

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

	X	
In re:	:	Chapter 11
	:	
WALTER ENERGY, INC., <u>et al.</u> ,	:	Case No. 15-02741-TOM11
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	X	

**DEBTORS’ MOTION FOR AN ORDER (A) AUTHORIZING THE DEBTORS TO  
OBTAIN SENIOR SECURED POSTPETITION FINANCING, (B) AUTHORIZING  
CONTINUED POSTPETITION USE OF CASH COLLATERAL, (C) GRANTING  
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES  
AND (D) GRANTING RELATED RELIEF**

Walter Energy, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”), by and through their undersigned counsel, hereby submit this motion (the “Motion”) pursuant to sections 105, 361, 362, 363, 364, 507 and 552(b) of title 11 of the U.S. Code (the “Bankruptcy Code”) and rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of a final order substantially in the form attached hereto as **Exhibit A** (the “Final Order”): (i) authorizing the Debtors to (a) obtain postpetition senior secured super-priority financing in an aggregate principal amount not to exceed \$50,000,000 (the “DIP Facility”), (b)

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



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enter into a credit agreement (the “DIP Credit Agreement”) and related documents (collectively, the “DIP Documents”) with the DIP Lenders (as defined below) on terms consistent with the term sheet attached to this Motion as **Exhibit B** (the “DIP Term Sheet”),<sup>2</sup> (c) grant priming liens, priority liens (the “DIP Liens”) and superpriority claims to the DIP Lenders on the terms described in the DIP Term Sheet and (d) continue using cash collateral; (ii) granting adequate protection to certain prepetition secured parties; and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363(c), 364, 507 and 552(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004 and 9014.

### **PRELIMINARY STATEMENT**

3. After months of conflict in these cases, the Debtors are now pursuing going concern sales (the “Sale(s)”) of their core mining business and other assets with widespread creditor support as described in the Sale Motion (as defined below), which was recently approved by the Court.<sup>3</sup> The Debtors are prepared to close the contemplated sale transactions by the end of

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<sup>2</sup> A substantially final draft of the DIP Credit Agreement will be made available to the Court and parties-in-interest prior to the hearing on this Motion.

<sup>3</sup> The Court granted the Sale Motion pursuant to the *Order (I) Approving the Sale of the Acquired Assets Free and Clear of Claims, Liens, Interests and Encumbrances; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 1584] (the “Sale Order”).

the first quarter of this year and anticipate satisfying all conditions to consummating the Sale(s). Without additional liquidity, however, the Debtors will be unable to continue to operate in the ordinary course of business, thereby putting consummation of the Sale pursuant to the Asset Purchase Agreement and the other Sale(s) in jeopardy.

4. By this Motion, the Debtors seek approval of the DIP Facility to provide the funding necessary for the Debtors to continue operations as they work towards consummating the Sale(s). The DIP Facility was negotiated in good faith and at arms' length between the Debtors and the informal group (the "Steering Committee") of certain unaffiliated lenders and noteholders (the "First Lien Creditors") holding a majority in amount of senior secured obligations (the "First Lien Obligations") with first priority liens (the "First Priority Liens") on substantially all of the Debtors' assets. Each of the First Lien Creditors will have an opportunity to participate in the DIP Facility on a *pro rata* basis, but the DIP Facility is being backstopped by the members of the Steering Committee (the "Backstop Parties"). The First Lien Creditors, which will become the owners of the Purchaser (as defined below) upon Closing (as defined in the Asset Purchase Agreement), are not only uniquely incentivized to provide funding, but are also the only viable source of financing as they hold liens on substantially all of the Debtors' assets.

5. Without the postpetition financing, the Debtors will be forced to shut down operations, abandon the proposed Sale(s) and liquidate their assets to the detriment of all stakeholders. In contrast, the DIP Facility will enable the Debtors to preserve the value of their assets pending the closing of the Sale(s) and successfully conclude these cases. The DIP Facility is therefore in the best interests of the Debtors and all stakeholders and should be approved.

## **RELIEF REQUESTED**

6. By this Motion, the Debtors seek entry of the Final Order: (i) authorizing the Debtors to (a) obtain postpetition senior secured super-priority financing and enter into the DIP Documents with the DIP Lenders on terms consistent with the DIP Term Sheet, (b) grant priming liens, first priority liens and superpriority claims to the DIP Lenders (as defined below) on the terms described in the DIP Term Sheet, and (c) continue using cash collateral; (ii) granting adequate protection to certain prepetition secured parties; and (iii) granting related relief.

## **BACKGROUND**

7. On July 15, 2015 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing these cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

8. On the Petition Date, this Court entered an order consolidating these Chapter 11 Cases for procedural purposes only.

9. The Bankruptcy Administrator for the Northern District of Alabama has appointed two official committees in these Chapter 11 Cases – the official committee of unsecured creditors (the “Creditors’ Committee”) and a committee of retired employees pursuant to sections 1114(c)(2) and 1114(d) of the Bankruptcy Code (the “Retiree Committee”).

10. Information regarding the Debtors’ prepetition capital structure and indebtedness is contained in the *Debtors’ Motion for Entry of Interim and Final Orders Under 11 U.S.C. §§ 105, 361, 362, 363, 507 and 552, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (A) (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing; and (B) Granting Related*

*Relief* [Docket No. 42] (the “Cash Collateral Motion”) and *Declaration of William H. Harvey in Support of Chapter 11 Petitions and First Day Relief* [Docket No. 3] (“First Day Declaration”).

11. After a hearing on September 24, 2015, the Court entered the *Amended Final Order (A) Authorizing Post-Petition Use of Cash Collateral, (B) Granting Adequate Protection to Post-Petition Secured Parties and (C) Granting Related Relief* (as amended to date, the “Amended Final Cash Collateral Order”). See Docket No. 797; see also Docket Nos. 857, 1158 & 1612 (extending term of Amended Final Cash Collateral Order through the earlier to occur of (x) the closing of the Stalking Horse Sale (defined below), (y) March 30, 2016 and (z) the termination by any party of the Asset Purchase Agreement). The Amended Final Cash Collateral Order authorizes the use of Cash Collateral and provides that, as of the Petition Date, the Prepetition Secured Parties held valid, properly perfected liens on all or substantially all of the Prepetition Collateral (each as defined therein). It further provides, among other things, adequate protection to the First Lien Creditors in the form of superpriority claims and superpriority liens on all of the Debtors’ pre- and postpetition collateral (the “Collateral”), subject to a Carve Out (as defined therein).

12. On November 5, 2015, the Debtors and Coal Acquisition LLC (the “Purchaser”), executed a stalking horse asset purchase agreement (the “Asset Purchase Agreement”) for the sale of substantially all of the Debtors’ Alabama coal operations to the Stalking Horse Purchaser, subject to higher or otherwise better offers (the “Stalking Horse Sale”). The Alabama coal operations – which include Jim Walter Resources, Inc.’s number 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto – comprise the Debtors’ principal underground mining businesses.

13. Shortly thereafter, the Debtors filed a motion (the “Sale Motion”) for approval of the Sale(s), including the Stalking Horse Sale, as well as related bidding procedures.<sup>4</sup>

On January 8, 2016, the Court entered the Sale Order.

14. As discussed above, the Debtors’ available and projected Cash Collateral alone is insufficient to continue the Debtors’ operations until the Closing. Consequently, the Debtors need the additional liquidity contemplated by the DIP Facility to fund their working capital needs and pay the costs of administering these Chapter 11 Cases through the Closing.

**CONCISE STATEMENT OF RELIEF REQUESTED**<sup>5</sup>

**A. The DIP Facility**

15. Pursuant to Bankruptcy Rule 4001(c), the following is a summary of the material terms of the proposed form of Final Order and DIP Facility:<sup>6</sup>

<b>Borrower</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Walter Energy, Inc.
<b>Guarantors</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Each of the Borrower’s existing and future, direct and indirect subsidiaries that are Debtors. All obligations of the Borrower under the DIP Facility will be unconditionally guaranteed on a joint and several basis by the Guarantors.
<b>DIP Lenders and Backstop Parties</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	“ <u>DIP Lenders</u> ”: Holders of record as of January 13, 2016 of claims under the Credit Agreement or the First Lien Indenture (each as defined in the Final Order), as applicable, but excluding any claims on account of any unfunded Revolving Loan Commitments and the outstanding undrawn Letters of Credit, each as defined in the Credit Agreement (collectively, the “ <u>First Lien Claims</u> ”) who elect to participate in the DIP Facility pursuant to the procedures set forth in the DIP Term Sheet.

<sup>4</sup> In the weeks after the Debtors filed the Sale Motion, the Creditors’ Committee and Retiree Committee reached agreements with the Debtors pursuant to which each committee has agreed to support the Sale(s). See Docket Nos. 1207 (global settlement with Creditors’ Committee) and 1333 (Debtors’ stipulation with Retiree Committee).

<sup>5</sup> The summaries and descriptions of the terms and conditions of the DIP Facility and Final Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of significant terms of the DIP Facility. In the event of any inconsistency between this Motion, on the one hand, and the Final Order or DIP Documents, on the other, the Final Order and DIP Documents shall control in all respects.

<sup>6</sup> Capitalized terms used but not otherwise defined in the table below have the meanings ascribed to them in the DIP Term Sheet.

	<p><u>Backstop Parties</u>: Certain lenders and noteholders holding the majority in amount of First Lien Obligations that have provided commitments (the “<u>Backstop Commitments</u>”) to fund the DIP Loans (as defined below). The portions of the DIP Facility not allocated to First Lien Creditors as provided above will be allocated to the Backstop Parties on a ratable basis based on their respective Backstop Commitments.</p>
<p><b>DIP Agent</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>A financial institution selected by the Backstop Parties.</p>
<p><b>Type and Amount of the DIP Facility</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>A non-amortizing multiple draw super-priority senior secured term loan facility in an aggregate principal amount not to exceed \$50 million (the DIP Lenders’ commitments under the DIP Facility, the “<u>DIP Commitments</u>”; and the loans under the DIP Facility, the “<u>DIP Loans</u>”), available as follows: the DIP Lenders will fund \$30 million in principal amount of the DIP Loans (the “<u>Initial Escrowed DIP Loans</u>”) to an account maintained by the DIP Agent in escrow (the “<u>Escrow Account</u>”), from which the Initial Escrowed DIP Loans may be withdrawn by the Borrower subject to the satisfaction of all conditions set forth in the DIP Documents, including without limitation that immediately after giving effect to any proposed withdrawal the aggregate amount of unrestricted cash and cash equivalents of the Borrower and the Debtors shall not exceed \$40 million. In the event that Availability Period is extended pursuant to the DIP Documents and the Initial Escrowed DIP Loans are less than \$2.5 million, to the extent requested by the Borrower and subject to the satisfaction of all conditions set forth in the DIP Documents, the DIP Lenders will fund \$20 million in principal amount of the DIP Loans (the “<u>Second Escrowed DIP Loans</u>”) to the Escrow Account which may be withdrawn by the Borrower. Any amount of the DIP Loans under the DIP Facility funded into the Escrow Account will permanently reduce the DIP Commitments by such amount, and once repaid, the DIP Loans under the DIP Facility cannot be reborrowed, and in no event will the aggregate principal amount of DIP Loans exceed \$50 million.</p>
<p><b>Term</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Closing Date</u>: DIP Loans under the DIP Facility may be drawn upon (a) the approval of the Stalking Horse Sale and (b) the satisfaction or waiver of all conditions required to draw upon the DIP Facility set forth in the DIP Documents.</p> <p><u>Termination Date</u>: All obligations under the DIP Facility will be due and payable in full in cash on the earliest of (i) the Stated Maturity Date (defined below); (ii) the effective date of any chapter 11 plan for the reorganization of the Borrower or any other Debtor; (iii) the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors pursuant to Bankruptcy Code section 363; and (iv) the date of the acceleration of the DIP Loans and the termination of the DIP Commitments in accordance with the DIP Documents (such earliest date, the “<u>DIP Termination Date</u>”). The principal of, and accrued interest on, the DIP Loans and all other amounts owing to the DIP Agent and the DIP Lenders under the DIP Facility shall be due and payable in cash on the DIP Termination Date. Upon the Closing (as defined in the Asset Purchase Agreement) of the transactions under the Asset Purchase Agreement, the DIP Obligations shall be indefeasibly and immediately paid in full in cash from the cash consideration provided by the Buyer under the Asset Purchase Agreement. “<u>Stated Maturity Date</u>” shall mean February 29, 2016; provided that such date may be extended with the consent of the Required Lenders (as defined in the Credit Agreement) and shall</p>

	<p>be extended automatically to match the Outside Date (under and as defined in the Asset Purchase Agreement) if such Outside Date is extended beyond February 29, 2016; provided further that, in no event shall the Stated Maturity Date be extended, either with the consent of the Required Lenders or automatically, to a date that is later than March 30, 2016.</p>
<p><b>Use of DIP Facility</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>In accordance with the Approved Budget, but subject to the Budget Covenant (each as defined below), the proceeds of the DIP Loans will be used only for the following purposes: (i) for the payment of prepetition amounts (including prepetition payments to certain critical vendors identified by the Borrower) to the extent authorized pursuant to the first day orders, other orders in these Chapter 11 Cases prior to the Closing Date or with the consent of the Backstop Parties; (ii) for the payment of working capital and other general corporate needs of the Debtors in the ordinary course of business; and (iii) for the payment of the costs and expenses of administering the Chapter 11 Cases (including payments benefiting from the Carve-Out (as defined below)), including allowed professional fees subject to the terms and conditions set forth in the DIP Term Sheet (and including fees incurred prior to the Closing Date) and the Final Order (for the avoidance of doubt, no proceeds of the DIP Loans may be used to make any of the adequate protection payments set forth in paragraph 11(a) of the Amended Final Cash Collateral Order). Notwithstanding the foregoing, the use of the proceeds of the DIP Loans, the Carve-Out and the DIP Collateral (as defined below) shall be subject to further restrictions consistent with those in the Amended Final Cash Collateral Order, as amended by the Final Order, including with respect to limitations on investigating and challenging claims of the Prepetition Secured Parties and limitations on paying fees and expenses of official committees. No proceeds of the DIP Facility or the DIP Collateral (as defined below) may be used to initiate, prepare or prosecute proceedings or actions on account of any claims and defenses against the Prepetition Secured Parties, the DIP Agent or the DIP Lenders.</p>
<p><b>Interest Rates</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Non-Default Rate</u>: 12% per annum payable in cash on the DIP Termination Date (as defined below).</p> <p><u>Default Rate</u>: 2.00% per annum plus the otherwise applicable rate.</p>
<p><b>Fees</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>“Upfront Fee”</u>: \$3,750,000, which represents 7.50% of the aggregate commitments under the DIP Facility, payable on the Closing Date from the proceeds of the initial DIP Loan.</p> <p><u>“Drawdown Fee”</u>: 2.5% of each withdrawal by the Borrower from the Escrow Account, payable on each DIP Draw Date (as defined in the DIP Term Sheet) from the proceeds thereof (with such fee being payable in respect of the principal amount of the DIP Loans actually funded by the DIP Lenders into the Escrow Account).</p> <p><u>“Put Option Premium”</u>: A put option premium in an amount equal to 7.5% of the Backstop Commitments shall be paid in cash to the Backstop Parties ratably based on their respective Backstop Commitments on the Closing Date from the proceeds of the initial DIP Loan.</p>



<p><b>Prepayments</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Voluntary</u>: Prepayments under the DIP Facility may be made at any time without premium or penalty (other than breakage costs to the extent applicable) subject to the terms and conditions of the DIP Documents.</p> <p><u>Mandatory</u>: The DIP Documents will require mandatory prepayments customarily found in loan documents for similar debtor-in-possession financings and other mandatory prepayments deemed by the Backstop Parties to be appropriate to the specific transaction, including, without limitation, prepayments from the proceeds of (i) asset sales (other than the sale contemplated by the Asset Purchase Agreement), (ii) insurance and condemnation proceeds and (iii) equity or debt issuances, in each case, received by the Borrower or any of the Guarantors.</p>
<p><b>Approved Budget</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>The DIP Agent and the DIP Lenders shall have received an operating budget setting forth the projected financial operations of the Debtors and their subsidiaries for the 11-week period starting on the week in which the Closing Date occurs, which budget shall be in form and substance acceptable to the Backstop Parties in their sole discretion (the “<u>Approved Budget</u>”).</p>
<p><b>Covenants</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Reporting Covenants, Affirmative Covenants and Negative Covenants</u>: The DIP Documents will contain reporting requirements, affirmative covenants and negative covenants appropriate for a transaction of this type and customarily found in loan documents for similar debtor-in-possession financings and other reporting requirements, affirmative covenants and negative covenants deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation: (i) delivery of variance reports consistent with what is required under the Amended Final Cash Collateral Order; and (ii) a prohibition on transferring any cash or cash equivalents to a subsidiary of the Borrower that is not a Guarantor.</p> <p><u>Budget Covenant</u>: Maximum negative variance of \$10,000,000 from the “Cumulative Net Cash Flow” line in the Approved Budget and maximum negative variance of the greater of \$5,000,000 and 5% of “Cumulative Disbursements” set forth in the Approved Budget from the “Cumulative Disbursements” set forth in the Approved Budget, which, in each case, shall be tested every two weeks on a cumulative basis from the beginning of the period covered by the Approved Budget. “Cumulative Net Cash Flow” and “Cumulative Disbursements” shall not include, (w) fees and expenses of the Steering Committee Advisors, the Consultants, and the professionals retained by the Backstop Parties, and fees and expenses of professionals retained by the DIP Agent, the Administrative Agent, the First Lien Trustee and the Debtors, (x) Cash Collateral provided with respect to Approved Collateralized Obligations (as defined in the Amended Final Cash Collateral Order), (y) key employee retention payments approved by both the Required Lenders and the Bankruptcy Court and (z) any other amounts excluded from “Cumulative Net Cash Flow” or “Cumulative Disbursements” in the Amended Final Cash Collateral Order.</p> <p>Cumulative capital expenditures beginning January 1, 2016, as calculated on a GAAP basis, shall not exceed by \$1.5 million of the amount set forth in a capital expenditure budget delivered in connection with the DIP Facility in form and substance satisfactory to the Required Lenders. Such covenant shall be tested monthly.</p>

<p><b>Liens and Priorities</b> <i>Bankruptcy Rule 4001(c)(1)(B)(i)</i></p>	<p>All obligations of the Borrower and the Guarantors to the DIP Lenders and to the DIP Agent, including, without limitation, all principal and accrued interest, costs, fees and expenses or any exposure of a DIP Lender or any of its affiliates in respect of cash management incurred on behalf of the Borrower or any Guarantor (collectively, the “<u>DIP Obligations</u>”), shall be:</p> <p>Secured, pursuant to Bankruptcy Code sections 361, 362, 364(c)(2), 364(c)(3) and 364(d), by a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically and properly perfected first priority senior priming lien on, and security interest in (such liens and security interests, the “<u>DIP Liens</u>”), all present and after acquired property (whether tangible, intangible, real, personal or mixed) of the Debtors, wherever located, including, without limitation, all accounts, inventory, equipment, capital stock in subsidiaries of the Debtors, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks and other general intangibles, and all products and proceeds thereof, and the proceeds of any causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550 or 553 or any other avoidance actions under the Bankruptcy Code or applicable non-bankruptcy law (all such property, the “<u>DIP Collateral</u>”), which liens and security interests shall be senior to any and all other liens and security interests, including the Adequate Protection Liens granted under the Amended Final Cash Collateral Order and the Final Order (and as defined therein), and the liens granted to the Prepetition Secured Parties under the Prepetition Debt Documents (as defined in the Final Order), other than the (i) Carve-Out, (ii) Permitted Priority Liens (as defined in the Amended Final Cash Collateral Order), if any, and (iii) Approved Liens (as defined in the Amended Final Cash Collateral Order).</p> <p>The DIP Obligations shall also constitute claims entitled to the benefits of Bankruptcy Code section 364(c)(1), having a super-priority over any and all administrative expenses and claims, of any kind or nature whatsoever, including, without limitation, the Superpriority Claims granted to the Prepetition Secured Parties under the Amended Final Cash Collateral Order and the Final Order (and as defined therein), and the administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114, and any other provision of the Bankruptcy Code (“<u>DIP Claims</u>”), subject only to the Carve-Out.</p>
<p><b>Carve-Out</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>“<u>Carve-Out</u>” shall be defined in a manner consistent with the Amended Final Cash Collateral Order, as amended by the Final Order. For the avoidance of doubt and notwithstanding anything to the contrary in the Amended Final Cash Collateral Order, from and after the Closing, the Debtors shall irrevocably waive any right to use, utilize or otherwise access any funds or moneys relating to the “Carve-Out,” and the Carve-Out shall be eliminated.</p>
<p><b>Adequate Protection</b> <i>Bankruptcy Rule 4001(c)(1)(B)(ii)</i></p>	<p>The Debtors shall provide adequate protection to the Prepetition Secured Parties on substantially the same terms as provided in the Amended Final Cash Collateral Order, as amended by the Final Order, in the form of, among other things (a) additional and replacement liens and (b) superpriority claims, in each case, subject to the Carve-Out, the DIP claims and liens, and certain other liens, as applicable. As additional adequate protection, the Debtors shall pay certain fees and expenses of the Prepetition Secured Parties, including (i) the</p>

	<p>fees and expenses of (x) the Administrative Agent and First Lien Trustee and their respective counsel, (y) the Steering Committee Advisors and (z) the Consultants, and (ii) the costs and expenses of each Steering Committee member, in each case, as set forth in the Final Order. The adequate protection payments specified in paragraph 11(a) of the Amended Final Cash Collateral Order that have accrued but remain unpaid as of the date of the Final Order shall be deferred and shall not be paid unless and until the DIP Obligations have been indefeasibly paid in full in cash. No additional adequate protection payments shall accrue under paragraph 11(a) of the Amended Final Cash Collateral Order from and after the date of the Final Order.</p>
<p><b>Events of Default and Remedies</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Events of Default:</u> The DIP Documents and the Final Order will contain events of default customarily found in loan documents for similar debtor-in-possession financing and other events of default deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation, upon the occurrence of any Termination Event under and as defined in the Amended Final Cash Collateral Order, upon any breach of, or failure to perform by Debtors of any of their agreements, covenants, representations or warranties contained in the Asset Purchase Agreement or in the Sale Order, upon the occurrence of any termination event under the Asset Purchase Agreement and upon the entry of an order reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, in each case, without the prior written consent of the Backstop Parties in their sole discretion.</p> <p><u>Remedies:</u> The DIP Agent (acting at the direction of the Required Lenders) and the DIP Lenders shall have customary remedies, including, without limitation, the right (after providing five (5) business days' prior notice to counsel to the Debtors, counsel to the Creditors' Committee, counsel to the Retiree Committee and the Bankruptcy Administrator of the occurrence of the DIP Termination Date) to realize on all DIP Collateral, including Cash Collateral. In the event any party requests a hearing seeking to prevent the DIP Agent or the DIP Lenders from exercising any of their rights and remedies that arise after an event of default, the sole issue before the Bankruptcy Court at such hearing shall be whether an event of default has occurred and has not been cured. No other issue or argument shall be relevant to any opposition to enforcement of the DIP Agent's and the DIP Lenders' rights.</p>
<p><b>Waiver / Modification of Automatic Stay</b> <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i></p>	<p>The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated on the DIP Termination Date, without further notice or order of the Bankruptcy Court, unless the DIP Agent (at the direction of the Required Lenders) elects otherwise in a written notice to the Debtors, and the DIP Agent (at the direction of the Required Lenders) shall be permitted to exercise all rights and remedies, including with respect to the DIP Collateral, set forth in the Final Order and the DIP Documents, and as otherwise available at law without further order or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise.</p>
<p><b>Indemnification</b> <i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i></p>	<p>The Borrower and the Guarantors, jointly and severally, will indemnify and hold harmless the DIP Agent, the Backstop Parties, the DIP Lenders, the First Lien Secured Parties, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an "<u>Indemnified Person</u>") from and</p>

	<p>against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Facility or the transactions contemplated thereby.</p>
<p><b>Reimbursement of Fees and Expenses</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>(a) All out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the Backstop Parties (but excluding the fees and expenses of any outside counsel or financial advisor retained by any individual Backstop Party), whether accrued on, prior to or after the Closing Date, in connection with the Chapter 11 Cases, the DIP Facility and the transactions contemplated thereby shall be paid by the Borrower and the Guarantors from time to time, whether or not the Closing Date occurs;</p> <p>(b) All out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the DIP Lenders, for enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby will be paid by the Borrower and the Guarantors; and</p> <p>(c) All fees of the DIP Agent charged in connection with any “seasoning” of the DIP Facility shall be paid by the Borrower and the Guarantors.</p> <p>In addition to the foregoing, the Debtors shall pay the fees and expenses of the DIP Agent as set forth in an agency fee letter to be agreed by the parties (the “<u>Agent Fee Letter</u>”).</p>
<p><b>Conditions</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Conditions Precedent to the Closing:</u> Conditions precedent to the closing of the DIP Facility include, among other customary conditions precedent customarily found in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the Backstop Parties appropriate to the specific transaction, the following: (i) execution and delivery of the DIP Credit Agreement and DIP Documents, in each case, which shall be in form and substance substantially consistent with the DIP Term Sheet and otherwise acceptable to the Backstop Parties and the Debtors; (ii) entry of the Final Order; (iii) entry of the Sale Order in form and substance acceptable to the Backstop Parties and the Debtors, which Sale Order shall not have been reversed, amended, stayed, vacated, terminated or otherwise modified in any manner, in each case, without the prior written consent of the Backstop Parties in their sole discretion; (iv) delivery of the Approved Budget acceptable to the Backstop Parties in their sole discretion; and (v) the syndication of the DIP Commitments as described in the DIP Term Sheet has been completed.</p> <p><u>Conditions Precedent to Each DIP Term Loan:</u> Conditions precedent customarily found in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation, (i) no default or event of default, (ii) accuracy of representations and warranties in all material respects, (iii) on such DIP Draw Date and immediately after giving effect to each such proposed draw and the use of proceeds thereof as of such DIP Draw Date, unrestricted cash and cash equivalents of the Borrower and the Debtors shall be no greater than \$40 million, (iv) no breach of, or failure to perform by Debtors or any of their</p>

	subsidiaries of any of their agreements, covenants, representations or warranties contained in the Asset Purchase Agreement or in the Sale Order, (v) no termination event has occurred under the Asset Purchase Agreement, (vi) no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, in each case, without the prior written consent of the Backstop Parties in their sole discretion; and (vii) delivery of a notice of borrowing.
<b>Liens on Avoidance Actions</b> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)(xi)</i>	As set forth above, the DIP Liens shall include liens on the proceeds of any causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550 or 553 or the proceeds of any other avoidance actions under the Bankruptcy Code or applicable non-bankruptcy law.

**B. Use Cash Collateral and Adequate Protection**

16. In addition to the proposed DIP Facility, the Debtors also need to continue using Cash Collateral to finance their operations and pay administrative costs of these Chapter 11 Cases. The Prepetition Secured Parties have consented to the Debtors' continued use of Cash Collateral or are deemed to have consented by virtue of the Intercreditor Agreement (as defined in the Amended Final Cash Collateral Order). As consideration for the Prepetition Secured Parties' consent to the Debtors' continued use of Cash Collateral, the Debtors propose to continue to provide adequate protection to the Prepetition Secured Parties against any diminution in the value of their collateral as summarized above and set forth in the Final Order.

**BASIS FOR RELIEF REQUESTED**

**A. The DIP Facility Should Be Approved Under Section 364(c) of the Bankruptcy Code**

17. The purpose of the proposed DIP Facility is to provide sufficient liquidity to bridge the Debtors through a going concern sale of their core Alabama assets. The Debtors have an immediate need to access the liquidity provided by the DIP Facility and use Cash Collateral, to permit, among other things, the orderly continuation of the Debtors' businesses and the consummation of the Sale(s). Without this new liquidity, the Debtors' ability to successfully sell

their assets will be jeopardized and the Debtors will be forced to cease their business operations and lose the going concern value of their businesses, to the detriment of all parties in interest.

18. Section 364 of the Bankruptcy Code “provides bankruptcy courts with the power to authorize postpetition financing for a Chapter 11 debtor-in-possession.” In re Defender Drug Stores, Inc., 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). “Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [section] 364 to provide ‘incentives to the creditor to extend postpetition credit.’” Id. In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor may obtain certain types of secured credit and provides, in pertinent part, as follows:

- (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt
  - (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
  - (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
  - (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

19. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (i) the debtor is unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim;
- (ii) the credit transaction is necessary to preserve the assets of the estate; and

- (iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above factors and holding that “[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and that the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”).

20. As long as a debtor’s business judgment does not run afoul of the letter and spirit of the Bankruptcy Code, courts grant a debtor considerable discretion with respect to postpetition financing. See, e.g., In re Ames Dept. Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”); see also In re Belle Foods, LLC, No. 13-81963-JAC11, 2013 WL 5590876, at \*5 (Bankr. N.D. Ala. Aug. 12, 2013) (approving debtor in possession loan where it “reflect[ed] the exercise of prudent business judgment by the Debtor consistent with its fiduciary duties”); In re CB Holding Corp., 447 B.R. 222, 227 (Bankr. D. Del. 2010) (“[T]he terms of the Post-Petition Financing appear to be fair and reasonable, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.”); Trans World Airlines, Inc. v. Travellers Int’l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994)



(approving postpetition loan and receivables facility where such facility “reflect[ed] sound and prudent business judgment . . .”); In re Simasko Prod. Co., 47 B.R. 444, 448-49 (Bankr. D. Colo. 1985). Courts evaluate the requirements of section 364(c) against this backdrop.

**i. Credit Was Not Obtainable on Better Terms**

21. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of sections 364(c) of the Bankruptcy Code. Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986). The circumstances of a case may also support a finding that the Debtor is unable to obtain unsecured financing. See In re Devlin, 185 B.R. 376, 376-78 (Bankr. M.D. Fla. 1995) (concluding debtor was unable to obtain unsecured credit because of pending bankruptcy, potential foreclosure and objections to plan). Thus, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” In re Snowshoe Co., Inc., 789 F.2d at 1088; accord Ames Dep’t Stores, 115 B.R. at 40. Moreover, where few lenders are likely to be able and willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (approving financing pursuant to 364(d) where debtor had little or no unencumbered property), aff’d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); see also In re Stanley Hotel, Inc., 15 B.R. 660, 663 (D. Colo. 1981) (finding section 364(d)(1)(A) to have been satisfied where two banks refused to provide unsecured credit to debtor).

22. Prior to the Petition Date, when the Debtors explored alternatives to their agreement with the Steering Committee, it became clear that they would not be able to obtain postpetition financing on a non-priming basis, much less on an unsecured, administrative or junior



secured basis. As discussed in the Cash Collateral Motion and supporting declarations, the Debtors engaged in discussions with a group of unsecured noteholders, but ultimately determined that obtaining financing from a source other than their First Lien Creditors was not possible.

23. The Debtors' circumstances have not changed. Given the extent of the First Priority Liens and relative value of the Debtors' assets, the Debtors are unable to obtain financing on an unsecured or junior basis. Moreover, the First Lien Creditors indicated that they would not consent to having their liens primed by a third-party lender. In light of these limitations, the Debtors have successfully negotiated postpetition financing from their only viable source. Considering the purpose of the financing and lack of alternatives, the Debtors concluded that the DIP Facility represents the only financing available to them.

**ii. The DIP Facility is Necessary to Preserve Assets of the Estates**

24. It is essential that the Debtors obtain the proposed financing to continue the orderly operation of their businesses and consummate the Sale(s). As discussed above and in the Sale Motion, absent the requisite financing provided by the DIP Facility, the Debtors will need to wind down their operations, resulting in irreparable harm to their businesses, going concern value and ability to pursue the proposed Sale(s). Accordingly, the circumstances of these Chapter 11 Cases necessitate postpetition financing under section 364(c) of the Bankruptcy Code.

**iii. The Terms of the DIP Facility Are Fair, Reasonable and Appropriate**

25. The terms and conditions of the proposed DIP Facility are fair and reasonable under the circumstances and constitute a sound exercise of the Debtors' business judgment. Moreover, the DIP Facility was negotiated extensively by well-represented, independent parties in good faith and at arm's length. Additionally, the interest rates and fees under the DIP Facility will not reduce recoveries of other creditor constituents, as they are being

paid from proceeds of the DIP Loans. The Asset Purchase Agreement will be amended to provide that, upon the Closing of the Asset Purchase Agreement, the Purchaser will pay, as part of the cash consideration, the total amount of any outstanding liabilities under the DIP Credit Agreement on the Closing Date to the Debtors such that they can repay the DIP Facility in full.

26. Without the financing proposed by the DIP Facility, the Debtors would not be able to realize the full value of their assets through a going concern sale, to the detriment of all stakeholders. Accordingly, the terms of the DIP Facility are fair, reasonable and appropriate.

**B. The DIP Facility Should Be Approved Under Section 364(d) of the Bankruptcy Code**

27. If a debtor is unable to obtain credit under the provisions of section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a “priming lien.” 11 U.S.C. § 364(d). Section 364(d) of the Bankruptcy Code provides that a court may authorize a debtor to obtain such priming or equal debt provided that (i) the debtor is not able to obtain credit otherwise and (ii) the lien being primed or diluted is adequately protected. Id.

28. As explained above, the Debtors explored alternatives and cannot obtain financing without granting priming liens pursuant to section 364(d) of the Bankruptcy Code. No party is willing to provide credit on a non-priming basis, and the First Lien Creditors will not agree to be primed by a third party.

29. In the context of 364(d), collateral requires adequate protection to the extent that a priming lien will decrease the value of the subject property. See generally In re Delta Res., Inc., 54 F.3d 722, 729-30 (11th Cir. 1995). What constitutes adequate protection is determined on a case-by-case basis. See, e.g., In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984) (recognizing that there must be “an individual determination” of whether a

secured creditor's interest is adequately protected). The Debtors satisfy section 364(d) of the Bankruptcy Code, as the Prepetition Secured Parties have consented to the priming of their liens or are deemed to have consented by virtue of the intercreditor agreement described in the Cash Collateral Motion. Moreover, the adequate protection provided to the Prepetition Secured Parties is fair and reasonable, including the priming liens and claims.

30. In light of the forgoing, the proposed DIP Facility and the priming liens being granted to the DIP Lenders satisfy section 364(d) of the Bankruptcy Code and should be approved.

**C. Cash Collateral and Adequate Protection**

31. In addition to the DIP Facility, the Debtors require the continued use of Cash Collateral to ensure that they have the liquidity necessary to fund their ordinary course business operations and the administration of these Chapter 11 Cases, including the consummation of the Sale(s). The Debtors' use of Cash Collateral will be subject to the Approved Budget in accordance with the Final Order.

32. The Debtors' use of property of their estates, including "cash collateral," is governed by section 363 of the Bankruptcy Code. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the relevant Prepetition Secured Parties have consented to (or, as applicable, have been directed to, or it has been asserted that they are deemed to have consented to pursuant to the Intercreditor Agreement), conditioned upon the entry of Final Order, the Debtors' entry into the DIP Facility, including the granting of priming liens and claims in connection therewith, and the continued use of Cash

Collateral, on the terms and conditions set forth in the Final Order. Accordingly, the use of Cash Collateral pursuant to the Final Order and the adequate protection package provided therein should be authorized and approved by this Court.

**D. Good Faith**

33. As discussed above, the terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at arms'-length. Therefore, the DIP Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code to the extent any or all of the provisions of the DIP Credit Agreement, or any order of this Court pertaining thereto, are hereafter modified, vacated, stayed or terminated by subsequent order of this or any other court.

**E. The Automatic Stay Should Be Modified on a Limited Basis**

34. The relief requested in this Motion contemplates a modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to permit the DIP Agent and the DIP Lenders to exercise (solely with respect to the DIP Facility), upon the occurrence and continuance of an event of default, the rights and remedies provided in the Final Order. In the Debtors' business judgment, the stay modification requested in this Motion is fair and reasonable under the circumstances.

**NOTICE**

35. Notice of this Motion will be provided to: (a) the Bankruptcy Administrator; (b) counsel to the administrative agent for the Debtors' prepetition secured credit facility; (c) counsel to the indenture trustee of the Debtors' First Lien Notes; (d) counsel to the indenture trustee for the Debtors' Second Lien Notes; (e) counsel to the Steering Committee; (f) counsel to the Backstop Parties; (g) counsel to the Creditors' Committee; (h) counsel to the Retiree

Committee; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the U.S. Environmental Protection Agency; (l) counsel to the United Mine Workers of America (the “UMWA”); (m) counsel to the United Steelworkers; (n) the United States Attorney for the Northern District of Alabama; and (o) all persons or entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, no other or further notice is necessary.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request entry of the Final Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in this Motion and such other and further relief as is just, proper and equitable.

Dated: January 14, 2016  
Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

By: \_\_\_\_\_/s/ Patrick Darby  
Patrick Darby  
Jay Bender  
Cathleen Moore  
James Bailey  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
Telephone: (205) 521-8000  
Email: pdarby@babc.com, jbender@babc.com,  
ccmoore@babc.com, jbailey@babc.com

- and -

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

Stephen J. Shimshak (*pro hac vice*)  
Kelley A. Cornish (*pro hac vice*)  
Claudia R. Tobler (*pro hac vice*)  
Ann K. Young (*pro hac vice*)  
Michael S. Rudnick (*pro hac vice*)  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 373-3000  
Email: sshimshak@paulweiss.com, kcornish@paulweiss.com,  
ctobler@paulweiss.com, ayoung@paulweiss.com,  
mrudnick@paulweiss.com

*Counsel to the Debtors and Debtors-in-Possession*

**EXHIBIT A TO MOTION**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

In re:	)	
	)	Chapter 11
WALTER ENERGY, INC., <i>et al.</i>	)	Case No. 15-02741-TOM11
Debtors. <sup>1</sup>	)	Jointly Administered
	)	
	)	

**ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED POSTPETITION FINANCING, (B) AUTHORIZING CONTINUED POSTPETITION USE OF CASH COLLATERAL, (C) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) [Docket No. \_\_\_]<sup>2</sup> dated January 14, 2016 of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 363, 364, 507 and 552(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 4001, 6004 and 9014, seeking, among other things, entry of an order (this “Order”):

- (I) authorizing the Debtors to obtain senior secured postpetition financing in the form of a non-amortizing multiple draw term loan facility (the “DIP Facility”) in an aggregate principal amount not to exceed \$50 million (the loans under the DIP Facility, the “DIP Loans”) subject to and pursuant to

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co. LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the *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] (the “Amended Final Cash Collateral Order”), as applicable.



the terms and conditions set forth in this Order and the *Senior Secured Superpriority Debtor-in-Possession Credit Agreement* (as amended, supplemented, or otherwise modified from time to time, the “DIP Credit Agreement” and, together with all agreements, documents, and instruments executed and delivered in connection therewith, as hereafter amended, supplemented, or otherwise modified from time to time in accordance with this Order, the “DIP Financing Documents”), among Walter Energy, Inc., as borrower (the “Borrower” or “Walter”), each of the Borrower’s existing and future, direct and indirect subsidiaries that are debtors and debtors-in-possession in the Chapter 11 Cases (collectively, the “Guarantors”), the lenders from time to time party thereto (collectively, the “DIP Lenders”), and a financial institution selected by the Backstop Parties, as administrative agent and collateral agent (collectively, the “DIP Agent”) on behalf of the DIP Lenders;

- (II) authorizing the Debtors to execute and deliver, and to perform under, the DIP Credit Agreement and the other DIP Financing Documents, and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- (III) granting the DIP Agent and the DIP Lenders allowed superpriority administrative expense claims in each of the Debtors’ Chapter 11 Cases and any successor cases, including any chapter 7 cases, with respect to the DIP Facility and all obligations owing thereunder and under the DIP Financing Documents (collectively, and including all “Obligations” as defined in the DIP Credit Agreement, the “DIP Obligations”), subject to the priorities set forth herein;
- (IV) granting the DIP Agent, for the benefit of itself and the DIP Lenders, automatically perfected priming security interests in, and liens on, all of the DIP Collateral (as defined herein), including, but not limited to, Cash Collateral, subject to the priorities set forth herein;
- (V) authorizing the Debtors, subject to and pursuant to the terms and conditions set forth in this Order, to continue to (a) use Cash Collateral and (b) provide adequate protection on account of the diminution in the value of the Prepetition Collateral, including Cash Collateral, as a consequence of the Debtors’ use, sale or lease of the Prepetition Collateral, including any Cash Collateral, the imposition of the automatic stay, the Debtors’ incurrence of debt under the DIP Credit Agreement and the priming of the Prepetition Secured Parties’ liens by the DIP Facility, to the Prepetition Secured Parties (as defined herein) who have been granted prepetition liens and security interests under the following documents (collectively, the “Prepetition Debt Documents”):

- (a) the Credit Agreement, dated as of April 1, 2011 (as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time, the “Credit Agreement” and together with all mortgage, security, pledge, guaranty and collateral agreements, including the 1L Security Agreement (as defined below) and all other documentation executed in connection with any of the foregoing, each as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time, the “First Lien Credit Documents”), among the Walter, as U.S. borrower, Western Coal Corp.<sup>3</sup> and Walter Energy Canada Holdings, Inc., as Canadian borrowers, the lenders from time to time party thereto (collectively, the “First Lien Lenders”), and Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity, the “Administrative Agent”);
- (b) the Indenture, dated as of September 27, 2013 (as amended, waived, supplemented or otherwise modified from time to time, the “First Lien Indenture” and together with all mortgage, security, pledge, guaranty and collateral agreements, including the 1L Notes Collateral Agreement (as defined below) and all other documentation executed in connection with the foregoing, each as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time, the “First Lien Indenture Documents” and together with the First Lien Credit Documents, the “First Lien Documents”), among Walter, as issuer, certain of its subsidiaries, as guarantors, and Wilmington Trust, National Association (as successor to Union Bank, N.A.), as trustee (in such capacity, the “First Lien Trustee”) and collateral agent for the noteholders from time to time of the 9.50% Senior Secured Notes due 2019 (collectively, the “First Lien Noteholders” and, together with the First Lien Trustee, the Administrative Agent and the First Lien Lenders, the “First Lien Secured Parties”);
- (c) the Indenture, dated as of March 27, 2014 (as amended, waived, supplemented or otherwise modified from time to time, the “Second Lien Indenture” and together with all mortgage, security, pledge, guaranty and collateral agreements, including the 2L Collateral Agreement (as defined below) and all other documentation executed in connection with the foregoing, each as amended, restated, amended and restated, waived, supplemented or

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<sup>3</sup> Western Coal Corp. was a Canadian borrower at the time of entry into the First Lien Credit Agreement and related documents. In connection with a 2012 restructuring, substantially all of Western Coal Corp.’s assets were transferred to Walter Canadian Coal Partnership, and Western Coal Corp. was dissolved, with its remaining assets (including its partnership interest in Walter Canadian Coal Partnership) distributed to Walter Energy Canada Holdings, Inc.

otherwise modified from time to time, the “Second Lien Indenture Documents”), among Walter, as issuer, certain of its subsidiaries, as guarantors, and BOKF, N.A. (as successor to Wilmington Trust, National Association), as trustee (in such capacity, the “Second Lien Trustee” and, together with the First Lien Trustee, the “Indenture Trustees”) and collateral agent for the noteholders from time to time of the 11.0%/12.0% Senior Secured Second Lien PIK Toggle Notes due 2020 (collectively, the “Second Lien Noteholders” and, together with the Second Lien Trustee and the First Lien Secured Parties, collectively, the “Prepetition Secured Parties”);

- (VI) authorizing the DIP Agent and the DIP Lenders to exercise remedies under the DIP Financing Documents upon the occurrence and during the continuance of an Event of Default (as defined herein);
- (VII) waiving the Debtors’ right to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to Bankruptcy Code section 506(c);
- (VIII) modifying the automatic stay imposed by Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Order; and
- (IX) waiving any applicable stay with respect to the effectiveness and enforceability of this Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

The Court having considered the Motion, the evidence submitted or proffered and the arguments of counsel made at the hearing on the Motion held on January [28], 2016 (the “Hearing”); and proper and sufficient notice of the Motion and the Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Hearing to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion and to the entry of this Order having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief requested is fair and reasonable and in the best interests of the Debtors, their estates, creditors and parties-in-interest; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *The Motion.* The Motion is granted as set forth herein. The DIP Facility is authorized and approved, and the grant of adequate protection for the consensual use of Prepetition Collateral, including Cash Collateral, is authorized, subject to the terms and conditions set forth in this Order. All objections to the Motion and entry of this Order, to the extent not withdrawn or resolved, are hereby overruled.

2. *Jurisdiction.* This Court has core jurisdiction over the above-captioned Chapter 11 cases (the “Chapter 11 Cases”) commenced on July 15, 2015 (the “Petition Date”), the Motion, the objections, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Statutory Committees.* On July 30, 2015, the Office of the Bankruptcy Administrator for the Northern District of Alabama (the “Bankruptcy Administrator”) appointed the official committee of unsecured creditors (the “Creditors’ Committee”) in the Chapter 11 Cases [Docket Nos. 268 and 342]. Pursuant to an order entered on July 30, 2015 [Docket No. 264], a committee of retired employees (the “Retiree Committee”) has been formed pursuant to Bankruptcy Code sections 1114(c)(2) and 1114(d). As of the date hereof, no other official committees have been appointed in the Chapter 11 Cases.

4. *Notice.* The Debtors have caused notice of the Motion, the relief requested therein and the Hearing to be served on: (a) the Bankruptcy Administrator; (b) counsel to the Administrative Agent; (c) counsel to the First Lien Trustee; (d) counsel to the Second Lien Trustee; (e) counsel to the Steering Committee; (f) counsel to certain lenders and noteholders holding the majority in amount of the First Lien Obligations that have provided commitments to fund the DIP Loans (collectively, the “Backstop Parties”); (g) counsel to the Creditors’

Committee; (h) counsel to the Retiree Committee; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the U.S. Environmental Protection Agency; (l) counsel to the United Mine Workers of America (the “UMWA”); (m) counsel to the United Steelworkers; (n) the United States Attorney for the Northern District of Alabama; and (o) all persons or entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (the “Notice Parties”). Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein and the Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014.

5. *Debtors’ Stipulations.* Except as modified by this Order and subject to the Creditors’ Committee’s right to assert Claims and Defenses (as defined below) by the Challenge Deadline (as defined herein) as set forth in paragraph 21 below, all admissions, stipulations and agreements of the Debtors set forth in paragraph 5 of the Amended Final Cash Collateral Order are incorporated herein by reference as if fully set forth herein. Such admissions, stipulations and agreements remain binding on the Debtors and their respective representatives, successors and assigns, including any chapter 7 trustee, on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including, but not limited to, any trustee or other representative appointed by the Court, whether such trustee or representative is appointed in cases under chapter 11 or chapter 7 of the Bankruptcy Code.

6. *Effect on Amended Final Cash Collateral Order.* The Amended Final Cash Collateral Order is amended and superseded by this Order solely to the extent set forth herein; provided, however, that the Adequate Protection Obligations, Superpriority Claims, Adequate Protection Liens, waivers, releases and other rights and protections granted to the Prepetition

Secured Parties in the Amended Final Cash Collateral Order remain in full force and effect, except as modified herein.

7. *Findings Regarding the DIP Loans and the Use of Prepetition Secured Parties' Collateral, Including the Cash Collateral.*

(a) Good cause has been shown for the entry of this Order.

(b) The Debtors require postpetition financing and continued use of the Prepetition Secured Parties' Collateral, including the Cash Collateral, in order to, among other things, fund their operations and pay for the costs and expenses related to the administration of the Chapter 11 Cases until the closing of the sale(s) pursuant to the Sale Motion. Absent granting the relief set forth in this Order, the Debtors' estates and their business will be irreparably harmed.

(c) The Debtors are unable to obtain financing on more favorable terms and conditions from sources other than the DIP Lenders pursuant to, and for the purposes set forth in, the DIP Financing Documents and are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also are unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2), and 364(c)(3) without granting priming liens under Bankruptcy Code section 364(d)(1) and a DIP Superpriority Claim (as defined herein) on the terms and conditions set forth in this Order and the DIP Financing Documents.

(d) The terms upon which the Debtors will be permitted to continue to use Cash Collateral pursuant to this Order and the terms of the DIP Loans are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Steering Committee, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the Second Lien Trustee, the 1L Notes Collateral Agent, and the 2L Notes Collateral Agent, as applicable, have consented to (or, as applicable, have been directed to, or it has been asserted that they are deemed to have consented to pursuant to the Amended and Restated Intercreditor Agreement, dated as of March 27, 2014 (as amended, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), conditioned upon the entry of this Order, the Debtors’ entry into the DIP Facility, including the granting of priming liens and claims in connection therewith, and the continued use of Cash Collateral, on the terms and conditions set forth in this Order.

(f) (i) The DIP Financing Documents and the use of the Prepetition Secured Parties’ Collateral, including the continued use of Cash Collateral, have been the subject of extensive negotiations conducted in good faith and at arm’s length among the Debtors, the DIP Agent, the DIP Lenders, the Credit Agreement Collateral Agent (on behalf of the First Lien Lenders), the Administrative Agent, and the Backstop Parties, and (ii) all of the Debtors’ obligations and indebtedness arising under or in connection with the DIP Financing Documents and the DIP Loans, including, but not limited to, all principal and accrued interest, costs, fees and expenses or any exposure of a DIP Lender or any of its affiliates in respect of cash management incurred on behalf of the Borrower or any Guarantor (collectively, the “DIP Obligations”), and this Order shall be deemed to have been extended by the DIP Agent and the DIP Lenders in “good faith” as such term is used in Bankruptcy Code sections 363(m) and 364(e), and in express reliance upon the protections set forth therein, and shall be entitled to the full protections of Bankruptcy Code sections 363(m) and 364(e) in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

8. *Authorization of the DIP Financing Loans and the DIP Financing Documents.*

(a) The DIP Financing Documents are hereby approved. The Debtors are authorized and empowered to enter into, and perform under, the DIP Financing Documents and, in the case of Borrower, to borrow, subject to the terms and conditions of this Order and the DIP Financing Documents, the DIP Loans in an aggregate principal amount not to exceed \$50 million solely for the purposes specified in the DIP Term Sheet filed with the Motion, and any other purposes specified in the DIP Credit Agreement to be filed with the Court. Upon the Closing (as defined in the Asset Purchase Agreement) of the transactions under the Asset Purchase Agreement, the DIP Obligations shall be indefeasibly and immediately paid in full in cash from the cash consideration provided by the Buyer under the Asset Purchase Agreement.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts (and to the extent such acts have already occurred, such acts are hereby ratified) and to execute and deliver all instruments and documents that the DIP Agent determines to be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Financing Documents, including without limitation:

- (i) the execution, delivery and performance of the DIP Financing Documents;
- (ii) the non-refundable payment to the DIP Agent and the DIP Lenders, as the case may be, of the fees set forth in the DIP Financing Documents, including, but not limited to, the Upfront Fee, Drawdown Fee and Put Option Premium and the fees set forth in the Agent Fee Letter and the other fees, costs and expenses as may be due from time to time as provided in this Order and the DIP Financing Documents, including, but not limited to, reasonable attorneys' fees and expenses and the fees and expenses of financial advisors, consultants and other professionals as provided in the DIP Financing Documents;



- (iii) the granting of all liens and claims with respect to, and the making any payments in respect of, Adequate Protection Obligations (as defined herein) to the extent provided for in this Order; and
- (iv) the performance of all other acts required under or in connection with this Order and/or the DIP Financing Documents.

(c) The DIP Financing Documents constitute legal, valid, binding and non-avoidable obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with the terms of this Order and the DIP Financing Documents. The failure to specifically include any particular provision of the DIP Financing Documents in this Order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that the DIP Financing Documents be authorized and approved in their entirety.

(d) No obligation, payment, transfer or grant of security or superpriority claim by the Debtors under the DIP Financing Documents, this Order or the Amended Final Cash Collateral Order, to the extent not amended by this Order, shall be subject to contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined in the Bankruptcy Code), impairment, or subordination (whether equitable, contractual, or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

9. *Budget Compliance and Reporting.* Attached as **Exhibit A** hereto and incorporated by reference herein is the 11-week budget, for the period starting on the week in which the Effective Date occurs, setting forth the projected financial operations of the Debtors, which budget has been approved by the Backstop Parties (the “Approved Budget”). As soon as available but in any event within five (5) business days after the end of each Budget Testing Period (with the first variance report due following the end of the second week covered by the

Approved Budget), the Debtors shall deliver to the DIP Agent and the Backstop Parties who have signed a non-disclosure agreement, with copies to the Steering Committee Advisors, the advisors to the Administrative Agent, the advisors to the Creditors' Committee and counsel to the Second Lien Trustee, a variance report showing comparisons of actual amounts for each line item against the budgeted amounts for such line item in the Approved Budget for the preceding two-week period and on a cumulative basis from the immediately preceding Budget Testing Period accompanied by a narrative explanation; provided that, the variance report may be shared on a confidential basis with those DIP Lenders who have signed a non-disclosure agreement, and those Prepetition Secured Parties that have signed a non-disclosure agreement or are otherwise subject to confidentiality restrictions pursuant to the Prepetition Debt Documents. The Debtors shall not allow the: (a) aggregate amount of the actual net cash flow of the Debtors of the type set forth in the line item "Cumulative Net Cash Flow" on the Approved Budget for any Budget Testing Period to be lower than the budgeted amount set forth on the line item "Cumulative Net Cash Flow" on the Approved Budget for such Budget Testing Period by more than \$10,000,000; and (b) aggregate amount of the actual disbursements of the Debtors of the type set forth in the line item "Cumulative Disbursements" on the Approved Budget for any Budget Testing Period to be greater than the budgeted amount set forth on the line item "Cumulative Disbursements" on the Approved Budget for such Budget Testing Period by more than the greater of (x) \$5,000,000 and (y) 5.0% of such budgeted amount. For purposes of the Cumulative Net Cash Flow and Cumulative Disbursements variance tests set forth above, (i) "Budget Testing Period" shall mean the two-week period beginning with the week in which the Effective Date occurs, and each cumulative period beginning with the week in which the Effective Date occurs and ending every two weeks after the first two week period and (ii) "Cumulative Net Cash Flow" and "Cumulative

Disbursements” shall not include (w) the fees and expenses of the Backstop Parties’ Advisors (as defined herein) and the Steering Committee Advisors and the Consultants (each as defined herein), and fees and expenses of the professionals retained by the DIP Agent, the Administrative Agent, the First Lien Trustee and the Debtors, (x) the Cash Collateral used with respect to the Approved Collateralized Obligations, (y) any key employee retention payments pursuant to the *Memorandum Opinion and Order (A) Granting the Debtors’ Motion Approving the Debtors’ Key Employee Retention Plan and (B) Granting Related Relief* [Docket No. 1490] (the “KERP Order”) and any other key employee retention payments approved by the Required Lenders and the Court, and (z) any other amounts excluded from “Cumulative Net Cash Flow” or “Cumulative Disbursements” in the Amended Final Cash Collateral Order. The Debtors shall not allow the cumulative amount of the actual capital expenditures, as calculated on a GAAP basis, for any Capital Expenditure Testing Period to exceed the budgeted amount set forth in the Capital Expenditure Budget for such Capital Expenditure Testing Period by \$1.5 million. For purposes of the capital expenditure variance test, (i) “Capital Expenditure Testing Period” shall mean each cumulative period beginning January 1, 2016 and ending at the end of each calendar month thereafter and (ii) “Capital Expenditure Budget” shall mean a budget projecting capital expenditures of the Debtors and their Subsidiaries for period starting from January 1, 2016 through March 31, 2016 on a monthly basis, which “Capital Expenditure Budget” shall be in form and substance acceptable by the Backstop Parties in their sole discretion.

10. Except as otherwise agreed to by the Backstop Parties, the Debtors’ use of the DIP Loans and Cash Collateral shall be only permitted pursuant to the terms of, and in accordance with, the Approved Budget subject to permitted variances. The Backstop Parties, the DIP Agent, the Steering Committee, the Administrative Agent and the First Lien Trustee, as

applicable, shall have no obligation with respect to the Debtors' use of the DIP Loans and Cash Collateral, and shall not be obligated to ensure or monitor the Debtors' compliance with the Approved Budget or to pay (directly or indirectly from the DIP Loans or Cash Collateral) any expenses incurred or authorized to be incurred pursuant to the Approved Budget. The consent of the Backstop Parties, the Steering Committee, the DIP Agent, the Administrative Agent and the First Lien Trustee, as applicable, to the use of DIP Loans or Cash Collateral pursuant to this Order and the DIP Financing Documents shall not be construed as consent to the use of any DIP Loans or Cash Collateral after the occurrence of an Event of Default, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

11. *DIP Claims and Liens.* As security for the DIP Obligations, the DIP Agent, for the benefit of the DIP Lenders, is hereby granted the following claims, liens, and security interests ((a) and (b) below, collectively, the "DIP Claims and Liens"):

(a) *DIP Superpriority Claim.* Pursuant to Bankruptcy Code section 364(c)(1), an allowed joint and several superpriority administrative expense claim against each of the Debtors on account of the DIP Obligations (collectively, the "DIP Superpriority Claim"), with priority over any and all administrative expenses and claims asserted against the Debtors or their estates, at any time existing or arising, of any kind or nature whatsoever, including, but not limited to, the Prepetition Secured Parties' Superpriority Claims (as defined herein) and the administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114, and any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject and subordinate only to the Carve-Out.

(b) *DIP Liens.* Pursuant to Bankruptcy Code sections 361, 362, 364(c)(2), 364(c)(3) and 364(d), a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically and properly perfected first priority senior priming lien on, and security interest in (such liens and security interests, the “DIP Liens”), all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor’s “estate” (as created pursuant to Bankruptcy Code section 541(a)), of any kind or nature, whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including without limitation, all cash, accounts, inventory, goods, contract rights, mineral rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor (other than Walter), other equity or ownership interests held by a Debtor, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action (including causes of action and the proceeds thereof arising under Bankruptcy Code section 549 and any related action under Bankruptcy Code section 550) and proceeds of any causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 550 or 553 or any other avoidance action under the Bankruptcy Code or applicable non-bankruptcy law (collectively, the “Avoidance Actions”), Prepetition Collateral, including Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above, documents, vehicles, intellectual property,

securities, partnership or membership interests in limited liability companies and capital stock, including, but not limited to, the products, proceeds and supporting obligations thereof, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (all such property, the “DIP Collateral”), which liens and security interests shall be senior to any and all other liens and security interests, including the Adequate Protection Liens (as defined herein) and the liens granted to the Prepetition Secured Parties under the Prepetition Debt Documents, other than the (i) Carve-Out, (ii) Permitted Priority Liens, if any, and (iii) Approved Liens. The DIP Liens shall not be (i) subject or subordinate to, or *pari passu* with, (x) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 or (y) any lien or security interest arising on or after the Petition Date but subject to the Carve-Out or (ii) other than as set forth herein, subordinated to or made *pari passu* with any other lien, claim or security interest under Bankruptcy Code sections 363 or 364 or otherwise.

(c) For purposes of this Order and the Amended Final Cash Collateral Order, prior to the Closing, the “Carve-Out” shall mean the sum of: (A) all fees required to be paid to the Clerk of the Court and the Bankruptcy Administrator (without regard to the Carve-Out Trigger Notice (as defined herein)); (B) reasonable fees and expenses up to \$25,000 in the aggregate incurred by a trustee appointed under Bankruptcy Code section 726(b) (without regard to the Carve-Out Trigger Notice); (C) subject to the Committee Monthly Cap (as defined herein) with respect to Professional Fees incurred by Professional Persons (as defined herein) retained by the Creditors’ Committee, the Retiree Committee or any other statutory committee appointed in the Chapter 11 Cases, to the extent allowed, whether by interim order, procedural order or otherwise, all accrued and unpaid reasonable fees, costs, and expenses (the “Professional Fees”)

incurred by persons or firms retained by the Debtors, the Creditors' Committee, the Retiree Committee or any other statutory committee appointed in the Chapter 11 Cases pursuant to Bankruptcy Code section 327, 328, or 363 (collectively, the "Professional Persons") at any time before or on the day of delivery by the DIP Agent or the Backstop Parties of a Carve-Out Trigger Notice (the "Pre-Trigger Date Fees"); and (D) after the delivery by the DIP Agent or the Backstop Parties of the Carve-Out Trigger Notice (the "Trigger Date"), to the extent allowed at any time, whether by interim order, procedural order or otherwise, the payment of (1) all Professional Fees of Professional Persons retained by the Debtors and (2) subject to the Committee Monthly Cap, the payment of Professional Fees of Professional Persons incurred by the Creditors' Committee, the Retiree Committee or any other statutory committee appointed in the Chapter 11 Cases, not to exceed \$5 million in the aggregate for clauses (1) and (2) incurred after the Trigger Date (the amount set forth in this clause (D) being the "Post-Carve Out Trigger Notice Cap"); provided that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (C) or (D) above, on any grounds. On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice also shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to the accrued and unpaid Pre-Trigger Date Fees plus the Post-Carve Out Trigger Notice Cap, and the Debtors shall deposit and hold any such amounts in a segregated account at a financial institution selected by the Debtors for such purpose and solely for the benefit of the Professional Persons entitled thereto. The reserved funds shall be released from time to time from the segregated account to pay when due any Pre-Trigger Date Fees and any fees and expenses incurred after Post-Carve Out Trigger Notice that are included in the Post-

Carve Out Trigger Notice Cap under clause (D) above. Such account and amounts therein shall be free and clear of all liens, claims and interests of any party other than the Professional Persons entitled thereto. Notwithstanding the foregoing, (X) the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (1) the investigation, preparation, initiation or prosecution of any claims, causes of action, proceeding, adversary proceeding or other litigation against any of the Prepetition Secured Parties (in such capacity), any of the DIP Financing Lenders or the DIP Agent, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations, liens and security interests granted under the Prepetition Debt Documents, in favor of the Prepetition Secured Parties, the Amended Final Cash Collateral Order, the DIP Financing Documents, in favor of the DIP Financing Lenders or the DIP Agent, or under this Order, including, but not limited to, for lender liability or pursuant to Bankruptcy Code section 105, 510, 544, 547, 548, 549, 550 or 552, applicable nonbankruptcy law or otherwise; (2) attempts to modify any of the rights granted to the Prepetition Secured Parties, the DIP Lenders or the DIP Agent hereunder or under the Amended Final Cash Collateral Order; (3) attempts to prevent, hinder or otherwise delay any of the Prepetition Secured Parties', the DIP Lenders' or the DIP Agent's enforcement or realization upon any Collateral in accordance with the Prepetition Debt Documents, the DIP Financing Documents or this Order; or (4) paying any amount on account of any claims arising before the Petition Date unless such payments are approved by an order of this Court, in the Approved Budget or otherwise consented to by the Backstop Parties in their sole discretion, and (Y) so long as the Carve-Out Trigger Notice shall not have been delivered, the Carve-Out shall not be reduced by the payment of Professional Fees allowed at any time by this Court. Any claim incurred in connection with any of the activities



described above shall not be allowed, treated or payable as an administrative expense claim for purposes of Bankruptcy Code section 1129(a)(9)(A). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent or the Backstop Parties to the Debtors, Debtors’ counsel, the Administrative Agent, the First Lien Trustee, the Bankruptcy Administrator, counsel to the Creditors’ Committee and counsel to the Retiree Committee, upon the occurrence and during the continuance of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked. For the avoidance of doubt and notwithstanding anything to the contrary herein, in the Prepetition Debt Documents or the DIP Financing Documents, the Carve-Out shall be senior to (i) all liens and claims arising out of the Prepetition Debt Documents, including the Prepetition Liens, (ii) the Adequate Protection Liens, (iii) the First Lien Superpriority Claim, (iv) the Second Lien Superpriority Claim, (v) all liens and claims arising out of the DIP Financing Documents and granted to the DIP Agent and the DIP Lenders under this Order, including the DIP Claims and Liens, and (vi) any and all other forms of adequate protection, liens or claims securing or relating to the Prepetition Obligations or the DIP Obligations. From and after the Closing, however, the “Carve-Out” shall mean zero dollars (\$0) and shall be deemed deleted from this Order and the Amended Final Cash Collateral Order in any and all places and for any and all purposes there shall be no “Carve-Out” or similar concept in these Chapter 11 Cases or any successor case, including any chapter 7 case.

12. *Events of Default.* Unless expressly waived in accordance with the consents required in the DIP Financing Documents, each of the following shall constitute an event of default (each, an “Event of Default” and collectively, the “Events of Default”):

(a) the Debtors’ failure to: (i) use the DIP Loans and DIP Collateral, including but not limited to Cash Collateral, in a manner consistent with the Approved Budget

and otherwise comply in any respect with any provision of this Order and the DIP Financing Documents; or (ii) comply with any other covenant or agreement specified in this Order, in each case where such failure shall have continued unremedied for five (5) business days following receipt of written notice by the Debtors from the DIP Agent or the Backstop Parties of such failure;

(b) (i) filing of an application, motion or other pleading by any Debtor seeking to amend, stay, supplement, vacate, extend or modify in any manner the DIP Lenders', the DIP Agent's or the Prepetition Secured Parties' rights or benefits granted under this Order; or (ii) entry of an order reversing, amending, supplementing, extending, staying, vacating, or otherwise modifying in any manner this Order, in each case, without the prior written consent of the Backstop Parties and the DIP Agent, each in their/its sole discretion;

(c) the date any provision of this Order for any reason ceases to be valid and binding or any Debtor so asserts in any pleading filed in any court;

(d) the date (i) any Chapter 11 Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Debtor files a motion or other pleading seeking the dismissal or conversion of any Chapter 11 Case pursuant to Bankruptcy Code section 1112 or otherwise; or (ii) a trustee, responsible officer, or an examiner (other than a fee examiner) pursuant to Bankruptcy Code section 1104 is appointed or elected, as applicable, in any Chapter 11 Case, any Debtor applies for, consents to, or acquiesces in, any such appointment, or the Court enters an order providing for such appointment, in each case without the prior written consent of the Backstop Parties in their sole discretion;

(e) the Court enters an order or orders granting relief from the automatic stay to the holder or holders of any security interest to proceed against, including foreclosure (or the

granting of a deed in lieu of foreclosure or the like) on any of the Debtor's assets (other than in respect of insurance proceeds or with respect to assets having a fair market value of less than \$1,000,000);

(f) any Debtor files a motion or application for the approval of any superpriority claim, lien or security interest in the Chapter 11 Cases (other than such claim, lien or security interest granted or permitted pursuant to this Order and the Approved Liens), which is *pari passu* with, or senior to, the DIP Liens, DIP Superpriority Claim, Prepetition Liens, Adequate Protection Liens, First Lien Superpriority Claim, or the Second Lien Superpriority Claim, without the prior consent of the DIP Agent, Backstop Parties, the Steering Committee, or the Administrative Agent, as applicable, each in its/their sole discretion;

(g) other than with respect to the Carve-Out, the Approved Liens and the claims, liens and security interests granted herein to the DIP Lenders and the DIP Agent, any Debtor creates or incurs, or the Court enters an order granting, any claim, lien or security interest that is *pari passu* with, or senior to, any of the DIP Liens, DIP Superpriority Claim, Prepetition Liens, Adequate Protection Liens, First Lien Superiority Claim or Second Lien Superpriority Claim granted under this Order;

(h) except as contemplated by the Sale Motion, unless otherwise agreed to in writing by the Backstop Parties in their sole discretion, the consummation of a sale or disposition of any material assets of the Debtors other than in the ordinary course of business;

(i) commencement of any action, including the filing of any pleading, by any Debtor, or direct or indirect non-debtor affiliate or subsidiary of a Debtor, against any of the DIP Lenders, DIP Agent, or Prepetition Secured Parties with respect to any of the DIP Obligations,

DIP Liens, DIP Superpriority Claim, First Lien Adequate Protection Obligations, First Lien Adequate Protection Liens, Prepetition Obligations or Prepetition Liens, as applicable;

(j) except as contemplated by the Sale Motion, the Court enters an order approving the sale of all or substantially all of the DIP Collateral that does not provide for the payment in respect thereof to be remitted to the DIP Agent, unless and until the DIP Facility shall have been indefeasibly paid in full in cash, and then to the Administrative Agent consistent with the priorities set forth in this Order and the Prepetition Debt Documents;

(k) the Debtors' breach of, or failure to perform, any of their agreements, covenants, representations or warranties contained in the Asset Purchase Agreement (unless cured or waived to the extent permitted under and in accordance with the Asset Purchase Agreement) or the Sale Order, without the prior written consent of the Backstop Parties in their sole discretion;

(l) the occurrence of any termination event under the Asset Purchase Agreement, without the prior written consent of the Backstop Parties in their sole discretion;

(m) entry of an order reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, without the prior written consent of the Backstop Parties in their sole discretion; and

(n) any "Event of Default" in the DIP Credit Agreement, unless cured or waived to the extent permitted under the DIP Credit Agreement.

13. *Remedies Upon an Event of Default (DIP Financing Lenders and DIP Agent).*

The Debtors shall promptly provide notice to counsel to each of the Backstop Parties and the DIP Agent (with a copy to counsel to each of the Creditors' Committee, Retiree Committee, Administrative Agent, First Lien Trustee, Second Lien Trustee and Bankruptcy Administrator)

of the occurrence of any Event of Default, at which time the DIP Obligations, as applicable, shall become due and payable and the Debtors' ability to use Cash Collateral shall terminate. Upon the occurrence of an Event of Default, to the extent not cured or waived as permitted under the DIP Credit Agreement or this Order, as applicable, and following the giving of not less than five (5) business days' written notice (such notice, the "DIP Enforcement Notice" and such date, the "Termination Date") to counsel to the Debtors, counsel to the Creditors' Committee, counsel to the Retiree Committee, and the Bankruptcy Administrator (the "DIP Financing Notice Period"), the DIP Lenders and the DIP Agent (acting at the direction of the Required Lenders) may exercise any remedies available to them under this Order, the DIP Financing Documents and applicable non-bankruptcy law, including, but not limited to, foreclosing upon the DIP Collateral or otherwise enforcing the DIP Obligations and the DIP Claims and Liens on any or all of the DIP Collateral and/or taking any other actions or exercising any other default-related rights and remedies under the DIP Financing Documents, this Order or applicable law to effect the repayment and satisfaction of the DIP Obligations. The only permissible basis for the Debtors, Creditors' Committee, Bankruptcy Administrator or any other party to contest, challenge or object to the DIP Enforcement Notice shall be solely with respect to the validity of the Event(s) of Default giving rise to such DIP Enforcement Notice (*i.e.*, whether such Event(s) of Default validly occurred or have not been cured or waived in accordance with this Order or the DIP Credit Agreement). The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated on the Termination Date, without further notice or order of the Bankruptcy Court, unless the DIP Agent (at the direction of the Required Lenders) elects otherwise in a written notice to the Debtors, and the DIP Agent (at the direction of the Required Lenders) shall be permitted to exercise all rights and remedies, including with respect to the DIP

Collateral, set forth in the Order, the DIP Financing Documents, and as otherwise available at law without further order or application or motion to the Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise.

14. *Backstop Parties' Fees and Expenses.* The Debtors shall promptly pay in cash upon presentment, but in no event later than 10 days of presentment, of an applicable invoice to the Debtors (with a copy of such invoice to be presented contemporaneously to both the Bankruptcy Administrator and counsel for each of the Creditors' Committee and Retiree Committee), all reasonable, actual, and documented (in customary detail, redacted for privilege and work product) fees, costs and expenses of Akin Gump Strauss Hauer & Feld LLP ("Akin Gump"), as lead counsel, Burr Forman LLP ("Burr Forman"), as Alabama counsel, and Lazard Frères & Co. LLC ("Lazard" and together with Akin Gump and Burr Forman, the "Backstop Parties' Advisors"), as financial advisor, to the Backstop Parties. In addition, the Debtors shall promptly reimburse each Backstop Party in cash for all reasonable and documented out-of-pocket costs and expenses (without limiting the Debtors' obligations pursuant to the previous sentence, which out-of-pocket costs and expenses should not include any advisor or professional fees for such individual Backstop Party) incurred by such party in connection with the Chapter 11 Cases.

15. *Entitlement to Adequate Protection.* The Prepetition Secured Parties are entitled to adequate protection of their respective interests in the Prepetition Collateral (including, but not limited to, the Cash Collateral) on which the Prepetition Secured Parties hold perfected security interests as of the Petition Date in an amount equal to the aggregate postpetition diminution in value of the Prepetition Collateral, including any Cash Collateral, from and after the Petition Date (such diminution in value, the "Diminution in Value"), including, but not limited to, to the

extent such diminution results from the sale, lease or use by the Debtors of the Prepetition Collateral, including any Cash Collateral, the subordination of the Prepetition Liens to the Carve-Out and the DIP Claims and Liens, the Debtors' incurrence of the DIP Loans, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (such adequate protection, as set forth in paragraph 16 below, the "Adequate Protection Obligations"). Nothing contained herein shall be deemed a finding by the Court or an acknowledgement by the Prepetition Secured Parties or the Steering Committee, respectively, that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against the Diminution in Value.

16. *Adequate Protection Granted to Prepetition Secured Parties.*

(a) First Lien Superpriority Claim and Adequate Protection Liens. The First Lien Secured Parties are hereby granted the following claims, liens and security interests:

- (i) ***First Lien Superpriority Claim.*** The Adequate Protection Obligations due to the First Lien Secured Parties (the "First Lien Adequate Protection Obligations") shall constitute allowed joint and several superpriority claims against each of the Debtors as provided in Bankruptcy Code section 507(b) (collectively, the "First Lien Superpriority Claim"), with priority over any and all administrative expenses and all other claims asserted against the Debtors or their estates, at any time existing or arising, of any kind or nature whatsoever, including, but not limited to, the administrative expenses and other claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 327, 328, 330, 331, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114, and any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject and subordinate in all respects to the Carve-Out and the DIP Superpriority Claim. Except to the extent expressly set forth in this Order, the First Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect to the First Lien Superpriority Claim unless and until all DIP Obligations shall have been indefeasibly paid in full in cash.
- (ii) ***First Lien Adequate Protection Liens.*** As security for the First Lien Adequate Protection Obligations, effective as of the Petition Date and perfected without the necessity of the execution by the Debtors (or

recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the First Lien Secured Parties, the First Lien Secured Parties are hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable additional and replacement liens on, and security interests in, the DIP Collateral (the “First Lien Adequate Protection Liens”), subject and subordinate only to the (w) Carve-Out, (x) DIP Liens, (y) Permitted Priority Liens (if any) and (z) Approved Liens. The First Lien Adequate Protection Liens shall not be subject or subordinate to, or *pari passu* with, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 but shall be subject to the DIP Liens.

(b) Second Lien Secured Parties Superpriority Claim and Adequate Protection

Liens. The Second Lien Trustee and the Second Lien Noteholders (collectively, the “Second Lien Secured Parties”) are hereby granted the following claims, liens and security interests:

- (i) ***Second Lien Superpriority Claims***. The Adequate Protection Obligations due to the Second Lien Secured Parties (the “Second Lien Adequate Protection Obligations”) shall constitute joint and several superpriority claims against the Debtors as provided in Bankruptcy Code section 507(b) (the “Second Lien Superpriority Claim” and together with the First Lien Superpriority Claim, the “Prepetition Secured Parties’ Superpriority Claims”), with priority over any and all administrative expenses and claims asserted against the Debtors or their estates, at any time existing or arising, of any kind or nature whatsoever, including, but not limited to, the administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 327, 328, 330, 331, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114, and any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject and subordinate in all respects only to the (v) Carve-Out, (w) DIP Superpriority Claim, (x) First Lien Superpriority Claim, (y) Permitted Priority Liens (if any) and (z) Approved Liens. Except to the extent expressly set forth in this Order, the Second Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect to the Second Lien Superpriority Claim unless and until all DIP Obligations and the First Lien Obligations shall have been indefeasibly paid in full in cash in accordance with the priorities set forth herein.



(iii) ***Second Lien Adequate Protection Liens.*** As security for the Second Lien Adequate Protection Obligations, effective as of the Petition Date and perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Second Lien Secured Parties, security interests in, and liens on, the DIP Collateral are hereby granted to the Second Lien Secured Parties, subject and subordinate only to the (u) Carve-Out, (v) DIP Liens, (w) First Lien Adequate Protection Liens, (x) liens and security interests securing the First Lien Obligations, (y) the Permitted Priority Liens (if any) and (z) Approved Liens, and subject further to the Intercreditor Agreement (all such liens and security interests, the “Second Lien Adequate Protection Liens,” and collectively with the First Lien Adequate Protection Liens, the “Adequate Protection Liens”). The Second Lien Adequate Protection Liens shall not be subject or subordinate to, or *pari passu* with, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551 but shall be subject to the DIP Liens, First Lien Adequate Protection Liens and Prepetition First Priority Liens.

(c) Additional Adequate Protection Granted to Prepetition Secured Parties.

(i) ***Adequate Protection Payments:*** The adequate protection payments specified in paragraph 11(a) of the Amended Final Cash Collateral Order that have accrued but remain unpaid as of the date hereof shall be deferred and shall not be paid unless and until the DIP Obligations have been indefeasibly paid in full in cash. No additional adequate protection payments shall accrue under paragraph 11(a) of the Amended Final Cash Collateral Order from and after the date hereof. For the avoidance of doubt, nothing contained herein shall preclude or impact the Administrative Agent’s (on behalf of the First Lien Lenders) and the First Lien Trustee’s (on behalf of the First Lien Noteholders) ability or right to credit bid the First Lien Adequate Protection Obligations for the Acquired Assets (as defined in the Asset Purchase Agreement) pursuant to the Asset Purchase Agreement, the Amended Final Cash Collateral Order, the Sale Order and the *Order Granting Steering Committee’s Motion to Determine the Value of the First Lien Secured Parties’ Adequate Protection Claims as a Result of the Diminution in Value of the First Lien Secured Parties’ Collateral* [Docket No. 1450]; provided that the DIP Obligations are indefeasibly paid in full in cash at Closing.

(ii) ***Agent/Indenture Trustee Fees and Expenses:*** The Debtors shall promptly pay, in cash, (x) all Letter of Credit Fees and Facing Fees

(each as defined in the Credit Agreement), and any annual administrative agent fees and other fees set forth in Section 4.01(b) through (e) of the Credit Agreement on the respective dates for the payment of all such fees as provided in the Credit Agreement, at the applicable non-default rate provided for in the First Lien Credit Documents with respect to such fees and (y) upon presentment, but in no event later than 10 days of presentment, of an applicable invoice to the Debtors (with a copy of such invoice to be presented contemporaneously to the Bankruptcy Administrator, counsel to the Backstop Parties, and counsel for each of the Creditors' Committee and Retiree Committee), all reasonable, actual, and documented (in customary detail, redacted for privilege and work product) fees, costs and expenses incurred by each of the Administrative Agent and the First Lien Trustee, including, but not limited to, the fees, costs and expenses of one lead counsel, one local counsel (if necessary) and, if needed, one Canadian counsel for each of the Administrative Agent and the First Lien Trustee, in each case in accordance with the applicable engagement letters (if any) and the Prepetition Debt Documents and without further order of, or application to, the Court or notice to any party other than as provided in this paragraph 16(c)(ii).

- (iii) ***Budget Compliance/Additional Reporting.*** With respect to the Prepetition Secured Parties, the Debtors shall comply with the budget and reporting requirements set forth in this Order and the DIP Financing Documents; provided that, such compliance and rights set forth in this paragraph 16(c)(iii) shall only extend to the Prepetition Secured Parties to the extent that the Debtors have indefeasibly paid and satisfied in full in cash the DIP Obligations but continue to use Cash Collateral.
- (iv) ***Steering Committee Fees and Expenses.*** The Debtors shall promptly pay in cash upon presentment, but in no event later than 10 days of presentment, of an applicable invoice to the Debtors (with a copy of such invoice to be presented contemporaneously to both the Bankruptcy Administrator and counsel for both the Creditors' Committee and Retiree Committee), all reasonable, actual, and documented (in customary detail, redacted for privilege and work product) fees, costs and expenses of (i) Akin Gump, as lead counsel, Burr Forman, as Alabama counsel, Cassels Brock & Blackwell LLP, as Canadian counsel, Jackson Kelly LLP, as West Virginia counsel, Lazard, as financial advisor (including the Restructuring Fee as defined in Lazard's engagement letter), Stephen Douglas Williams Consulting LLC, as consultant, Golder Associates Inc., as mining engineer, Duff & Phelps LLC, as consultant, NRI Management Group LLC, as consultant, AME Consulting Limited, as consultant, JD Consulting LLC, as consultant, and Henry Consulting, LLC, as

consultant, to the Steering Committee (collectively, the “Steering Committee Advisors”) and (ii) any other consultants or advisors retained by the Steering Committee (and not by individual Steering Committee members) (the parties described in this paragraph 16(c)(iv), collectively, the “Consultants”); provided that the Steering Committee shall provide notice to the Debtors prior to retaining any such Consultants, in each case, in accordance with engagement letters (if any) of such consultant or advisor, and in each case, without further order of, or application to, the Court or notice to any party other than as provided in this paragraph 16(c)(iv); provided that no success fees shall be payable to any Steering Committee Advisor (except for the Restructuring Fee payable to Lazard) or Consultant. In addition, the Debtors shall promptly reimburse each Steering Committee member in cash for all reasonable and documented out-of-pocket costs and expenses (without limiting the Debtors’ obligations pursuant to the previous sentence, which out-of-pocket costs and expenses should not include any advisor or professional fees for such individual Steering Committee member) incurred by such member in connection with these cases.

- (v) ***Access to Records/Financial Reporting.*** In addition to, and without limiting, whatever rights of access the Prepetition Secured Parties have under the Prepetition Debt Documents, upon reasonable notice, at reasonable times and subject to appropriate confidentiality protections, the Debtors shall permit representatives and agents of the Backstop Parties, the Creditors’ Committee, the Retiree Committee, and the Administrative Agent (i) to have access to and inspect the Debtors’ properties, subject to reasonable safety precautions, (ii) to examine the Debtors’ books and records, and (iii) to discuss the Debtors’ affairs, finances and condition with the Debtors’ officers and financial advisors. In addition, the Debtors shall provide to the Backstop Parties’ Advisors, and the advisors to each of the Administrative Agent, the Creditors’ Committee, the Retiree Committee, and the UMWA, on a monthly basis, reports setting forth (i) substantive mine-by-mine details of the Debtors’ operating performance, including its non-debtor subsidiaries and (ii) a detailed comparison, including commentary, of the month’s actual operating performance against the projections, substantially in form and substance consistent with the Company’s historical monthly reporting to the Board of Directors, as modified to include summary mine-level operating and financial data.
- (vi) ***Right to Seek Additional Adequate Protection.*** This Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request additional forms of adequate protection at any time, subject to the

consent of the Backstop Parties in their sole discretion, or any party-in-interest's right to object thereto. Any such request must be consistent with the Intercreditor Agreement.

17. *Liens and/or Security Interests of ACE American Insurance Company.* For the avoidance of doubt, (i) to the extent ACE American Insurance Company and/or any of its affiliates (collectively, "ACE") had valid and perfected liens and/or security interests on any of the DIP Collateral as of the Petition Date, which liens and/or security interests were senior to the liens and/or security interests of each of the Prepetition Secured Parties, such liens and/or security interests shall be senior to any liens and/or security interests granted pursuant to this Order, (ii) the DIP Agent, DIP Lenders and Prepetition Secured Parties do not have liens and/or security interests on any letter(s) of credit for which ACE is the beneficiary or any proceeds thereof and (iii) this Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by ACE as collateral to secure obligations under insurance policies and related agreements.

18. *Release.* Each of the Debtors and the Debtors' estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns (collectively, the "Releasers") shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, fully and forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Lenders, the DIP Agent, the Backstop Parties, the Steering Committee, the Prepetition Secured Parties and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the "Releasees"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and

obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, but not limited to, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that existed as of the Effective Date relating to any of the Prepetition Debt Documents, the DIP Financing Documents, or the transactions contemplated under such documents, or the Chapter 11 Cases, as applicable, including, but not limited to, (i) any so-called "lender liability," equitable subordination, equitable disallowance or recharacterization claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or nonavoidability of the liens or claims of the DIP Lenders, the DIP Agent and the Prepetition Secured Parties; provided, however, that solely with respect to the Prepetition Secured Parties, the foregoing releases are subject to the rights of the Creditors' Committee in paragraph 21 below.

19. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L Notes Collateral Agent, the Second Lien Trustee and the 2L Notes Collateral Agent, are each hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted to it hereunder. Whether or not the DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L Notes Collateral Agent, the Second Lien Trustee or the 2L Notes Collateral Agent, each in its respective sole discretion, chooses to

file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute, subordination, contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined in the Bankruptcy Code), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law as of the Petition Date. If the DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L Notes Collateral Agent, the Second Lien Trustee or the 2L Notes Collateral Agent, as applicable, determines to file any financing statements, notices of liens or similar instruments, the Debtors will cooperate and assist in any such filings as reasonably requested by the DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L Notes Collateral Agent, the Second Lien Trustee or the 2L Notes Collateral Agent, as applicable, and the automatic stay shall be modified to allow such filings.

(b) The DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L Notes Collateral Agent, the Second Lien Trustee or the 2L Notes Collateral Agent, may, each in its respective discretion, cause a certified copy of this Order to be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Agent, the Administrative Agent, the Credit Agreement Collateral Agent, the First Lien Trustee, the 1L

Notes Collateral Agent, the Second Lien Trustee or the 2L Notes Collateral Agent all such agreements, financing statements, instruments and other documents as each such party may reasonably request to evidence, confirm, validate or perfect the DIP Liens and the Adequate Protection Liens, as applicable.

(d) Notwithstanding anything to the contrary in the Motion or this Order, for purposes of this Order, in no event shall the DIP Collateral or Prepetition Collateral include or the DIP Liens or the Adequate Protection Liens granted under this Order attach to, any lease, license, permit, contract, or agreement (including any operating and joint venture agreements) or other property right, to which any Debtor is a party, or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (i) the abandonment, invalidation, unenforceability, or other impairment of any right, title, or interest of any Debtor therein, or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, agreement, or other property right pursuant to any provision thereof, unless, in the case of each of clauses (i) and (ii), the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code (such leases, licenses, contracts or agreements, or other property rights are collectively referred to as the "Specified Contracts"); provided that the foregoing shall not preclude any counterparty to a Specified Contract from an opportunity to be heard in this Court on notice with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders such provision ineffective. Notwithstanding the foregoing, the DIP Liens and the Adequate Protection Liens shall in all events attach to all proceeds, products, offspring, or profits from all sales, transfers, dispositions, or monetizations of any and all Specified Contracts.

20. *Preservation of Rights Granted Under this Order.*

(a) Notwithstanding any order dismissing any of these Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (i) the DIP Claims and Liens, the Prepetition Secured Parties' Superpriority Claims, the Adequate Protection Liens, the other administrative claims granted pursuant to this Order, and the Carve-Out shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations, Adequate Protection Obligations and the Carve Out shall have been indefeasibly paid and satisfied in full in cash, as applicable (and such DIP Claims and Liens, Prepetition Secured Parties' Superpriority Claims, other administrative claims granted pursuant to this Order, Carve Out and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(b) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any DIP Claims and Liens, DIP Obligations, Prepetition Secured Parties' Superpriority Claims and Adequate Protection Obligations incurred prior to the date of the entry of an order granting such reversal, stay, modification or vacatur (the "Reversal Order"); or (ii) the validity, priority or enforceability of the DIP Liens and the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any borrowings under the DIP Facility, use of the Prepetition Collateral (including the Cash Collateral) or DIP Collateral, or the DIP Obligations or the Adequate Protection Obligations incurred by the Debtors hereunder prior to the date of the entry of the Reversal Order shall be governed in all respects by the original provisions of this Order, and (x) the DIP Lenders, the



DIP Agent, and the First Lien Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in Bankruptcy Code sections 363(m) and 364(e) with respect to all uses of the Prepetition Collateral and DIP Collateral, all DIP Obligations and First Lien Adequate Protection Obligations for periods prior to the date of the entry of the Reversal Order and (y) subject to the Intercreditor Agreement, the Second Lien Trustee and the Second Lien Noteholders shall be entitled to all of the rights, remedies, privileges and benefits granted in Bankruptcy Code section 363(m) with respect to all uses of the Prepetition Collateral (including the Cash Collateral) (other than Collateral constituting setoff rights of the First Lien Secured Parties) and all Second Lien Adequate Protection Obligations for periods prior to the date of the entry of the Reversal Order.

(c) Except as expressly provided in this Order, the DIP Claims and Liens, the Adequate Protection Liens and Prepetition Secured Parties' Superpriority Claims and all other rights, claims, security interests and remedies of the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Order shall survive, and shall not be modified, impaired or discharged by the entry of an order (i) converting any of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, dismissing any of these Chapter 11 Cases or by any other act or omission or (ii) confirming a plan of reorganization in any of the Chapter 11 Cases, and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Claims and Liens, Adequate Protection Liens or the Prepetition Secured Parties' Superpriority Claims. The terms and provisions of this Order shall continue in these Chapter 11 Cases, in any successor cases, including any chapter 7 cases, if these Chapter 11 Cases cease to be jointly administered, or in any successor or superseding chapter 7 cases under the Bankruptcy Code, and the DIP Claims and Liens, Adequate Protection

Liens, the administrative claims granted pursuant to this Order, and all other rights, claims, security interests and remedies of the DIP Lenders, DIP Agent and Prepetition Secured Parties granted by the provisions of this Order shall continue in full force and effect as provided herein.

21. *Effect of Stipulations on Third Parties.* The stipulations, releases and admissions contained in this Order, including in paragraph 5 hereof, shall be binding upon the Debtors and any successor thereto in all circumstances other than as expressly set forth below. The stipulations, releases and admissions contained in this Order, including in paragraph 5 hereof, shall be binding upon all other parties in interest, including the Creditors' Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), unless solely with respect to the Prepetition Secured Parties (a) the Creditors' Committee has duly filed an adversary proceeding challenging in whole or part the validity, enforceability, priority or extent of the Prepetition Obligations or the liens on the Prepetition Collateral securing the Prepetition Obligations held by or on behalf of the Prepetition Secured Parties or otherwise asserting or prosecuting any Avoidance Actions, recharacterization, subordination, "lender liability", or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Obligations, or the Prepetition Collateral or the Prepetition Liens by no later than fourteen days (14) from the date the Creditors' Committee receives written notice of the termination of the Asset Purchase Agreement (the "Challenge Deadline") or as otherwise provided in the Global Settlement (as defined below); provided, however, pursuant to that certain Settlement Term Sheet (as approved in the *Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bank. P. 9019* [Docket No. 1456],

the “Global Settlement”), the Creditors’ Committee has agreed to waive its right to, and shall not, assert any Claims and Defenses, Challenges (as defined herein) or any other claims against the Prepetition Secured Parties upon the Closing of the transactions contemplated under the Asset Purchase Agreement (the “Condition to Effectiveness of Global Settlement”), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the Creditors’ Committee sustaining any such Challenge or claim in any such duly filed adversary proceeding. If the Condition to Effectiveness of Global Settlement does not occur, and the Creditors’ Committee fails to timely file such an adversary proceeding by the Challenge Deadline or (b) the Condition to Effectiveness of Global Settlement occurs: (x) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined in the Bankruptcy Code), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law, for all purposes in these Chapter 11 Cases and any subsequent chapter 7 cases; and (y) the Prepetition Obligations, the Administrative Agent’s, the First Lien Trustee’s and the Second Lien Trustee’s respective Prepetition Liens on the Prepetition Collateral and the respective Prepetition Secured Parties in such capacity shall not be subject to any other or further challenge or claim and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If the Condition to Effectiveness of Global Settlement does not occur and the Creditors’ Committee does file such an adversary proceeding

by the Challenge Deadline, the stipulations and admissions contained in this Order, including in paragraph 5 hereof, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Creditors' Committee and any other Person (as defined in the Credit Agreement), including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding. Nothing in this Order vests or confers on any Person, including the Creditors' Committee or Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates; provided, however, that the Creditors' Committee shall be automatically vested with standing to initiate a Challenge prior to the expiration of the Challenge Period without any need to first seek a Court order granting such standing. For the avoidance of doubt, the Challenge Period (as defined in the Amended Final Cash Collateral Order) has expired with respect to all other parties in interest, other than the Creditors' Committee, and no such party in interest has commenced a Challenge or filed an adversary proceeding prior to the expiration of such period.

22. *506(c) Waiver.* Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any successor cases, including any chapter 7 cases, that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (i) the DIP Agent or any DIP Lender, any of the DIP Obligations, any Prepetition Secured Party, or any of the Prepetition Obligations, (ii) any of the DIP Lenders', DIP Agent's or the Prepetition Secured Parties' respective claims, or (iii) the DIP Collateral or Prepetition Collateral, as applicable, pursuant to Bankruptcy Code sections 105(a) or 506(c), or otherwise, without the prior written consent of the affected DIP Agent, Administrative Agent, Steering Committee, First Lien Trustee or Second Lien Trustee and the Backstop Parties, as applicable, each in its/their sole discretion, and no such

consent shall be implied from any other action, inaction, or acquiescence by any of the DIP Lenders, the DIP Agent, the Prepetition Secured Parties, the Steering Committee, the Backstop Parties, as applicable, or their respective representatives.

23. *Section 552(b)*. Each of the DIP Lenders, the DIP Agent, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b). The “equities of the case” exception under Bankruptcy Code section 552(b) shall not apply to the DIP Lenders, the DIP Agent and Prepetition Secured Parties with respect to (i) proceeds, products or profits of any of the Prepetition Collateral, including Cash Collateral, or DIP Collateral, as applicable or (ii) the extension of the Adequate Protection Liens to cover proceeds of the Prepetition Collateral.

24. *Credit Bidding*. (a) The DIP Agent (as directed by the Required Lenders) shall have the unqualified right to credit bid up to the full amount of any remaining DIP Obligations in the sale of any of the Debtors’ assets, including (i) pursuant to Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725, and (b) subject to the indefeasible payment in full in cash of the DIP Obligations, the Administrative Agent (on behalf of the First Lien Lenders), the First Lien Trustee (on behalf of the First Lien Noteholders) and the Second Lien Trustee (on behalf of the Second Lien Noteholders) (but only if any such credit bid provides, to the extent set forth in the Intercreditor Agreement, for the payment in full and in cash of all Prepetition Obligations owed to the First Lien Secured Parties and any amounts due and owing to the First Lien Secured Parties under this Order, and provides for the cash collateralization of any letters of credit in accordance with the First Lien Credit Documents and this Order), as applicable, shall have the right to credit bid (X) up to the full

amount of the remaining Prepetition Obligations under the First Lien Credit Documents, First Lien Indenture Documents and the Second Lien Indenture Documents, respectively and (Y) the Prepetition Secured Parties' Superpriority Claims, and any unpaid amounts due and owing under paragraph 16 hereof, as applicable, in the sale of any of the Debtors' assets, including, but not limited to, (i) pursuant to Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725.

25. *No Marshaling.* None of the DIP Collateral, the Prepetition Collateral, the DIP Lenders, the DIP Agent or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine.

26. *Information and Other Covenants.* The Debtors shall comply with the reporting requirements set forth in the DIP Credit Agreement and the Prepetition Debt Documents, including the reporting requirements set forth in Section 9.01 (except for clauses (d) and (e)) of the Credit Agreement, as applicable, together with such additional information as the DIP Agent, the Administrative Agent or the First Lien Trustee may reasonably request from time to time. The Debtors shall maintain their cash management arrangements in a manner consistent in all material respects with that described in *The Debtors' Motion for an Order (A) (I) Approving Continued Use of the Debtors' Existing Cash Management System; (II) Authorizing Use of Existing Bank Accounts and Checks; (III) Waiving the Requirements of 11 U.S.C. 345(b); (IV) Granting Administrative Expense Status to Certain Postpetition Intercompany Claims; and (V) Authorizing the Continuation of Certain Intercompany Transactions; and (B) Granting Related Relief* (the "Cash Management Motion") [Docket No. 38], and any orders approving the Cash Management Motion.

27. *Restrictions on Transfer of DIP Collateral or Prepetition Collateral to Non-Debtor Affiliates.* The Debtors shall not transfer or use any DIP Collateral or Prepetition Collateral, including Cash Collateral, to or for the benefit of any direct or indirect foreign or non-debtor affiliate or subsidiary of the Debtors.

28. *Indemnification and Expenses.* Each of the Debtors, jointly and severally, shall indemnify and hold harmless the DIP Agent, the Backstop Parties, the DIP Lenders, the First Lien Secured Parties, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “Indemnified Person”) from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel but subject to the limitations set forth below) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Financing Documents or this Order or the transactions contemplated thereby and hereby; provided that, no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct. No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any of their subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence, willful misconduct or material breach of its obligations under the DIP Financing

Documents or this Order. In no event, however, shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages. In addition, (a) all out-of-pocket expenses (including, but not limited to, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the Backstop Parties (but excluding the fees and expenses of any outside counsel or financial advisor retained by any individual Backstop Party), whether accrued on, prior to or after the Effective Date, in connection with the Chapter 11 Cases, the DIP Facility and the transactions contemplated thereby and hereby shall be paid by the Debtors from time to time, whether or not the Closing Date occurs, (b) all out-of-pocket expenses (including, but not limited to, fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the DIP Lenders for enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby and hereby shall be paid by the Debtors, and (c) all fees of the DIP Agent charged in connection with any “seasoning” of the DIP Facility shall be paid by the Debtors. Notwithstanding the foregoing, in no event shall (i) the DIP Agent and (ii) the DIP Lenders, in each case, be entitled to the reimbursement of costs and expenses of more than one primary counsel, one local Alabama counsel and other special counsel and advisors, as needed. Nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent, the Backstop Parties or the DIP Lenders in the DIP Financing Documents. For the avoidance of doubt, this paragraph 28 does not limit or otherwise affect any indemnification rights or obligations in respect of the Prepetition Secured Parties under the Prepetition Debt Documents.

29. *Limitation on Use of the DIP Loans, the DIP Collateral, and the Prepetition Collateral (including the Cash Collateral).* The Debtors shall use the DIP Loans, the DIP



Collateral, and the Prepetition Collateral (including the Cash Collateral), solely as provided in this Order, the Approved Budget and the DIP Financing Documents. Notwithstanding anything herein or in any other order of this Court to the contrary, the Debtors shall not be authorized to use the DIP Loans, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, to pay fees or expenses (x) in excess of \$175,000 per month for each of the Creditors' Committee and the Retiree Committee (the "Committee Monthly Cap") on account of all Professional Persons retained by each such committee in the aggregate; provided that any unused amounts may be carried forward to a subsequent month, (y) in excess of \$100,000 (the "Investigation Budget"), which Investigation Budget replaces and does not supplement or replenish the Investigation Budget provided under the Amended Final Cash Collateral Order, for the Creditors' Committee to investigate (but not prepare, initiate or prosecute) Claims and Defenses against the Prepetition Secured Parties before the Challenge Deadline, or (z) to initiate or prosecute proceedings or actions (the "Challenge") on account of any Claims and Defenses against the Prepetition Secured Parties. For the avoidance of doubt and notwithstanding any other provision of this Order, other than the Investigation Budget (which may be used solely for the purposes authorized in this paragraph 29), no DIP Loans, DIP Collateral, Prepetition Collateral, including Cash Collateral, or any portion of the Carve-Out may be used directly or indirectly by any Debtor, any official committee appointed in the case, including the Creditors' Committee and Retiree Committee, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity to (i) investigate, object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the DIP Obligations, the Prepetition Obligations or the liens, claims or rights granted under the Amended Final Cash Collateral Order, this Order, the DIP Financing

Documents or the Prepetition Debt Documents, or take any action purporting to do any of the foregoing; (ii) investigate, assert or prosecute any Claims and Defenses against the DIP Agent, the DIP Lenders, the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors or any take action purporting to do the foregoing in respect of the DIP Obligations, Prepetition Obligations, DIP Claims and Liens, Prepetition Liens, and/or the Adequate Protection Obligations, Adequate Protection Liens and Superpriority Claims granted to the Prepetition Secured Parties under this Order or the Amended Final Cash Collateral Order, as applicable; (iii) prevent, hinder, or otherwise delay the DIP Agent's, the DIP Lenders' or the Prepetition Secured Parties', as applicable, enforcement, or realization on the DIP Obligations, DIP Collateral, Prepetition Obligations, Prepetition Collateral, and the liens, claims and rights granted to such parties under Amended Final Cash Collateral Order and this Order, in accordance with the DIP Financing Documents, the Prepetition Debt Documents, the Amended Final Cash Collateral Order or this Order, as applicable; (iv) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or Prepetition Secured Parties hereunder (other than with the consents contemplated hereunder) or under the Amended Final Cash Collateral Order, the DIP Financing Documents or the Prepetition Debt Documents, as applicable; (v) apply to the Court for authority to approve superpriority claims or grant liens (other than the Approved Liens) or security interests in the DIP Collateral or any portion thereof that are senior to, or *pari passu* with, the DIP Liens, DIP Claims, Adequate Protection Liens, Prepetition Secured Parties' Superpriority Claims or Prepetition Liens, unless all DIP Obligations, Prepetition Obligations, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Lenders or Prepetition Secured Parties under the Amended Final Cash Collateral Order and this Order, as applicable, have been

refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the Required Lenders or the Steering Committee and the Administrative Agent, as applicable, each in its sole discretion; or (vi) seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the Required Lenders in their sole discretion or are otherwise included in the Approved Budget.

30. *Employee Incentive/Retention Plans.* Other than the key employee retention plan approved by the KERP Order, the Debtors will not seek approval of any employee incentive or retention plans (or any similar sort of retention or incentive program) without the prior written consent of the Backstop Parties, which consent shall be in their sole discretion.

31. *Executory Contracts and Unexpired Leases.* The Debtors will confer with the Steering Committee, the Backstop Parties, and its/their advisors to determine which executory contracts and unexpired leases should be assumed or rejected by the Debtors. The Debtors will provide the Steering Committee, the Backstop Parties, and its/their advisors with all necessary information in order to analyze such a decision. Other than as contemplated by the Sale Motion, the Debtors shall not make any decision with regard to the assumption or rejection of executory contracts and unexpired leases without first obtaining the consent of the Steering Committee and the Backstop Parties and which consent shall each be in its/their respective sole discretion.

32. *Restrictions on Disposition of Material Assets Outside the Ordinary Course of Business.* Except as contemplated by the Sale Motion or expressly permitted under the “first day” pleadings, the Debtors shall not use, sell or lease any material assets outside the ordinary course of business, or seek authority of this Court to the extent required by Bankruptcy Code section 363, without obtaining the prior written consent of the Backstop Parties, which consent

shall be in their sole discretion, at least five (5) business days prior to the date on which the Debtors seek the Court's authority for such use, sale or lease. Subject to paragraph 11(c) hereof and the rights of any holder of a Permitted Priority Lien thereon, in the event of any such sale, lease, transfer, license, or other disposition of property of the Debtors (other than a disposition of all or substantially all of the Debtors' assets) that constitutes DIP Collateral outside the ordinary course of business (to the extent permitted by the DIP Financing Documents and this Order), the Debtors are authorized and shall promptly pay, without further notice or order of this Court, the DIP Agent, for the benefit of the DIP Lenders, 100% of the net cash proceeds resulting therefrom no later than the second business day following receipt of such proceeds. In the event of any casualty, condemnation, or similar event with respect to property that constitutes DIP Collateral, the Debtors are authorized and shall promptly pay to the DIP Agent, for the benefit of the DIP Lenders, any insurance proceeds, condemnation award, or similar payment (excluding any amounts on account of any D&O policies) in excess of \$2,000,000 no later than the second business day following receipt of payment by the Debtors, unless the DIP Agent and the Backstop Parties consent, each in its/their sole discretion, in writing, to the funds being reinvested by the Debtors.

33. *Prepetition Intercreditor Agreements.* Nothing in this Order shall amend or otherwise modify the terms and enforceability of the Intercreditor Agreement, which shall remain in full force and effect. The rights of the Prepetition Secured Parties shall at all times remain subject to the Intercreditor Agreement and any other applicable intercreditor agreements.

34. *Binding Effect; Successors and Assigns.* The provisions of this Order, the DIP Credit Agreement and the other DIP Financing Documents shall be binding upon all parties in interest in the Chapter 11 Cases and any successor cases, including any chapter 7 cases,

including the Prepetition Secured Parties, the Backstop Parties, the Steering Committee, the Creditors' Committee, the Retiree Committee, the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estates of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) as provided herein.

35. *Limitation of Liability.* In determining to make any loan under the DIP Financing Documents, permitting use of the Cash Collateral, or exercising any rights or remedies as and when permitted pursuant to this Order, the DIP Financing Documents or the Prepetition Debt Documents, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or their businesses (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint venture or partnership with any of the Debtors. Furthermore, nothing in this Order, the DIP Financing Documents or the Prepetition Debt Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in Bankruptcy Code section 101(2)).

36. *No Modification of Order.* Until and unless the DIP Obligations, DIP Superpriority Claim, Prepetition Secured Parties' Superpriority Claims, and Prepetition

Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) except as permitted under the DIP Documents, and with the prior written consent of the Backstop Parties (i) any modification, stay, vacatur, or amendment to this Order; (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, but not limited to any administrative expense of the kind specified in Bankruptcy Code sections 503(b), 507(a), or 507(b)) in any of the Chapter 11 Cases or successor cases, including any chapter 7 cases, equal or superior to the DIP Superpriority Claim, the DIP Obligations, Prepetition Secured Parties' Superpriority Claims, or the Prepetition Obligations, other than the Carve-Out, or (iii) any other order allowing use of the DIP Collateral or Prepetition Collateral; and (b) except as permitted under the DIP Documents, any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens, Adequate Protection Liens or Prepetition Liens, respectively. Each Debtor irrevocably waives any right to seek any amendment, modification or extension of this Order without the prior written consent of the DIP Agent, the Backstop Parties and the Steering Committee, as applicable, each in its/their sole discretion, and no such consent shall be implied by any action, inaction or acquiescence of the applicable DIP Agent, DIP Lenders, the Backstop Parties or the Steering Committee.

37. *Priorities Among Prepetition Secured Parties.* Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities among, and rights of, the Prepetition Secured Parties (including, but not limited to, the relative priorities

and rights of the Prepetition Secured Parties with respect to the adequate protection granted hereunder), such relative priorities and rights shall continue to be governed by the Prepetition Debt Documents and the Intercreditor Agreement.

38. *Rights of Administrative Agent and First Lien Trustee.* Nothing in this Order shall be construed to limit or affect the (i) Administrative Agent's right to request instructions from the Required Lenders (as defined in the Credit Agreement) in accordance with Section 12.04 of the Credit Agreement and (ii) First Lien Trustee's right to request directions from holders of a majority in aggregate principal amount of the then outstanding First Lien Notes (the "Majority First Lien Noteholders") in accordance with Sections 6.05, 7.01, and 10.02 of the First Lien Indenture. It being understood that since the Steering Committee constitutes the Required Lenders and the Majority First Lien Noteholders and can therefore direct the Administrative Agent in taking actions in connection with the Credit Agreement and the First Lien Trustee in taking actions in connection with the First Lien Indenture, in any instance in this Order where the Administrative Agent or the First Lien Trustee is indicated as having given its consent, as the Steering Committee has also given its consent in such case, the Administrative Agent and the First Lien Trustee shall be deemed to have given its consent at the direction of the Required Lenders and Majority First Lien Noteholders, as applicable.

39. *No Waiver.* This Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Agent, the DIP Lenders or the Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights, claims and defenses of the issuers of surety bonds on which the Debtors are principals or indemnitors under applicable bankruptcy

and non-bankruptcy law, including any such issuer's rights, claims and defenses under any existing indemnity agreements, surety bonds or related agreements or any letters of credit related thereto, all of which are expressly reserved.

40. *Automatic Stay Modified.* The automatic stay shall be modified or lifted to the extent necessary to allow the DIP Agent, the Backstop Parties or the Prepetition Secured Parties, as applicable, to provide any notices to the Debtors or take any other action as contemplated by and in accordance with this Order.

41. *Rights Preserved.* Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly the DIP Agent's, the DIP Lenders', the Prepetition Secured Parties', the Steering Committee's or the Backstop Parties' respective right to seek any other or supplemental relief in respect of the Debtors. Nothing in this Order shall relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b).

42. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect immediately upon entry hereof, and there shall be no stay of execution of effectiveness of this Order. Any finding of fact shall constitute a finding of fact even if it appears as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it appears as a finding of fact.

43. *Controlling Effects of Order.* To the extent of any conflict between or among (a) the Motion, any other order of this Court, the DIP Credit Agreement or any other agreements, on the one hand, and (b) the terms and provisions of this Order, on the other hand, unless such term or provision herein is phrased in terms of "as defined in" or "as more fully described in" or "as



provided in” or words to that effect with respect to the DIP Financing Documents or the Prepetition Debt Documents, as applicable, the terms and provisions of this Order shall govern.

44. *Jurisdiction.* This Court shall retain jurisdiction to enforce the terms of this Order and to adjudicate any and all matters arising from or related to the interpretation, implementation or enforcement of this Order.

Dated: January \_\_\_\_, 2016

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THE HONORABLE TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Approved Budget**

**Walter Energy, Inc. and Domestic Subsidiaries**  
DIP BUDGET

(Amounts in USD)

Actual / Forecast Week Ending	1	2	3	4	5	6	7	8	9	10	11	Total for 11 Weeks
	Forecast 1/23/16	Forecast 1/30/16	Forecast 2/6/16	Forecast 2/13/16	Forecast 2/20/16	Forecast 2/27/16	Forecast 3/5/16	Forecast 3/12/16	Forecast 3/19/16	Forecast 3/26/16	Forecast 4/2/16	
<b>TOTAL NET CASH FLOW</b>												
<b>Receipts</b>												
Sales/AR Receipts	\$ 1,214,142	\$ 16,695,315	\$ 7,062,054	\$ 2,631,837	\$ 17,814,480	\$ 7,019,668	\$ 9,638,096	\$ 10,522,590	\$ 480,106	\$ 8,489,162	\$ 418,033	\$ 81,985,484
Other	93,500	900,000	15,000	35,000	415,000	625,500	265,000	35,000	47,500	693,000	260,000	3,384,500
<b>Total Cash Receipts</b>	<b>1,307,642</b>	<b>17,595,315</b>	<b>7,077,054</b>	<b>2,666,837</b>	<b>18,229,480</b>	<b>7,645,168</b>	<b>9,903,096</b>	<b>10,557,590</b>	<b>527,606</b>	<b>9,182,162</b>	<b>678,033</b>	<b>85,369,984</b>
<b>Disbursements</b>												
Payroll, Benefits & Pension	(2,152,874)	(5,647,429)	(3,469,460)	(6,059,358)	(2,760,038)	(6,696,455)	(2,607,310)	(6,833,727)	(2,582,310)	(3,634,964)	(4,752,333)	(47,196,256)
Leases, Taxes, Utilities, Fuel, Insurance	(921,140)	(4,699,271)	(554,000)	(3,207,852)	(1,038,700)	(1,727,194)	(402,500)	(2,174,041)	(1,039,810)	(970,309)	(803,500)	(17,538,316)
Freight & Royalties	(4,122,716)	(2,829,123)	(2,712,823)	(2,664,026)	(4,802,658)	(2,731,221)	(1,262,000)	(1,368,772)	(2,925,579)	(1,563,662)	(1,242,000)	(28,224,579)
Other Expenditures	(3,776,431)	(5,691,951)	(6,924,951)	(5,824,951)	(5,490,912)	(4,734,954)	(3,246,191)	(3,479,191)	(2,909,191)	(3,314,179)	(3,432,178)	(48,825,081)
<b>Total Disbursements<sup>1</sup></b>	<b>(10,973,161)</b>	<b>(18,867,773)</b>	<b>(13,661,233)</b>	<b>(17,756,186)</b>	<b>(14,092,307)</b>	<b>(15,889,823)</b>	<b>(7,518,001)</b>	<b>(13,855,731)</b>	<b>(9,456,890)</b>	<b>(9,483,114)</b>	<b>(10,230,011)</b>	<b>(141,784,232)</b>
<b>TOTAL NET CASH FLOW<sup>2</sup></b>	<b>\$ (9,665,519)</b>	<b>\$ (1,272,458)</b>	<b>\$ (6,584,179)</b>	<b>\$ (15,089,349)</b>	<b>\$ 4,137,173</b>	<b>\$ (8,244,655)</b>	<b>\$ 2,385,095</b>	<b>\$ (3,298,141)</b>	<b>\$ (8,929,284)</b>	<b>\$ (300,952)</b>	<b>\$ (9,551,978)</b>	<b>\$ (56,414,247)</b>
<b>Cash Collateral Budget Metrics</b>												
<i>Cumulative Totals</i>												
Total Disbursements	(10,973,161)	(29,840,934)	(43,502,167)	(61,258,354)	(75,350,661)	(91,240,484)	(98,758,485)	(112,614,216)	(122,071,106)	(131,554,221)	(141,784,232)	
Total Net Cash Flow	(9,665,519)	(10,937,977)	(17,522,156)	(32,611,505)	(28,474,332)	(36,718,987)	(34,333,892)	(37,632,033)	(46,561,318)	(46,862,269)	(56,414,247)	

Notes:

<sup>1</sup> Although permitted pursuant to the terms of the Cash Collateral Order, the figures above exclude (i) adequate protection payments, (ii) fees and expenses of professionals retained outside the ordinary course of business, (iii) the Debtors' use of the Cash Collateral to collateralize any new, replaced or renewed letters of credit, surety bonds or workers' compensation obligations in each case, that have been consented to by the Steering Committee in its sole discretion and (iv) key employee retention payments approved by both the Steering Committee and the Court that are approved to be paid pursuant to the Approved Budget and the Cash Collateral Order.

<sup>2</sup> Budget assumes continuation of ordinary course transactions between the Debtors and Non-Debtor Affiliates Black Warrior Methane and Black Warrior Transmission.

**EXHIBIT B TO MOTION**

**DIP Term Sheet**

Walter Energy, Inc.  
\$50,000,000  
Debtor-in-Possession Term Loan Facility  
Summary of Terms and Conditions

<u>Borrower:</u>	Walter Energy, Inc. (the “ <u>Borrower</u> ”), as a debtor and debtor-in-possession in a case (together with the cases of its affiliated debtors and debtors-in-possession, the “ <u>Cases</u> ”) under chapter 11 of title 11 of the United States Bankruptcy Code (the “ <u>Bankruptcy Code</u> ”) commenced in the United States Bankruptcy Court for the Northern District of Alabama (the “ <u>Bankruptcy Court</u> ”) on July 15, 2015 (the “ <u>Petition Date</u> ”).
<u>Guarantors:</u>	Each of the Borrower’s existing and future, direct and indirect subsidiaries that are debtors and debtors-in-possession in the Cases (collectively, the “ <u>Guarantors</u> ” and, together with the Borrower, the “ <u>Debtors</u> ”). All obligations of the Borrower under the DIP Facility will be unconditionally guaranteed on a joint and several basis by the Guarantors.
<u>Backstop Parties:</u>	Certain lenders and noteholders holding the majority in amount of the First Lien Obligations <sup>1</sup> (collectively, the “ <u>Backstop Parties</u> ”) will provide commitments to fund the DIP Loans (as defined below) (the “ <u>Backstop Commitments</u> ”).
<u>DIP Agent:</u>	A financial institution selected by the Backstop Parties shall act as administrative agent and collateral agent (in such capacity, the “ <u>DIP Agent</u> ”) on behalf of the DIP Lenders (as defined below).
<u>DIP Lenders:</u>	On or prior to the date of entry of the Final Order (as defined below) (the “ <u>Final Order Entry Date</u> ”), each holder of record (collectively, the “ <u>First Lien Creditors</u> ”) as of 11:59 p.m. New York time on January 13, 2016 (the “ <u>Record Date</u> ”) of claims under the Credit Agreement or the First Lien Indenture, as applicable, but excluding any claims on account of any unfunded Revolving Loan Commitments and the outstanding undrawn Letters of Credit, each as defined in the Credit Agreement (collectively, the “ <u>First Lien Claims</u> ”) shall be afforded the right to participate in the DIP Facility on a ratable basis up to its pro rata share of the First Lien Claims as of the Record Date pursuant to procedures, terms and conditions and documentation acceptable to the Backstop Parties and the DIP Agent (lenders holding the DIP Loans, the “ <u>DIP Lenders</u> ”). Any amounts of the DIP Facility not so allocated shall be allocated to the Backstop Parties on a ratable basis based on their respective Backstop Commitments.

<sup>1</sup> Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Amended Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Postpetition Secured Parties and (C) Granting Related Relief [Docket No. 797] (the “Cash Collateral Order”).

<p><u>Type and Amount of the DIP Facility:</u></p>	<p>A non-amortizing multiple draw super-priority senior secured term loan facility (the “<u>DIP Facility</u>”) in an aggregate principal amount not to exceed \$50 million (the “<u>DIP Lenders’ commitments under the DIP Facility, the “DIP Commitments”</u>”; and the loans under the DIP Facility, the “<u>DIP Loans</u>”).</p> <p>The DIP Loans under the DIP Facility may be incurred during the Availability Period (as defined below), subject to the satisfaction or waiver of all conditions thereto set forth in the Definitive Financing Documentation (as defined below) (such date, the “<u>Closing Date</u>”), including the entry of an Order of the Bankruptcy Court (the “<u>Sale Order</u>”), in form and substance satisfactory to the Backstop Parties, pursuant to Bankruptcy Code sections 105, 363, 364 and 365 authorizing and approving, <i>inter alia</i>, the Asset Purchase Agreement, dated as of November 5, 2015, by and among Coal Acquisition LLC, as buyer (the “<u>Buyer</u>”), the Borrower and certain subsidiaries of Borrower, as sellers (the “<u>Asset Purchase Agreement</u>”). On the Closing Date, DIP Lenders shall fund \$30 million in principal amount of the DIP Loans (the “<u>Initial Escrowed DIP Loans</u>”) to an account maintained by the DIP Agent in escrow (the “<u>Escrow Account</u>”). Interest shall accrue on the full amount of the Initial Escrowed DIP Loans starting from the Closing Date. The Initial Escrowed DIP Loans may be withdrawn by the Borrower from the Escrow Account during the Availability Period (the date of any withdrawal by the Borrower from the Escrow Account, a “<u>DIP Draw Date</u>”) provided that (i) immediately after giving effect to each such proposed withdrawal (and the use of proceeds thereof on any such DIP Draw Date), the aggregate amount of unrestricted cash and cash equivalents of the Borrower and the Debtors shall not exceed \$40 million, (ii) the amount of DIP Loans withdrawn on each DIP Draw Date shall not be less than \$5 million (or, if less than \$5 million, the aggregate amount remaining in the Escrow Account) (iii) the Drawdown Fee shall have been paid on each DIP Draw Date, and (iv) all conditions set forth in the “Conditions Precedent to each DIP Term Loan” section of this Term Sheet have been satisfied ((i), (ii), (iii) and (iv) collectively, the “<u>DIP Draw Conditions</u>”). In the event that the Availability Period is extended as a result of an extension to the Stated Maturity Date as set forth in the definition thereof and less than \$2.5 million of the Initial Escrowed DIP Loans remain in the Escrow Account, to the extent requested by the Borrower and subject to the satisfaction of all conditions set forth in the “Conditions Precedent to each DIP Term Loan” section of this Term Sheet (other than clauses (iii) and (vii) therein), DIP Lenders shall fund \$20 million in principal amount of the DIP Loans (the “<u>Second Escrowed DIP Loans</u>”) to the Escrow Account. Interest shall accrue on the full amount of the Second Escrowed DIP Loans starting from the date of the funding by DIP Lenders of such DIP Loans to the Escrow Account (the “<u>Second Escrowed DIP Loan Funding Date</u>”). The Second Escrowed DIP Loans may be withdrawn by the Borrower on and after the Second Escrowed DIP Loan Funding Date but prior to the end of the Availability Period only to the extent the DIP Draw Conditions are satisfied with respect to each such withdrawal. For the avoidance of doubt, any amount of the DIP Loans under the DIP Facility funded into the Escrow Account will permanently reduce the DIP Commitments by such amount, and once repaid, the DIP Loans under the DIP Facility cannot be reborrowed, and in no event shall the aggregate principal amount of DIP Loans exceed \$50 million.</p>
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<u>Availability Period:</u>	DIP Loans under the DIP Facility may be drawn during the period from and including the Closing Date up to but excluding the DIP Termination Date (as defined below) (such period, the “ <u>Availability Period</u> ”). The DIP Commitments will expire at the end of the Availability Period.
<u>Maturity:</u>	All obligations under the DIP Facility will be due and payable in full in cash on the earliest of (i) the Stated Maturity Date; (ii) the effective date of any chapter 11 plan for the reorganization of the Borrower or any other Debtor; (iii) the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors pursuant to Bankruptcy Code section 363 (including pursuant to the Asset Purchase Agreement); and (iv) the date of the acceleration of the DIP Loans and the termination of the DIP Commitments in accordance with the Definitive Financing Documentation (such earliest date, the “ <u>DIP Termination Date</u> ”). The principal of, and accrued interest on, the DIP Loans and all other amounts owing to the DIP Agent and the DIP Lenders under the DIP Facility (the “ <u>DIP Obligations</u> ”) shall be due and payable in cash on the DIP Termination Date. Upon the Closing (as defined in the Asset Purchase Agreement) of the transactions under the Asset Purchase Agreement, the DIP Obligations shall be indefeasibly and immediately paid in full in cash from the cash consideration provided by the Buyer under the Asset Purchase Agreement. “ <u>Stated Maturity Date</u> ” shall mean February 29, 2016; <u>provided</u> that such date may be extended with the consent of the Required Lenders and shall be extended automatically to match the Outside Date (under and as defined in the Asset Purchase Agreement) if such Outside Date is extended beyond February 29, 2016; <u>provided further</u> that, in no event shall the Stated Maturity Date be extended, either with the consent of the Required Lenders or automatically, to a date that is later than March 30, 2016.
<u>Purpose:</u>	In accordance with the Approved Budget, but subject to the “Budget Covenant”, the proceeds of the DIP Loans under the DIP Facility will be used only for the following purposes: (i) for the payment of prepetition amounts (including prepetition payments to certain critical vendors identified by the Borrower) to the extent authorized pursuant to first day orders, other orders entered in the Cases prior to the Closing Date or with the consent of the Backstop Parties, (ii) for the payment of working capital and other general corporate needs of the Borrower and the Guarantors in the ordinary course of business, and (iii) for the payment of the costs and expenses of administering the Cases (including payments benefiting from the Carve-Out (as defined below)), including allowed professional fees subject to the terms and conditions set forth in this Term Sheet (and including fees incurred prior to the Closing Date) and the Cash Collateral Order (for the avoidance of doubt, no proceeds of the DIP Loans may be used to make any adequate protection payments set forth in paragraph 11(a) of the Cash Collateral Order). Notwithstanding the foregoing, the use of the proceeds of the DIP Loans, the Carve-Out and the Debtor Collateral (as defined below) shall be subject to further restrictions consistent with those in the Cash Collateral Order, as amended by the Final Order, including with respect to limitations on investigating and challenging claims of the Prepetition Secured Parties and limitations on paying fees and expenses of official committees. No proceeds of the DIP Facility or the Debtor Collateral may be used to initiate, prepare or prosecute proceedings or actions on account of any claims and defenses against

the Prepetition Secured Parties, the DIP Agent or the DIP Lenders.

For the avoidance of doubt and notwithstanding any other provision of this Term Sheet, other than the Investigation Budget (which may be used solely for the purposes authorized in the Cash Collateral Order, as amended by the Final Order), from and after the Closing Date, no DIP Loans, Debtor Collateral, Prepetition Collateral, including Cash Collateral, or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Cases, including the Creditors' Committee and Retiree Committee, or any trustee appointed in the Cases or any successor case, including any chapter 7 case, or any other person, party or entity to (i) investigate, object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the Prepetition Obligations, the DIP Obligations (as defined below) and/or the liens, claims or rights granted under the Cash Collateral Order, the Final Order, the Definitive Financing Documents or the Prepetition Debt Documents, or take any action purporting to do any of the foregoing; (ii) investigate, assert or prosecute any Claims and Defenses against the Prepetition Secured Parties, the DIP Agent or the DIP Lenders or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors or any action purporting to do the foregoing in respect of the Prepetition Obligations, the Prepetition Liens, DIP Obligations, DIP Liens (as defined below), DIP Claims (as defined below), and/or the Adequate Protection Obligations, Adequate Protection Liens and Superpriority Claims granted to the Prepetition Secured Parties under the Cash Collateral Order or the Final Order, as applicable; (iii) prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Obligations, Prepetition Collateral, DIP Obligations, Debtor Collateral, Cash Collateral and the liens, claims and rights granted to such parties under the Cash Collateral Order and the Final Order, in accordance with the Prepetition Debt Documents, the Definitive Financing Documents, the Cash Collateral Order or the Final Order, as applicable; (iv) seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under the Cash Collateral Order, the Final Order (other than with the consents contemplated thereunder), the Prepetition Debt Documents or the Definitive Financing Documents, as applicable; (v) apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens (other than the Approved Liens) or security interests in the Debtor Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Claims, Adequate Protection Liens and Superpriority Claims granted to the Prepetition Secured Parties, or Prepetition Liens, unless all DIP Obligations, Prepetition Obligations, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Lenders or Prepetition Secured Parties under the Cash Collateral Order and the Final Order, as applicable, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the Required Lenders or the Steering Committee and the Administrative Agent, as applicable, each in its sole discretion; or (vi) seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the Required Lenders in their sole discretion or are otherwise included in the Approved Budget.



<p><u>Final Order:</u></p>	<p>The order approving the DIP Facility, which shall be in form and substance acceptable to the Backstop Parties and the Debtors (the “<u>Final Order</u>”), shall, among other things, authorize, approve and direct the Debtors to enter into the Definitive Financing Documentation, the making of the DIP Loans, the granting of the super-priority claims and liens against the Debtors and their assets in accordance with this Term Sheet and the Definitive Financing Documentation with respect to the Debtor Collateral and the payment of all fees and expenses (including the fees and expenses of outside counsel and financial advisors) required to be paid to the DIP Agent, the DIP Lenders and the Backstop Parties as described in “Indemnification and Expenses” by the Debtors.</p>
<p><u>Priority and Security Under DIP Facility:</u></p>	
<p><i>Debtor Collateral</i></p>	<p>All obligations of the Borrower and the Guarantors to the DIP Lenders and to the DIP Agent, including, without limitation, all principal and accrued interest, costs, fees and expenses or any exposure of a DIP Lender or any of its affiliates in respect of cash management incurred on behalf of the Borrower or any Guarantor (collectively, the “<u>DIP Obligations</u>”), shall be:</p>
	<p>Secured, pursuant to Bankruptcy Code sections 361, 362, 364(c)(2), 364(c)(3) and 364(d), by a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically and properly perfected first priority senior priming lien on, and security interest in (such liens and security interests, the “<u>DIP Liens</u>”), all present and after acquired property (whether tangible, intangible, real, personal or mixed) of the Debtors, wherever located, including, without limitation, all accounts, inventory, equipment, capital stock in subsidiaries of the Debtors, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks and other general intangibles, and all products and proceeds thereof, and the proceeds of any causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550 or 553 or any other avoidance actions under the Bankruptcy Code or applicable non-bankruptcy law (all such property, the “<u>Debtor Collateral</u>”), which liens and security interests shall be senior to any and all other liens and security interests, including the Adequate Protection Liens granted under the Cash Collateral Order and the Final Order, and the liens granted to the Prepetition Secured Parties under the Prepetition Debt Documents, other than the (i) Carve-Out, (ii) Permitted Priority Liens, if any, and (iii) Approved Liens.</p>
	<p>The DIP Obligations shall also constitute claims entitled to the benefits of Bankruptcy Code section 364(c)(1), having a super-priority over any and all administrative expenses and claims, of any kind or nature whatsoever, including, without limitation, the Superpriority Claims granted to the Prepetition Secured Parties under the Cash Collateral Order and the Final Order, and the administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 and 1114, and any other provision of the Bankruptcy Code (“<u>DIP Claims</u>”), subject only to the Carve-Out.</p>

	<p>“Carve-Out” shall be defined in a manner consistent with the Cash Collateral Order, as amended by the Final Order. For the avoidance of doubt and notwithstanding anything to the contrary in the Cash Collateral Order, from and after the Closing (as defined in the Asset Purchase Agreement), the Debtors shall irrevocably waive any right to use, utilize or otherwise access any funds or moneys relating to the “Carve-Out,” and the Carve-Out shall be eliminated.</p>
<u>Intercompany Loans</u>	Any and all intercompany loans held by the Borrower or the Guarantors shall be pledged in favor of the DIP Agent pursuant to the Final Order.
<u>Interest Rates:</u>	<p>12% per annum payable in cash on the DIP Termination Date.</p> <p>After the occurrence and during the continuance of an event of default, interest on all DIP Loans and all other outstanding amounts under the Definitive Financing Documentation will bear interest at a rate equal to 2.0% per annum <u>plus</u> the otherwise applicable rate.</p>
<u>Upfront Fee:</u>	An upfront fee in an amount equal to 7.5% of the DIP Commitments shall be paid to the DIP Lenders in cash from the proceeds of the DIP Loans ratably based on their respective DIP Commitments on the Closing Date.
<u>Drawdown Fee:</u>	A drawdown fee in an amount equal to 2.5% of each withdrawal of DIP Loans by the Borrower from the Escrow Account (the “ <u>Drawdown Fee</u> ”) shall be paid to the DIP Lenders in cash ratably based on their respective principal amount of DIP Loans withdrawn on each DIP Draw Date and such fee shall be paid from the proceeds thereof (it being understood that such fee shall be payable in respect of the principal amount of the DIP Loans actually funded by the DIP Lenders into the Escrow Account rather than the net proceeds of DIP Loans actually received by the Borrower).
<u>Put Option Premium:</u>	A put option premium in an amount equal to 7.5% of the Backstop Commitments shall be paid in cash to the Backstop Parties ratably based on their respective Backstop Commitments on the Closing Date from the proceeds of the initial DIP Loan.
<u>Prepayments:</u>	<p><i>Voluntary:</i> Prepayments under the DIP Facility may be made at any time without premium or penalty (other than breakage costs to the extent applicable).</p> <p><i>Mandatory:</i> The Definitive Financing Documentation will require mandatory prepayments customarily found in loan documents for similar debtor-in-possession financings and other mandatory prepayments deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation, prepayments from proceeds of (i) asset sales (other than the sale contemplated by the Asset Purchase Agreement), (ii) insurance and condemnation proceeds and (iii) equity or debt issuances, in each case, received by the Borrower or any of the Guarantors and subject to exceptions to be agreed.</p>

<u>Conditions Precedent to the Closing:</u>	<p>Conditions precedent customarily found in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation: (i) execution and delivery of a credit agreement (the “<u>DIP Credit Agreement</u>”) and other definitive documentation evidencing the DIP Facility, in each case, which shall be in form and substance substantially consistent with this Term Sheet and otherwise acceptable to the Backstop Parties and the Debtors (the “<u>Definitive Financing Documentation</u>”); (ii) entry of the Final Order; (iii) entry of the Sale Order in form and substance acceptable to the Backstop Parties and the Debtors, which Sale Order shall not have been reversed, amended, stayed, vacated, terminated or otherwise modified in any manner, in each case, without the prior written consent of the Backstop Parties in their sole discretion; (iv) delivery of the Approved Budget acceptable to the Backstop Parties in their sole discretion; and (v) the syndication of the DIP Commitments as described in “DIP Lenders” above shall have been completed.</p>
<u>Conditions Precedent to Each DIP Term Loan:</u>	<p>Conditions precedent customarily found in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation, (i) no default or event of default, (ii) accuracy of representations and warranties in all material respects, (iii) on such DIP Draw Date and immediately after giving effect to each such proposed draw and the use of proceeds thereof as of such DIP Draw Date, unrestricted cash and cash equivalents of the Borrower and the Debtors shall be no greater than \$40 million, (iv) no breach of, or failure to perform by Debtors or any of their subsidiaries of any of their agreements, covenants, representations or warranties contained in the Asset Purchase Agreement or in the Sale Order, (v) no termination event has occurred under the Asset Purchase Agreement, (vi) no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, in each case, without the prior written consent of the Backstop Parties in their sole discretion; and (vii) delivery of a notice of borrowing.</p>
<u>Representations and Warranties:</u>	<p>The Definitive Financing Documentation will contain representations and warranties appropriate for a transaction of this type and customarily found in loan documents for similar debtor-in-possession financings and other representations and warranties deemed by the Backstop Parties appropriate to the specific transaction.</p>

<p><u>Reporting Covenants, Affirmative Covenants and Negative Covenants:</u></p>	<p>The Definitive Financing Documentation will contain reporting requirements, affirmative covenants and negative covenants appropriate for a transaction of this type and customarily found in loan documents for similar debtor-in-possession financings and other reporting requirements, affirmative covenants and negative covenants deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation: (i) delivery of variance reports consistent with what is required under the Cash Collateral Order, as amended by the Final Order, and (ii) a prohibition on transferring any cash or cash equivalents to a subsidiary of the Borrower that is not a Guarantor.</p> <p>Notwithstanding any of the foregoing, any DIP Lender may elect not to receive any of the information provided by the Borrower and/or the Guarantors pursuant to the reporting covenants in the DIP Credit Agreement (the "<u>Information</u>"). Following receipt of written notice of such election from such DIP Lender, the DIP Agent will refrain from delivering the Information to such DIP Lender until the DIP Agent has received a written request from such DIP Lender to be provided with the Information.</p>
<p><u>Budget Covenant:</u></p>	<p>Maximum negative variance of \$10,000,000 from the "Cumulative Net Cash Flow" line in the Approved Budget and maximum negative variance of the greater of \$5,000,000 and 5% of "Cumulative Disbursements" set forth in the Approved Budget from the "Cumulative Disbursements" line set forth in the Approved Budget, which, in each case, shall be tested every two weeks on a cumulative basis from the beginning of the period covered by the Approved Budget. "Cumulative Net Cash Flow" and "Cumulative Disbursements" shall not include, (w) fees and expenses of the Steering Committee Advisors, the Consultants, and the professionals retained by the Backstop Parties, and fees and expenses of professionals retained by the DIP Agent, the Administrative Agent, the First Lien Trustee and the Debtors, (x) Cash Collateral provided with respect to Approved Collateralized Obligations, (y) key employee retention payments approved by both the Required Lenders and the Bankruptcy Court and (z) any other amounts excluded from "Cumulative Net Cash Flow" or "Cumulative Disbursements" in the Cash Collateral Order.</p> <p>Cumulative capital expenditures beginning January 1, 2016, as calculated on a GAAP basis, shall not exceed by \$1.5 million of the amount set forth in a capital expenditure budget delivered in connection with the DIP Facility in form and substance satisfactory to the Required Lenders. Such covenant shall be tested monthly.</p>
<p><u>Approved Budget:</u></p>	<p>The DIP Agent and the DIP Lenders shall have received an operating budget setting forth the projected financial operations of the Debtors and their subsidiaries for the 11-week period starting on the week in which the Closing Date occurs, which budget shall be in form and substance acceptable to the Backstop Parties in their sole discretion (the "<u>Approved Budget</u>").</p>

<p><u>Events of Default:</u></p>	<p>The Definitive Financing Documentation will contain events of default customarily found in loan documents for similar debtor-in-possession financing and other events of default deemed by the Backstop Parties appropriate to the specific transaction, including, without limitation, upon the occurrence of any of Termination Event under and as defined in the Cash Collateral Order, upon any breach of, or failure to perform by Debtors of any of their agreements, covenants, representations or warranties contained in the Asset Purchase Agreement or in the Sale Order, upon the occurrence of any termination event under the Asset Purchase Agreement and upon the entry of an order reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, in each case, without the prior written consent of the Backstop Parties in their sole discretion.</p>
<p><u>Remedies:</u></p>	<p>The DIP Agent (acting at the direction of the Required Lenders) and the DIP Lenders shall have customary remedies, including, without limitation, the right (after providing five (5) business days' prior notice to counsel to the Debtors, counsel to the Creditors' Committee, counsel to the Retiree Committee, and the Bankruptcy Administrator of the occurrence of the DIP Termination Date), to realize on all Debtor Collateral, including Cash Collateral.</p> <p>The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated on the DIP Termination Date, without further notice or order of the Bankruptcy Court, unless the DIP Agent (at the direction of the Required Lenders) elects otherwise in a written notice to the Debtors, and the DIP Agent (at the direction of the Required Lenders) shall be permitted to exercise all rights and remedies, including with respect to the Debtor Collateral, set forth in the Final Order and the Definitive Financing Documentation, and as otherwise available at law without further order or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise.</p> <p>In the event any party requests a hearing seeking to prevent the DIP Agent or the DIP Lenders from exercising any of their rights and remedies that arise after an event of default, the sole issue before the Bankruptcy Court at such hearing shall be whether an event of default has occurred and has not been cured or waived. No other issue or argument shall be relevant to any opposition to enforcement of the DIP Agent's and the DIP Lenders' rights.</p>

<p><u>Indemnification and Expenses:</u></p>	<p>The Borrower and the Guarantors, jointly and severally, will indemnify and hold harmless the DIP Agent, the Backstop Parties, the DIP Lenders, the First Lien Secured Parties, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “<u>Indemnified Person</u>”) from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel but subject to the limitations set forth two paragraphs below) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Facility, the Final Order, or the transactions contemplated thereby; <u>provided</u> that, no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct.</p> <p>No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Borrower, the Guarantors or any of their subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence, willful misconduct or material breach of its obligations hereunder. In no event, however, shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages.</p> <p>In addition, (a) all out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the Backstop Parties (but excluding the fees and expenses of any outside counsel or financial advisor retained by any individual Backstop Party), whether accrued on, prior to or after the Closing Date, in connection with the Cases, the DIP Facility and the transactions contemplated thereby shall be paid by the Borrower and the Guarantors from time to time, whether or not the Closing Date occurs and (b) all out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Agent and the DIP Lenders, for enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby will be paid by the Borrower and the Guarantors and (c) all fees of the DIP Agent charged in connection with any “seasoning” of the DIP Facility shall be paid by the Borrower and the Guarantors. Notwithstanding the foregoing, in no event shall (i) the DIP Agent and (ii) the DIP Lenders, in each case, be entitled to the reimbursement of costs and expenses of more than one primary counsel, one local Alabama counsel and other special counsel and advisors, as needed.</p>
<p><u>Required Lenders:</u></p>	<p>At least four unaffiliated DIP Lenders who are Backstop Parties or their affiliates holding at least 55% of the outstanding commitments and loans under the DIP Facility held by all Backstop Parties and their affiliates at such time (the “<u>Required Lenders</u>”).</p>

<u>Assignments and Participations:</u>	<p>Assignments under the DIP Facility are subject to the consent of the DIP Agent, which consent shall not be unreasonably withheld or delayed, except, in each case, with respect to any assignment to a DIP Lender, an affiliate of such a DIP Lender or a fund engaged in investing in commercial loans that is advised or managed by such a DIP Lender. No participation shall include voting rights, other than for matters requiring consent of 100% of the DIP Lenders.</p> <p>Notwithstanding anything to the contrary herein, except in connection with the syndication of the DIP Commitments as described above in “DIP Lenders”, no assignments of the DIP Commitments shall be allowed prior to the Final Order Entry Date.</p>
<u>Governing Law:</u>	State of New York (and, to the extent applicable, the Bankruptcy Code).
<u>Miscellaneous:</u>	The Definitive Financing Documentation will include standard yield protection provisions (including, without limitation, provisions relating to compliance with risk based capital guidelines, increased costs and payments free and clear of withholding taxes).
<u>Counsel to Backstop Parties:</u>	<p>Akin Gump Strauss Hauer &amp; Feld LLP</p> <p>Burr &amp; Forman LLP</p>
<u>Counsel to DIP Agent:</u>	TBD