year.

[“Mining” means the exploration, extraction, processing, storage and transportation of coal and non-coal minerals and to the Reclamation of lands used for such activities.

“Mining Financial Assurances” has the meaning set forth in Section 5.20(a).

“Mining and Mining Safety Law” means all Legal Requirements relating to Mining and Mining safety, including (i) SMCRA (including its implementing regulations and any state analogs); (ii) MSHA; (iii) OSHA; (iv) acid mine drainage requirements; and (v) regulations relating to Mining operations and activities, including Reclamation.

“Mining Permits” means all applicable Permits related to Mining or otherwise required by Mining and Mining Safety Law.

“MSHA” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § § 801 et. seq.]<sup>16</sup>

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

[“Net Working Capital” means Current Assets minus Current Liabilities determined as of the Closing Date, without giving effect to the transactions contemplated by this Agreement.

“Net Working Capital Adjustment” means Net Working Capital minus Target Working Capital, expressed as a positive number if positive, and as a negative number if negative, as determined in accordance with Section 3.2.]

[“New NPDES Permit” has the meaning set forth in Section 7.9(a).]

[“NPDES Interim Period” has the meaning set forth in Section 7.9(a).]

“Objections Notice” has the meaning set forth in Section 3.3(c).

“Order” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, precept, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority or an arbitrator, mediator or other judicially sanctioned Person or body.

“Ordinary Course of Business” means, with respect to any Person, the ordinary and usual course of normal day-to-day operations of such Person and its business, consistent with its past practice; provided that in the case of Sellers, “Ordinary Course of Business” shall take into account the business and operating practices that have been utilized by Sellers since the commencement of the Bankruptcy Case.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 et. seq.

“Outside Date” has the meaning set forth in Section 11.1(b)(ii).

“Owned Real Property” means, specifically excluding any Excluded Asset, all real property owned by any Seller to the extent relating solely to the Business, and all right, title and interest of such Seller therein, together with all of such Seller’s right, title and interest in and to the following: (i) all buildings, structures, systems, hereditaments and Improvements located on such real property owned by such Seller; (ii) all Improvements owned by such Seller; and (iii) all easements, if any, in or upon such real property owned by such Seller, licenses and all rights-of-way, beneficial easements, licenses, and other rights, privileges and appurtenances belonging or in any way pertaining to such real property owned by such Seller, in each case to the extent relating solely to the Business.

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<sup>16</sup> Insert bracketed language if any Mining Lots are purchased. References to these definitions in the Agreement will be appropriately removed if no Mining Lots are purchased.

[“Pardee Lease” means that certain [identify lease from Pardee Minerals, Inc., to J.W. Walter, Inc.]

“Pardee Lease Liabilities” has the meaning set forth in Section 2.6.

“Pardee Sublease” means that certain [identify sublease of Pardee Lease by JWW to Maple Coal.]<sup>17</sup>

“Party” or “Parties” means, individually or collectively, as applicable, Buyer, the Company and Sellers.<sup>18</sup>

[“Patents” means United States and foreign patents and patent applications, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals and patent disclosures related thereto.]

“PBGC” has the meaning set forth in Section 5.11(b).

“Permits” means any and all permits (including Environmental Permits and Mining Permits), licenses, approvals, consents, waivers, franchises, filings, accreditations, registrations, certifications, certificates of occupancy, easements, rights of way, notifications, exemptions, clearances, and authorizations, together with all modifications, renewals, amendments, supplements and extensions thereof and applications therefor, of or from any Governmental Authority, in each case solely to the extent relating to a Seller and the Acquired Assets.

“Permitted Encumbrances” means Encumbrances specifically permitted by the Sale Order.

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, unincorporated organization, estate, trust, association, organization or other legal entity or group (as defined in Section 13(d)(3) of the Exchange Act) or Governmental Authority.

“Petition Date” means July 15, 2015.

“Post-Closing Taxes” has the meaning set forth in Section 2.3(j).

[“Pre-Closing Statement” has the meaning set forth in Section 3.2(a).]

[“Pre-Paid Expenses” means any of Sellers’ rights with respect to all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, pre-paid expenses, prepayments, rights under warranties or guarantees, vendor rebates and other refunds of every kind and nature (whether or not known or unknown or contingent or non-contingent), to the extent related solely

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<sup>17</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>18</sup> Add JWW if Lot 3 is purchased and Lot 6 is not.

to the Business, except that professional fee retainers and pre-paid deposits related thereto shall not be included in the definition of “Pre-Paid Expenses.”]

“Previously Omitted Contract” has the meaning set forth in Section 2.5(b)(i).

“Previously Omitted Contract Designation” has the meaning set forth in Section 2.5(b)(i).

“Previously Omitted Contract Notice” has the meaning set forth in Section 2.5(b)(ii).

“Proceeding” means any Action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before any Governmental Authority.

“Purchase Price” has the meaning set forth in Section 3.1.

“Real Property” and “Real Properties” means any of Sellers’ rights with respect to (i) the Owned Real Property; (ii) the Leased Real Property; (iii) all Improvements; (iv) all strips and gores and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining any Owned Real Property; and (v) all easements, licenses, rights and appurtenances relating to the foregoing that any Seller has a legally recognized interest therein, in each case solely to the extent relating to the Business.

[“Reclamation” means reclamation, revegetation, recontouring, abatement, control or prevention of adverse effects of mining activities.]<sup>19</sup>

“Release” means, except as authorized by a valid Permit issued under Environmental Law, (a) any releasing, spilling, discharging, disposing, leaking, pumping, injecting, pouring, depositing, emitting, leaching of any Hazardous Substance into the outdoor environment, including ambient air, surface water, groundwater and surface or subsurface strata, and (b) migration of Hazardous Substances into or out of any of the Real Property through soil, surface water, or groundwater.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Response Period” has the meaning set forth in Section 3.3(c).

“Sale Motion” means the motion filed by the Debtors pursuant to, *inter alia*, Sections 363 and 365 of the Bankruptcy Code to obtain the Bidding Procedures Order and the Sale Order and approve, among other things, the transactions contemplated by this Agreement.

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<sup>19</sup> Insert bracketed language if any Mining Lots are purchased. References to this term will be appropriately removed if no Mining Lots are purchased.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance satisfactory to Buyer and Sellers, pursuant to, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances (other than Permitted Encumbrances), and the assumption and assignment of the Assumed Contracts and the Assumed Liabilities by and to Buyer, and containing findings of fact and conclusions of law that Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code, which order shall in any event provide that, on the Closing Date and concurrently with the Closing, the Acquired Assets shall be transferred to Buyer free and clear of all then existing Encumbrances (including, for the avoidance of doubt, all successor liability, including any successorship obligations under any Collective Bargaining Agreement, and/or with respect to any Benefit Plan), other than Permitted Encumbrances and Assumed Liabilities.

“SEC” means the Securities and Exchange Commission.

[“Secured Taxes” means Taxes that if unpaid would give rise to a statutory lien on the Acquired Assets.]

“Securities Act” means the Securities Act of 1933.

“Sellers”<sup>20</sup> means:

- (i) [Atlantic Development and Capital, LLC, Atlantic Leaseco, LLC, Maple Coal Co., LLC]<sup>21</sup>, each a Delaware limited liability company;
- (ii) [Blue Creek Energy, Inc.]<sup>22</sup>, [J.W. Walter, Inc.]<sup>23</sup>, [Walter Coke, Inc.]<sup>24</sup>, [Walter Land Company]<sup>25</sup>, [Walter Minerals, Inc.]<sup>26</sup>, each a Delaware corporation; and
- (iii) [Jefferson Warrior Railroad Company, Inc.]<sup>27</sup>, [Jim Walter Resources, Inc.]<sup>28</sup>, [Taft Coal Sales & Associates, Inc.]<sup>29</sup>, [Tuscaloosa Resources, Inc.]<sup>30</sup>, each an Alabama corporation.

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<sup>20</sup> Note to Draft: If Lot 2 is purchased, certain guarantees for leases relating to Lot 2 and made by Walter Energy, Inc. will need to be released, and replacement guarantees may need to be obtained by a buyer of Lot 2. If Lots 4, 5 or 9 are purchased Walter Energy, Inc. will need to assign certain contracts relating to those Lots if such contracts are assumed.

<sup>21</sup> Insert if Lot 3 is purchased.

<sup>22</sup> Insert if Lot 2 is purchased.

<sup>23</sup> Insert if Lot 6 is purchased.

<sup>24</sup> Insert if Lot 9 is purchased.

<sup>25</sup> Insert if Lot 7 is purchased.

<sup>26</sup> Insert if Lots 2, 5 or 8 are purchased.

[“SMCRA” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201 et seq.]<sup>31</sup>

“Straddle Period” has the meaning set forth in Section 8.1(a).

“Subsidiary” means any legal entity with respect to which a specified Person (or a subsidiary thereof) owns, directly or indirectly, more than 50% of the voting stock or other equity or partnership interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such legal entity, or of which the specified Person controls the management.

“Successful Bid” has the meaning set forth in the Bidding Procedures.

“Successful Bidder” has the meaning set forth in the Bidding Procedures.

[“Target Working Capital” means [\_\_\_\_\_] Dollars (\$[\_\_\_\_]).]

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any liability for any items described in clause (i) payable by reason of contract, transferee liability or operation of law (including Treasury Regulation Section 1.1502-6) or otherwise.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

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<sup>27</sup> Insert if Lot 9 is purchased.

<sup>28</sup> Insert if Lot 8 is purchased.

<sup>29</sup> Insert if Lot 4 is purchased.

<sup>30</sup> Insert if Lot 8 is purchased.

<sup>31</sup> Insert bracketed language if any Mining Lots are purchased. References to this term will be appropriately removed if no Mining Lots are purchased.

“Title IV Plan” means any Benefit Plan subject to Title IV of ERISA (which, for the avoidance of doubt, excludes any Multiemployer Plan).

“Trade Payables” means trade obligations and accrued operating expenses incurred in the ordinary course of business of Sellers to the extent that such obligations relate to the Acquired Assets or the Business and are approved to be paid pursuant to the Approved Budget.

[“Trade Secrets” means trade secrets and other confidential and proprietary information and know-how.]

[“Trademarks” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names, Internet domain names and any other similar designations of source of goods or services, whether registered or unregistered, and registrations and pending applications to register the foregoing, and all goodwill related to or symbolized by the foregoing.]

“Transaction Documents” means this Agreement, the Assumption Agreement, the Bill of Sale, [the Transition Services Agreement] and any other agreements, instruments or documents entered into at the Closing pursuant to this Agreement.

“Transfer Taxes” means any real property transfer Tax, sales Tax, use Tax, real property recording Tax or fee, intangible Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Acquired Assets (and the perfecting or recording of evidence thereof) and not exempted under the Sale Order, by Section 1146(c) of the Bankruptcy Code or applicable state or municipal law.

“Transferred Permits” has the meaning set forth in Section 2.1(h).

[“Transition Services Agreement” means a transition services agreement pursuant to which Sellers and/or their designee(s) shall provide certain services to Buyer after Closing and vice versa on terms mutually acceptable to Sellers and Buyer.]

“Treasury Regulations” means the Treasury regulations promulgated under the Code.

“UMWA” means the United Mine Workers of America.

“Union” and “Unions” have the meanings set forth in Section 5.10(a).

“WARN Act” has the meaning set forth in Section 5.10(c).

[“West Virginia Assets” has the meaning set forth in the Bidding Procedures.

“West Virginia Mining Permits” has the meaning set forth in Section 7.8(b)(iii)(1).<sup>32</sup>

## 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

Contracts, Agreements and Orders. Any reference in this Agreement to any contract, license, agreement or order means such contract, license, agreement or order as amended, supplemented or modified from time to time in accordance with the terms thereof.

Day. Any reference in this Agreement to “days” (but not Business Days) means to calendar days.

Dollars. Any reference in this Agreement to “\$” means United States dollars.

Exhibits/Schedules. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender includes all genders, and words imparting the singular number include the plural and vice versa.

Headings. The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article” or “Schedule” are to the corresponding Section, Article or Schedule of this Agreement unless otherwise specified.

Herein. Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear.

Including. The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

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<sup>32</sup> Insert if Lot 3 is purchased.



Law. Any reference to any law in this Agreement means such law as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time.

Lot Numbers. References to Lots by number are to the Lots as identified in Exhibit A to the Bidding Procedures.

Other. The words “to the extent” shall be interpreted to mean “to the extent (but only to the extent)”.

Person. Any reference to a Person shall include such Person’s successors and permitted assigns.

(b) No Strict Construction. Buyer, on the one hand, and the Company and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and the Company and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limiting the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

## ARTICLE 2

### PURCHASE AND SALE

#### 2.1 Purchase and Sale.

Subject to the entry of the Sale Order and upon the terms and subject to the conditions of this Agreement, on the Closing Date, Sellers shall unconditionally sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, acquire and accept from Sellers, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Sellers’ right, title and interest in, to or under the following properties, rights, claims and assets (in each case, other than the Excluded Assets), wherever situated or located, whether real, personal or mixed, whether tangible or intangible, whether identifiable or contingent, whether owned, leased, licensed, used or held for use, but in each case solely, in or relating to the Business, and whether or not reflected on the books and records of Sellers, as the same shall exist on the Closing Date (collectively, the “Acquired Assets”):

(a) all inventory of any kind or nature, merchandise and goods, solely related to the Business and maintained, held or stored by or for Sellers on the Closing Date, whether or not prepaid, and wherever located, held or owned, and any prepaid deposits for any of the same, including all coal inventory located upon or within Sellers’ Real Property or belonging to Sellers, disposables and consumables used, or held for use, solely in connection with the Business, including any goods in transit, other than any such items to the extent related to the Excluded Assets (“Inventory”);

(b) all Equipment used solely in the Business and located on the premises located at [\_\_\_\_\_] <sup>33</sup>, except to the extent primarily used in connection with the Excluded Assets;

(c) subject to Section 2.5, all Assumed Contracts, except to the extent used in connection with the Excluded Assets;

(d) [the Current Assets;]

(e) all (i) Real Property (other than the Leased Real Property to the extent the Leases related thereto are not Assumed Contracts) and (ii) the Lessor Leases (to the extent that a Lessor Lease is an Assumed Contract), in each case relating solely to the Business;

(f) [all rights to subsidence lands associated with mining operations and all rights to the waiver of and release from subsidence liability and indemnity rights under any and all conveyances, representations and instruments or agreements of any kind and nature applicable to Sellers' coal mining activities and interests, in each case relating solely to the Business and except to the extent related to the Excluded Assets or the Excluded Liabilities;]

(g) except to the extent prohibited by law, any rights of Sellers to the warranties and licenses received from manufacturers and Sellers of the Equipment, Improvements or any component thereof, in each case relating solely to the Business and except to the extent related to the Excluded Assets or the Excluded Liabilities;

(h) subject to Section 2.5(c) and Section 7.8 and obtaining the consents set forth on Schedule 5.2, all Permits and licenses held by Sellers, including those identified on Schedule 2.1(h) (the "Transferred Permits"); provided, that Schedule 2.1(h) and the definition of "Transferred Permits" shall be deemed updated and amended to exclude, without further action by either Party, any Permit that relates to an Excluded Asset;

(i) [all Intellectual Property relating solely to the Business to the extent owned or leased by Sellers and transferrable by them, except to the extent related to the Excluded Assets or the Excluded Liabilities or to the extent such Intellectual Property utilizes the names "Walter" or "Jim Walter" or variations or derivations of either thereof;] <sup>34</sup>

(j) [all Accounts Receivable, except to the extent related to the Excluded Assets or the Excluded Liabilities;] <sup>35</sup>

(k) [all Pre-Paid Expenses;] <sup>36</sup>

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<sup>33</sup> Insert addresses depending on Lot(s) purchased.

<sup>34</sup> Insert depending on Lot(s) purchased, including if Lot 4 is purchased and domain name Taftcoal.com is transferred.

<sup>35</sup> Insert if any of Lots 3, 4, or 9 are purchased. **Note to Draft:** If Accounts Receivable are a Current Asset, include in Exhibit A and remove as a separate item in Section 2.1.

(l) [to the extent not prohibited by Legal Requirements and not subject to attorney-client privilege or other work product privilege, all Documents and other books and records (financial, accounting, personnel files of Buyer Employees, and other), except to the extent related to the Excluded Assets or the Excluded Liabilities, and correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, that are used or held for use in, or that are exclusively related to, the Acquired Assets, the Assumed Liabilities or the Business; provided, that Sellers shall be permitted to keep copies of all of the foregoing to the extent necessary or required by the Bankruptcy Court or in connection with the Bankruptcy Case or related to the Excluded Assets or the Excluded Liabilities, subject to Section 12.2;

(m) except as set forth on Schedule 2.1(m) or to the extent related to the Excluded Assets or the Excluded Liabilities, and excluding any Avoidance Actions, all claims, interests, rights, rebates, abatements, remedies, recoveries, goodwill, customer and referral relationships, other intangible property and all privileges, set-offs and benefits of Sellers, and all claims, demands, indemnification rights, causes of action, arising under or relating solely to any of the Acquired Assets [(including Intellectual Property to the extent transferrable or assignable)]<sup>37</sup>, the Assumed Liabilities or the Business, including those arising out of Assumed Contracts, express or implied warranties, representations and guarantees from suppliers, manufacturers, contractors or others to the extent relating to the operation of the Business or affecting the Equipment, Inventory or other tangible Acquired Assets;

(n) [all third party business interruption, property or casualty insurance proceeds, to the extent received by Sellers solely in respect of the Business or the Acquired Assets or the Assumed Liabilities and only to the extent that the losses giving rise to such proceeds occur after the Closing Date;]

(o) [all rights under non-disclosure or confidentiality, non-compete, or non-solicitation agreements (in each case, to the extent transferrable) or key employee retention plans or similar arrangements with (or for the benefit of) Buyer Employees and agents of Sellers or with third parties (including any such non-disclosure or confidentiality, non-compete, or non-solicitation agreements (in each case, to the extent transferrable) [or any key employee retention plans or similar arrangements with respect to any Buyer Employee entered into in connection with or in contemplation of the auction contemplated by the Bidding Procedures]), in each case to the extent relating solely to the Acquired Assets or the Business and included as an Assumed Contract;] and

(p) all telephone, telex and telephone facsimile numbers and other directory listings, but only to the extent they relate solely to the Business or the Acquired Assets.

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<sup>36</sup> If Pre-Paid Expenses (or any other line items in this Section 2.1) are a Current Asset, include in Exhibit A and remove as separate subsection of Section 2.1.

<sup>37</sup> Insert depending on Lot(s) purchased, including if Lot 4 is purchased and domain name Taftcoal.com is transferred.

## 2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing herein shall be deemed to sell, transfer, assign, convey or deliver any of the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under, and all Liabilities with respect to, the Excluded Assets. For all purposes of and under this Agreement, the term “Excluded Assets” shall consist of all assets that are not Acquired Assets, including the following items, assets and properties (whether or not such assets are otherwise described in Section 2.1):

- (a) the assets, if any, listed on Schedule 2.2(a);
- (b) any and all Collective Bargaining Agreements;
- (c) any (i) Employee personnel files or records and (ii) Excluded Benefit Plan and any assets, trust agreements, insurance policies, administrative service agreements and other contracts, files and records in respect thereof;
- (d) any shares of capital stock or other equity interest in or issued by any Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by any Seller, and any shares of capital stock or other equity interest in or issued by any Subsidiary of any Seller (including, for the avoidance of doubt, any foreign Subsidiary) or other entity in which any Seller holds an equity interest, or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by any Subsidiary of any Seller or other entity in which any Seller holds an equity interest, including the capital stock or equity interest set forth on Schedule 2.2(d);
- (e) the limited liability company, partnership and corporate books and records of internal limited liability company, partnership and corporate proceedings, minute books, organizational or governing documents, stock ledgers and other records of Sellers; provided, however, that copies of the foregoing items have been made available by Sellers to Buyer;
- (f) Documents that Sellers are required by Legal Requirements to retain and documents subject to attorney-client privilege or other work product privilege; provided, that such documents shall remain subject to Section 12.2, if applicable;
- (g) any Contract that is not an Assumed Contract;
- (h) all rights under or arising out of insurance policies [to the extent not set forth in Section 2.1(n)];<sup>38</sup>
- (i) any prepaid deposits related to professional fee retainers and Cash Collateral securing Approved Collateralized Obligations;

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<sup>38</sup> Schedule policy relating to liability under Pardee Lease if Lot 3 is purchased.

- Acquired Asset;]<sup>39</sup>
- (j) [all Accounts Receivable, except to the extent included as an
  - (k) the Cash Consideration, all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit, bank accounts and other bank deposits, instruments and investments of Sellers;
  - (l) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;
  - (m) any rights, claims or causes of action of Sellers under this Agreement or any other Transaction Document;
  - (n) subject to Section 2.5(c), any Permits and licenses held by Sellers that are not assignable or transferrable;
  - (o) any surety bonds or other financial assurances, any cash of any Seller (wherever held) that secures or otherwise supports letters of credit serving as, securing or supporting financial assurances, and any deposits, escrows, surety bonds or other financial assurances and any cash or cash equivalents securing any surety bonds or financial assurances, including in connection with any of the Transferred Permits or any Assumed Liabilities;
  - (p) all Avoidance Actions;
  - (q) any intercompany receivables by or between one or more of the Sellers, any Debtor or any of their Subsidiaries;
  - (r) any tax assets or attributes and all rights to refunds of Taxes of Sellers;
  - (s) all Tax records and work papers; and
  - (t) all right and interest in and right to manage the 501(c)(21) Black Lung Benefits Trust funded by the Company, Sellers, Debtors or their affiliates in respect of Black Lung Liability.

### 2.3 Assumed Liabilities.

Subject to entry of the Sale Order, upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall, effective at the time of the Closing, assume and agree to discharge and perform when due, the Liabilities of Sellers (and only those Liabilities of Sellers) which are enumerated in this Section 2.3 (the “Assumed Liabilities”). The following Liabilities of Sellers (and only the following Liabilities) shall constitute, without duplication, the Assumed Liabilities:

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<sup>39</sup> Insert if none of Lots 3, 4, or 9 are purchased.

- Net Working Capital;
- (a) all Liabilities under the Assumed Contracts;
  - (b) the Current Liabilities to the extent included in the calculation of
  - (c) all Cure Costs;
  - (d) outstanding Trade Payables;
  - (e) (1) Liabilities arising out of the operation of the Acquired Assets or the Business for periods following the Closing Date, including with respect to workers' compensation or occupational health claims relating to any Buyer Employee arising out of an event that occurs on or after the Closing Date and (2) [any and all Black Lung Assumed Liabilities]<sup>40</sup>;
  - (f) (i) those specific Liabilities of Sellers (if any) related to Employees as identified on Schedule 2.3(f)<sup>41</sup> (collectively, the "Assumed Benefits");
  - (g) all Liabilities of Sellers to the extent arising out of or relating to the Transferred Permits, including (i) all Liabilities for Reclamation and post-mining operation Liabilities; (ii) compliance with performance obligations or standards under the Transferred Permits and associated Legal Requirements<sup>42</sup>; and (iii) obligations to replace and/or increase bonds or other financial assurance instruments associated with the Transferred Permits;
  - (h) regulatory violations and obligations on or in relation to the Transferred Permits arising post-Closing;
  - (i) all Liabilities to the extent arising out of or relating to: (i) compliance with any Mining and Mine Safety Law, and any mine operating or safety compliance matters, related to the Acquired Assets or the acquired mining areas of the Business; (ii) the Acquired Assets' or the Business' compliance with Environmental Laws; and (iii) the remediation or corrective action required to resolve any environmental, safety or health conditions present at, under or migrating from the Acquired Assets, including any arising from or related to a Release resulting from the operation of the Acquired Assets, excluding, in each of the preceding cases (i)-(iii), any monetary fines and penalties imposed by any Governmental Authority for which Sellers or any of their Affiliates have received a written notice of violation or notice of claim (or other written notice of similar legal intent or meaning) on or prior to the Closing Date (whether or not disclosed on the Disclosure Schedules);

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<sup>40</sup> Insert if any Mining Lot or Lot 9 is purchased.

<sup>41</sup> Note to Draft: should include KERP payments.

<sup>42</sup> If Lot 9 is purchased, this will include the Administrative Order on Consent entered by Walter Coke with the U.S. Environmental Protection Agency regarding Section 3008(h) of the Solid Waste Disposal Act, known as Resource Conservation and Recovery Act of 1976 (RCRA), Docket No. RCRA-04-2012-4255.

(j) Transfer Taxes, Secured Taxes and all Taxes with respect to the Acquired Assets for any period (or portion thereof) beginning on or after the Closing Date (such Taxes, “Post-Closing Taxes”);

(k) all Liabilities of Sellers as a result of any action taken by Sellers at Buyer’s or its Affiliates’ request pursuant to [Sections 7.8(a)(iv), 7.8(a)(v) and 7.8(a)(vi)]<sup>43</sup> and [Sections 7.8(b)(iv), 7.8(b)(v) and 7.8(b)(vi)]<sup>44</sup>;

(l) [all Liabilities of Sellers in respect of the Acquired Assets for Reclamation (and, if applicable, post-mining operation Liabilities);]<sup>45</sup> and

(m) any and all accrued and unpaid payroll by Sellers and/or their Affiliates in connection with the Acquired Assets or the Business for the two-week period prior to the Closing.

#### 2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of, or Liability against, Sellers, Sellers’ Subsidiaries, the Business or the Acquired Assets, of any kind or nature, whether or not direct or indirect, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the “Excluded Liabilities”). Without limiting the generality of the foregoing, the Excluded Liabilities shall include each of the following Liabilities of Sellers and Sellers’ Subsidiaries, except to the extent they are set forth in Sections 2.3(a)-2.3(m):

(a) all Liabilities with respect to any Taxes that are not expressly assumed by the Buyer pursuant to Section 2.3(j);

(b) all Liabilities with respect to Actions and Proceedings pending on or before the Closing Date or to the extent against or giving rise to Liability against the Business or the Acquired Assets prior to the Closing Date even if instituted after the Closing Date;

(c) all Liabilities to any owner or former owner of capital stock or warrants with respect to such capital stock or warrants, holder of Indebtedness for borrowed money, or current or former officer or director of, in each case, any Seller or Subsidiary of any Seller in such capacities;

(d) except as expressly provided herein, all Liabilities with respect to any Excluded Asset, including any and all Collective Bargaining Agreements, Excluded Benefit

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<sup>43</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>44</sup> Insert if Lot 3 is purchased.

<sup>45</sup> Insert if any Mining Lot is purchased.

Plans and liabilities in respect of the benefit plans, programs and arrangements of any ERISA Affiliate;

(e) all Liabilities under any futures contracts, options on futures, swap agreements or forward sale agreements;

(f) other than Trade Payables, all Liabilities for: (i) costs and expenses incurred or owed in connection with the administration of the Bankruptcy Case; and (ii) all costs and expenses incurred by Sellers in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

(g) except as set forth in Section 2.3(d), all workers' compensation claims and occupational health claims related to the Acquired Assets, including and with respect to Buyer Employees and former employees of Sellers who worked or who were employed at the Acquired Assets;

(h) any Liability or other obligations of Sellers or any ERISA Affiliate arising under, relating to or with respect to any multiemployer pension plan, single employer pension plan or Multiemployer Plan;

(i) except for the Assumed Benefits, all Liabilities with respect to Employees, or former Employees, or both (or their representatives or beneficiaries) or employees of any ERISA Affiliate, for any action or inaction of any Seller (or any predecessor of any Seller) occurring prior to or on the Closing Date, including with respect to vacation, payroll, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock option, equity compensation, employee stock purchase, or profit sharing plans, health care and other welfare plans or benefits (including COBRA or the Coal Act), or any other employee plans or arrangements or benefits or other compensation of any kind to any employee, including under any Excluded Benefit Plan or benefit plans, programs and arrangements of an ERISA Affiliate, and Liabilities of Sellers and their predecessors pursuant to the WARN Act;

(j) except for the Assumed Benefits, any Liability arising under any employment agreement, Collective Bargaining Agreement or arrangement, severance, retention or termination agreement or other similar arrangement with any employee, consultant or contractor (or its representatives) of any Seller; and

(k) all Liabilities (other than Assumed Liabilities) accruing, arising out of, or relating to any federal, state or local investigations of any Seller or any Employee, agents, vendors or representatives of any Seller arising out of actions prior to the Closing (other than rights of setoff and recoupment claims).

## 2.5 Assignment and Assumption of Contracts.

(a)

(i) Schedule 2.5(a) sets forth a list of all executory Contracts (including all supply agreements, joint venture agreements, operating and joint operating agreements, participation agreements, exploration agreements (including



minerals and coalbed gas exploration agreements), Leases and Lessor Leases) relating to the Business or the Acquired Assets to which one or more of Sellers are party (the “Available Contracts”) which Schedule 2.5(a) may be updated from time to time to add or remove any Contracts inadvertently included or excluded from such schedule. On or before the Bid Deadline (as defined in the Bidding Procedures) (such date, the “Determination Date”), Buyer shall use reasonable efforts to designate in writing which Available Contracts from Schedule 2.5(a) relating to the Business or the Acquired Assets that Buyer wishes to “Assume” (the “Assumed Contracts”), provided that Buyer shall update and finalize Schedule 2.5(a) as soon as reasonably practicable after entry of the Sale Order. All Contracts of Sellers that are listed on Schedule 2.5(a) and which Buyer does not designate in writing for assumption shall not be considered Assumed Contracts or Acquired Assets and shall automatically be deemed “Excluded Contracts” (and for the avoidance of doubt, Buyer shall not be responsible for any related Cure Costs); provided, however, that if an Available Contract is subject to a cure dispute or other dispute as to the assumption or assignment of such Available Contract that has not been resolved to the mutual satisfaction of Buyer and Sellers prior to the Determination Date, then the Determination Date shall be extended (but only with respect to such Available Contract) to no later than the earlier of (A) the date on which such dispute has been resolved to the mutual satisfaction of Buyer and Sellers, (B) the Closing Date, (C) the date on which such Available Contract is deemed rejected by operation of 11 U.S.C. § 365(d)(4) and (D) the date required by the Bankruptcy Court and set forth in either the Bidding Procedures Order or the Sale Order (the “Extended Contract Period”). If such Available Contract is not expressly assumed by Buyer in writing by the end of such Extended Contract Period, such Available Contract shall be automatically deemed an Excluded Contract. Buyer shall be responsible for any obligations or Liabilities arising during any Extended Contract Period relating to any Available Contract that has not been assumed or rejected as of the Determination Date as provided in this Section 2.5(a). For the avoidance of doubt, except as set forth in Section 2.3 and other than as provided in the preceding sentence, (x) Buyer shall not assume or otherwise have any Liability with respect to any Excluded Contract and (y) each Collective Bargaining Agreement to which any Seller is bound or party to shall be an Excluded Contract. Notwithstanding the foregoing, from and after the Determination Date until February 15, 2016, Buyer shall be permitted to designate in writing any Contracts previously designated as Assumed Contracts to be Excluded Contracts, and upon any such designation such Contracts shall be automatically deemed to be Excluded Contracts.

(ii) Each of Sellers and Buyer, as applicable, shall use commercially reasonable efforts to assign, or cause to be assigned, the Assumed Contracts to Buyer, including taking all actions required by the Bankruptcy Court to obtain an Order containing a finding that the proposed assumption and assignment of the Assumed Contracts to Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code. Buyer shall use commercially reasonable efforts to comply with all of the requirements of Section 365 of the Bankruptcy Code necessary to permit such assumption and assignment.

(iii) If, prior to the Closing Date, there are Available Contracts that have not been designated as an Assumed Contract or an Excluded Contract,

Sellers shall not assume or reject any such Available Contract pursuant to Section 365 of the Bankruptcy Code and any order of the Bankruptcy Court until the earlier of (x) the date Buyer so directs Sellers and (y) the end of the Extended Contract Period, if applicable (which assumption shall be at Buyer's sole cost and expense); provided, that Buyer shall be responsible for any obligations or Liabilities arising during any Extended Contract Period.

(iv) At Closing, (x) Sellers shall, pursuant to the Sale Order and the Assumption Agreement, assume and assign, or cause to be assigned, to Buyer (the consideration for which is included in the Purchase Price) each of the Assumed Contracts that is capable of being assumed and assigned and (y) Buyer shall pay promptly all Cure Costs (if any) in connection with such assumption and assignment (as agreed to among Buyer and Sellers or as determined by the Bankruptcy Court) and assume and perform and discharge the Assumed Liabilities (if any) under the Assumed Contracts, pursuant to the Sale Order and the Assumption Agreement.

(b) Previously Omitted Contracts.

(i) If prior to or following Closing, it is discovered that a Contract should have been listed on Schedule 2.5(a) but was not listed on Schedule 2.5(a) and has not been rejected by Sellers (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof (but in no event later than two (2) Business Days following the discovery thereof), notify Buyer in writing of such Previously Omitted Contract and all Cure Costs (if any) for such Previously Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as "Assumed" or "Rejected" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.5(b)(i) as "Rejected," or with respect to which Buyer fails to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract.

(ii) If Buyer designates a Previously Omitted Contract as "Assumed" in accordance with Section 2.5(b)(i), Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and Sellers' intention to assume and assign such Previously Omitted Contract in accordance with this Section 2.5. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with ten (10) Business Days to object, in writing to Sellers and Buyer, to the Cure Costs or the assumption of its Contract. If the counterparties, Sellers and Buyer are unable to reach a consensual resolution with respect to the objection, Sellers shall seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is served on Sellers and Buyer, Sellers shall obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption of the Previously Omitted Contract. Buyer shall be responsible for all Cure Costs relating to such "Assumed" Previously Omitted Contracts and for any obligations or Liabilities

relating to such “Assumed” Previously Omitted Contracts arising during the Extended Contract Period.

(c) Non-Assignment of Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Contract or any Permit, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer, would constitute a violation of a Legal Requirement or a breach of such Contract or Permit. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code and the commercially reasonable efforts of Sellers, such consent or approval is required but not obtained with respect to an Assumed Contract or a Permit, neither Sellers nor Buyer shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor (but subject to Buyer’s termination right set forth in Section 11.1) shall the Closing be delayed in respect of the Assumed Contracts or the Permits; provided, however, if the Closing occurs, then, with respect to any Assumed Contract or Permit for which consent or approval is required but not obtained, from and after the Closing for a period of no more than six (6) months, Sellers shall reasonably cooperate, at Buyer’s sole cost and expense, with Buyer in any reasonable arrangement that Buyer may request to provide Buyer with all of the benefits of, or under, the applicable Assumed Contract or Transferred Permit, including enforcement for the benefit of Buyer of any and all rights of Sellers against any party to the applicable Assumed Contract or Transferred Permit arising out of the breach or cancellation thereof by such party; provided, however, to the extent that any such arrangement has been made to provide Buyer with the benefits of, or under, the applicable Assumed Contract or Transferred Permit, from and after the Closing, Buyer shall be responsible for, and shall promptly pay and perform all payment and other obligations under such Assumed Contract or Permit (all of which shall constitute, and shall be deemed to be, Assumed Liabilities hereunder) to the same extent as if such Assumed Contract or Permit had been assigned or transferred at Closing with respect to Assumed Contracts and Permits, and at such applicable later date specified in this Section 2.5(c) with respect to any additional Assumed Contracts. Any assignment to Buyer of any Assumed Contract or Permit that shall, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, require the consent or approval of any Person for such assignment as aforesaid shall be made subject to such consent or approval being obtained. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold harmless the Company, Sellers and/or their Affiliates from any and all Liabilities incurred by the Company, Sellers and/or their Affiliates in connection with any action taken by the Company, Sellers at Buyer’s or its Affiliates’ request pursuant to this Section 2.5(c).

2.6 [Assignment and Assumption of Pardee Lease]. Subject to entry of the Sale Order and upon the terms and subject to the conditions of this Agreement and an assignment and assumption agreement to be entered by and between Buyer and JWW in the form of Exhibit B attached hereto (the “JWW Assumption Agreement”), on the Closing Date, JWW shall unconditionally transfer, assign and convey to Buyer, and Buyer shall purchase, acquire, assume and accept from JWW, free and clear of all Encumbrances (other than Permitted Encumbrances), all of JWW’s right, title and interest in, to or under the Pardee Lease and the Pardee Sublease, and Buyer shall, effective at the time of the Closing, assume and agree to discharge and perform when due, the Liabilities of JWW under the Pardee Lease and the Pardee Sublease, including any

and all Cure Costs with respect to the Pardee Lease and any and all Transfer Taxes with respect to the transfer and assignment, or the recordation thereof, of the Pardee Lease or Pardee Sublease (collectively, the "Pardee Lease Liabilities").<sup>46</sup>

## 2.7 Further Assurances.

(a) Except as otherwise provided herein and subject to the terms and conditions of this Agreement, the Bankruptcy Code and any orders of the Bankruptcy Court, from and after the Execution Date, the Company, Sellers and Buyer, shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Legal Requirements to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, in each case, after giving effect to the Sale Order.

(b) At and after the Closing, Sellers shall execute and deliver to Buyer such further instruments and certificates as reasonably requested by Buyer and Buyer will reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with actions taken by Sellers (i) to vest, perfect or confirm ownership (of record or otherwise) in Buyer, of Sellers' right, title or interest in, to or under any or all of the Acquired Assets and Business, including the Real Property, free and clear of all Encumbrances (other than Permitted Encumbrances and Assumed Liabilities) or (ii) to otherwise effectuate the purposes and intent of this Agreement and the other Transaction Documents. From and after the Closing Date, Buyer will reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with actions taken by Sellers and each of the Parties shall take, or cause to be taken, and cooperate with the other Parties to take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Buyer or otherwise to carry out this Agreement, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Agreement, it being specifically understood that, notwithstanding anything to the contrary herein, no Seller shall have any obligation to (i) record or pay any recording fees and Taxes in connection with the foregoing (except to the extent Buyer agrees to reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with such recordation or payment), or (ii) pay any title insurance fee or premium in connection with any title insurance commitment or policy Buyer may obtain, in each case, included any related costs and expenses (except to the extent Buyer agrees to reimburse

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<sup>46</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased. If Lot 6 is purchased and Lot 3 is not purchased, insert a provision agreeing that the Pardee Lease and the Pardee Sublease may be assigned to such buyer of Lot 3. If Lot 3 is purchased an insurance policy relating to certain potential liabilities under the Pardee Lease may need to be assigned to the Buyer.

Sellers [and JWW]<sup>47</sup> for any out-of-pocket expenses incurred by Sellers [and JWW]<sup>48</sup> in connection with such commitment or policy).

### ARTICLE 3

#### PURCHASE PRICE

##### 3.1 Consideration.

The aggregate consideration (the “Purchase Price”) for the purchase, sale, assignment and conveyance of the Acquired Assets shall consist of:

(a) cash (the “Cash Consideration”) in an amount equal to \$[\_\_\_\_\_], including the Good Faith Deposit provided by Buyer to Sellers under the Bidding Procedures, but subject to adjustment as provided in Section 3.2;

(b) the assumption by Buyer of the Assumed Liabilities from Sellers, including the assumption of the obligation to pay to the applicable counterparties of the applicable Assumed Contracts the Cure Costs payable by Buyer under Section 2.5; and

(c) [the assumption by Buyer of the Pardee Lease Liabilities from JWW.]<sup>49</sup>

##### 3.2 [Purchase Price Adjustment].<sup>50</sup>

(a) At least [three (3)] Business Days prior to the Closing Date, Sellers shall prepare and deliver to Buyer a certificate executed by an executive officer of each of the Sellers (the “Pre-Closing Statement”) setting forth Sellers’ good faith estimates of the Net Working Capital and the resulting Net Working Capital Adjustment calculated in accordance with this Section 3.2, together with supporting documentation for such estimates and any additional information reasonably requested by Buyer. The Pre-Closing Statement shall be prepared in accordance with this Agreement and the Accounting Standards.

(b) Not later than [sixty (60)] days after the Closing Date, Buyer shall prepare and deliver to Sellers a certificate executed by an executive officer of Buyer (the “Closing Statement”) setting forth Buyer’s determination of the Net Working Capital and the resulting Net Working Capital Adjustment calculated in accordance with this Section 3.2, together with supporting documentation for such estimates and any additional information reasonably requested by Sellers. The Closing Statement shall be prepared in accordance with this Agreement and the Accounting Standards.

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<sup>47</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>48</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>49</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>50</sup> Purchase Price Adjustment to be included if necessary.

(c) Within [thirty (30)] days after Sellers' receipt of the Closing Statement, Sellers shall deliver to Buyer a written statement either accepting the Closing Statement or specifying any objections thereto. During such [thirty (30)] day period, Buyer shall reasonably cooperate with Sellers and their agents and advisors in connection with review of the Closing Statement by Sellers and their agents and advisors by promptly providing all information and by providing access to all relevant books, records and employees of Buyer as are reasonably requested by Sellers or any of their agents or advisors in connection with their review of the Closing Statement and the calculation of the Net Working Capital and the resulting Net Working Capital Adjustment. If Sellers do not deliver any such written statement accepting the Closing Statement or specifying any objections thereto within such [thirty (30)] day period, then the Closing Statement shall become final and binding upon all parties. If Sellers deliver a written statement specifying objections within such period, then the parties shall negotiate in good faith for a period of [thirty (30)] days following Buyer's receipt of such objections to resolve any such objections. If the parties are able to resolve Sellers' objections during such [thirty (30)] day period, then the Closing Statement, as revised in accordance with such resolution, shall become final and binding upon all parties. If the parties are not able to resolve such objections during such thirty (30) day period, then any remaining disputes shall be referred for resolution to a firm of independent nationally recognized accountants reasonably chosen and mutually accepted by both Parties (the "Accounting Referee")<sup>51</sup>. The Accounting Referee shall be instructed to resolve any such disputes within [thirty (30)] days after its appointment. The resolution of such disputes by the Accounting Referee shall be (i) set forth in writing, (ii) determined in accordance with this Agreement, (iii) within the range of dispute between Buyer and Sellers and (iv) binding upon all parties, absent manifest error. Upon delivery of such resolution by the Accounting Referee, the Closing Statement, as modified in accordance with such resolution, shall become final and binding upon all parties. The fees, costs and expenses relating to the Accounting Referee shall be borne solely by Buyer.

(d) If Sellers fail to deliver a written statement specifying objections in accordance with Section 3.2(c), the Net Working Capital Adjustment shall be as set forth in the Closing Statement or (ii) if Sellers deliver a written statement of objection, the Net Working Capital Adjustment as mutually agreed by negotiation of the parties or as resolved by submission to the Accounting Referee, as the case may be, pursuant to Section 3.2(c).

(e) If the Net Working Capital Adjustment is a positive number, then Buyer shall promptly (but in any event within [five (5)] Business Days following the determination thereof) deliver to Sellers such amount in cash.<sup>52</sup> If the Net Working Capital Adjustment is a negative number, then Sellers shall promptly (but in any event within [five (5)] Business Days following determination thereof) deliver to Buyer such shortfall in cash.<sup>53</sup> All

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<sup>51</sup> Note to Draft: assumes the parties would use the same accounting firm for disputes relating to the working capital adjustment as they would relating to allocation of purchase price (see Section 3.3(d)).

<sup>52</sup> Note to Draft: alternately: "... such amount by wire transfer of immediately available funds to an account or accounts designated in writing by Sellers"

<sup>53</sup> Note to Draft: cash holdback to be discussed with creditors in the event that Sellers are required to pay to Buyer a cash shortfall. Note to Draft: alternately: "... such shortfall by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer"

payments made pursuant to this Section 3.2 shall be treated by all parties for tax purposes as adjustments to the Purchase Price.]

### 3.3 Allocation of Purchase Price.

(a) Buyer and Sellers agree that, for Buyer's and Sellers' respective federal, state and local income tax purposes, the Purchase Price, the Assumed Liabilities and other relevant items shall be allocated among the Acquired Assets as mutually agreed by Buyer and Sellers in a manner consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder.

(b) Within [one hundred and twenty (120)]<sup>54</sup> days of the Closing Date Buyer shall prepare and deliver to Sellers a statement allocating the sum of the Purchase Price, the Assumed Liabilities and other relevant items among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (such statement, the "Allocation Statement").

(c) Sellers shall have a period of thirty (30) Business Days after the delivery of the Allocation Statement (the "Response Period") to present in writing to Buyer notice of any objections that Sellers may have to the allocations set forth therein (an "Objections Notice"). Unless Sellers timely object, such Allocation Statement shall be binding on the Parties without further adjustment.

(d) If Sellers shall raise any objections within the Response Period, Buyer and Sellers shall negotiate in good faith and use their commercially reasonable efforts to resolve such dispute. If the Parties fail to agree within fifteen (15) days after the delivery of the Objections Notice, then the disputed items shall be resolved by the Accounting Referee, whose determination shall be final and binding on the Parties. The Accounting Referee shall resolve the dispute within thirty (30) days after the item has been referred to it. The costs, fees and expenses of the Accounting Referee shall be split in half and borne equally by Sellers and Buyer.

(e) Unless otherwise required by law, the Internal Revenue Service (the "IRS") or any other taxing authority, the allocation of the Purchase Price pursuant to the Allocation Statement (if applicable, as modified by Section 3.3(d) hereof) shall be final and binding on the Parties, and the Parties shall follow the Allocation Statement for purposes of filing IRS Form 8594 (and any supplements to such form) and all other Tax Returns, and shall not take any position inconsistent therewith. If the IRS or any other taxation authority proposes a different allocation, Sellers or Buyer, as the case may be, shall promptly notify the other party of such proposed allocation. Sellers or Buyer, as the case may be, shall provide the other party with such information and shall take such actions (including executing documents and powers of attorney in connection with such proceedings) as may be reasonably requested by such other party to carry out the purposes of this Section 3.3. Except as otherwise required by any Legal Requirement or pursuant to a "determination" under Section 1313(a) of the Code (or any comparable provision of United States state, local, or non-United States law), (i) the transactions

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<sup>54</sup> Note to Draft: may need to be extended depending on the latest that the Purchase Price may be determined under Section 3.2.

contemplated by Article 2 of this Agreement shall be reported for all Tax purposes in a manner consistent with the terms of this Section 3.3, and (ii) neither Party (nor any of their Affiliates) will take any position inconsistent with this Section 3.3 in any Tax Return, in any refund claim, in any litigation or otherwise. Notwithstanding the allocation of the Purchase Price set forth in the Allocation Statement (if applicable, as modified by Section 3.3(d) hereof), nothing in the foregoing shall be determinative of values ascribed to the Acquired Assets or the allocation of the value of the Acquired Assets in any plan or reorganization or liquidation that may be proposed.

#### 3.4 Withholding.

Buyer shall be entitled to deduct and withhold from the Purchase Price otherwise payable pursuant to this Agreement to Sellers such amounts as Buyer is required to deduct and withhold under applicable Legal Requirements. To the extent that amounts are so deducted and withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to Sellers.

### ARTICLE 4

#### CLOSING AND DELIVERIES

##### 4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities (other than those pertaining to Previously Omitted Contracts pursuant to Section 2.5(b) and Assumed Contracts subject to a cure dispute pursuant to Section 2.5(a)(i) contemplated hereby) (the “Closing”) shall take place at the offices of [Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019]<sup>55</sup>, no later than two (2) Business Days following the date on which all the conditions set forth in Article 9 and Article 10 have been satisfied or (if permissible) waived by the Party entitled to waive such condition (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or on such other date and time as Sellers and Buyer may mutually agree in writing. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.” Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder, and the Closing, shall be deemed to have occurred as of 12:01 a.m. (Alabama time) on the Closing Date.

##### 4.2 Buyer’s Deliveries.

Subject to satisfaction or (if permissible) waiver of the other conditions set forth in Article 9 and Article 10, at the Closing, Buyer shall deliver (and/or cause one or more of its Affiliates to deliver):

- (a) to Sellers, the Cash Consideration;

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<sup>55</sup> Sellers may select another closing location depending on the Lot(s) being purchased and the identity of Buyer.



- (b) to Sellers, the Assumption Agreement, duly executed by Buyer;
- (c) to Sellers, [the Alabama Contract Mining Agreement]<sup>56</sup>, duly executed by Buyer;
- (d) [to Sellers, the Transition Services Agreement, duly executed by Buyer;]
- (e) to Sellers, each other Transaction Document to which Buyer is a party, duly executed by Buyer;
- (f) to Sellers, the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.2;
- (g) [to Sellers, evidence, in form and substance reasonably acceptable to Sellers, of receipt of the Alabama Mining License;]<sup>57</sup>
- (h) [to Sellers, evidence, in form and substance reasonably acceptable to Sellers that the “advance approval” contemplated by Section 7.8(b)(iii)];<sup>58</sup>
- (i) [to JWW, the JWW Assumption Agreement with respect to the Pardee Lease Liabilities;]<sup>59</sup>
- (j) [to Sellers, evidence reasonably satisfactory to Sellers of performance of the matters required to be performed prior to, by, or as of, the Closing Date in Section 7.8;]<sup>60</sup> and
- (k) to Sellers, such other documents as Sellers may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

#### 4.3 Sellers’ Deliveries.

At the Closing, Sellers shall deliver to Buyer:

- (a) the Bills of Sale, Deeds and the Assumption Agreement (in each case, relating to the Acquired Assets), [the Alabama Contract Mining Agreement]<sup>61</sup>, [the

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<sup>56</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>57</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>58</sup> Insert if Lot 3 is purchased.

<sup>59</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

<sup>60</sup> Insert if any Mining Lot or Lot 9 is being purchased.

<sup>61</sup> Insert if Lot 2, 4 or 8 is purchased.

Transition Services Agreement], and each other Transaction Document to which any Seller is a party, duly executed by the applicable Sellers;

(b) with respect to the Real Property included in the Acquired Assets, possession of such Real Property, together with copies (and originals in Sellers' possession) of all instruments, Leases and agreements evidencing Sellers' interest in the same, and any existing surveys, legal descriptions and title policies concerning such Real Property that are in the possession of Sellers which shall be deemed to be delivered to the extent located at any of the Real Property;

(c) a certified copy of the Sale Order;

(d) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;

(e) certificates executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that such Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code;

(f) such other bills of sale, Deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as Buyer may reasonably request to vest in Buyer all of the right, title and interest of Sellers in, to or under any or all of the Acquired Assets, including any Real Property included therewith, subject only to Permitted Encumbrances and Assumed Liabilities;

(g) [such ordinary and customary documents (including affidavits) as may be required by a title insurance company to issue owners' title insurance policies (or "pro formas" or marked up commitments having the same effect of a title insurance policy), at Buyer's sole election and Buyer's sole cost and expense, insuring title to any or all of the Real Property included in the Acquired Assets (in any event, subject to Permitted Encumbrances and Assumed Liabilities);]<sup>62</sup>

(h) [the JWW Assumption Agreement with respect to the Pardee Lease Liabilities, duly executed by JWW;]<sup>63</sup> and

(i) such other documents as Buyer may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

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<sup>62</sup> Obtaining title insurance in a timely manner may be impractical depending on Lot(s) purchased.

<sup>63</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF SELLERS<sup>64</sup>

Sellers hereby jointly and severally represent and warrant to Buyer as of the date hereof as follows, except as disclosed in the Disclosure Schedules or, except with respect to the representations and warranties set forth in Sections 5.5 and 5.9 with respect to material environmental matters, contained in the Incorporated Information:

#### 5.1 Organization and Good Standing.

Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Subject to the applicable provisions of the Bankruptcy Code, each Seller has all requisite corporate or limited liability company power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted. Sellers are duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of their Business or the nature of their properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### 5.2 Authority; Validity; Consents.

Each Seller has, subject to entry of the Sale Order, the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which such Seller is a party and to consummate the transactions contemplated hereby and thereby, and, subject to entry of the Sale Order, the execution, delivery and performance of this Agreement and such other Transaction Documents by such Seller and the consummation by such Seller of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate or limited liability company action on the part of Sellers. Subject to entry of the Sale Order, this Agreement has been duly and validly executed and delivered by each Seller and each other Transaction Document required to be executed and delivered by a Seller at the Closing will be duly and validly executed and delivered by such Seller at the Closing. Subject to entry of the Sale Order, this Agreement and the other Transaction Documents constitute, with respect to each Seller that is party thereto, the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to entry of the Sale Order, except (a) as may be required to comply with [the HSR Act and] the antitrust legislation of any [other] relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business, (b) for entry of the Sale Order, (c) for notices, filings and consents required in connection with the Bankruptcy Case, including the requirements of the Bidding Procedures Order, and (d) for the notices, filings and consents set forth on Schedule 5.2, Sellers are not required to give any notice to, make any registration, declaration or filing with or obtain any

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<sup>64</sup> Reps/warranties of Sellers subject to revision based on Lot(s) purchased.

consent, waiver or approval from, any Governmental Authority in connection with the execution and delivery of this Agreement and the other Transaction Documents to which a Seller is a Party or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, registrations, declarations or filings, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 5.3 No Conflict.

Except as a result of the Bankruptcy Case or as set forth in Schedule 5.3, neither the execution and delivery by any Seller of this Agreement or any other Transaction Document to which it is (or will be) a party nor after giving effect to the Sale Order, the consummation of the transactions contemplated hereby or thereby nor, after giving effect to the Sale Order and the Bidding Procedures Order, compliance by it with any of the provisions hereof or thereof will, (a) conflict with or result in a violation of (i) any provision of the certificate of incorporation or bylaws (or other organizational or governing documents) of such Seller or (ii) any material Order binding upon such Seller or by which the Business or any Acquired Assets are subject or bound, (b) (i) violate, conflict with, or result in a material breach of any of the terms of, or constitute a material default under, or give rise to any right of termination, modification, cancellation or acceleration under any material license or Permit held by Sellers, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority or (ii) result in a material breach of or constitute a default under or give rise to any right of termination, modification, cancellation or acceleration under any Material Contract which is an Available Contract, or (c) result in the creation of any Encumbrance (other than a Permitted Encumbrance or Assumed Liability) upon the properties or assets of such Seller being sold or transferred hereunder.

### 5.4 Real Property.

(a) Owned Real Property. Schedule 5.4(a)(i) sets forth an accurate and complete list of the Owned Real Property. Except for Permitted Encumbrances, at Closing Sellers will have good and marketable title in the Owned Real Property set forth on Schedule 5.4(a)(i). Except for the Lessor Leases, none of the Owned Real Property is subject to any lease or grant to any third-party of any right to the use, purchase, occupancy or enjoyment of such Owned Real Property or any material portion thereof required to conduct the Business. Except for Permitted Encumbrances and the applicable terms of Permits held by Sellers, at Closing the Owned Real Property will not be subject to any Encumbrances (other than liens that will be removed pursuant to the Sale Order), which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. There are no pending or, to Sellers' Knowledge, threatened condemnation proceedings relating to any of the Owned Real Property except those which do not materially impair or restrict the current use of the Owned Real Property subject thereto. Other than as set forth on Schedule 5.4(a)(ii) hereto, there are no outstanding options or rights of first refusal to purchase any of the Owned Real Property or any interest therein.

(b) Lessor Leases. Schedule 5.4(b) lists, as of the Execution Date, all material unexpired leases, subleases, licenses, sublicenses, occupancy or other agreements

whereby any Seller leases, subleases, licenses or grants an interest in any Owned Real Property or Leased Real Property to a third party (the “Lessor Leases”). Sellers have made available, to the extent that they are in Sellers’ possession or control, true, complete and correct copies of the Lessor Leases to Buyer, including any amendments thereto. Other than as set forth on Schedule 5.4(b) or as a result of the Bankruptcy Case, Sellers are not in material breach of or in default under the Lessor Leases and, to Sellers’ Knowledge, no party to any Lessor Lease has given Sellers written notice of or, to Sellers’ Knowledge, made a claim with respect to any material breach or material default by Sellers thereunder (other than as a result of the Bankruptcy Case).

(c) Leased Real Property. Schedule 5.4(c) contains a list of all Leased Real Property held or used for, or necessary to the operation of the Business. Sellers have made available, to the extent that they are in Sellers’ possession or control, true and complete copies of all Leases to Buyer. Other than as set forth on Schedule 5.4(c) or other than as a result of the Bankruptcy Case, Sellers are not in material (x) breach of any material term or (y) “default” under any Lease and, to Sellers’ Knowledge, no party to any Lease has given Sellers written notice of or made a claim with respect to any material breach or material default thereunder. To Sellers’ Knowledge or other than as a result of the Bankruptcy Case, there are no conditions that currently exist or which with the passage of time will result in a material default or material breach of any material term by any party to a Lease. Except as set forth on Schedule 5.4(c), to Sellers’ Knowledge, none of the Leased Real Property is subject to any sublease or grant to any third-party of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the Business. Sellers have not received written notice of any pending or threatened condemnation or other proceedings or claims relating to Seller’s interest in any of the Leased Real Property, except those which do not materially impair or restrict the current use of the Leased Real Properties subject thereto.

#### 5.5 Environmental Matters.

Except as set forth on Schedule 5.5 and except as would not reasonably be expected to be material to the Business or the Acquired Assets:

(a) Sellers’ operation of the Business, and Real Properties related thereto, have complied during the previous three (3) years and are in compliance with all applicable Environmental Law;

(b) Sellers have not received any written or other notice, report or other information alleging any pending or threatened material violation, non-compliance, liability or potential liability regarding Environmental Laws with regard to any of the Real Properties or the Business, or any prior business for which Sellers have retained liability under any Contract or Environmental Law, nor do Sellers have any unresolved claims alleging any violations of Environmental Law;

(c) the Real Properties do not contain any Hazardous Substances in amounts or concentrations which (i) constitute a violation of, or (ii) would reasonably be expected to give rise to liability, including liability for response costs, corrective action costs,

personal injury, property damage or natural resources damage, under any applicable Environmental Law;

(d) no Seller or, to Sellers' Knowledge, other Person, has treated, recycled, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or Released any Hazardous Substances, or owned or operated any property or facility in a manner that has given or could reasonably be expected to give rise to liability, including liability for response costs, corrective action costs, personal injury, property damage or natural resources damage, under any applicable Environmental Law;

(e) no Action is pending or, to Sellers' Knowledge, threatened under any Environmental Law or environmental provision of any Mining and Mining Safety Law against Sellers or with respect to the Real Properties or the Business, nor are there any Orders outstanding under any Environmental Law or environmental provision of any Mining and Mining Safety Law with respect to the Real Properties or the Business;

(f) Sellers (i) hold and are in compliance with all Permits required under Environmental Law (each of which is in full force and effect and is not subject to appeal, except in such instances where the requirement to hold an Environmental Permit is being contested in good faith by Sellers by appropriate proceedings diligently conducted) for any of their current operations or for the current ownership, operation or use of the Real Properties, including all Environmental Permits required for the coal mining-related operations of Sellers or, to the extent currently required, any pending construction or expansion related thereto; (ii) are, or have been, in compliance with all Environmental Permits, except in such instances where the requirement of a Permit required under Environmental Law is being contested in good faith by Sellers by appropriate proceedings diligently conducted; (iii) have used commercially reasonable efforts to cause all contractors, lessees and other Persons occupying, operating or using the Real Properties to comply with Environmental Law and obtain all necessary Permits required under Environmental Law; and (iv) have not received any written notice that the Permits required under Environmental Law will not be renewed;

(g) [to Sellers' Knowledge, none of the Real Properties have any associated direct or indirect acid mine drainage which (i) constitutes or constituted a violation of or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law or environmental provision of any Mining and Mining Safety Law; ]<sup>65</sup>

(h) to Sellers' Knowledge, neither the Transaction Documents nor the consummation or performance of any of the transactions contemplated hereby will result in any additional material liabilities for site investigation or cleanup pursuant to any Environmental Law [or environmental provision of any Mining and Mining Safety Law]<sup>66</sup>, including any so-called "transaction-triggered" or "responsible property transfer" requirements;

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<sup>65</sup> Insert if any Mining Lot is being purchased.

<sup>66</sup> Insert if any Mining Lot is being purchased.

(i) Except as set forth on Schedule 5.5(i) and in Section 2.3, Sellers have not, since January 1, 2005, contractually assumed any liabilities, including any obligation for corrective or remedial action, of any other Person relating to Environmental Laws;

(j) Sellers have made available copies of all material environmental assessments, audits (including compliance audits), evaluations, studies, and tests from the past five (5) years within their possession, relating to the Owned Real Property or the Leased Real Property, whether generated by Sellers or others, including environmental audits and environmental site assessments; and

(k) except as listed on Schedule 5.5(k), to Seller's Knowledge, none of the Acquired Assets contains underground storage tanks, above ground storage tanks, transformers or other equipment containing PCBs, underground injection wells, non-naturally occurring radioactive materials or septic tanks or waste disposal pits (to the extent such tanks or pits constitute Acquired Assets).

#### 5.6 Title to Acquired Assets.

At Closing, Sellers will have good, valid and marketable title to, or, in the case of property leased or licensed by Sellers, a valid leasehold or licensed interest in, all of the Acquired Assets, free and clear of all Encumbrances, except (a) for the Assumed Liabilities and (b) for Permitted Encumbrances.

#### 5.7 Taxes.

All material Taxes relating to the Business and/or the Acquired Assets that are due and payable have been timely paid, except as set forth on Schedule 5.7.

#### 5.8 Legal Proceedings.

Except (x) for the Bankruptcy Case (and proceedings related thereto) and (y) as set forth on Schedule 5.8, there is no Proceeding or Order pending, outstanding or, to Sellers' Knowledge, threatened in writing against or related to the Business, whether at law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, nor, to Sellers' Knowledge, are there any investigations relating to the Business pending or, to Sellers' Knowledge, threatened in writing by or before any arbitrator or any Governmental Authority, which would reasonably be expected to be material to the Business or the Acquired Assets, taken as a whole.

#### 5.9 Compliance with Legal Requirements; Permits.

(a) Except as set forth in Schedule 5.9(a), and, with respect to Permits required under any Environmental Law or environmental provision of any Mining and Mining Safety Law, which Permits are addressed in Section 5.5, Sellers hold all of the Permits necessary for the current operation and conduct of the Business and the Acquired Assets in compliance with Legal Requirements, including Mining and Mining Safety Law, the absence of which would be immaterial to the operation of the Business or the Acquired Assets from and after the Closing. The Permits set forth on Schedule 2.1(h) are all of the Permits held by Sellers with respect to the

current operation and conduct of the Business and the Acquired Assets, the absence of which would be reasonably expected to adversely affect the operation of the Business or the Acquired Assets from and after the Closing.

(b) Except (x) as set forth on Schedule 5.9(b), and, with respect to compliance with Environmental Law [or environmental provision of any Mining and Mining Safety Law]<sup>67</sup>, Schedule 5.5, (y) for fully paid, discharged and finally settled citations and notices of violations issued by MSHA, [the Alabama Surface Mining Commission]<sup>68</sup>, the Alabama Department of Environmental Management,<sup>69</sup> [the West Virginia Department of Environmental Protection,]<sup>70</sup> or other Governmental Authorities and (z) as would not reasonably be expected to be material to the Business or the Acquired Assets, Sellers have conducted the Business for the past three (3) years and currently own and operate the Acquired Assets in accordance, in all material respects, with all Legal Requirements, Orders and Permits applicable to Sellers and the Acquired Assets during such period, and the Business is in compliance in all material respects with all applicable Legal Requirements, Orders and Permits (including any anti-bribery Legal Requirements) and has obtained all approvals necessary for owning and operating its assets and has made all necessary filings with all Governmental Authorities having jurisdiction necessary for owning and operating its assets, and there are no Orders outstanding under any Mining and Mining Safety Law with respect to the Real Properties or the Business.

(c) Except (x) as set forth on Schedule 5.9(c) and, with respect to actions under Environmental Law, which are covered under Section 5.5, (y) for fully paid, discharged and finally settled citations and notices of violations issued by<sup>71</sup> [MSHA]<sup>72</sup>, [the Alabama Surface Mining Commission]<sup>73</sup>, [the Alabama Department of Environmental Management,]<sup>74</sup> [the West Virginia Department of Environmental Protection,]<sup>75</sup> or other Governmental Authorities, and (z) as would not reasonably be expected to be material to the Business or the Acquired Assets neither Sellers, nor to Sellers' Knowledge, any of their Representatives have received within the past three (3) years any written notice or other communication from a Governmental Authority that alleges that the Business is not in compliance with any Legal Requirement, Order or Permit applicable to the Business or the operations or properties of the Business or the Acquired Assets or that threatens or states the intention on the part of any issuing authority to revoke, cancel, suspend or modify any Permit

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<sup>67</sup> Insert if any Mining Lot is being purchased.

<sup>68</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>69</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>70</sup> Insert if Lot 3 is purchased.

<sup>71</sup> Additional agencies may be added if Lot 9 is purchased.

<sup>72</sup> Insert if any Mining Lot is purchased.

<sup>73</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>74</sup> Insert if any Mining Lot or Lot 9 is purchased.

<sup>75</sup> Insert if Lot 3 is purchased.



necessary for the current operation and conduct of the Business and the Acquired Assets (except with respect to regular periodic expirations and renewals thereof). Except as would not reasonably be expected to be material to the Business or the Acquired Assets: (i) no Seller has had any Permits that are necessary for the operation and conduct of the Business and the Acquired Assets appealed, denied, revoked, restricted or suspended during the past three (3) years; (ii) no Seller is currently a party to any proceedings involving the possible appeal, denial, revocation, restriction or suspension of any Permits that are necessary for the current operation and conduct of the Business and the Acquired Assets or any of the privileges granted thereunder (except where the obligation to hold such a Permit is being contested in good faith by appropriate proceedings diligently conducted or is excused by the Bankruptcy Court); and [(iii) no Seller nor any officer or director of any Seller is “permit blocked” on the Applicant Violator System established pursuant to the SMCRA (or any applicable state system) (the “Applicant Violator System”) by any Governmental Authority]<sup>76</sup>.

#### 5.10 Labor Matters.

(a) Except as set forth on Schedule 5.10(a), none of the Sellers are party to or subject to any collective bargaining agreements, works council agreements, labor union contracts, trade union agreements, and other similar agreements (each a “Collective Bargaining Agreement”) with any union, works council, or labor organization (each a “Union” and collectively “Unions”).

(b) Except as set forth on Schedule 5.10(b), to Sellers’ Knowledge, in the past three (3) years, other than pursuant to procedures established in connection with the Bankruptcy Case, (i) no Union or group of Employees or former Employees has organized any employees for purposes of collective bargaining, sought to bargain collectively with any of Sellers, made a demand for recognition or certification as an employee representative for purposes of collective bargaining or filed a petition for recognition with any Governmental Authority; (ii) as of this date, no Collective Bargaining Agreement is being negotiated by any of Sellers, other than pursuant to procedures established in connection with the Bankruptcy Case; and (iii) in the past three (3) years, there have been no material strikes, lockouts, slowdowns, work stoppages, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs, or other material forms of organized labor disruption with respect to any of Sellers.

(c) Except as set forth on Schedule 5.10(c) within the past three (3) years, Sellers have not failed to provide advance notice of layoffs or terminations as required by, or incurred any material Liability under, the Worker Adjustment and Retraining Notification Act of 1988, and including any similar state or local Legal Requirement (the “WARN Act”), or any applicable Legal Requirement for employees outside the United States regarding the termination or layoff of employees. Except as set forth on Schedule 5.10(c) or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or pursuant to procedures established in connection with the Bankruptcy Case, (i) within the past three (3) years, Sellers have been in compliance with all applicable Legal Requirements relating to labor and employment, including all Legal Requirements relating to employment practices;

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<sup>76</sup> Insert if any Mining Lot is purchased.

the hiring, promotion, assignment, and termination of employees; discrimination; equal employment opportunities; disability; labor relations; wages and hours; FLSA, classification of independent contractors, hours of work; payment of wages; immigration; workers' compensation; employee benefits; background and credit checks; working conditions; occupational safety and health; family and medical leave; employee terminations; and data privacy and data protection; (ii) there are no pending, or to Sellers' Knowledge, threatened, lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, claims, or proceedings (including any administrative investigations, charges, claims, actions, or proceedings), against Sellers brought by or on behalf of any applicant for employment, any current or former Employee, any person alleging to be a current or former employee, any representative, agent, consultant, independent contractor, subcontractor, or leased employee, volunteer, or "temp" of Sellers, or any group or class of the foregoing, or any Governmental Authority, alleging violation of any labor or employment Legal Requirements, breach of any Collective Bargaining Agreement, breach of any express or implied contract of employment, wrongful termination of employment, or any other discriminatory, wrongful, or tortious conduct in connection with the employment relationship; (iii) each of the Employees has all work permits, immigration permits, visas, or other authorizations required by any Legal Requirement for such Employee given the duties and nature of such Employee's employment; and (iv) no individual has been improperly excluded from, or wrongly denied benefits under, any Benefit Plan.

#### 5.11 Employee Benefits.

(a) Except as set forth in Schedule 5.11(a), (i) no Benefit Plan (or any benefit plans, programs or arrangements of an ERISA Affiliate that would be a Benefit Plan if such ERISA Affiliate were a Seller) (A) is, or has been within the past six (6) years, a Title IV Plan or subject to Section 412 of the Code; (B) is maintained by more than one employer within the meaning of Section 413(c) of the Code; (C) is subject to Sections 4063 or 4064 of ERISA; (ii) no Benefit Plan is (A) a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA; or (B) an "employee pension benefit plan" (within the meaning of Section 3(2) of ERISA) that is not intended to be qualified under Section 401(a) of the Code; and (iii) none of the Sellers or any of their respective ERISA Affiliates contributes to, or is obligated to contribute to, or within the six (6) years preceding this Agreement contributed to or was obligated to contribute to, a Multiemployer Plan.

(b) Within the past three (3) years, there has been no "reportable event" (as defined in Section 4043 of ERISA and the regulations thereunder) with respect to any Title IV Plan set forth in Schedule 5.11(a) that would require the giving of notice to the Pension Benefit Guaranty Corporation (the "PBGC") under Section 4041(c)(3)(C) or 4063(a) of ERISA.

(c) Except as set forth in Schedule 5.11(c), (i) no Seller has terminated any Title IV Plan within the last six (6) years or incurred any outstanding liability under Section 4062 of ERISA to the PBGC, or to a trustee appointed under Section 4042 of ERISA; (ii) all premiums due the PBGC with respect to the Title IV Plans set forth in Schedule 5.11(a) have been paid; (iii) no Seller has filed a notice of intent to terminate any Title IV Plan set forth in Schedule 5.11(a) and has not adopted any amendment to treat such Title IV Plan as terminated; (iv) the PBGC has not instituted, or to Sellers' Knowledge, threatened to institute, proceedings to treat any Title IV Plan set forth in Schedule 5.11(a) as terminated; and (v) no event has occurred

or circumstance exists that may constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan set forth in Schedule 5.11(a).

(d) No Seller or ERISA Affiliate has, within the past six (6) years, withdrawn from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” as defined in Sections 4203 and 4205 of ERISA, respectively, so as to result in an unsatisfied liability, contingent or otherwise (including the obligations pursuant to an agreement entered into in accordance with Section 4204 of ERISA), of such Seller or ERISA Affiliate.

(e) No Seller or any organization to which such Seller is a successor or parent corporation, within the meaning of Section 4069(b) of ERISA, has engaged in any transaction described in Sections 4069 or 4212(c) of ERISA.

(f) Except as set forth in Schedule 5.11(f) or expressly provided herein or in the Approved Budget or if the payment thereof is otherwise excused as a result of the Bankruptcy Case, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) result in any payment becoming due and payable, or increase the amount of any compensation due and payable, to any current or former officer, director, employee, leased employee, consultant or agent (or their respective beneficiaries) of Sellers.

(g) Except in connection with the Bankruptcy Case, Sellers have no plan, contract or commitment, whether legally binding or not, to create any new employee benefit or compensation plans, policies or arrangements for any Buyer Employee.

5.12 Sellers’ Intellectual Property. Except as disclosed on Schedule 5.12, and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to Sellers’ Knowledge, (i) the conduct of the Business by Sellers as currently conducted (including the products and services currently sold or provided by Sellers) does not infringe or otherwise violate any Person’s intellectual property rights, and no such claims are pending or threatened in writing against Sellers, and (ii) no Person is infringing or otherwise violating any Intellectual Property owned by Sellers, and no such claims are pending or threatened in writing against any Person by Sellers.

5.13 Contracts. Schedule 5.13(i) sets forth a complete list, as of the date hereof, of all Material Contracts to which any Seller is a party. Each Material Contract is in full force and effect and is a valid and binding obligation of each Seller party thereto in accordance with its terms and conditions, in each case except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors’ rights generally or general principles of equity, (y) as set forth on Schedule 5.13(ii) and (z) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.13(iii), upon entry of the Sale Order, other than the payment of Cure Costs (i) no Seller will be in breach or default of its obligations under any Material Contract; (ii) no condition exists that with notice or lapse of time or both would constitute a default by any Seller under any Material Contract; and (iii) to Sellers’ Knowledge, no other party to any Material Contract is in breach or default thereunder, except in

the case of clauses (i), (ii) and (iii) for any breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.14 [RESERVED].

5.15 Brokers or Finders.

Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

5.16 Affiliate Interests.

Other than employment arrangements, compensation benefits and travel advances entered into in the Ordinary Course of Business, and other than arrangements or relationships that would not be required to be disclosed in the Company's SEC filings pursuant to Regulation S-K of the Securities Act, to Sellers' Knowledge, no Affiliate of any Seller controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, other than through the ownership of any publicly traded entity, (i) any Person which does business with any Seller or is competitive with the Business in any material respect, or (ii) any material property, asset or right which is used by any Seller. All Indebtedness of any such Affiliate to any Seller, and all Indebtedness of any Seller to any Affiliate of any Seller, is listed on Schedule 5.16.

5.17 [RESERVED].

5.18 Undue Influence.

In connection with the operation of the Business, no Seller or, to Sellers' Knowledge, any director, officer, agent, employee or Affiliate of Sellers, has taken any action, directly or indirectly, with respect to the Business that would result in a violation of the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder (the "FCPA"). Sellers, and, to Sellers' Knowledge, their Affiliates, have conducted the Business in compliance with the FCPA in all material respects and maintain procedures which are reasonably expected to ensure compliance therewith.

5.19 [Absence of Certain Changes].

(a) Since the Petition Date through the date hereof, there has not been a Material Adverse Effect.

(b) Except as set forth on Schedule 5.19(b), or as expressly contemplated by this Agreement, the Approved Budget or the Cash Collateral Orders or any other orders entered in the Bankruptcy Case from and after the Execution Date through the date hereof, Sellers have not, solely with respect to the Business or the Acquired Assets:

(i) except for executory contracts and unexpired leases rejected by Sellers with the prior written consent of Buyer, terminated, modified or amended any Available Contract that is a Material Contract other than due to the expiration of the term or automatic renewals, in each case, in accordance with the terms of any such Available Contract that is a Material Contract;

(ii) purchased or otherwise acquired any material properties or assets (tangible or intangible) or sold, leased, transferred or otherwise disposed of any Acquired Assets, except for purchases of materials and sales of coal, coke and surplus equipment Inventory in the Ordinary Course of Business, (A) permitted, allowed or suffered any of the Acquired Assets to be subjected to any Encumbrance (other than Permitted Encumbrances), or (B) removed any (non-surplus) Equipment or other material assets (other than Inventory) from the Real Property other than in the Ordinary Course of Business; provided, that, any such action with respect to any asset previously identified in the Disclosure Statement as an asset held for sale shall be considered Ordinary Course of Business;

(iii) allowed any material Transferred Permit held by any Seller to terminate, expire or lapse; or

(iv) agreed or committed in writing to do any of the foregoing.]<sup>77</sup>

#### 5.20 [Mining.

(a) Sellers have, in the amounts and forms required pursuant to applicable Mining and Mining Safety Laws, obtained all performance bonds and surety bonds, or otherwise provided any financial assurance as (i) required under the Transferred Permits or Mining and Mining Safety Laws for Reclamation of land, water or other natural resources at any current mines related to the Transferred Permits, (ii) required pursuant to any applicable Transferred Permit or Mining and Mining Safety Law to mitigate any actual or potential environmental impact of such mines related to the Transferred Permits, or (iii) otherwise obtained in the Ordinary Course of Business with respect to the Transferred Permits and the mines related thereto (collectively, "Mining Financial Assurances"), except for such Mining Financial Assurances that do not exceed \$[1,000,000] in the aggregate. The Company has posted or otherwise provided all Mining Financial Assurances that have been requested in writing by the applicable Governmental Authorities in respect of any applicable Transferred Permits and Legal Requirements having to do with Reclamation in connection with Sellers' mining operations as currently conducted under the Transferred Permits, subject to the discretion of any applicable Governmental Authority to require additional or supplemental Mining Financial Assurances from time to time.

(b) All Reclamation performed by or on behalf of any Seller meets in all material respects the requirements of the applicable Mining Permit and any associated mine Reclamation requirements of any applicable Governmental Authority. The liability for mine closing and Reclamation obligations recorded on the most recent balance sheet of Sellers

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<sup>77</sup> This section subject to revision based on Lot(s) purchased.

provided to Buyer has been properly accrued in accordance with the requirements of Financial Accounting Standards Board Codification Topic 410, Asset Retirement and Environmental Obligations, formerly known as Financial Accounting Standard No. 143 (“FASB 410”), and the amount of such liability is equal to or in excess of the amount of such obligations, determined on the basis of Sellers’ actual historic Reclamation and closure costs and currently planned mine life and escalated for inflation, in accordance with FASB 410 and applicable Legal Requirements.]<sup>78</sup>

5.21 [MSHA; OSHA].. For the past three (3) years, except as set forth on Schedule 5.21 and except for fully paid, discharged and settled citations and notices of violation issued by [MSHA,] [the Alabama Surface Mining Commission,]<sup>79</sup> [the West Virginia Office of Miners’ Health, Safety and Training]<sup>80</sup> or other Governmental Authority, Sellers have conducted their respective business and operations, and their respective assets have been maintained, in compliance in all material respects with [MSHA or] OSHA, as applicable. Except as set forth on Schedule 5.21, there are no investigations pending or, to Sellers’ Knowledge, threatened by any Governmental Authority or other third Person that would result in the imposition of any material Liability on any Seller pursuant to [MSHA or] OSHA. Except as set forth on Schedule 5.21, Sellers do not owe any material assessments, penalties, fines, liens, charges, surcharges, nor are there any other material amounts due or owing pursuant to [MSHA or] OSHA, and there have been no imminent danger orders, unwarrantable failure orders, failure to abate orders, or cessation orders, notices of a pattern of violations, or material assessments, under [MSHA or] OSHA during the past three (3) years. Schedule 5.21 sets forth all material reports of any [MSHA or] OSHA audits with respect to the Business of which Sellers have Knowledge performed within the past three (3) years by any Person (including Sellers). Schedule 5.21 sets forth all orders issued under [MSHA or] OSHA, together with any appeals thereof, with respect to the Business within the past three (3) years by any Governmental Authority. Sellers have made available to Buyer copies of all orders and reports under [MSHA or] OSHA within their possession, together with the minutes of all joint health and safety committee meetings within their possession, with respect to Sellers for the past three (3) years.<sup>81</sup>

5.22 [Coal Act; Black Lung Act].

(a) Sellers [and their “related persons” (as defined in the Coal Act)] are in compliance in all material respects with the Coal Act and any regulations promulgated thereunder, except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Court or the Bankruptcy Code, and none of Sellers or their “related persons” (as defined in the Coal Act) has any liability under the Coal Act, except as disclosed in the Financial Statements or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or with respect to premiums or other material payments required thereunder which have been paid when due, or

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<sup>78</sup> Insert if any Mining Lot is purchased.

<sup>79</sup> Insert if Lot 2, 4 or 8 is purchased.

<sup>80</sup> Insert if Lot 3 is purchased.

<sup>81</sup> Insert references to MSHA if any Mining Lot is purchased.

which liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Court or the Bankruptcy Code.

(b) Sellers are in compliance in all material respects with the Black Lung Act, except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Court or the Bankruptcy Code, and Sellers have not incurred any Black Lung Liability or assumed any other Black Lung Liability, except as disclosed in the Financial Statements or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or with respect to premiums, contributions or other material payments required thereunder which have been paid when due or which Black Lung Liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Court or the Bankruptcy Code.]<sup>82</sup>

#### 5.23 Warranties Exclusive.

EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 5 (AS MODIFIED BY THE DISCLOSURE SCHEDULES) OR IN THE BILL OF SALE AND THE ASSUMPTION AGREEMENT, SELLERS MAKE NO REPRESENTATION OR WARRANTY, STATUTORY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR THE BUSINESS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. NEITHER SELLERS NOR ANY OTHER PERSON, DIRECTLY OR INDIRECTLY, HAS MADE OR IS MAKING, ANY REPRESENTATION OR WARRANTY, WHETHER WRITTEN OR ORAL, REGARDING THE PRO-FORMA FINANCIAL INFORMATION, FINANCIAL PROJECTIONS OR OTHER FORWARD-LOOKING STATEMENTS OF SELLERS.

### ARTICLE 6

#### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

##### 6.1 Organization and Good Standing.

Buyer is a [\_\_\_\_\_], duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_]. Buyer has the requisite power and authority

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<sup>82</sup> Insert provisions relating to Coal Act if Lot 4, [5] or 8 is purchased. **Note to Draft:** Coal Act is only applicable to mines which are UMWA mines—to be confirmed that only JWR and Taft have UMWA bargaining units (Lot 8 is listed because JWR will be a Seller with respect to Lot 8). Insert provisions relating to Black Lung if any Mining Lot or Lot 9 is purchased.

to own or lease and to operate and use its properties and to carry on its business as now conducted.

## 6.2 Authority; Validity; Consents.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the other Transaction Documents by Buyer and the consummation by Buyer of the transactions contemplated herein and therein have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a Party will be duly and validly executed and delivered by Buyer, as applicable, at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except in each case as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except [as required to comply with the HSR Act or] as set forth on Schedule 6.2, Buyer is not or will be required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a Party or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, registrations, declarations or filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, materially affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

## 6.3 No Conflict.

Neither the execution and delivery by Buyer of this Agreement or the other Transaction Documents to which it is a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the organizational documents of Buyer or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation in any material respect binding upon Buyer or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under (i) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the business of Buyer, or (ii) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority.



6.4 Brokers or Finders.

Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which any Seller (or any Affiliate of any Seller) is or will become liable, and Buyer shall hold harmless and indemnify Sellers and their Affiliates from any claims with respect to any such fees or commissions.

6.5 Legal Proceedings.

There is no Proceeding or Order pending against, or to Buyer's Knowledge, threatened against or affecting, Buyer before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement and the other Transaction Documents or which would or would reasonably be expected to impair Buyer's ability to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

6.6 Financing.<sup>83</sup>

Buyer shall, on the Execution Date and at the Closing, have sufficient available funds to permit Buyer to pay the Cash Consideration and all other amounts to be paid or repaid by Buyer under the Transaction Documents to the extent payable on or about the Closing Date, including amounts to be paid for the Cure Costs and including all requisite financial assurances to be provided by Buyer pursuant to Section 7.8.

6.7 Qualification.

(a) To Buyer's Knowledge, there exist no facts or circumstances that would cause, or be reasonably expected to cause, Buyer and/or its Affiliates not to qualify as "good faith" purchasers under Section 363(m) of the Bankruptcy Code.

(b) As of the Closing, Buyer will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts [and the Pardee Lease and Pardee Sublease]<sup>84</sup>.

(c) [As of the Closing, Buyer will be capable of taking transfer of, or obtaining replacement or overlapping permits for, the Closing Required Permits held by Sellers and, to Buyer's Knowledge, as of the date hereof and as of the Closing, there exists no reason why approval for any application for any Mining Permit or other Governmental Authorization should be denied, other than any denial for violations that may reasonably be expected to be cured by the time of such transfer or obtaining of Permits as contemplated by Section 7.8 and

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<sup>83</sup> Good Faith Deposit is being paid by Buyer.

<sup>84</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

Section 7.9, and no Buyer or any officer or director thereof, as applicable, is or will be “permit blocked” on the Applicant Violator System by any Governmental Authority.]<sup>85</sup>

6.8 No Other Representations or Warranties; Condition of the Business; Buyer’s Reliance.

Buyer acknowledges that neither Sellers or any of their Affiliates nor any other Person is making, and Buyer is not relying on, any representations or warranties whatsoever, statutory, expressed or implied, written or oral, at law or in equity, beyond those expressly made by Sellers in Article 5 hereof (as modified by the Disclosure Schedules). Buyer acknowledges that, except as expressly set forth in Article 5 (as modified by the Disclosure Schedules), neither Sellers or any of their Affiliates nor any other Person has, directly or indirectly, made any representation or warranty, statutory, expressed or implied, written or oral, at law or in equity, as to the accuracy or completeness of any information that Sellers furnished or made available to Buyer and its Representatives in respect of the Business, and Sellers’ operations, assets, stock, Liabilities, condition (financial or otherwise) or prospects. Buyer acknowledges that neither Sellers or any of their Affiliates nor any other Person, directly or indirectly, has made, and Buyer has not relied on, any representation or warranty, whether written or oral, regarding the pro-forma financial information, financial projections or other forward-looking statements of Sellers, and Buyer will make no claim with respect thereto. Buyer acknowledges that the Acquired Assets are being transferred on an “AS IS, WHERE IS” basis.

6.9 Information.

Buyer has conducted such investigations of the Company and its Subsidiaries, including the Sellers, as it deems necessary and appropriate in connection with the execution and delivery of this Agreement and the other Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby. Buyer acknowledges that it and its Representatives have been permitted full and complete access to the books and records, facilities, equipment, Tax Returns, Contracts, insurance policies (or summaries thereof) and other properties and assets of Sellers, that it and its Representatives have desired or requested to see or review, and that it and its Representatives have had a full opportunity to meet with the officers and employees of Sellers to discuss the Business. None of the Company, Sellers or any other Person (including any officer, director, member or partner of Sellers or any of their Affiliates) shall have or be subject to any liability to Buyer, or any other Person, resulting from Buyer’s use of any information, documents or material made available to Buyer in any “data rooms,” management presentations, due diligence or in any other form in expectation of the transactions contemplated hereby or by the other Transaction Documents.

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<sup>85</sup> To be modified depending on whether any Mining Lot or Lot 9 is purchased.

## ARTICLE 7

### ACTIONS PRIOR TO THE CLOSING DATE

#### 7.1 Access and Reports; Confidentiality.

(a) From and after the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the provisions of Article 11, Sellers shall (i) afford Buyer and its Representatives reasonable access, upon reasonable notice, to its personnel, properties, books, Permits, Contracts and records, and furnish promptly to Buyer all reasonable information concerning the Acquired Assets, the Business, properties, any Benefit Plans and personnel as may be reasonably requested; (ii) furnish to Buyer such financial and operating data and other information relating to Sellers, the Business and the Acquired Assets as may be reasonably requested; (iii) permit Buyer, to make such reasonable inspections and, at Buyer's sole cost and expense, copies thereof as Buyer may require; and (iv) instruct the executive officers and senior business managers, counsel, auditors and financing advisors of Sellers to reasonably cooperate with Buyer and its Representatives regarding the same; provided, that any such access shall be conducted consistent with and not in violation of the Bidding Procedures Order and in a manner not to unreasonably interfere with the Business. All requests for information made pursuant to this Section 7.1 shall be directed to Adam Schlesinger, PJT Partners LP, 280 Park Avenue, 16<sup>th</sup> Floor, New York, NY 10017 or other person as designated by such person or Sellers. Notwithstanding the foregoing, Buyer and its Representatives shall not (A) have access to personnel records of Sellers relating to individual performance or evaluation records, medical histories or other information which in Sellers' good faith opinion is sensitive or the disclosure of which could subject a Seller to risk of liability and (B) have any right to perform or conduct, or cause to be performed or conducted, any environmental sampling or testing at, in, on or underneath any of Sellers' properties without written consent from the Company. No investigation pursuant to this Section 7.1 or by Buyer or its Representatives at any time prior to or following the date hereof shall affect or be deemed to modify any representation or warranty made by Sellers herein.

(b) Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 7.1 shall not require Sellers to permit any access to, or to disclose (i) any information that, in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of the Company, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which the Company or any Seller is a party or cause any privilege (including attorney-client privilege) or work product protection that Sellers would be entitled to assert to be waived or (ii) if the Company or any Seller, on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties in a litigation, any information that is reasonably pertinent thereto; provided, that, in the case of clause (i), the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so (A) would not (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be reasonably likely to result in the violation of any such Legal Requirement or Contract or be reasonably likely to cause such privilege or work product protection to be undermined with respect to such information or (B) could reasonably (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be managed through the use of customary "clean-room"

arrangements pursuant to which non-employee Representatives of Buyer could be provided access to such information.

(c) Buyer shall, and shall use its best efforts to cause its Affiliates and Representatives to, hold all confidential documents and information concerning the Business furnished to Buyer or its Affiliates in connection with the transactions contemplated by this Agreement and the other Transaction Documents in accordance with the provisions of the confidentiality agreement attached to the Bidding Procedures Order which Buyer shall execute in accordance with the Bidding Procedures Order.

## 7.2 Operations Prior to the Closing Date.

Sellers covenant and agree that, except (v) as expressly contemplated by this Agreement, (w) as disclosed in Schedule 7.2, (x) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (y) as otherwise required by Legal Requirements or (z) to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case, or as permitted under the Cash Collateral Orders, after the Execution Date and prior to the Closing Date:

(a) Sellers shall:

(i) carry on the Business in the Ordinary Course of Business and use commercially reasonable efforts to maintain, preserve and protect the Acquired Assets in the condition in which they exist on the date hereof, except for ordinary wear and tear and except for replacements, modifications or maintenance in the Ordinary Course of Business;

(ii) maintain their books, accounts and records in the Ordinary Course of Business; and

(iii) (A) comply in all material respects with all Legal Requirements applicable to them or having jurisdiction over the Business or any Acquired Asset, (B) comply in all material respects with contractual obligations applicable to or binding upon them pursuant to any Material Contracts (other than those obligations the compliance with which is excused during the Bankruptcy Case), and (C) maintain in full force and effect all material Permits and comply with the terms of each such Permit (but only to the extent such Permits are necessary for the Business and the Acquired Assets in the Ordinary Course of Business).

## 7.3 Regulatory Matters; Cooperation.

(a) [Subject to Section 7.3(c), as soon as reasonably practicable following entry of the Sale Order (or such later date as agreed in writing by all of the Parties hereto)], Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications required to be filed under the HSR Act with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice, and request early termination of the waiting period under the HSR Act.

Buyer, on the one hand, and Sellers, on the other hand, shall promptly respond to any requests for additional information or documentary materials in connection with such filings and shall take all other actions necessary to cause the waiting periods under the HSR Act to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act, and each Party shall be responsible for any other payment of its own respective costs and expenses incurred by such Party (including attorneys' fees and other legal fees and expenses) associated with the preparation of its portion of any antitrust filings.]

(b) Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to obtain (and Buyer shall cause its Affiliates to use commercially reasonable efforts to obtain), at the earliest practicable date, all necessary Governmental Authorizations and all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any), in each case relating to the Business, and take all reasonable steps as may be necessary to avoid any Proceeding by any Governmental Authority. In addition to such actions, Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to take (and Buyer shall cause its Affiliates to use commercially reasonable efforts to take), or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using commercially reasonable efforts to accomplish the following: (i) taking all reasonable acts necessary to cause the conditions precedent set forth in Article 9 and Article 10 to be satisfied; (ii) defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed; (iii) taking all reasonable acts necessary in connection with meeting with any Governmental Authority regarding the transferring of the Permits held by Sellers; and (iv) executing and delivering any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(c) Sellers, on the one hand, and Buyer, on the other hand, shall, (i) promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Legal Requirements, Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting

confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

(d) [Subject to the terms and conditions of this Agreement, Buyer shall, and shall cause its Affiliates to, take any and all steps reasonably necessary to avoid or eliminate impediments under any Antitrust Law that may be asserted by any Governmental Authority with respect to the transactions contemplated hereby so as to enable the Closing to occur as soon as reasonably possible, including, proposing, negotiating, committing to and effecting, by consent decree or otherwise, the sale, divestiture or disposition of such assets or businesses of Buyer or any of its Affiliates as may be required in order to avoid the entry, or to effect the dissolution, of any injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of preventing, delaying or restricting the consummation of the transactions contemplated by this Agreement; provided, that (i) Sellers shall not take any such action without the prior written consent of Buyer and (ii) Buyer shall not be obligated to take any such action if such action would have a Material Adverse Effect on the Business or the Acquired Assets, taken as a whole.]

7.4 [RESERVED].

7.5 [RESERVED].

7.6 Notice of Developments.

Sellers shall promptly notify Buyer of, and furnish Buyer any information it may reasonably request with respect to, any event that would reasonably be expected to cause any of the conditions set forth in Article 9 not to be fulfilled by the Outside Date.

7.7 [RESERVED].

7.8 Surety Bonds; Permits

(a) [Business and Acquired Assets in Alabama].<sup>86</sup>

(i) Promptly following the Execution Date, Sellers shall make available to Buyer a true and complete list of (A) all Permits held by Sellers in the operation of the Business and Acquired Assets in the State of Alabama, together with a description of the permitted property, facility or operation, together with a true and complete list of all pending applications for additional Permits, renewals of existing Permits, or amendments to existing Permits held by Sellers, which have been submitted

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<sup>86</sup> Except as otherwise noted below, insert paragraph (a) if Lot 2, 4 or 8 is purchased. If Lot 9 is purchased, additional items may be required.

to any Governmental Authority or other entity by any Seller or any of its Subsidiaries applicable to the operation of the Business and Acquired Assets in Alabama and (B) the applicable surety bonds (or other financial assurances) and the amount of the surety bonds (or other financial assurances) under such Permits, in each case, as amended, supplemented and modified through the Execution Date. Sellers shall as promptly as practicable deliver to Buyer any updates, modifications or corrections to the foregoing information.

(ii) As promptly as reasonably practicable after the Execution Date:

(1) Buyer shall file an application with the Alabama Surface Mining Commission for a license to engage in coal mining operations in the State of Alabama ("Alabama Mining License"), in a format and manner acceptable to the Alabama Surface Mining Commission, along with all applicable fees, and shall have obtained such Alabama Mining License, and continue to hold the same, on and as of the Closing Date and thereafter until the transfer to Buyer of all of the Alabama Mining Permits (as hereinafter defined) is completed; and

(2) Buyer shall use commercially reasonable efforts to provide, not later than [\_\_\_\_\_], evidence of appropriate financial commitments, in form, manner and amount acceptable to Sellers and the Alabama Surface Mining Commission, for replacement surety bonds or other financial assurances necessary to allow the transfer of the Alabama Mining Permits from Sellers to Buyer, and in any event, Buyer shall provide such evidence at or before Closing.

(iii) As promptly as reasonably practicable after the Execution Date:

(1) Buyer and Sellers shall file an application for a transfer of all Transferred Permits to engage in mining operations at particular locations in the State of Alabama with the Alabama Surface Mining Commission ("Alabama Mining Permits"), in a format and manner acceptable to the Alabama Surface Mining Commission, along with all applicable fees and shall publish notice of such applications in accordance with the applicable Legal Requirements;

(2) Buyer and Sellers shall file with the Alabama Department of Environmental Management an application for a transfer of Transferred Permits issued to Sellers by the Alabama Department of Environmental Management, in a format and manner acceptable to the Alabama Department of Environmental Management, along with all applicable fees;

(3) [Buyer and Sellers shall file with the Jefferson County Department of Health an application for a transfer of any

Transferred Permits relating to the emission of pollutants into the air, in a format and manner acceptable to the Jefferson County Department of Health, along with all applicable fees;]<sup>87</sup>

(4) Buyer and Sellers shall file with the Alabama Department of Environmental Management an application for a transfer of any Transferred Permits relating to the emission of pollutants into the air, in a format and manner acceptable to the Alabama Department of Environmental Management, along with all applicable fees;

(5) Buyer shall file with the Federal Explosives Licensing Center an application for each applicable Federal Explosives license or Permits, in a format and manner acceptable to the Federal Explosives Licensing Center, along with all applicable fees; and

(6) Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to properly file all documents or applications required to transfer, to amend, or to acquire all other Transferred Permits necessary for the operation and conduct of the Business or Acquired Assets in Alabama, and Buyer and Sellers shall reasonably cooperate in all actions necessary to seek and obtain approval for the transfer thereof.

(iv) Buyer and Sellers shall, and shall cause their Subsidiaries to, (A) take all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements with the appropriate Governmental Authority to put in place, to transfer, to amend, or to acquire all Transferred Permits that are necessary for the operation and conduct of the Business or Acquired Assets in Alabama by or on the Closing Date, unless the applicable Legal Requirements regarding such a Permit require certain actions to be taken upon or after Closing, and, in that event, Buyer, at Buyer's sole cost and expense from and after the Closing, shall take, or cause its Subsidiaries to take, all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements with the appropriate Governmental Authority which can only be taken or done after the Closing to put in place, to transfer, to amend, or to acquire such remaining Permits as promptly as reasonably practicable after the Closing; and (B) take all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements to put in place with the Alabama Surface Mining Commission as promptly as commercially reasonable possible after the Closing, financial assurances necessary to transfer the Alabama Mining Permits from Sellers and to Buyer and to obtain the release to Sellers of the financial assurances previously placed by Sellers with respect thereto. Sellers agree to provide, at Buyer's sole cost and expense from and after Closing, any reasonable cooperation as reasonably requested by Buyer to bring about the transfer of the Alabama Mining Permits or the issuance of new such permits to Buyer, as applicable. From and after the Closing, Buyer shall use commercially reasonable efforts to pursue the transfer of the Alabama Mining

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<sup>87</sup> Insert only if Lot 9 is purchased.



Permits or issuances of new Alabama Mining Permits to Buyer as promptly as possible, and Buyer shall operate under the Alabama Mining Permits as the designated operator and contract miner until the Alabama Mining Permits are transferred or new Permits are issued to Buyer, which contract mining operation shall be pursuant to the terms of a contract mining agreement in form mutually agreeable to Buyer and Sellers and executed and delivered by the Parties at Closing (the “Alabama Contract Mining Agreement”). To the fullest extent allowed by and in accordance with the applicable Legal Requirements, Sellers grant Buyer the right to conduct, at the sole cost and expense of Buyer, mining operations following the Closing on the Real Property under the Alabama Mining Permits, pursuant to and on the terms and conditions of the Alabama Contract Mining Agreement, as the designated operator until such time as the Alabama Mining Permits are transferred to, or new Permits are issued to, Buyer. Sellers shall take all steps that are reasonably necessary to maintain the Alabama Mining Permits prior to transfer thereof to Buyer and shall have (and Buyer grants) all rights of entry onto the Real Property that are reasonably necessary therefor. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold harmless Sellers and/or their Affiliates from any and all Liabilities incurred by Sellers and/or their Affiliates as a result of any action taken by Sellers at Buyer’s or its Affiliates’ request pursuant to this Section 7.8(a)(iv).

(v) Sellers shall use commercially reasonable efforts (at Buyer’s sole cost and expense from and after the Closing) to cause any surety bonds (or other financial assurances) in place as of the Closing with respect to applicable Transferred Permits to remain in place and to maintain current levels of surety bond coverage with respect to their Permits that are not Transferred Permits until such time as the final approval for the transfer of such applicable Transferred Permits to Buyer is received. At all times from and after Closing and prior to the transfer to Buyer of the Alabama Mining Permits and any other Permits not acquired by Buyer before the Closing Date, Buyer shall, and shall cause its Affiliates to, at Buyer’s sole cost and expense comply with all of the applicable Legal Requirements governing, and all conditions and requirements of, or pertaining to, any such Permits. Buyer shall promptly deliver to Sellers written notice of any incidents, violations or occurrences, which Sellers shall have the right, but not the obligation, to cure (including right of entry onto the applicable Real Property), and Buyer shall promptly reimburse Sellers for the reasonable costs of any such cure. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold harmless Sellers and/or their Affiliates from any and all Liabilities incurred by Sellers and/or their Affiliates as a result of any action taken by Sellers at Buyer’s or its Affiliates’ request pursuant to this Section 7.8(a)(v).

(vi) Notwithstanding anything in this Agreement to the contrary, from and after the Closing, Buyer shall, at its sole cost and expense, (x) until such time as Buyer has posted replacement surety bonds or other required financial assurances, pay or reimburse Sellers (within five (5) Business Days of receipt of notice from Sellers’ Representative, which such notice shall contain the applicable surety bond numbers and corresponding premium amounts, or other appropriate references as to other forms of financial assurance) for the cost of any premiums that become due after the Closing Date with respect to such surety bonds or the cost of other financial assurances, (y) post any addition to the principal amount of any such surety bond or other financial

assurance required by the Alabama Surface Mining Commission or any Governmental Authority after the Closing Date as a result of any action taken by Buyer with respect to the Business and Acquired Assets in Alabama and (z) Buyer shall reimburse Sellers for all out-of-pocket costs and expenses incurred by Sellers in connection with any action taken by Sellers at the request of Buyer.

(vii) Until such time as the Alabama Mining Permits are transferred to Buyer, Buyer shall, and shall cause its Affiliates to, take all reasonable and necessary actions such that Buyer will not have been denied, or be made subject to denial of, any application for any Permit or other Governmental Authorization due to application of the Applicant Violator System established pursuant to the SMCRA or any similar applicable state system.

(b) [Business and Acquired Assets in West Virginia].<sup>88</sup>

(i) Promptly, [but in no event later than ten (10) Business Days] following the Execution Date, Sellers shall deliver to Buyer a true and complete list of (A) all Permits held by Sellers in the operation of the Business and Acquired Assets in the State of West Virginia, together with a description of the permitted property, facility or operation, together with a true and complete list of all pending applications for additional Permits, renewals of existing Permits, or amendments to existing Permits held by Sellers, which have been submitted to any Governmental Authority or other entity by any Seller or any of its Subsidiaries applicable to the operation of the Business and Acquired Assets in West Virginia and (B) the applicable surety bonds (or other financial assurances) and the amount of the surety bonds (or other financial assurances) under such Permits, in each case, as amended, supplemented and modified through the Execution Date. Sellers shall as promptly as practicable deliver to Buyer any updates, modifications or corrections to the foregoing information.

(ii) As promptly as reasonably practicable after the Execution Date, Buyer shall use commercially reasonable efforts to provide evidence of appropriate financial commitments, in form, manner and amount acceptable to Sellers and the West Virginia Department of Environmental Protection, for replacement surety bonds or other financial assurances necessary to allow the transfer of the West Virginia Mining Permits from Sellers to Buyer, and in any event, Buyer shall provide such evidence at or before Closing.

(iii) As promptly as reasonably practicable after the Execution Date:

(1) Buyer and Sellers shall file an application for a transfer, and for “advance approval” of such transfer, of all Transferred Permits to engage in mining operations at particular locations in the State of West Virginia with the West Virginia Department of Environmental Protection (“West

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<sup>88</sup> Insert paragraph (b) if Lot 3 is purchased.

Virginia Mining Permits”), in a format and manner acceptable to the West Virginia Department of Environmental Protection, along with all applicable fees;

(2) Buyer shall take all steps to obtain issuance of certificates of approval from the West Virginia Office of Miners’ Health, Safety and Training to engage in mining operations under the West Virginia Mining Permits, including payment of all applicable fees in connection therewith;

(3) Buyer and Sellers shall file with the West Virginia Department of Environmental Protection an application for a transfer of Transferred Permits, in a format and manner acceptable to the West Virginia Department of Environmental Protection, along with all applicable fees;

(4) Buyer and Sellers shall file with the West Virginia Department of Environmental Protection an application for a transfer of any Transferred Permits relating to the emission of pollutants into the air, in a format and manner acceptable to the West Virginia Department of Environmental Protection, along with all applicable fees;

(5) Buyer shall file with the Federal Explosives Licensing Center an application for each applicable Federal Explosives license or Permit, in a format and manner acceptable to the Federal Explosives Licensing Center, along with all applicable fees; and

(6) Buyer shall use commercially reasonable efforts to properly file all documents, applications, or financial assurances required to transfer, to amend, or to acquire all other Transferred Permits, or any other authorizations or permissions, necessary for the operation and conduct of the Business or Acquired Assets in West Virginia, and Buyer and Sellers shall reasonably cooperate in all actions necessary to seek and obtain approval for the transfer, and “advance approval” of the transfer, thereof.

(iv) Buyer and Sellers shall, and shall cause their Subsidiaries to, (A) take all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements with the appropriate Governmental Authority to put in place, to transfer, to amend, or to acquire all Transferred Permits that are necessary for the operation or conduct of the Business or Acquired Assets in West Virginia by or on the Closing Date, unless the applicable Legal Requirements regarding such a Permit require certain actions to be taken upon or after Closing, and, in that event, Buyer, at Buyer’s sole cost and expense from and after the Closing, shall take, or cause its Subsidiaries to take, all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements with the appropriate Governmental Authority which can only be taken or done after the Closing to put in place, to transfer, to amend, or to acquire such remaining Permits as promptly as reasonably practicable after the Closing; and (B) take all actions and do, or cause to be done, all things necessary or desirable under the applicable Legal Requirements to put in place with the West Virginia Department of Environmental Protection as promptly as commercially reasonably

possible, financial assurances necessary to transfer the West Virginia Mining Permits from Sellers to Buyer and to obtain the release to Sellers of the financial assurances previously placed by Sellers with respect thereto. Sellers agree to provide, at Buyer's sole cost and expense from and after Closing, any reasonable cooperation as reasonably requested by Buyer to bring about the transfer of the West Virginia Mining Permits or the issuance of new such permits to Buyer, as applicable. Prior to Closing, Buyer shall obtain issuance by the West Virginia Department of Environmental Protection of "advance approval" of Buyer as an operator under the West Virginia Mining Permits, and Buyer shall, after such "advance approval" is granted and the Closing occurs, operate under Sellers' West Virginia Mining Permits as the designated operator until the West Virginia Mining Permits are transferred to Buyer; and shall continue to diligently pursue the transfer of the West Virginia Mining Permits to Buyer as promptly as possible. To the fullest extent allowed by and in accordance with the applicable Legal Requirements, Sellers grant Buyer the right to conduct, at the sole cost and expense of Buyer, mining operations following the Closing on the Real Property under the West Virginia Mining Permits, as the designated operator under "advance approval" until such time as the West Virginia Mining Permits are transferred to, or new Permits are issued to, Buyer. Sellers shall take all steps that are reasonably necessary to maintain the West Virginia Mining Permits prior to transfer thereof to Buyer and shall have (and Buyer grants) all rights of entry onto the Real Property that are reasonably necessary therefor. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold harmless Sellers and/or their Affiliates from any and all Liabilities incurred by Sellers and/or their Affiliates in connection with Buyer's mining operations or Buyer's conduct of the Business or Acquired Assets as the designated operator under "advance approval" or in connection with any action taken by Sellers at Buyer's or its Affiliates' request pursuant to this Section 7.8(b)(iv).

(v) Sellers shall use commercially reasonable efforts (at Buyer's sole cost and expense from and after the Closing) to cause any surety bonds (or other financial assurances) in place as of the Closing with respect to applicable Transferred Permits to remain in place and to maintain current levels of surety bond coverage with respect to their Permits that are not Transferred Permits until such time as the final approval for the transfer of such applicable Transferred Permits to Buyer is received. At all times from and after Closing and prior to the transfer to Buyer of the West Virginia Mining Permits and any other Permits not acquired by Buyer before the Closing Date, Buyer shall, and shall cause its Affiliates to, at Buyer's sole cost and expense comply with all of the applicable Legal Requirements governing, and all conditions and requirements of, or pertaining to, any such Permits. Buyer shall promptly deliver to Sellers written notice of any incidents, violations or occurrences, which Sellers shall have the right, but not the obligation, to cure (including right of entry onto the applicable Real Property), and Buyer shall promptly reimburse Sellers for their reasonable costs of any such cure. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold Sellers and/or their Affiliates harmless from any and all Liabilities incurred by Sellers and/or their Affiliates as a result Buyer's mining operations or Buyer's conduct of the Business or Acquired Assets as the designated operator under "advance approval" or in connection with any action taken by Sellers at Buyer's or its Affiliates' request pursuant to this Section 7.8(b)(v).

(vi) Notwithstanding anything in this Agreement to the contrary, from and after the Closing, Buyer shall, at its sole cost and expense, (w) until such time as Buyer has obtained approval of replacement surety bonds or other required financial assurances, pay or reimburse Sellers (within five (5) Business Days of receipt of notice from Sellers' Representative, which such notice shall contain the applicable surety bond numbers and corresponding premium amounts, or other appropriate references as to other forms of financial assurance) for the cost of any premiums that become due after the Closing Date with respect to Seller's surety bonds or the costs of other financial assurances of Sellers, (x) post any addition to the principal amount of any such surety bond or other financial assurance of Sellers required by the West Virginia Department of Environmental Protection or any Governmental Authority after the Closing Date as a result of any action taken by Buyer with respect to the Business and Acquired Assets in West Virginia, (y) Buyer shall reimburse Sellers for all out-of-pocket costs and expenses incurred by Sellers in connection with any action taken by Sellers at the request of Buyer, and (z) Buyer shall reimburse Seller for the prorated portion of any premium paid by Seller prior to the Closing Date allocable to the period between the Closing Date and the date the surety bond to which such premium relates is released.

(vii) Until such time as the West Virginia Mining Permits are transferred to Buyer, Buyer shall, and shall cause its Affiliates to, take all reasonable and necessary actions such that Buyer will not have been denied, or be made subject to denial of, any application for any Permit or other Governmental Authorization due to application of the Applicant Violator System established pursuant to the SMCRA or any similar applicable state system.]

(c) All fees, bonds or financial assurances required to be paid or provided in connection with the actions to be taken under this Section 7.8 shall be paid or provided by Buyer.

#### 7.9 [Overlapping Permits]<sup>89</sup>

(a) To the extent that the permitted areas and outfalls covered by any National Pollutant Discharge Elimination System permit which is an Excluded Asset (each, an "Excluded NPDES Permit") overlaps with the permitted areas and outfalls covered by one or more Transferred Permits issued pursuant to the Surface Mining Reclamation and Control Act (each, an "Assumed SMCRA Permit"), Buyer and Sellers shall cooperate and use commercially reasonable efforts to remove, as soon as commercially practicable after the Closing, the permitted areas and outfalls covered by such Assumed SMCRA Permit(s) from such Excluded NPDES Permit. Without limiting the generality of the foregoing, as soon as commercially practicable after the Closing, (i) Buyer shall, and shall cause its Affiliates to, file with the appropriate Governmental Authority an application for a new National Pollutant Discharge Elimination System permit (each, a "New NPDES Permit") with respect to the areas and outfalls covered by such Assumed SMCRA Permit(s) and (ii) the applicable Seller shall, at Buyer's sole cost and expense, take all actions reasonably necessary or desirable under applicable Legal

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<sup>89</sup> Insert if any Mining Lots are purchased that have overlapping permits.

Requirements to modify such Excluded NPDES Permit to remove from such Excluded NPDES Permit the outfalls and areas covered by such Assumed SMCRA Permit(s) (the “Overlapping NPDES Areas”). Sellers shall have (and Buyer grants) all rights of entry onto the Overlapping NPDES Areas necessary for Sellers to maintain the applicable Excluded NPDES Permit at all times following the Closing until Buyer’s application for the applicable New NPDES Permit with respect to such Overlapping NPDES Areas is approved by the applicable Governmental Authority (the “NPDES Interim Period”) and thereafter until final release of each Excluded NPDES Permit.

(b) During the NPDES Interim Period, Buyer shall, and shall cause its Affiliates to, (i) comply with all of the Legal Requirements governing, and all conditions and requirements of, or pertaining to, any Excluded NPDES Permit with respect to any Overlapping NPDES Areas and (ii) be solely responsible for all incidents of violation, non-compliance, and similar occurrences related to the Overlapping NPDES Areas covered by an Excluded NPDES Permit that arise following the Closing. Buyer shall promptly deliver to Sellers written notice of any such incidents, violations or occurrences, which Sellers shall have the right, but not the obligation, to cure (including right of entry onto the applicable Overlapping NPDES Areas) in the event Buyer does not timely cure, and Buyer shall promptly reimburse Sellers for the reasonable costs of any such cure.

7.10 Sale Free and Clear.

On the Closing Date, the Acquired Assets shall be transferred to Buyer free and clear of all Encumbrances and Liabilities (including, for the avoidance of doubt, all successor liability, including any successorship obligations under any Collective Bargaining Agreement, and/or with respect to any Benefit Plan), other than the Permitted Encumbrances and the Assumed Liabilities [and the Pardee Lease Liabilities]<sup>90</sup>, including any Reclamation obligations that are Assumed Liabilities.

7.11 [RESERVED].

7.12 Other Actions.

Buyer covenants and agrees that, except (w) as expressly contemplated by this Agreement, (x) with the prior written consent of Sellers (which consent shall not be unreasonably withheld, conditioned or delayed), (y) as otherwise required by Legal Requirements or (z) to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case, or as permitted under the Cash Collateral Orders, after the Execution Date and prior to the Closing Date, Buyer shall use commercially reasonable efforts not to take or agree to or commit to assist any other Person in taking any action (i) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (ii) that would reasonably be expected to impair the ability of Buyer or Sellers to consummate the Closing in accordance with the terms hereof or to materially delay such consummation.

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<sup>90</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.

## ARTICLE 8

### ADDITIONAL AGREEMENTS

#### 8.1 Taxes.

(a) For purposes of Section 2.3(j), in the case of any Taxes with respect to the Acquired Assets that are payable with respect to any Tax period that begins before and ends after the Closing Date (a “Straddle Period”), the portion of any such Taxes that are imposed on a periodic basis with respect to the Acquired Assets that constitutes Post-Closing Taxes shall be deemed to be the amount of such Taxes for the entire Straddle Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding Tax period) multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period beginning on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period.

(b) Sellers and Buyer agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, the prosecution or defense of any claims, suit or proceeding relating to any Tax. Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 8.1 shall not require Sellers to permit any access to, or to disclose (i) any information that, in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of the Company, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which the Company or any Seller (or any of their respective Affiliates) is a party or cause any privilege (including attorney-client privilege) or work product protection that the Company or any Seller (or any of their respective Affiliates) would be entitled to assert to be waived or (ii) if the Company or any Seller (or any of their respective Affiliates), on the one hand, and Buyer or any of its Subsidiaries, on the other hand, are adverse parties in a litigation, any information that is reasonably pertinent thereto[; provided, that, in the case of clause (i), the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so (A) would not (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be reasonably likely to result in the violation of any such Legal Requirement or Contract or be reasonably likely to cause such privilege or work product protection to be undermined with respect to such information or (B) could reasonably (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be managed through the use of customary “clean-room” arrangements pursuant to which non-employee Representatives of Buyer could be provided access to such information].

#### 8.2 Bulk Sales.

The Sale Order shall provide either that (i) Sellers have complied with the requirements of any Legal Requirement relating to bulk sales and transfer or (ii) compliance with

the Legal Requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

### 8.3 Payments Received.

Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which belongs to the other and will account to the other for all such receipts.

### 8.4 Assumed Contracts: Adequate Assurance and Performance.

Buyer shall, and shall cause its Affiliates to, use commercially reasonable efforts to provide adequate assurance of the future performance by Buyer of each Assumed Contract as required under Section 365 of the Bankruptcy Code. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Sellers' Representatives available to testify before the Bankruptcy Court.

### 8.5 Employee Matters

(a) Employees. Prior to the Closing Date, Buyer shall set initial terms and conditions of employment, including wages, benefits, job duties and responsibilities and work assignment. Buyer shall determine which Employees, if any, to offer employment to, in its sole discretion. Only Employees who are offered and accept such offers of employment with Buyer based on the initial terms and conditions set by Buyer and further then actually commence employment with Buyer will become "Buyer Employees" after the Closing. Sellers shall terminate, or shall cause to be terminated, on or prior to the Closing Date the employment of all Employees who are offered and accept offers of employment with Buyer pursuant to this Section 8.5(a). Notwithstanding the foregoing, nothing herein will, after the Closing Date, impose on Buyer any obligation to retain any Buyer Employee in its employment for any amount of time or on any terms and conditions of employment. The employment of each such Buyer Employee with Buyer (including any Buyer Employee who may be on leave of absence) will commence immediately after the Closing Date. Except as otherwise required by Legal Requirement, specified in this Agreement, or otherwise agreed in writing by Buyer, Buyer shall not be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee on account of any termination of such Employee's employment on or before the Closing Date, and such benefits (if any) shall remain obligations of Sellers.

(b) Access to Information. After the Execution Date, Sellers shall provide Buyer, its Affiliates, and their Representatives with reasonable access to the Employees



and with information, including employee records and Benefit Plan data, reasonably requested by Buyer and such Affiliates, except as otherwise prohibited by Legal Requirements.

(c) Benefit Plans. To the extent that service is relevant for purposes of eligibility and vesting, but not accrual under any employee benefit plan, program, policy or arrangement of Buyer or its Subsidiaries, Buyer shall credit (or cause to be credited) the Buyer Employees for service earned prior to the Closing with Sellers in addition to service earned with Buyer on and after the Closing. To the extent the Buyer Employees and their eligible dependents enroll in any welfare benefit plan of Buyer or its Subsidiaries, subject to the terms of any such plan, Buyer shall undertake commercially reasonable efforts to waive, or cause such waiver of, any preexisting condition limitations applicable to such Buyer Employees to the extent that Buyer Employee's or eligible dependent's condition would not have operated as a preexisting condition under the applicable corresponding welfare benefit plan as maintained by Sellers. In addition, subject to the terms of the applicable welfare benefit plan of Buyer or its Subsidiaries, Buyer shall undertake commercially reasonable efforts to (i) waive all waiting periods under such welfare benefit plan otherwise applicable to the Buyer Employees and their eligible dependents, other than waiting periods that are in effect with respect to such individuals as of the Closing to the extent not satisfied under Sellers' applicable Benefit Plans, and (ii) provide each Buyer Employee and his or her dependents with corresponding credit under such welfare benefit plan for any co-payments and deductibles paid by them under Sellers' applicable corresponding Benefit Plans during the portion of the respective plan year prior to the Closing. At any time and from time to time after the Execution Date, Sellers and Buyer shall take, or cause to be taken, any and all actions necessary to effectuate the terms of this Section 8.5(c). Prior to the Closing, Sellers shall reasonably cooperate with Buyer and its Affiliates and give commercially reasonable assistance as Buyer may reasonably request in order to effectuate the foregoing.

(d) Payroll Taxes. For purposes of payroll taxes with respect to the Buyer Employees, Sellers shall treat the transactions contemplated by this Agreement, as a transaction described in Treasury Regulation Sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-(b)(2) (i.e., Buyer shall be treated as a successor for payroll tax purposes); and as such, Sellers and Buyer shall report on a predecessor/successor basis as set forth under the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320.

(e) WARN Act. With respect to Buyer Employees, Buyer will have full responsibility under the WARN Act relating to any act or omission of Buyer after the Closing Date. With respect to the Employees, Sellers will have full responsibility under the WARN Act relating to any act or omission of Sellers prior to and on the Closing Date.

(f) No Third-Party Beneficiaries; Employment Status. All provisions contained in this Agreement with respect to employee benefit plans or compensation of Buyer Employees are included for the sole benefit of the respective parties hereto. Nothing contained herein (i) shall confer upon any former, current or future employee of Sellers or Buyer or any legal representative or beneficiary thereof any rights or remedies, including any right to employment or continued employment, of any nature, for any specified period; (ii) shall cause the employment status of any former, present or future Employee to be other than terminable at will; or (iii) shall confer any third party beneficiary rights upon any Buyer Employee or any dependent or beneficiary thereof or any heirs or assigns thereof.

8.6 Post-Closing Books and Records; Properties; and Personnel.

From and after the Closing Date for a period of one (1) year, each Party shall provide the other Parties (and their respective Representatives) with access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business, to the assets, books, records, systems and other property and any employees of the other Parties so as to enable Buyer and Sellers to prepare Tax, financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, to prosecute and defend legal Actions or for other like purposes, including Claims, objections and resolutions, and to enable Sellers to wind down the Business. During such one (1) year period, each Party (and their respective Representatives) shall be permitted to make copies of any books and records described in this Section 8.6, subject to the confidentiality requirements set forth in Section 7.1. If any Party desires to dispose of any such books and records, such Party shall, thirty (30) days prior to such disposal, provide the other Party with a reasonable opportunity to remove or copy such records to be disposed of at the removing Party's expense. Buyer shall retain such books and records for a period of six (6) years following the Closing. For the avoidance of doubt, nothing in this Section 8.6 shall be seen as limiting the Parties' obligations under Section 8.1(b).

8.7 Use of Name.

Buyer agrees that from and after the Closing, Buyer shall not use or employ any name which includes the words "Walter" or any similar names indicating affiliation with Sellers, any of its Affiliates, the Business or the business or activities engaged in by Sellers or any of Sellers' Affiliates prior to or after the Closing.

8.8 No Successor Liability.<sup>91</sup>

The Parties intend that, except as included in the Assumed Liabilities, upon the Closing, Buyer shall not be deemed to: (a) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to Sellers, including with respect to any Collective Bargaining Agreements and any Benefit Plans, under the Coal Act, and any common law successor liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability; (b) have, *de facto*, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Buyer shall not be liable for any Encumbrances (other than Assumed Liabilities and Permitted Encumbrances) against any Seller or any of its predecessors or Affiliates, and that Buyer have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date or whether fixed or contingent, existing or hereafter arising, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 8.8 shall be reflected in the Sale Order.

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<sup>91</sup> References to specific agreements or laws to be adjusted depending on Lot(s) purchased.

8.9 [RESERVED].

## ARTICLE 9

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived by Buyer in writing, in its sole and absolute discretion:

#### 9.1 Accuracy of Representations.

The representations and warranties of Sellers set forth in Article 5 shall be true and correct in all respects (without giving effect to any qualification as to materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which are confined to a specified date shall speak only as of such date); provided, however, that in the event of a breach of a representation or warranty, the condition set forth in this Section 9.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a Material Adverse Effect. Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer of each Seller.

#### 9.2 Sellers' Performance.

The covenants and agreements that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

#### 9.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, decreed or entered any Order from and after the Execution Date, which is in effect and has the effect of prohibiting (or delaying beyond the Outside Date) the consummation of the transactions contemplated by this Agreement.

#### 9.4 Governmental Authorizations.

(a) To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business contemplated by this Agreement shall have expired or shall have been terminated; and

(b) Subject to Section 2.5, (i) all of the Closing Required Permits shall have been transferred to, or obtained by, Buyer[ or (ii) with respect to any Transferred Permits that have not been transferred at or prior to Closing, Buyer shall have the right to conduct,

pursuant to Section 7.8, mining operations following the Closing on the applicable Real Property]<sup>92</sup>.

9.5 Sellers' Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

9.6 Sale Order.

Subject to Section 2.5, the Bankruptcy Court shall have entered the Sale Order in form and substance, including with respect to all findings of fact and conclusions of law, acceptable to Sellers and Buyer, and the Sale Order shall have become a Final Order.

9.7 Assumed Contracts.

The Bankruptcy Court shall have approved and authorized, other than with respect to Cure Costs, the assumption and assignment of each Assumed Contract, except as would not have a material effect on the Business from and after the Closing.

9.8 Material Adverse Effect.

Since the Execution Date, no Material Adverse Effect shall have occurred.

## ARTICLE 10

### **CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE**

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived by Sellers in writing, in their sole and absolute discretion:

10.1 Accuracy of Representations.

The representations and warranties of Buyer set forth in Article 6 shall be true and correct in all respects (without giving effect to any qualification as to materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which are confined to a specified date shall speak only as of such date); provided, however, that in the event of a breach of a representation or warranty, the condition set forth in this Section 10.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement. Sellers

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<sup>92</sup> To be inserted if any Mining Lot is purchased.

shall have received a certificate of Buyer to such effect signed by a duly authorized officer of Buyer.

#### 10.2 Buyer's Performance.

The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized representative thereof.

#### 10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, decreed, or entered any Order from and after the Execution Date, which is in effect and has the effect of prohibiting (or delaying beyond the Outside Date) the consummation of the transactions contemplated by this Agreement.

#### 10.4 Governmental Authorizations.

(a) To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business contemplated by this Agreement shall have expired or shall have been terminated; and

(b) Subject to Section 2.5, (i) all of the Closing Required Permits shall have been transferred to, or obtained by, Buyer or (ii) with respect to any Transferred Permits that have not been transferred at or prior to Closing, Buyer shall have the right to conduct, pursuant to Section 7.8, mining operations immediately following the Closing on the Real Property.

#### 10.5 Buyer's Deliveries.

Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

10.6 Sale Order. Subject to Section 2.5, the Bankruptcy Court shall have entered the Sale Order in form and substance, including with respect to all findings of fact and conclusions of law, acceptable to Sellers and Buyer, and the Sale Order shall have become a Final Order.

### **ARTICLE 11**

#### **TERMINATION**

##### 11.1 Termination Events.

Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated at any time prior to the Closing only as follows.

- (a) by mutual written consent of Sellers and Buyer;
- (b) by written notice from either Sellers or Buyer:

- (i) if a Governmental Authority issues a final, non-appealable ruling or Order permanently restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated hereby where such ruling or Order was not requested, encouraged or supported by any of Sellers or Buyer; provided that the right to terminate this Agreement under this Section 11.1(b)(i) shall not be available to any Party whose willful failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;

- (ii) if the Closing shall not have occurred on or prior to [February 29, 2016] (the “Outside Date”); provided, however, that if the Closing has not occurred by such date, but on such date all of the conditions set forth in Article 9 and Article 10 have been satisfied or waived (to the extent such conditions may be waived) other than the conditions set forth in Sections 9.4 and 10.4, then the Outside Date shall automatically be extended until thirty (30) days after such initial Outside Date (and such extended date shall be deemed to be the “Outside Date” for all purposes hereunder); provided, further that the terminating Party under this Section 11.1(b)(ii) is not (at such time of termination) in breach of any representation, warranty, covenant or other agreement in this Agreement so as to cause any conditions to Closing not to be satisfied and shall not have been the proximate cause of the failure of the Closing to occur on or prior to the Outside Date; or

- (iii) upon the final, non-appealable ruling or denial of the Governmental Authorizations described in Sections 9.4 and 10.4 and required to be obtained by Closing.

- (c) by written notice from Buyer:

- in the event of any breach of, or failure to perform, by Sellers of any of their agreements, covenants, representations or warranties contained herein or in the Sale Order, which breach or failure to perform (A) would result in a condition set forth in Article 9 not to be satisfied and (B) cannot be cured within ten (10) Business Days after Buyer notifies Sellers of such breach in writing; provided that Buyer shall not have a right of termination pursuant to this Section 11.1(c) if it is then in material breach of any of its agreements, covenants, representations or warranties contained herein or in the Sale Order.

- (d) by written notice from Sellers:

- in the event of any breach of, or failure to perform, by Buyer of any of its agreements, covenants, representations or warranties contained herein or in the Sale Order, which breach or failure to perform (A) would result in a condition set forth in Article 10 not to be satisfied and (B) cannot be cured within ten (10) Business Days after Sellers notify Buyer of such breach in writing; provided that Sellers shall not

have a right of termination pursuant to this Section 11.1(d) if Sellers are then in material breach of any of their agreements, covenants, representations or warranties contained herein or in the Sale Order.

Each condition set forth in this Section 11.1 shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 11.1 are applicable, the applicable party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated.

#### 11.2 Effect of Termination.

In the event of termination of this Agreement by Buyer or Sellers pursuant to this Article 11, this Agreement shall become null and void and have no effect, and all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party (other than as expressly provided herein); provided, that the provisions of Sections 7.1(c) (Access and Reports; Confidentiality), 12.9 (Expenses), 12.10 (Governing Law, Consent to Jurisdiction and Venue; Jury Trial Waiver) and this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, Article 1), shall expressly survive the termination of this Agreement; provided, further, that in the event that Sellers terminate this Agreement pursuant to Section 11.1(d), Sellers shall keep the Good Faith Deposit provided by Buyer pursuant to the Bidding Procedures.

## ARTICLE 12

### GENERAL PROVISIONS

#### 12.1 Survival.

All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder shall not survive the Closing and shall thereupon terminate, including any Actions for damages in respect of any breach thereof.

#### 12.2 Confidentiality.

Following the Closing, each Seller agrees not to, and to cause its Subsidiaries not to, disclose any confidential or non-public information concerning the Acquired Assets, the Business, the negotiation or existence and terms of this Agreement or the business affairs of Buyer or the Assumed Liabilities ("Confidential Information") except disclosure of Confidential Information that (a) was or is lawfully obtained from a source that, to the knowledge of such Seller, was not under an obligation of confidentiality to Buyer with respect to such information, (b) is independently developed by such Seller without violating any of its obligations under this Agreement, (c) is or becomes available to the public, (d) is or may be necessary to wind down any of Sellers' estates, or in connection with the enforcement of the rights of, or the defense of

any Proceeding against or involving, any Seller provided that the Confidential Information is afforded confidential treatment, (e) primarily relates to any Excluded Assets and/or Excluded Liabilities, or (f) is or may be necessary in connection with the Bankruptcy Case provided that the Confidential Information is afforded confidential treatment. Notwithstanding the foregoing, a Seller may disclose Confidential Information if such Seller believes (upon the advice of counsel) it is legally required to make such disclosure in order to comply with applicable law, regulation, rule or legal, judicial or administrative process (including any rule, regulation or policy statement of (i) any organized securities exchange, market or automated quotation system on which the Company's securities are listed or quoted, (ii) any self-regulatory organization of which a party is a member) or (iii) in connection with the Bankruptcy Case. If a Seller or any of its Representatives becomes required (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or it becomes necessary in connection with the Bankruptcy Case to disclose any of the Confidential Information, such Seller or Representative shall use reasonable efforts to provide Buyer with prompt notice, to the extent allowed by law, rule and regulation, of such requirement. Each Seller agrees to disclose only that portion of the Confidential Information which it believes it is necessary or required to disclose and to use commercially reasonable efforts to obtain confidential treatment of such Confidential Information.

### 12.3 Public Announcements.

Prior to the Closing, unless otherwise required by applicable Legal Requirement or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed). From and after the Closing, the Parties may make public statements with respect to this Agreement or the transactions contemplated hereby so long as such announcements do not disclose the specific terms or conditions of this Agreement except where such terms and conditions have already been disclosed as required by Legal Requirement or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange; provided, that the issuing party shall use its commercially reasonable efforts to consult with the other party with respect to the text thereof to the extent practicable.

### 12.4 Notices.

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by overnight courier or facsimile transmission:

- (a) If to Sellers, then to:

Walter Energy, Inc.  
3000 Riverchase Galleria  
Suite 1700



Birmingham, AL 35244  
Attn: Earl H. Doppelt  
Facsimile: (205)776-7859

with a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Kelley A. Cornish  
Facsimile: 212-757-3990

and

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Ariel J. Deckelbaum  
Toby S. Myerson  
Facsimile: 212-757-3990

(b) If to Buyer:

Attn:

Facsimile:

with a copy (which shall not constitute notice) to:

Attn:

Facsimile:

and

Attn:

Facsimile:

or to such other person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally-delivered or faxed or delivered by overnight courier.

#### 12.5 Waiver.

Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Legal Requirements, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

#### 12.6 Entire Agreement; Amendment.

This Agreement (including the Disclosure Schedules and the Exhibits), the Sale Order, the Bidding Procedures Order and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended, modified or supplemented except by a written agreement executed by each of the Parties.

#### 12.7 Assignment.

This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of all of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party) and any assignment in contravention of this Section 12.7 shall be null and void *ab initio*.

#### 12.8 Severability.

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible; and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

#### 12.9 Expenses.

Except as otherwise expressly provided in this Agreement, including Section 11.2, whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel,

financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action or Proceeding; provided, however, that, if the Bankruptcy Case has been closed pursuant to Section 350(a) of the Bankruptcy Code, all Actions and Proceedings arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in the state of New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action or Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action or Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.4) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

12.11 Counterparts.

This Agreement and any amendment hereto may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.4, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

12.12 Parties in Interest; Third Party Beneficiaries; No Amendment.

This Agreement and the other Transaction Documents shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This

Agreement and the other Transaction Documents are for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind. Notwithstanding anything to the contrary, nothing in this Agreement shall constitute an amendment to any Benefit Plan.

#### 12.13 Remedies.

Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit Sellers or Buyer in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

#### 12.14 Specific Performance.

Each Party recognizes that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached, and that monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries. Accordingly, a non-breaching Party shall be entitled to injunctive relief to enforce the terms and provisions of this Agreement. If any Action or Proceeding is brought by the non-breaching Party or Parties to enforce any of the terms or provisions of this Agreement pursuant to this Section 12.14, the Party in breach shall waive the defense that there is an adequate remedy at law. Each Party agrees to waive any requirement for the security or posting of any bond in connection with any Action or Proceeding seeking specific performance of such terms or provisions and that the only permitted objection that it may raise in response to any action for specific performance of such terms or provisions is that it contests the existence of a breach or threatened breach of such provisions. The rights set forth in this Section 12.14 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

#### 12.15 Sellers' Representative; Reliance.

Subject to entry of the Sale Order, Sellers, jointly and severally, hereby represent and warrant that the statements in this Section 12.15 are true and correct as of the Execution Date:

(a) The Company has been appointed, and is authorized, and empowered to act, in connection with, and to facilitate the consummation of, the transactions contemplated by this Agreement and the other Transaction Documents and in connection with any activities to be performed by Sellers under this Agreement and the other Transaction Documents, for the purposes and with the powers, and authority set forth in this Agreement, which will include the sole power and authority:

(i) to receive and distribute the Purchase Price or any other amount paid in connection with this Agreement or the other Transaction Documents to Sellers or to the Persons legally entitled thereto;

(ii) to enforce and protect the rights and interests of Sellers arising out of or under or in any manner relating to this Agreement and the other

Transaction Documents (including in connection with any claims related to the transactions contemplated hereby and thereby) and, in connection therewith, to (A) assert any claim or institute any action, (B) investigate, defend, contest or litigate any action initiated by Buyer or any other Person pursuant to this Agreement and the other Transaction Documents and receive process on behalf of each Seller in any such action and compromise or settle on such terms as the Company will determine to be appropriate, give receipts, releases and discharges on behalf of all or any Seller with respect to any such action, (C) file any proofs, debts, claims and petitions as the Company may deem advisable or necessary, (D) settle or compromise any claims related to the transactions contemplated by this Agreement and the other Transaction Documents, (E) assume, on each Sellers' behalf, the defense of any claims related to the transactions contemplated by this Agreement and the other Transaction Documents, and (F) file and prosecute appeals from any decision, judgment or award rendered in any of the foregoing actions;

(iii) to enforce or refrain from enforcing any right of any Seller (prior to the Closing) and/or of the Company arising out of or under or in any manner relating to this Agreement or the other Transaction Documents;

(iv) to take any action to be taken by one or more Sellers under or in connection with this Agreement or the other Transaction Documents;  
or

(v) to make, execute, acknowledge and deliver all such other Contracts, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Company, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described in Section 12.15(a)(i) through Section 12.15(a)(iii) and the transactions contemplated by this Agreement and the Transaction Documents.

(b) The Company's power and grant of authority is (i) coupled with an interest and is irrevocable and survives the bankruptcy or liquidation of any Seller and will be binding on any successor thereto; and (ii) may be exercised by the Company acting by signing as the representative of any Seller.

(c) Buyer and its Affiliates and representatives may conclusively and absolutely rely, without inquiry, upon the action of the Company as the action of each Seller (and may ignore any action taken or notice given by any Seller other than the Company) in all matters relating to this Agreement, the Transaction Documents or the transactions contemplated hereby and thereby. Any document delivered or notice delivered by or on behalf of Buyer or its Affiliates to, or action taken by or on behalf of Buyer or its Affiliates with respect to, the Company shall be deemed to have been delivered to, or taken with respect to, all Sellers. Any amounts to be paid by Buyer to Sellers pursuant to this Agreement shall be divided by Sellers among themselves, but may be paid by Buyer to the Company. Sellers shall be jointly and severally liable for any amounts due to be paid or owed by Sellers to Buyer pursuant to this Agreement.

*[Signature pages follow.]*

**IN WITNESS WHEREOF**, the Parties have caused this Asset Purchase Agreement to be executed and delivered by their duly authorized representatives, all as of the Execution Date.

[BUYER]

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

Name:

Title:

WALTER ENERGY, INC.,  
as the Company

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

Name:

Title:

[SELLERS]

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

Name:

Title:

**[Exhibit A]**

**[Accounting Standards]**

[To come.]



**[Exhibit B]**

**[Form of JWW Assumption Agreement]<sup>93</sup>**

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<sup>93</sup> Insert if Lot 3 is purchased and Lot 6 is not purchased.