

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

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING  
THE DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), having filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on the Petition Date; and the Debtors having proposed the *Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (as further modified, amended, or supplemented from time to time, the “Plan”) [Dkt. No. 446];<sup>2</sup> and the Court having approved the Debtors’ proposed solicitation and voting procedures [Dkt. No. 282] (the “Solicitation Procedures Order”) and the adequacy of the information contained in the *Disclosure Statement for the First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) [Dkt. No. 277]; and the Court having set the Confirmation Hearing for February 22, 2021 at 10:00 a.m. (prevailing Central Time); and the Debtors having filed proposed findings of fact, conclusions of law and order granting confirmation of the Plan (the “Confirmation Order”); and the Court having reviewed the *Debtors’ Memorandum of Law Supporting Confirmation of the Second Amended*

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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: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinergy of Alabama, Inc. (3009).

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Confirmation Brief, the Disclosure Statement, or the Solicitation Procedures Order, as applicable.

*Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Brief”), along with the exhibits thereto, including the *Declaration of Timothy Turek in Support of Confirmation of the Debtors’ Second Amended Joint Plan of Reorganization* (the “Confirmation Declaration”) and the *Declaration of Robert Gillin of Donlin Recano and Company, Inc. Regarding the Solicitation and Tabulation of Votes Cast on First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Voting Report”); and all required notice of the foregoing having been given by the Debtors, as shown in the affidavits of service filed by the Claims Agent [Dkt. No. \_\_\_\_]; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases, and having reviewed and considered all of the foregoing; and the Court having heard and considered the statements of counsel at the Confirmation Hearing supporting and objecting to confirmation of the Plan, along with all testimony presented and evidence admitted at the Confirmation Hearing; and with the Court finding, after due deliberation, that (a) notice of the Confirmation Hearing, and the opportunity provided to all parties in interest to object and be heard, was adequate and appropriate as to all parties affected by the Plan,<sup>3</sup> and (b) that the legal and factual bases set forth at the Confirmation Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein; the Court hereby makes the following Findings of Fact and Conclusions of Law:

**IT IS HEREBY FOUND AND DETERMINED—**

**I. Findings of Fact, Application of Law and Conclusions of Law**

A. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction to determine whether (i) the Plan complies with the applicable provisions of the Bankruptcy Code, and (ii) the Plan should be confirmed, and a Final Order entered with respect thereto. Venue of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> In accordance with Rules 2002(b) and 3017(d) of the Bankruptcy Rules.

B. Burden of Proof. The Debtors have the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence and, as set forth below, the Debtors have met that burden.

C. Judicial Notice. The Court takes judicial notice of the docket in the Chapter 11 Cases maintained by the Clerk and/or its duly appointed agent, including without limitation, all pleadings, notices and other documents filed, all proceedings during the Chapter 11 Cases, and all orders entered during the pendency of the Chapter 11 Cases.

D. Objections to Confirmation. The consensual resolutions of the resolved objections satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules, are in the best interests of the Estates and are supported by the record of the Confirmation Hearing, and are, therefore, approved. All Objections that were not resolved by agreement on or prior to the Confirmation Hearing are overruled, or are otherwise disposed of, as set forth herein and on the record of the Confirmation Hearing.

E. Compromise and Settlement in Connection with the Plan. All of the settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

F. Preservation of Causes of Action (11 U.S.C. § 1123(c)(3)). The Plan provides that except as otherwise expressly provided therein, any and all Causes of Action are preserved under the Plan. Except as otherwise provided in the Plan or herein, all Causes of Action, including, but not limited to, those included in Schedule E of the Plan Supplement, shall vest in the Reorganized Debtors, on the Effective Date. As set forth in Schedule E of the Plan Supplement, such schedule is based upon information known by the Debtors to date and is therefore not exhaustive of all Causes of Action that may be pursued by the Reorganized Debtors.

The Plan provides that the Reorganized Debtors shall have the exclusive right to investigate, institute, prosecute, abandon, settle or compromise any Causes of Action that were held by the Debtors and the Estates on the terms set forth in the Plan.

The Plan's reservation and preservation of all such Causes of Action and the disclosures set forth in the Disclosure Statement and Schedule E of the Plan Supplement, is adequate and sufficient to reserve, retain and preserve all such Causes of Action other than those that are expressly released in the Plan or this Confirmation Order.

The Plan's reservation and preservation of all such Causes of Action and the disclosures set forth in the Disclosure Statement and Schedule E of the Plan Supplement, constitute adequate and sufficient notice to any party in interest and counterparty (or potential counterparty) to a Cause of Action of the intent to pursue any and all such Causes of Action, including, but not limited to, those described and defined in the Plan Supplement and in the Plan and Disclosure Statement, to judgment and collection, and that the proceeds of all such Causes of Action are essential to the Plan. The Plan, the Disclosure Statement and Schedule E of the Plan Supplement provide adequate and sufficient notice to enable Creditors to (i) identify the types and categories of Causes of Action (or potential Causes

of Action) at issue and (ii) evaluate whether those Causes of Action might provide additional assets for distribution.

No Person or Entity may rely on the absence of a specific reference in the Plan, Disclosure Statement, Schedule E of the Plan Supplement or anything contained herein, to any Cause of Action against it, him, or her as any indication that the Reorganized Debtors will not pursue any and all available Causes of Action against it, him, or her, it being the intent of the Debtors that all Causes of Action not expressly released shall be reserved, retained, and preserved for the benefit of all Creditors and parties in interest. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any Causes of Action upon, after, or as a consequence of the Plan's confirmation or occurrence of the Effective Date.

The recoveries and proceeds from the Causes of Action reserved and preserved under the Plan will be used to satisfy the Allowed Claims of creditors pursuant to the terms of the Plan. The Reorganized Debtors are appropriate representatives of the Estates to prosecute and pursue the Causes of Action (and the proceeds thereof) reserved and preserved under the Plan.

G. Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).

H. Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d).

I. Transmittal and Mailing of Materials; Notices. The Debtors' solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all Holders of Claims entitled to vote on the Plan, and sufficient time was prescribed for such Holders of Claims to accept or reject the Plan, thereby satisfying the requirements of Bankruptcy Rule 3018.

J. Receipt and Tabulation of Votes. The procedures used by the Claims Agent to receive and tabulate Ballots of the Holders of Claims in the voting Classes, as set forth in the Voting Report, were proper and appropriate and in compliance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations. As described in the Voting Report, which certified both the method and results of the voting, the Plan was accepted by all Impaired Classes entitled to vote. The Debtors, therefore, obtained the requisite acceptance both in number and amount for confirmation of the Plan.

K. Plan Compliance With 11 U.S.C. § 1129. As set forth below and as demonstrated by the record in the Chapter 11 Cases, the Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code.<sup>4</sup>

L. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth and demonstrated below, the Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of the Court with respect to the Plan, thus satisfying the requirements of section 1129(a)(1) of the Bankruptcy Code.

- i. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code because: (a) the Plan's classifications conform to the requirements of the Bankruptcy Code and separately classify Claims based on valid business and legal reasons; (b) the Plan's classification scheme has a rational basis because it is based on the respective legal rights of each Holder of a Claim against or Interest in the Estates; (c) the Plan was not proposed to manipulate Class voting; and (d) Article III of the Plan designates the classification of Claims and Interests.
- ii. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan complies fully with the requirements of section 1123(a)(2) of the Bankruptcy Code because Article III of the Plan specifies which Classes of Claims and Interests are not Impaired under the Plan.
- iii. Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies fully with the requirements of section 1123(a)(3) of the Bankruptcy Code because Article III of the Plan specifies the treatment of Classes of Claims and Interests under the Plan, including those which are Impaired.
- iv. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies fully with the requirements of section 1123(a)(4) of the Bankruptcy Code because, as reflected in the treatment set forth in Article III of the Plan, the treatment of each of the Claims and Interests in each particular Class is the same as the treatment of each of the other Claims or Interests in such Class, except to the extent the Holder of such an Allowed Claim agrees to less favorable treatment.
- v. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan complies fully with the requirements of section 1123(a)(5) of the Bankruptcy Code because Article IV of the Plan provides adequate means for implementation of the Plan through, among other things, substantive consolidation of the Estates, implementation of the Restructuring Transactions, the sources of consideration for Distributions under the Plan, the vesting of assets in the Reorganized Debtors, provisions

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<sup>4</sup> See Confirmation Brief.

regarding the Reorganized Debtors corporate existence and governance (including composition of the New Boards), and the issuance of New FM Units.

- vi. Voting Power of Equity Securities (11 U.S.C. § 1123(a)(6)). Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in a corporate debtor's charter provisions prohibiting the issuance of nonvoting equity securities and providing for an "appropriate distribution" of voting power among those securities possessing voting power. Section 1123(a)(6) of the Bankruptcy Code is satisfied as the governing corporate documents of each Debtor do not contemplate the issuance of non-voting equity securities.
- vii. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Article IV.G of the Plan provides that the applicable governing body of each Debtor prior to the Effective Date, in their capacity as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of the applicable Debtor. Moreover, adequate disclosure of the procedures for determining the identities and affiliations of the New Boards has been made prior to the Confirmation Hearing. Upon the Effective Date, John McNab and Michael Jamison will serve as President and Secretary, respectively, of FM Coal, LLC. Cane Creek, LLC will be managed by FM Coal, LLC as the sole member. Best Coal, Inc. will be managed by a board of directors, consisting of Mr. McNab and Mr. Jamison. Mr. McNab and Mr. Jamison will also serve as the President and Secretary and Treasurer of the Reorganized Debtors. The Reorganized Debtors will be managed pursuant to the New Organizational Documents attached to the Plan Supplement as Exhibit A. The selection of the initial directors and officers of the Reorganized Debtors was, is, and will be consistent with the interests of Holders of Claims and Interests and public policy. Therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.
- viii. Discretionary Contents of Plan (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and are not inconsistent with the provisions of the Bankruptcy Code. The specific facts and equities of the Chapter 11 Cases demonstrate that the Debtor Releases in the Plan are critical to the successful implementation and confirmation of the Plan. The Third Party Release was conspicuously identified in the Debtors' solicitation materials, and Holders of Claims were given the opportunity to opt out of the Third Party Release; accordingly, the Third Party Release is consensual and not inconsistent with the provisions of the Bankruptcy Code. The Debtors have demonstrated that the exculpations provided in the Plan were granted to key constituents and professionals within these cases (*i.e.*, the Exculpated Parties), and are appropriate in scope given the consideration provided by the Exculpated Parties and the standards within the Eleventh Circuit. The Plan's injunction is appropriate in scope, necessary to effectuate the Plan and within the standards of the Eleventh Circuit.

M. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the orders of the Court with respect to the solicitation of acceptances

or rejections of the Plan, thus satisfying the requirements of section 1129(a)(2) of the Bankruptcy Code.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan, including all documents necessary to effectuate the Plan, including but not limited to those contained in the Plan Supplement, in good faith and not by any means forbidden by law, as evidenced by, among other things, the totality of the circumstances surrounding the formulation of the Plan, the record of the Chapter 11 Cases and the recoveries of Holders of Claims thereunder, thus satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments that have been made or are to be made by the Debtors or Reorganized Debtors under the Plan, or by any Person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases including administrative expense claims under sections 503 and 507 of the Bankruptcy Code, have been approved by, or will be subject to the approval of, the Court as reasonable, thus satisfying the requirements of section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity of the persons proposed to serve as members of the New Boards of the Reorganized Debtors was disclosed in the Plan Supplement and the appointment of the New Boards is consistent with the interests of Holders of Claims against and Interests in the Debtors and with public policy. Therefore, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not contain any rate changes. Therefore, the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

R. Best Interest of Creditors Test (11 U.S.C. § 1129(a)(7)). The Disclosure Statement and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence or persuasively challenged in any of the Objections to Confirmation of the Plan, and (iii) establish that each Holder of an Impaired Claim or Interest, as the case may be, in such Impaired Classes has either accepted the Plan, or will receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date, thus satisfying the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or Interests under the Plan, such Class has either accepted the Plan or is not Impaired under the Plan.<sup>5</sup> Voting Classes 3–4 have voted to accept the Plan. Because Holders of Claims or Interests in

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<sup>5</sup> Unimpaired Classes 1–3 are conclusively presumed to have accepted the Plan without the solicitation of acceptances or rejections pursuant to section 1126(f) of the Bankruptcy Code.

Impaired Classes 5 and 7 neither received nor retained any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, and the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met, thereby requiring application of section 1129(b) of the Bankruptcy Code. The Plan does not discriminate unfairly against Classes 5 and 7 because those Classes are not equally situated to the Classes receiving a distribution under the Plan and, as such, there is a reasonable basis for how the Plan treats Classes 5 and 7. Further, the Plan is fair and equitable with respect to Classes 5 and 7. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Classes 5 and 7.

T. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims, Priority Tax Claims, Other Secured Claims and Other Priority Claims are set forth in Articles II.B, II.D, III.B.1 and III.B.2 of the Plan, thus satisfying the requirements of section 1129(a)(9) of the Bankruptcy Code.

U. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Report, the Plan has been accepted by Impaired Classes 3–4, determined without inclusion of any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted through the Disclosure Statement, Confirmation Brief, and Plan Declarations regarding feasibility, together with all evidence proffered or advanced at or before the Confirmation Hearing, (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). As set forth in Article V.K of the Plan, the Debtors have paid, or will pay, prior to the Effective Date, all amounts due under 28 U.S.C. § 1930, and further provides that all such fees payable after the Effective Date shall be paid when due or as soon thereafter as reasonably practicable, and that satisfaction of such fees is a condition precedent to closing the Chapter 11 Cases, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

X. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable as the Debtors (i) do not provide retiree benefits<sup>6</sup> (1129(a)(13)), (ii) have no domestic support obligations (1129(a)(14)), (iii) are not individuals (1129(a)(15)), and (iv) are a for-profit business (1129(a)(16)).

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<sup>6</sup> As defined in section 1114 of the Bankruptcy Code, “retiree benefits” means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical or hospital care benefits, or benefits in the event of sickness, accident, disability or death under any plan, fund or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under the Bankruptcy Code.



Y. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Holders of Claims and Interests in Classes 5 and 7 will receive no Distributions under the Plan and, accordingly, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors presented uncontroverted evidence that the Plan does not discriminate unfairly and is fair and equitable with respect to the treatment of Claims and Interests in Classes 5 and 7. Further, the Plan does not discriminate unfairly against Classes 5 or 7 because those Classes are not equally situated to the Classes receiving a distribution under the Plan and as such, there is a reasonable basis for how the Plan treats Classes 5 and 7. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding its failure to satisfy section 1129(a)(8) of the Bankruptcy Code. The Plan shall be binding upon the members of Classes 5 and 7 upon confirmation of the Plan.

Z. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan that has been filed in the Chapter 11 Cases which has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

AA. Principal Purpose of the Plan (11 U.S.C. 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, and no Governmental Unit has requested that the Court deny Confirmation on such basis, thus satisfying the requirements of section 1129(d) of the Bankruptcy Code.

BB. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court in the Chapter 11 Cases, the Debtors, the Committee, the Claims Agent and each of their respective members, officers, directors, agents, financial advisers, attorneys, employees, equity holders, partners, affiliates and representatives have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code in soliciting acceptance or rejection of the Plan under section 1125(e) of the Bankruptcy Code and are thus entitled to the protections afforded by section 1125(e) of the Bankruptcy Code with respect to such solicitation of acceptance or rejection of the Plan.

CC. Substantive Consolidation. The substantive consolidation contemplated by Article IV.A of the Plan, which is unopposed, is consistent with, and permissible under, applicable law in the Eleventh Circuit. No party has objected to such substantive consolidation, and the overwhelming majority of parties have voted in favor of the Plan which is predicated upon entry of an order substantively consolidating the Estates in accordance with Article IV.A of the Plan solely for purposes of voting on the Plan, confirming the Plan and making Distributions pursuant to the Plan.

DD. Likelihood of Satisfaction of Conditions Precedent to the Effective Date. All conditions precedent to the Effective Date set forth in Article IX of the Plan have been satisfied, will be satisfied after entry of this Confirmation Order or have been or will be duly waived.

EE. Retention of Jurisdiction. The Court finds that it may properly retain jurisdiction over the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

Based on the foregoing, the Court holds that the Plan satisfies all of the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code and may be confirmed.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED—**

**I. The Plan is Hereby Confirmed**

A. Approval of the Plan. The Plan, which consists of the Plan as filed on March 8, 2021 (as amended, supplemented or otherwise modified, and including all exhibits and schedules thereto, including, but not limited to, those exhibits and schedules filed in the Plan Supplement) (hereafter, the “Plan”), is approved and confirmed as having satisfied all of the requirements of chapter 11 of the Bankruptcy Code. The terms of the Plan, as modified, are incorporated herein by reference and are an integral part of this Confirmation Order. A copy of the Plan is attached hereto as Exhibit A.

B. Findings of Fact and Conclusions of Law. The findings of fact and conclusions of law of the Court set forth herein and at the Confirmation Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applicable herein by Bankruptcy Rule 9014, and the findings and conclusions of the Court at the Confirmation Hearing are incorporated herein by reference. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and vice versa.

C. Objections. All Objections, to the extent not already withdrawn, waived, or settled, and all reservations of rights included therein, shall be, and hereby are overruled.

**II. The Plan’s Classification and Treatment of Claims is Approved**

D. Approval of Classification Scheme: All Claims and Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan’s classification scheme shall be, and hereby is, approved.

E. Classification for Voting Purposes Only: The classifications set forth in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes; (c) may not be relied upon by any Holder of a Claim as representing the actual classification of such Claims under the Plan for Distribution purposes, and (d) shall not bind the Debtors or Reorganized Debtors.

F. Approval of the Treatment of Claims: The treatment of Claims and Interests as provided in the Plan is approved.

### **III. Effects of Confirmation**

G. Enforceability of Plan. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan shall be, and hereby is, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. The Debtors may modify, amend or enter into, as necessary, all documents arising in connection with the Plan, without further order of the Court, in accordance with the provisions of the Plan.

H. Authorization to Implement the Plan. Upon the entry of this Confirmation Order, the Debtors and Reorganized Debtors, as applicable, and their respective professionals, are authorized to take or cause to be taken all actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into or otherwise make effective all documents arising in connection therewith, prior to, on and after the Effective Date. All such actions taken or caused to be taken shall be, and hereby are, authorized and approved by the Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including, without limitation, (a) the incurrence of all obligations contemplated by the Plan and the making of Distributions and (b) the implementation of all settlements and compromises as set forth in or contemplated by the Plan.

I. Authorization to Make Payments Pursuant to the Plan. The Reorganized Debtors are authorized to make payments pursuant to the terms of the Plan at any time after the Effective Date of the Plan, including payments on account of Allowed Other Secured Claims, Allowed Administrative Claims and Allowed Other Priority Claims, Allowed Priority Tax Claims, Allowed Credit Agreement Secured Claims, and Allowed General Unsecured Claims.

J. Discharge of Claims. Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, including the agreements and documents contained in the Plan Supplement, the distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not the Holder of such a Claim has accepted the Plan. Any default or “event of default” by the Debtors with respect to any Claim or Equity Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. This Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring.

K. Binding Effect. Notwithstanding the stay contemplated by Bankruptcy Rule 3020(e) and except as otherwise provided in section 1141(d) of the Bankruptcy Code, immediately after entry of this Confirmation Order and subject to the occurrence of the Effective Date, the Plan and this Confirmation Order shall be immediately effective and enforceable and binding upon (i) the Debtors, (ii) all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, (iii) any and all non-Debtor parties to Executory Contracts or Unexpired Leases with the Debtors, and (iv) all present and former Holders of Claims and Interests, whether or not (a) such Holder shall receive or retain any property or interest in property under the Plan, (b) such Holder's Claim or Interest is Impaired under the Plan, (c) such Holder has accepted the Plan, (d) such Holder has failed to vote to accept or reject the Plan or voted to reject the Plan, (e) such Holder is entitled to a Distribution under the Plan, and (f) such Holder has filed a proof of Claim in the Chapter 11 Cases. Accordingly, as permitted by Bankruptcy Rule 3020(e), the fourteen (14) day period provided by such rule is hereby waived in its entirety.

L. Discharges, Releases, Injunctions, Limitations of Liability and Exculpation. The Plan includes (i) the release by the Debtors of certain parties in interest (*i.e.*, the Debtor Releases), (ii) the voluntary release by certain Holders of Claims of certain non-Debtor third parties (*i.e.*, the Third Party Release), (iii) an exculpation provision, and (iv) an injunction provision. As set forth above, all discharges, releases, injunctions, limitations of liability and exculpation provisions in the Plan, including, without limitation, the Debtor Releases, the Third Party Release and all other releases, exculpations and injunctions contained in Article X of the Plan, are fair and equitable, were given for valuable consideration and are in the best interests of the Debtors and all parties in interest, and such provisions shall be effective and binding on all persons and entities, to the extent provided therein, and are incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety.

M. Settlements. The settlements contemplated under the Plan, and the respective terms thereof as set forth in the Plan, are hereby approved pursuant to Bankruptcy Rule 9019 as fair, prudent and reasonable compromises of the controversies and Claims resolved by such settlements, are binding upon all Persons affected thereby, and shall be effectuated in accordance with the terms thereof.

N. Cancellation of Interests. On the Effective Date, all Interests, excluding Interests in FM Coal, LLC, shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan. The Holders of Interests shall not be entitled to receive further notice in these Chapter 11 Cases after such Interests have been cancelled.

O. Cancellation of Existing Securities and Agreements. Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees

related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

P. Executory Contracts and Unexpired Leases. Except as otherwise provided in the Plan or this Confirmation Order, or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired leases (a) that have been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date, (b) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (c) is listed on Exhibit D to the Plan Supplement and is not thereafter removed in any amended Plan Supplement filed prior to the Effective Date.

- i. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases.
- ii. Upon the occurrence of the Effective Date, each Executory Contract or Unexpired Lease listed on Exhibit D to the Plan Supplement and any amendments thereto filed prior to the Effective Date shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Reorganized Debtors or their assignees in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing or providing for its assumption or applicable federal law. This Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. With respect to each such executory contract and unexpired lease listed on Exhibit D to the Plan Supplement, the Debtors have designated a proposed Cure Claim, and the assumption of such executory contracts and unexpired leases may be conditioned upon the disposition of all issues with respect to such Cure Claim.
- iii. Any Claims created by the rejection of Executory Contracts and Unexpired Leases under the Plan must be filed with the Court and served on the Reorganized Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan for which proofs of Claim are not timely filed within that time period shall be forever barred from assertion against the Debtors, the Estates, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.E of the Plan. Unless otherwise ordered by the Court, all such Claims that are timely filed as provided in the Plan shall be treated as General

Unsecured Claims under the Plan and shall be subject to the provisions of Article III therein.

#### **IV. Implementation of the Plan**

Q. Substantive Consolidation. In light of the fact that the substantive consolidation of the Debtors' estates for voting, confirmation and Distribution purpose, as provided in Article IV.A of the Plan, will promote a more equitable distribution of the Debtors' assets, such substantive consolidation set forth in Article IV.A of the Plan is (i) in the best interests of the Debtors' stakeholders, (ii) appropriate under section 105(a) of the Bankruptcy Code, and (iii) hereby approved.

Thus, on the Effective Date, (a) the assets of the Debtors and their Estates will be merged and/or treated as if they are merged into a consolidated Estate for the purpose of making distributions on account of Allowed Claims against the Debtors and their Estates; (b) any Claim filed or asserted against any of the Debtors will be deemed a Claim against the consolidated Estate (and any duplication of claims arising from both primary operative documents and guaranty and/or other secondary obligations, or other Claims for which more than one Debtor may be liable, shall be eliminated and all such Claims against the Debtors shall be treated as a single Claim that eliminates such duplications); (c) any obligation of any of the Debtors or their Estates will be deemed to be an obligation of the consolidated Estate; (d) all guarantees by one of the Debtors in favor of any of the other Debtors shall be eliminated, (e) all guarantees executed by any of the Debtors in favor of any Creditor shall be deemed to be a single obligation, and (f) any and all Intercompany Claims shall be eliminated and not entitled to any distribution under the Plan. For the avoidance of doubt, Holders of Allowed Claims or Allowed Equity Interests who assert identical Claims against or Equity Interests in multiple Debtors shall be entitled to only a single satisfaction of such Claims or Equity Interests.

Furthermore, the substantive consolidation effected pursuant to the Plan, as set forth in Article IV.A of the Plan, shall not (i) affect any Debtors' status as a separate and independent legal entity; (ii) affect the Debtors' organizational structure; (iii) constitute a change of control of any Debtor for any purpose; (iv) cause a merger or consolidation of any legal entities; (v) cause a transfer of any Debtor or Estate assets; (vi) affect any valid, enforceable, and unavoidable Liens (other than any Liens that secure any Claims eliminated as a result of the substantive consolidation and any Liens against any collateral that cease to exist as a result of the substantive consolidation); (vii) cause any Lien to attach to any property of any Debtor or Estate to which such Lien would not attach in the absence of the substantive consolidation provided for in this Article (*e.g.*, holders of floating Liens on particular classes of property shall not attach to property of a Debtor that did not secure such Claim on the Effective Date); (viii) create new collateral with respect to any Lien, charge, or other encumbrance securing the payment or performance of any Claim; (ix) make any Debtor or Estate assets or proceeds thereof available for the satisfaction of any Secured Claim that would not be available for the satisfaction of such Secured Claim in the absence of the substantive consolidation provided for in Article IV.A of the Plan; (x) create any Claim in a Class different from the Class in which such Claim would have been placed in the absence of this substantive consolidation; (xi) change the priority or nature of

any Claim; (xii) affect any Debtor's independent ownership of any assets for any purposes other than the substantive consolidation described herein; or (xiii) result in the substantive consolidation of the Debtors. Except as otherwise expressly provided by or permitted in the Plan, all Debtors shall continue to exist as separate and independent legal entities.

R. Dissolution of the Debtors' Governing Bodies. On the Effective Date, (i) the Debtors' boards of directors and/or trustees, as applicable, shall be dissolved and the then-current officers of the Debtors and members of the boards of directors and/or trustees of the Debtors shall be relieved of their positions and corresponding duties and obligations, and (ii) the New Boards and officers will be appointed pursuant to the Plan.

S. Bankruptcy Administrator Fees. All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors on or before the Effective Date. After the Effective Date, the Reorganized Debtors shall pay quarterly fees to the Bankruptcy Administrator until each of their respective Chapter 11 Cases are closed or converted. For the avoidance of doubt, the transfer of the Litigation Trust Assets to the Litigation Trust shall not result in the incurrence of fees payable to the Bankruptcy Administrator. The Reorganized Debtors shall pay up to \$1,000 of any fees payable to the Bankruptcy Administrator on account of the Distribution of any proceeds of the Litigation Trust Assets. Any other fees payable to the Bankruptcy Administrator on account of the Distribution of any proceeds of the Litigation Trust Assets shall be deducted from such Distribution by the Disbursing Agent.

T. Section 1146(a) Waiver. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and all state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

U. Post-Effective Date Expenses. Except as otherwise specifically provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall pay in Cash the reasonable legal fees and expenses incurred by such Reorganized Debtor after the Effective Date in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and each Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

V. Dissolution of Creditors' Committee. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from or in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention and employment of the Committee's attorneys, financial advisors and other agents shall terminate, except with respect to (i) applications filed under sections 330 and 331 of the

Bankruptcy Code, (ii) any motions seeking the enforcement of the provisions of the Plan or this Confirmation Order, and (iii) any appeals of this Confirmation Order.

W. Preservation of Causes of Action. Except as otherwise expressly provided in the Plan, any and all Causes of Action are preserved under the Plan.

i. Vesting of Causes of Action

(a) Except as otherwise provided in the Plan or herein, in accordance with section 1123(b)(3) of the Bankruptcy Code, any and all Causes of Action that the Debtors and the Estates may hold against any Person or Entity shall vest in the Reorganized Debtors on and after the Effective Date, including, but not limited to, the Causes of Action scheduled in Exhibit E of the Plan Supplement.

(b) Except as otherwise provided in the Plan or herein, after the Effective Date, all privileges, including the attorney-client, work-product and other privileges held by the Debtors and the Estates shall vest in the Reorganized Debtors, as applicable.

(c) Except as otherwise provided in the Plan or herein, after the Effective Date, the Reorganized Debtors shall have the exclusive right to investigate, institute, prosecute (in any court or other tribunal, including, without limitation, in an adversary proceeding relating to one or more of the Chapter 11 Cases in the Bankruptcy Court), abandon, settle or compromise any Causes of Action that were held by the Debtors and the Estates. The Reorganized Debtors' authority to abandon, settle, or compromise such Causes of Action shall be in the Reorganized Debtors' sole discretion and without further order of the Bankruptcy Court, except as otherwise set forth in the Plan.

ii. Preservation of All Causes of Action Not Expressly Identified, Disclosed, Settled or Released

(a) Unless a Cause of Action against a Holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan, in or by operation of any Final Order (including this Confirmation Order) of the Bankruptcy Court, the Debtors and their Estates expressly reserve such Cause of Action for later adjudication or administration by the Reorganized Debtors (including, without limitation, Causes of Action not specifically identified or described in the Plan or elsewhere or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances which may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or this Confirmation Order,



except where such Causes of Action have been released in the Plan (including, without limitation, and for the avoidance of doubt, the releases contained in Article X.B.1 of the Plan) or any other Final Order (including this Confirmation Order). In addition, the Debtors and their Estates expressly reserve the right of the Reorganized Debtors to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or codefendants in such lawsuits. Further, the Debtors and their Estates expressly reserve all privileges, including the attorney-client, work-product and other privileges.

(b) Subject to the immediately preceding paragraph, any Person or Entity to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, or leased equipment or property from the Debtors should assume that any such obligation, transfer, or transaction, including personal injury and other tort claims, may be reviewed by the Reorganized Debtors subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person or Entity has filed a proof of Claim against the Debtors in the Chapter 11 Cases; (ii) the Debtors have Allowed or objected to any such Person or Entity's proof of Claim; (iii) any such Person or Entity's Claim was included in the Schedules; (iv) the Debtors have objected to any such Person or Entity's scheduled Claim; or (v) any such Person or Entity's scheduled Claim has been identified by the Debtors as disputed, contingent or unliquidated.

X. Post-Effective Date Notice Pursuant to Bankruptcy Rule 2002. Because certain Persons and Entities may not desire to continue to receive notices after the Effective Date, the Plan provides for the establishment of a Post-Effective Date Notice List. Persons and Entities on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under the Plan (as described in the Plan). Any Person or Entity desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Reorganized Debtors and their counsel. On or before sixty (60) days after the Effective Date, the Reorganized Debtors shall compile a list of all Persons on the Post-Effective Date Notice List and file such list with the Bankruptcy Court. Those parties set forth in Article XII.L of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request. Notwithstanding the foregoing, Post-Effective Date notices and pleadings shall be served on all parties whose rights are directly affected by such notices or pleadings, even if such parties did not submit a request to be included on the Post- Effective Date Notice List. Notice given in accordance with the foregoing procedures shall be deemed adequate pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

Y. Revisions to the Claims Register: The Claims Agent is hereby authorized and directed to make such revisions to the official claims register as are necessary to reflect the relief granted in this Confirmation Order.

Z. Authorization to Consummate. The Debtors are authorized to consummate the Plan at any time after the entry of the Confirmation Order subject to satisfaction or waiver (by the required parties as set forth in the Plan) of the conditions precedent to the Effective Date set forth in Article X.A of the Plan.

AA. Incorporation. The failure to specifically include any particular provision of the Plan in this Confirmation Order will not diminish the effectiveness of such provision, it being the intent of the Court that the Plan is confirmed in its entirety and incorporated herein by its reference.

BB. Notice of Entry of the Confirmation Order and the Occurrence of the Effective Date. The Debtors and/or their authorized agent shall serve notice of the entry of this Confirmation Order and the occurrence of the Effective Date (the “Notice of Effective Date”), substantially in the form attached hereto as Exhibit B, which form is hereby approved, on all Creditors and parties in interest in the Chapter 11 Cases within five (5) business days after the occurrence of the Effective Date. Notwithstanding the foregoing, no service of the Notice of Effective Date shall be required to be made upon any Person to whom the Debtors mailed a (a) notice of the meeting of Creditors under section 341 of the Bankruptcy Code, (b) notice of the bar date for filing Proofs of Claim, or (c) a solicitation package or other solicitation-related notice and, in each instance, received such notice or materials returned by the United States Postal Service marked “undeliverable as addressed,” “moved – left no forwarding address,” “forwarding order expired” or similar marking or reason, unless the Debtors have been informed in writing by such person of that Person’s new address. Service of the Notice of Effective Date described herein in the time and manner set forth herein shall constitute due, adequate and sufficient notice, and no other or further notice shall be necessary.

CC. Surety Bond Obligations. Notwithstanding any other provisions of the Plan, this Confirmation Order or any other order of the Bankruptcy Court, on the Effective Date, all rights and obligations of any party related to (i) the Debtors’ current surety bonds issued by a surety provider (each, a “Surety” and collectively, the “Surety Bonds”) and maintained in the ordinary course of business; (ii) any surety payment and indemnity agreements, setting forth the Surety’s rights against the Debtors, and the Debtors’ obligations, among other things, to pay and indemnify the Surety from any loss, cost, or expense that the Surety may incur, in each case, on account of the issuance of any surety bonds on behalf of the Debtors; (iii) any Surety collateral; (iv) Surety collateral agreements governing collateral, if any, in connection with the Debtors’ surety bonds; and/or (v) ordinary course premium payments to the Surety for the Debtors’ surety bonds (collectively, the “Surety Bond Program” and the Debtors’ obligations arising therefrom, the “Surety Bond Obligations”) shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect and are not discharged, enjoined, impaired or released by the Plan in any way. For the avoidance of doubt, nothing in the Plan, this Confirmation Order or other agreements between the Debtors and third parties, including, without limitation, any

exculpation, release, injunction, exclusions and discharge provision of the Plan, including, without limitation, any of those provisions contained in Article X of the Plan, shall bar, alter, limit, impair, release or modify or enjoin any Surety Bond Obligations. The Sureties are deemed to have opted out of any release, exculpation and injunction provisions of the Plan that apply or could be interpreted to apply to the Sureties, their rights or claims in any respect, and are otherwise not Releasing Parties under the Plan. The Surety Bond Program and all Surety Bond Obligations related thereto shall be treated by the Reorganized Debtors and the Surety in the ordinary course of business as if the Chapter 11 Cases had not been commenced; and in furtherance thereof, in the event that any of the Surety Bond Obligations cease to be in effect upon the Effective Date for reasons other than their expiration or termination in accordance with the terms of the applicable agreements, the Reorganized Debtors and the applicable Surety shall execute the documents that are necessary to reinstitute such Surety Bond Obligations, including, without limitation, the indemnity obligations thereunder, as such Surety Bond Obligations were in effect immediately prior to the Effective Date; *provided, however*, that nothing in the foregoing shall be deemed to alter, limit, modify or expand any such Surety Bond Obligations. For the avoidance of any doubt, with a reservation of rights to all parties, and only to the extent applicable, any agreements related to the Surety Bond Program are assumed by the Debtors and the Reorganized Debtors pursuant to section 365 of the Bankruptcy Code upon the Effective Date. Nothing in the Plan or this paragraph shall affect in any way the Surety's rights against any non-Debtor, or any non-Debtor's rights against the Surety, including under the Surety Bond Program or with regard to the Surety Bond Obligations.

DD. Formation of the Litigation Trust. The form of the Litigation Trust Agreement attached to the Plan Supplement is hereby approved, and the Debtors are authorized to execute and to take any action necessary or appropriate to implement, effectuate or consummate the Litigation Trust Agreement.

EE. Appointment of Litigation Trustee. Brian Walding is hereby appointed as the Litigation Trustee.

## **V. Miscellaneous Provisions**

FF. Federal Lease Interests. The United States Department of the Interior (the "Interior") consents to the Debtors and Reorganized Debtors' assumption of the Debtors' interests in their Federal Lease (as defined below). Nothing in the Plan, Plan Supplement, or Confirmation Order shall be construed as a compromise or settlement of any claim, interest or cause of action of the United States under the Federal Lease or affect the treatment of any interest in contracts, leases, covenants, operating rights agreements, rights-of-use and easement, and rights-of-way or other interests or agreements (a) with the federal government; or (b) involving federal land or minerals (collectively, the "Federal Lease"). Notwithstanding anything to the contrary in the Plan, Plan Supplement, or Confirmation Order, upon the date of entry of the Confirmation Order, the Debtors shall assume all of, and shall not abandon or otherwise reject, their current or former interests in the Federal Lease and none of the Plan, Plan Supplement, or Confirmation Order shall assign or transfer any of the Debtors' interests in their Federal Lease to any entity other than to the Reorganized Debtors. On the Effective Date, the Reorganized Debtors shall

assume and succeed to all financial assurance, bonding, maintenance and monitoring, reclamation, decommissioning, plugging and abandonment and other obligations related to the Federal Lease assumed pursuant to the Plan, Plan Supplement, or Confirmation Order. Nothing in the Plan, Plan Supplement, or Confirmation Order shall be interpreted to release the Debtors or the Reorganized Debtors from any reclamation, plugging and abandonment, or other operational requirement under applicable Federal laws or to address, or otherwise affect, any decommissioning obligations, financial assurance or other regulatory or contractual requirements under the Federal Lease, as determined by the United States, that must be met by the Debtors, the Reorganized Debtors, or their successors and assigns with respect to the Federal Lease. Notwithstanding anything to the contrary in the Plan, Plan Supplement, or Confirmation Order or in any notices of proposed Cure Claim contemplated by, or associated with, the Plan, Plan Supplement, or Confirmation Order, any amounts owing under the Federal Lease shall be promptly paid when due in the ordinary course subject to applicable non-bankruptcy laws, regulations and administrative procedures. If the Debtors or the Reorganized Debtors, as applicable, do not timely pay amounts owing on account of the Federal Lease when due in the ordinary course pursuant to applicable non-bankruptcy laws, regulations and administrative procedures, the Debtors and/or the Reorganized Debtors, as applicable, will pay late payment charges on the untimely payment at the rate established in 30 C.F.R. § 1218.54 to the fullest extent permitted by applicable non-bankruptcy laws and regulations. *For the avoidance of any doubt*, and notwithstanding anything to the contrary in the Plan, Plan Supplement, or Confirmation Order, the assumption of any the Debtors' interests in the Federal Lease shall not release any monetary or non-monetary obligations that are owing by either the Debtors and/or the Reorganized Debtors, as applicable, under applicable laws and regulations on account of such Federal Lease. Notwithstanding any provision to the contrary in the Plan, Plan Supplement, or Confirmation Order, the United States and/or its respective delegees will retain, and have, the right to audit and/or perform any compliance review and, if appropriate, collect from the Debtors, the Reorganized Debtors, and/or their successor(s) and assign(s) under the Federal Lease, any monies that the Debtors or the Reorganized Debtors are later determined to owe for periods prior to the assumption of the Federal Lease without those rights being adversely affected by these bankruptcy proceedings. Such rights shall be preserved in full as if this bankruptcy had not occurred. The Debtors, the Reorganized Debtors, and their successors and assigns, as applicable, will each individually retain all defenses and/or rights, other than defenses and/or rights arising from these bankruptcy proceedings, to challenge any such determination: *provided, however*, that any such challenge, including any challenge associated with the Chapter 11 Cases, must be raised in the United States' administrative review process leading to a final agency determination by Interior. To the extent that anything in the Plan, Plan Supplement, or Confirmation Order conflict with this paragraph, the terms of this paragraph shall expressly supersede and control.

GG. Reservation of Governmental Units. As to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit"), nothing in the Plan, the Plan Supplement, or the Confirmation Order shall expand the scope of discharge, release, or injunction to which the Debtors are entitled under the Bankruptcy Code, if any. The discharge, release, and injunction provisions contained in the Plan, the Plan Supplement, and the Confirmation Order are not intended and shall not be construed to bar any Governmental Unit from,

subsequent to the Confirmation Order, pursuing any actions, including but not limited to any police or regulatory action, against anyone.

Notwithstanding anything contained in the Plan, the Plan Supplement, or the Confirmation Order to the contrary, nothing in the Plan, the Plan Supplement, or the Confirmation Order shall discharge, release, impair, or otherwise preclude: (a) any liability to any Governmental Unit that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (b) any liability to any Governmental Unit arising after the Confirmation Date; (c) any valid right of setoff or recoupment of any Governmental Unit against any of the Debtors; or (d) any liability or obligation to, or any Claim or Cause of Action by, a Governmental Unit under police or regulatory law or environmental law to which any entity is subject as the owner, lessor, lessee, permittee, controller, or operator of real property or a mine (including any idled, closed, and inactive mines, associated impoundments, disposal areas and wells, and treatment plants) or other facility after the Effective Date, including, but not limited to, liability for reclamation; restoration; dam safety; water treatment; stream and wetland mitigation; underground injection control; contamination; pollution; hazardous or toxic substances; mine drainage; water supply protection; mine subsidence remediation; protection of the environment; and impacts on human health, safety, and welfare. Nor shall anything in the Confirmation Order, the Plan, or the Plan Supplement: (a) enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in this paragraph, or (b) divest any court, commission, or tribunal of jurisdiction from resolving any matters relating to the liabilities and/or claims set forth in this paragraph, or (c) confer in the Bankruptcy Court jurisdiction over any matter as to which it would not have jurisdiction under the Bankruptcy Code.

Moreover, nothing in the Confirmation Order, the Plan, or the Plan Supplement shall release or exculpate any non-Debtor, including any Released Parties and/or Exculpated Parties, from any liability to any Governmental Unit, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Released Parties and/or Exculpated Parties, nor shall anything in the Confirmation Order, the Plan, or the Plan Supplement enjoin any Governmental Unit from bringing any claim, suit, action, or other proceeding against the Released Parties and/or Exculpated Parties for any liability whatsoever.

Nothing contained in the Plan, the Plan Supplement, or the Confirmation Order shall be deemed to determine the tax liability of any person or entity, including but not limited to the Debtors, nor shall the Plan, the Plan Supplement, or the Confirmation Order be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of the Plan, nor shall anything in the Plan, the Plan Supplement, or the Confirmation Order be deemed to have conferred jurisdiction upon the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under 11 U.S.C. § 505.

HH. Warrior Met Settlement. The settlement (the “WM Settlement”) between the Debtors and Warrior Met Coal Land, LLC (“Warrior Met”) is hereby approved. The Debtors are authorized to execute the Claim Compromise Agreement attached hereto as

**Exhibit C.**<sup>7</sup> The WM Settlement is in the best interests of the Debtors, the Debtors' estates, and the holders of Claims and Equity Interests. The WM Settlement is fair, equitable, and falls above the lowest point in the range of reasonableness. The WM Settlement is the product of the sound exercise of the Debtors' business judgment, and the arms-length, good faith negotiations between the Debtors and Warrior Met, each of whom were represented by counsel. Absent the WM Settlement, the Debtors will expend substantial litigation expenses with an uncertain probability of success.

II. **Nelson Brothers Settlement.** The settlement (the "**NB Settlement**") between the Debtors and Nelson Brothers, LLC ("**NB**") is hereby approved. The Debtors are authorized to execute the Claim Compromise Agreement attached hereto as **Exhibit D.** The NB Settlement is in the best interests of the Debtors, the Debtors' estates, and the holders of Claims and Equity Interests. The NB Settlement is fair, equitable, and falls above the lowest point in the range of reasonableness. The NB Settlement is the product of the sound exercise of the Debtors' business judgment, and the arms-length, good faith negotiations between the Debtors and NB, each of whom were represented by counsel. Absent the NB Settlement, the Debtors will expend substantial litigation expenses with an uncertain probability of success. Notwithstanding anything to contrary contained in the Plan or this Order, all Chapter 5 Actions that the Debtors hold against NB shall be released pursuant to the NB Settlement and shall not be retained by the Debtors or Reorganized Debtors as Retained Chapter 5 Actions.

JJ. **Dyno Nobel Agreement.** No provision of this Order impacts or alters creditor Dyno Nobel, Inc.'s ability to assert any defenses available to it at law or equity as to any nonbankruptcy litigation involving Dyno Nobel and any Debtor entity, specifically including *Dyno Nobel, Inc. v. MS&R Equipment Co., Inc., et al.*, Case No. 2:19-cv-01782 (N.D. Ala.) (the "**Federal Court Litigation**") and *Cook v. Dyno Nobel, et al.*, Case No. 64-CV-2020-900142 (Walker County Circuit Court) (the "**State Court Litigation**"). For the avoidance of doubt, Dyno Nobel's affirmative claims against the Debtors are subject to the discharge and injunction provisions of the Debtors' confirmed plan and accordingly, Dyno Nobel will be forever barred and enjoined from seeking any monetary or affirmative relief from the Debtors whatsoever in the Federal Court or State Court Litigation or otherwise; however, Dyno Nobel is not barred from asserting those claims as defenses, credits or set-offs in either the Federal Court or State Court Litigation.

KK. **Modification of Plan.** Pursuant to Article XII.A of the Plan, after the entry of this Confirmation Order, the Debtors or Reorganized Debtors may, upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order in such manner as may be necessary to carry out the purpose and intent of the Plan, so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however*, that prior

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<sup>7</sup> The Surface Coal Mining Lease (the "**Coal Mining Lease**") attached to the Claim Compromise Agreement as Exhibit 3 contains sensitive and proprietary information that has been redacted. Any party wanting to review the redacted portions of the Coal Mining Lease should contact counsel for the Debtors and/or Warrior Met. The Debtors and Warrior Met reserve the right to file a motion to seal the Coal Mining Lease.

notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

LL. Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the matters set forth in Article XI of the Plan, which provisions are incorporated herein by reference.

MM. Confirmation Order Controls. To the extent that the terms of this Confirmation Order are inconsistent with the terms set forth in the Plan or any of the exhibits thereto, then the terms of this Confirmation Order shall govern and control.

NN. Final Order. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d) and 7062, or any other applicable Bankruptcy Rule, the Court finds that there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

Dated: March 10, 2021

/s/ Tamara O. Mitchell  
TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Plan of Reorganization**



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

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**SECOND AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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*Counsel to the Debtors*

Dated: March [\_\_], 2021

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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: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinergy of Alabama, Inc. (3009).

# TABLE OF CONTENTS

<b>ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION .....</b>	<b>1</b>
A.    DEFINED TERMS .....	1
B.    RULES OF INTERPRETATION .....	12
<b>ARTICLE II. ADMINISTRATIVE AND PRIORITY CLAIMS .....</b>	<b>13</b>
A.    ESTABLISHMENT OF ADMINISTRATIVE CLAIMS BAR DATE .....	13
B.    ADMINISTRATIVE CLAIMS .....	14
C.    PROFESSIONAL COMPENSATION AND REIMBURSEMENT CLAIMS .....	14
D.    PRIORITY TAX CLAIMS .....	15
<b>ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS.....</b>	<b>15</b>
A.    SUMMARY .....	15
B.    CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS .....	16
1. <i>Other Secured Claims (Class 1)</i> .....	17
2. <i>Other Priority Claims (Class 2)</i> .....	17
3. <i>Credit Agreement Secured Claims (Class 3)</i> .....	18
4. <i>General Unsecured Claims (Class 4)</i> .....	18
5. <i>Intercompany Claims (Class 5)</i> .....	18
6. <i>Intercompany Equity Interests (Class 6)</i> .....	19
7. <i>FM Equity Interests (Class 7)</i> .....	19
C.    OBJECTIONS AND DEFENSES .....	19
D.    RELEASE OF LIENS.....	20
E.    SURCHARGE UNDER SECTION 506(c) OF THE BANKRUPTCY CODE.....	20
F.    ESTIMATION OF CLAIMS.....	20
G.    DISTRIBUTION CAP .....	20
H.    SPECIAL PROVISION GOVERNING UNIMPAIRED CLAIMS.....	21
I.    ELIMINATION OF VACANT CLASSES.....	21
J.    PRESUMED ACCEPTANCE BY VOTING CLASSES THAT DO NOT VOTE.....	21
K.    NONCONSENSUAL CONFIRMATION .....	21
<b>ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN.....</b>	<b>21</b>
A.    SUBSTANTIVE CONSOLIDATION FOR VOTING AND DISTRIBUTION PURPOSES .....	21
B.    RESTRUCTURING TRANSACTIONS .....	23
C.    SOURCES OF CONSIDERATION FOR DISTRIBUTIONS UNDER THE PLAN .....	23
D.    VESTING OF ASSETS .....	24
E.    CONTINUED CORPORATE EXISTENCE .....	24
F.    CANCELLATION OF EXISTING SECURITIES AND AGREEMENTS.....	24
G.    GOVERNING BODIES .....	25
H.    EXEMPTION FROM CERTAIN TAXES AND FEES.....	25
I.    EXEMPTION FROM SECURITIES LAWS.....	25
J.    OPERATIONS OF THE DEBTORS BETWEEN THE CONFIRMATION DATE AND THE EFFECTIVE DATE .....	25
K.    AUTOMATIC STAY.....	26
L.    THE COMMITTEE.....	26
M.    PRESERVATION OF CAUSES OF ACTION.....	26
N.    A&R CREDIT DOCUMENTS.....	27
O.    AUTHORIZATION, ISSUANCE, AND DELIVERY OF NEW FM UNITS.....	27
<b>ARTICLE V. PROVISIONS GOVERNING DISTRIBUTIONS .....</b>	<b>27</b>
A.    DISTRIBUTION DATES .....	27
B.    DISBURSING AGENTS.....	28

C.	RECORD DATE FOR DISTRIBUTIONS .....	28
D.	DELIVERY OF DISTRIBUTIONS .....	29
E.	UNDELIVERABLE AND UNCLAIMED DISTRIBUTIONS .....	29
F.	MANNER OF CASH PAYMENTS UNDER THE PLAN .....	29
G.	COMPLIANCE WITH TAX REQUIREMENTS.....	29
H.	INTEREST ON CLAIMS .....	30
I.	SETOFF AND RECOUPMENT .....	30
J.	DE MINIMIS DISTRIBUTIONS; CHARITABLE DONATION .....	30
K.	STATUTORY FEES.....	31
L.	NO DISTRIBUTIONS ON LATE-FILED CLAIMS .....	31
M.	CLAIMS PAID OR PAYABLE BY THIRD PARTIES .....	31
N.	DISTRIBUTIONS FREE AND CLEAR .....	32
O.	NOT SECURITIES; SECTION 1145 EXEMPTION .....	32
<b>ARTICLE VI. DISPUTED CLAIMS AND CLAIM OBJECTIONS .....</b>		<b>32</b>
A.	PAYMENTS AND DISTRIBUTIONS ON DISPUTED CLAIMS AND CLAIMS THAT HAVE OTHERWISE NOT BEEN ALLOWED .....	32
B.	DISPUTED CLAIMS RESERVE.....	32
C.	CLAIM OBJECTIONS.....	33
D.	OBJECTION DEADLINE .....	33
E.	DISALLOWANCE OF UNTIMELY CLAIMS .....	33
F.	ALLOWANCE OF CLAIMS .....	34
<b>ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS .....</b>		<b>34</b>
A.	ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	34
B.	CLAIMS BASED ON REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	35
C.	OBJECTIONS TO ASSUMPTION AND ASSIGNMENT AND PROPOSED CURE CLAIMS.....	35
D.	LIMITED EXTENSION OF TIME TO ASSUME OR REJECT .....	36
E.	INDEMNIFICATION AND REIMBURSEMENT .....	36
F.	RESERVATION OF RIGHTS .....	37
<b>ARTICLE VIII. LITIGATION TRUST .....</b>		<b>37</b>
A.	LITIGATION TRUST AGREEMENT .....	37
B.	LITIGATION TRUST ASSETS.....	37
C.	PRESERVATION OF PRIVILEGE AND DEFENSES .....	37
<b>ARTICLE IX. CONDITIONS PRECEDENT .....</b>		<b>38</b>
A.	CONDITIONS PRECEDENT .....	38
B.	WAIVER .....	38
C.	EFFECT OF FAILURE OF CONDITIONS .....	38
D.	SUBSTANTIAL CONSUMMATION .....	39
E.	NOTICE OF EFFECTIVE DATE.....	39
<b>ARTICLE X. INDEMNIFICATION, RELEASE, INJUNCTIVE, AND RELATED PROVISIONS .....</b>		<b>39</b>
A.	TERM OF BANKRUPTCY INJUNCTION OR STAY .....	39
B.	DISCHARGE OF CLAIMS AND TERMINATION OF INTERESTS.....	39
C.	RELEASES.....	40
D.	EXCULPATION .....	41
E.	INJUNCTIVE PROVISIONS .....	41
F.	RELEASES OF LIENS AND CANCELLATION OF DOCUMENTS .....	42
<b>ARTICLE XI. RETENTION OF JURISDICTION.....</b>		<b>42</b>
<b>ARTICLE XII. MISCELLANEOUS PROVISIONS.....</b>		<b>45</b>
A.	MODIFICATION OF PLAN .....	45

B.	EXTENSION OF TIME.....	45
C.	POST-EFFECTIVE DATE NOTICE LIST .....	45
D.	REVOCATION OF THE PLAN .....	46
E.	BINDING EFFECT .....	46
F.	SUCCESSORS AND ASSIGNS .....	46
G.	GOVERNING LAW .....	46
H.	RESERVATION OF RIGHTS .....	46
I.	ARTICLE 1146 EXEMPTION .....	46
J.	SECTION 1125(e) GOOD FAITH COMPLIANCE.....	47
K.	FURTHER ASSURANCES .....	47
L.	SERVICE OF DOCUMENTS .....	47
M.	FILING OF ADDITIONAL DOCUMENTS .....	48
N.	SEVERABILITY.....	48
O.	ENTIRE AGREEMENT .....	48
P.	IMMEDIATE BINDING EFFECT .....	48

## **INTRODUCTION**<sup>1</sup>

The Debtors hereby propose this Plan for the resolution of Claims against and Equity Interests in each of the Debtors pursuant to chapter 11 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement, including the exhibits thereto, for an overview of the Debtors' history, business, properties, results of operations, and projections for future operations and risk factors, together with a summary and analysis of the Plan. **ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO CONSULT THE DISCLOSURE STATEMENT AND TO READ THE PLAN CAREFULLY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.** Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation.

The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. The Plan provides for the substantive consolidation of any of the Debtors' Estates and treats the Debtors as comprising a single Estate solely for the purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan with respect to Allowed Claims. Accordingly, voting on the Plan shall be conducted and counted on a consolidated basis.

## **ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION**

### **A. Defined Terms**

Unless the context requires, the following terms shall have the following meanings when used in capitalized form in this Plan:

1. **"A&R Credit Agreement"** means that certain amended and restated credit agreement to be entered into on the Effective Date among the Reorganized Debtors, the Lenders, and the Administrative and Collateral Agent.

2. **"A&R Credit Documents"** means, collectively, the A&R Credit Agreement and any related amendments, restatements, supplements, ancillary agreements, pledges, collateral agreements, mortgages, deeds of trust, and other documents or instruments to be executed or delivered in connection with the A&R Credit Agreement, which shall be in form and substance acceptable to the Debtors, the Administrative and Collateral Agent, and the Lenders.

3. **"A&R Term Loans"** means, collectively, the Lenders' A Loan, the Lenders' B Loan, and the Lenders' C Loan.

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<sup>1</sup> Capitalized terms used in this Introduction have the meanings ascribed to them in Article I of the Plan.

4. **“Accrued Professional Compensation”** means, at any given moment, all accrued fees and expenses (including, without limitation, fees or expenses Allowed or awarded by a Final Order of the Bankruptcy Court), whether paid or unpaid, (i) for legal, financial advisory, accounting, liquidation, and other professional services, and reimbursement of expenses, of Professionals that are awardable and allowable under sections 328, 330(a), or 331 of the Bankruptcy Code and rendered prior to the Effective Date, or (ii) for which compensation and reimbursement is awardable and allowable under sections 503(b)(3) through 503(b)(6) of the Bankruptcy Code, including in connection with (a) applications for allowance of fees and expenses prepared and/or filed in accordance with the Bankruptcy Code and Bankruptcy Rules before or after the Effective Date, (b) motions seeking the enforcement of the provisions of the Plan or Confirmation Order, by all Professionals in the Chapter 11 Cases that the Bankruptcy Court has not denied by a Final Order, and (c) applications for allowance of Administrative Claims arising under sections 503(b)(2) or 503(b)(3) through 503(b)(6) of the Bankruptcy Code. Accrued Professional Compensation also includes all accrued fees and expenses of the Claims Agent as of the Effective Date. To the extent any Professional has voluntarily reduced monthly or interim or final applications for fees and expenses or the Bankruptcy Court or any higher court denies by a Final Order any amount of a Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.

5. **“Administrative and Collateral Agent”** means KeyBank National Association in its capacity as administrative agent and collateral agent under the Credit Agreement or A&R Credit Agreement (as applicable).

6. **“Administrative Claims”** means Claims that have been filed timely and properly filed before the Administrative Claims Bar Date set forth in the Confirmation Order (except as otherwise provided by a separate order of the Bankruptcy Court) for costs and expenses of administration under sections 503(b) (other than section 503(b)(9)), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors. Any fees or charges assessed against the Estates under section 1930 of chapter 123 of title 28 of the United States Code are excluded from the definition of Administrative Claims and shall be paid in accordance with Article V.K of this Plan. Notwithstanding anything to the contrary in this Plan, the filing of an Administrative Claim shall not be required in order to receive payment for any tax liability described in sections 503(b)(1)(B) and (C) in accordance with section 503(b)(1)(D) of the Bankruptcy Code.

7. **“Administrative Claims Bar Date”** means the first Business Day that is thirty (30) days after the Effective Date and is the deadline for Holders of Administrative Claims to file a request with the Bankruptcy Court for payment of an Administrative Claim in the manner indicated in Article II of this Plan. The Administrative Claims Bar Date shall not apply to Claims by Professionals or Claims that assert priority under section 503(b)(9) of the Bankruptcy Code.

8. **“Allowed”** means, with respect to any Claim against the Debtors, except as otherwise provided in this Plan:

- a. a Claim that both (i) has been scheduled by the Debtors in their Schedules as other than disputed, contingent, or unliquidated and (ii) has not been objected to on or before the Claims Objection Bar Date;
- b. a liquidated, mature and fixed Claim evidenced by a valid Proof of Claim filed in the Chapter 11 Cases by the applicable Bar Date that either (i) has not been objected to on or before the Claims Objection Bar Date or (ii) has been allowed by a Final Order of the Bankruptcy Court;
- c. a Claim that is allowed: (i) in any stipulation or written agreement with the Debtors or Reorganized Debtors (as applicable) of the amount and nature of Claim that is approved by Final Order of the Bankruptcy Court; or (ii) by any contract, instrument, or other agreement entered into or assumed in connection with this Plan;
- d. a Claim that is allowed by this Plan upon the Effective Date of the Plan; or
- e. is not a Disputed Claim.

9. **“Amended Schedules Bar Date”** means the later of (a) the General Bar Date or Governmental Bar Date (as applicable), or (b) 5:00 p.m., prevailing Central Time, on the date that is forty-five (45) days from the date on which the Debtors mail notice of the amendment to the Schedules, as established in the Bar Date Order.

10. **“Bankruptcy Administrator”** means the Bankruptcy Administrator for the Northern District of Alabama.

11. **“Bankruptcy Code”** means sections 101 *et seq.* of title 11 of the United States Code and applicable portions of titles 18 and 28 of the United States Code.

12. **“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, having jurisdiction over the Chapter 11 Cases and, to the extent of any withdrawal of the reference made pursuant to section 157 of title 28 of the United States Code, the unit of such District Court pursuant to section 151 of title 28 of the United States Code or any other court exercising competent jurisdiction over the parties and subject matter or res.

13. **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of title 28 of the United States Code, and local rules and standing orders of the Bankruptcy Court, as the context may require, as may be amended from time to time.

14. **“Bar Date”** means, collectively or individually, as applicable, (i) the General Bar Date, (ii) the Governmental Bar Date, (iii) the Rejection Damages Bar Date, (iv) the Amended Schedules Bar Date, (v) the Administrative Claims Bar Date, and (vi) any other deadline

established for filing a Proof of Claim or claim payment request in the Chapter 11 Cases by this Plan or a Final Order.

15. “**Bar Date Order**” means the order of the Bankruptcy Court dated October 26, 2020 [Dkt. No. 208], establishing the General Bar Date, the Governmental Bar Date, the Rejection Damages Bar Date, and the Amended Schedules Bar Date, with only those exceptions permitted thereby.

16. “**Business Day**” means any day, other than a Saturday, Sunday or “legal holiday” (as that term is defined in Bankruptcy Rule 9006(a)).

17. “**Cash**” means cash and cash equivalents in certified or immediately available U.S. funds, including, but not limited to, bank deposits, checks, and similar items.

18. “**Causes of Action**” means any and all Claims, actions, causes of action, choses in action, rights, demands, suits, liabilities, encumbrances, lawsuits, adverse consequences, debts, damages, dues, sums of money, accounts, reckonings, deficiencies, bonds, bills, disbursements, expenses, losses, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, restraints, injunctions, remedies (legal, equitable, mixed, or otherwise), rights of setoff, rights of recoupment, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims (including those of the Debtors and/or the Estates), subordination rights, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, and whether held in a personal or representative capacity, that are or may be pending as of the Effective Date or instituted thereafter against any Entity, based in law or equity (or mixed law and equity), including under the Bankruptcy Code or any under any other federal or state statute, whether direct, indirect, derivative, or otherwise, and whether asserted or unasserted as of the Effective Date.

19. “**Chapter 5 Actions**” means any and all Claims arising under chapter 5 of the Bankruptcy Code and any and all fraudulent conveyance, voidable preference, or avoidable transfer Claims that, in any instance, could be brought under state or federal law.

20. “**Chapter 11 Cases**” means the chapter 11 cases commenced when the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court, which Chapter 11 Cases are jointly administered.

21. “**Claim**” has the meaning as defined in section 101(5) of the Bankruptcy Code.

22. “**Claims Agent**” means Donlin, Recano & Company, Inc., the Bankruptcy Court-appointed claims and noticing agent in the Chapter 11 Cases.

23. “**Claims Objection Bar Date**” means the date by which objections to Claims must be filed, which shall be one hundred eighty (180) days after the Effective Date; *provided, however*, that the Reorganized Debtors may seek extensions of this date from the Bankruptcy Court, with notice only to the Post-Effective Date Notice List.



24. “***Class***” means a category of Holders of Claims or Equity Interests as set forth in Article III in this Plan and under section 1122(a) of the Bankruptcy Code.

25. “***Committee***” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases by the Bankruptcy Administrator.

26. “***Confirmation Date***” means the date on which the Confirmation Order is entered by the Bankruptcy Court.

27. “***Confirmation Hearing***” means the hearing before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order, as such hearing may be adjourned or continued from time to time.

28. “***Confirmation Order***” means the order of the Bankruptcy Court (including all exhibits and schedules thereto) confirming the Plan under section 1129 of the Bankruptcy Code, which order shall be acceptable to the Debtors in their sole discretion.

29. “***Credit Agreement***” means that certain Credit Agreement, dated as of September 1, 2017 and as amended, restated, supplemented, or otherwise modified from time to time, among the Debtors, the Lenders, and KeyBank National Association, as Administrative Agent, Collateral Agent, Swing Line Lender, and Issuing Lender.

30. “***Credit Agreement Claims***” means any and all claims of the “Lenders” under the Credit Agreement.

31. “***Credit Agreement Deficiency Claims***” means the portions of the Credit Agreement Claims that are unsecured pursuant to section 506(a) of the Bankruptcy Code, which shall be Allowed for all purposes under this Plan in the amount of the Credit Agreement Claims less the Credit Agreement Secured Claims. As of the Effective Date, the Credit Agreement Deficiency Claims shall be Allowed in the amount of \$36,630,840.12.

32. “***Credit Agreement Secured Claims***” means the portion of the Credit Agreement Claims that are Secured Claims, which shall be Allowed for all purposes under this Plan. As of the Effective Date, the Credit Agreement Secured Claims shall be Allowed in the amount of \$28 million.

33. “***Creditor***” has the meaning in section 101(10) of the Bankruptcy Code.

34. “***Cure Claim***” means a monetary Claim based upon the Debtors’ defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtors pursuant to section 365 of the Bankruptcy Code.

35. “***Debtor Releasing Parties***” has the meaning given to it under Article X.C.1 of this Plan.

36. “**Debtors**” means the debtors and debtors in possession in the Chapter 11 Cases, and where applicable, the Estates thereof.

37. “**Disbursing Agent**” means the Entity empowered and authorized to make all Distributions under Article V.B of this Plan.

38. “**Disclosure Statement**” means that certain *Disclosure Statement for the First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, including, without limitation, all exhibits and schedules thereto, as amended, supplemented, or modified from time to time, filed contemporaneously herewith.

39. “**Disputed**” means any Claim: (a) listed on the Schedules as unliquidated, disputed, or contingent, irrespective of whether a Proof of Claim has been filed with respect to such Claim; (b) as to which the Debtors, the Reorganized Debtors, or any other party in interest, has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, or this Plan, which has not been withdrawn or determined by a Final Order; (c) any Claim filed or listed in the Schedules for which the Claim Objection Bar Date has not yet passed; or (d) otherwise disputed in accordance with applicable bankruptcy or insolvency law, provided such dispute has not been withdrawn or determined by a Final Order.

40. “**Disputed Claims Reserve**” means the reserve created and funded in compliance with Article VI.B of this Plan.

41. “**Distributions**” means the distributions of Cash or any other form of consideration to be made in accordance with the Plan.

42. “**Effective Date**” means a Business Day selected by the Debtors that is on or after the date by which all conditions precedent specified in Article IX of this Plan have been satisfied or waived.

43. “**Entity**” has the meaning set forth in section 101(15) of the Bankruptcy Code and shall include any Person as such term is defined in section 101(41) of the Bankruptcy Code.

44. “**Equity Interest**” means any equity interest in a Debtor that existed immediately prior to the Petition Date.

45. “**ESM**” means Eagle Specialty Materials, LLC.

46. “**ESM Claims**” means all Claims of ESM, which Claims shall be deemed waived and shall not be entitled to participate in any Distribution under this Plan.

47. “**Estates**” means the Debtors’ estates created under section 541 of the Bankruptcy Code upon the filing of the Chapter 11 Cases.

48. “**Exculpated Parties**” means each of (a) the Debtors; (b) the Committee and each of its members, solely in their capacities as such; (c) the Reorganized Debtors, solely if acting in

a capacity as fiduciaries for the Estates; and (d) with respect to each of the foregoing entities in clauses (a) through (c), each of their current and former affiliates, solely with respect to conduct from the Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates; and (e) with respect to each of the foregoing entities in clauses (a) through (d) and solely with respect to conduct from the Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates, such entities' current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

49. ***"Final Cash Collateral Order"*** means the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Granting Related Relief* [Dkt. No. 191].

50. ***"Final Decree"*** means the decree contemplated under Bankruptcy Rule 3022.

51. ***"Final Order"*** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to file an appeal, motion for reconsideration or rehearing, or request for a stay has expired with no appeal, motion for reconsideration or rehearing, or request for a stay having been timely filed, without giving effect to any motion that may be filed under Rule 7060; *provided, however*, that the Confirmation Order shall be deemed a Final Order upon its entry unless it has been stayed.

52. ***"FM"*** means FM Coal, LLC.

53. ***"FM Equity Interests"*** means any Equity Interest held by any Entity in FM.

54. ***"General Bar Date"*** means November 30, 2020 at 5:00 p.m. prevailing Central Time, as established in the Bar Date Order.

55. ***"General Unsecured Claims"*** means Claims against any Debtor that are not Administrative Claims, Accrued Professional Compensation Claims, Priority Tax Claims, Credit Agreement Secured Claims, Other Secured Claims, Other Priority Claims, Intercompany Claims, Intercompany Equity Interests, or FM Equity Interests. For the avoidance of doubt, the Credit Agreement Deficiency Claims and ESM Claims shall be General Unsecured Claims.

56. ***"General Unsecured Creditor Initial Distribution"*** means a cash payment on the Effective Date, or as soon as practicable after a General Unsecured Claim becomes Allowed, in an amount equal to the Holder of such Allowed General Unsecured Claim's Pro Rata share of \$240,000.

57. ***"Governmental Bar Date"*** means March 1, 2021 at 5:00 p.m. prevailing Central Time, as established in the Bar Date Order.

58. “**Holder**” means an Entity that is the legal or beneficial holder of a Claim or Equity Interest.

59. “**Hunt Adversary Proceeding**” means the adversary proceeding captioned *Cane Creek, LLC, et al. v. Hunt*, Adv. Pro. No. 20-00045 currently pending in the Bankruptcy Court.

60. “**Hunt Causes of Action**” means all Causes of Action, including all Chapter 5 Actions, held by the Debtors and their Estates against Freddy Hunt other than the Causes of Action specifically raised in the Hunt Adversary Proceeding.

61. “**Impaired**” has the meaning within sections 1123(a)(4) and 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

62. “**Insurance Policies**” includes any policy of insurance coverage of any kind (including any and all amendments, endorsements, renewals, and extensions thereof) that at any time belonged or belongs to or included or includes a Debtor as a named insured, additional insured, beneficiary, or assignee, including, without limitation, any director and/or officer liability insurance policy.

63. “**Intercompany Claims**” means any pre- or postpetition Claim against a Debtor held by another Debtor.

64. “**Intercompany Equity Interests**” means any Equity Interest held by any of the Debtors in any other Debtor.

65. “**Lenders**” means KeyBank National Association, Caterpillar Financial Services Corporation, and Sumitomo Mitsui Banking Corporation, each in their capacity as a lender under the Credit Agreement or A&R Credit Agreement (as applicable).

66. “**Lenders’ A Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$19 million.

67. “**Lenders’ B Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$4 million evidencing the Debtors’ reimbursement obligations with respect to an unfunded letter of credit issued under the Credit Agreement in support of the Debtors’ reclamation surety bonds. Such letter of credit shall include an auto-renewal provision absent an Event of Default (as defined in the A&R Credit Agreement). The Lenders’ B Loan shall accrue letter of credit fees consistent with the terms of the Credit Agreement.

68. “**Lenders’ C Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$5 million.

69. “**Lien**” has the meaning in section 101(37) of the Bankruptcy Code.

70. “**Litigation Trust**” means the Litigation Trust established pursuant to this Plan and the Litigation Trust Agreement.

71. “**Litigation Trust Agreement**” means the Litigation Trust Agreement, as may be amended, supplemented, restated, or otherwise modified from time to time pursuant to the terms thereof, by and between the Debtors and the Litigation Trustee.

72. “**Litigation Trust Assets**” means, collectively, the Hunt Causes of Action, the Litigation Trust Initial Funding, and the Litigation Trust Professional Fee Escrow Funding.

73. “**Litigation Trust Beneficiaries**” means the Holders of Allowed General Unsecured Claims.

74. “**Litigation Trust Initial Funding**” means the sum of \$25,000 to be paid by the Debtors to the Litigation Trust on the Effective Date.

75. “**Litigation Trust Professional Fee Escrow Funding**” means up to \$100,000 of the Professional Fee Escrow otherwise allocable to the Committee’s Professionals but that are unnecessary to satisfy fully the fees and expenses of the Committee’s Professionals incurred prior to the Effective Date.

76. “**Litigation Trustee**” means the Entity designated in the Litigation Trust Agreement to serve as trustee of the Litigation Trust from time to time.

77. “**New Boards**” means collectively, the initial board of directors, members or managers, as applicable, of each Reorganized Debtor, as applicable.

78. “**New FM Units**” means the membership interests in Reorganized FM to be issued on the Effective Date.

79. “**New Organizational Documents**” means the form of certificate of formation and operating agreement of Reorganized FM.

80. “**Ordinary Course Professionals**” means any Entity retained pursuant to the *Order Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business* [Dkt. No. 207].

81. “**Other Priority Claims**” means Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

82. “**Other Secured Claims**” means Secured Claims other than the Credit Agreement Secured Claims.

83. “**Petition Date**” means the date on which the Debtors filed the Chapter 11 Cases.

84. “**Plan**” means this *Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, as described herein, including exhibits, supplements, appendices, and schedules hereto, either in its present form or as it may be altered, amended, modified or

supplemented from time to time in accordance herewith, with the Bankruptcy Code, with the Bankruptcy Rules, or with any order of the Bankruptcy Court.

85. ***“Plan Supplement”*** means one or more supplements to the Plan containing certain schedules, documents, and/or forms of documents relevant to the implementation of the Plan, including, without limitation, (a) the New Organizational Documents of the Reorganized Debtors, (b) the identity of the members of the New Boards, (c) the A&R Credit Agreement, (d) the Schedule of Assumed Executory Contracts and Unexpired Leases with proposed Cure Claims, (e) the Schedule of Retained Causes of Action, (f) the Litigation Trust Agreement, and (g) all other schedules, documents, and/or forms of documents necessary to comply with sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code filed by the Debtors no later than seven (7) days before the Voting Deadline.

86. ***“Post-Effective Date Notice List”*** means the post-Effective Date notice list established pursuant to Article XII.C below.

87. ***“Priority Tax Claims”*** means Claims of governmental units of the kind specified in section 507(a)(8) of the Bankruptcy Code.

88. ***“Pro Rata”*** means the proportion that the amount of a Claim or Equity Interest in a particular Class or Classes bears to the aggregate amount of all Claims (including Disputed Claims, but excluding disallowed Claims) or Equity Interests in such Class or Classes.

89. ***“Professional Fee Escrow”*** has the meaning ascribed to it in the Final Cash Collateral Order.

90. ***“Professionals”*** means (i) any Entity employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code (including, but not limited to, Ordinary Course Professionals), and to be compensated for services rendered prior to the Effective Date under sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; and (ii) to the extent not included in the foregoing, the Claims Agent.

91. ***“Proof of Claim”*** means a proof of claim filed against any Debtor on or before the applicable Bar Date or as otherwise permitted by the Bankruptcy Court or agreed to by the Debtors (as such Proof of Claim may be amended from time to time with authorization from the Bankruptcy Court or as agreed to by the Debtors).

92. ***“Reinstated”*** or ***“Reinstatement”*** means, with respect to Claims and Equity Interests, that the Claim or Equity Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

93. ***“Rejection Damages Bar Date”*** means the later of (a) the General Bar Date or Governmental Bar Date (as applicable), or (b) 5:00 p.m., prevailing Central Time, on the date that is thirty (30) days following entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors, as established in the Bar Date Order.

94. ***“Released Parties”*** each of (a) the Debtors, (b) each Debtor’s current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, (c) the Administrative Agent, (d) the Lenders, (e) ESM, and (f) with respect to each entity in clauses (c), (d), and (e), each such Entity’s current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such. For the avoidance of doubt, John McNab, Michael Jamison, and Michael Costello shall be Released Parties. Notwithstanding the foregoing, Freddy Hunt shall not be a Released Party.

95. ***“Releasing Parties”*** means (a) all Holders of Claims and Equity Interests that are deemed to accept the Plan; (b) all Holders of Claims and Equity Interests who vote to accept the Plan; (c) all Holders of Claims and Equity Interests that (i) abstain from voting on the Plan and who do not opt out of the releases in the Plan, (ii) vote to reject the Plan and who do not opt out of the releases in the Plan, or (iii) are deemed to reject the Plan and who do not opt out of the releases in the Plan.

96. ***“Reorganized Debtors”*** means, collectively, all of the Debtors that are reorganized under and pursuant to the Plan, on and after the Effective Date.

97. ***“Reorganized FM”*** means FM, in its capacity as a Reorganized Debtor.

98. ***“Restructuring Transactions”*** means one or more transactions pursuant to section 1123(a)(5) of the Bankruptcy Code to occur on the Effective Date, or as soon as reasonably practicable thereafter, that may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, including (a) the consummation of the transactions provided for under or contemplated by this Plan; (b) the execution and delivery of appropriate agreements or other documents (including the agreements and other documents included in the Plan Supplement) containing terms that are consistent with or reasonably necessary to implement the terms of this Plan and that satisfy the requirements of applicable law; (c) the execution and delivery of appropriate instruments (including the agreements and other documents included in the Plan Supplement) of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of this Plan; and (d) all other actions that the Debtors or Reorganized Debtors (as applicable) determine are necessary or appropriate and consistent with this Plan.

99. ***“Retained Chapter 5 Actions”*** means all Chapter 5 Actions against (i) Freddy Hunt, (ii) Nelson Brothers LLC, (iii) Sunoco LLC, and (iv) Booger’s Tire & Towing.

100. ***“Schedule of Retained Causes of Action”*** means any non-exhaustive schedule (including any amendments or modifications thereto) of Causes of Action of the Debtors to be retained by the Reorganized Debtors

101. “**Schedules**” mean the schedules of assets and liabilities, schedules of executory contracts and unexpired leases and statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, as may be amended, modified or supplemented from time to time.

102. “**Secured Claim**” means a Claim against the Debtors that is secured by a Lien on property in which the Estates have an interest, which Liens are valid, perfected, unavoidable and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Estates’ interest in such property or to the extent of the amount subject to setoff, as applicable, as determined under section 506(a) of the Bankruptcy Code.

103. “**Sharing Allocation**” means the following allocation of the proceeds of the Hunt Causes of Action: (i) the first \$350,000 to the Litigation Trust for the benefit of Holders of Allowed General Unsecured Claims (other than Credit Agreement Deficiency Claims and ESM Claims); and (ii) all proceeds exceeding \$350,000 split one-third (1/3) in favor of the Litigation Trust for the benefit of Holders of Allowed General Unsecured Claims (other than Credit Agreement Deficiency Claims and ESM Claims) and two-thirds (2/3) in favor of the Administrative and Collateral Agent for the benefit of the Lenders.

104. “**Solicitation Procedures Order**” means any order, including the exhibits and schedules thereto, entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan and approving the Disclosure Statement.

105. “**Tax Code**” means the United States Internal Revenue Code of 1986, as amended.

106. “**Unimpaired**” means not Impaired.

107. “**Voting Deadline**” means the date and time by which Creditors entitled to vote to accept or reject the Plan must submit their ballot(s) in accordance with the terms and instructions set forth in the Solicitation Procedures Order.

108. “**Voting Record Date**” means the record date established by the Bankruptcy Court pursuant to the Solicitation Procedures Order.

109. “**Xinergy**” means Xinergy of Alabama, Inc.

## **B. Rules of Interpretation**

For purposes of this Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender include the masculine, feminine and the neutral gender; (b) any reference in this Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference in this Plan to an existing document or exhibit having been filed or to be filed means that document or exhibit, as it may thereafter be amended, modified or supplemented through and



including the Confirmation Date, which, after they are filed, may be amended, modified, or supplemented only with the express written consent of the Debtors; (d) unless otherwise specified, all references in this Plan to “Articles” are references to Articles hereof or hereto; (e) the words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) all exhibits and/or supplements to the Plan are incorporated herein, regardless of when those exhibits are filed; (h) except as expressly set forth in the Plan, to the extent any discrepancy exists between the description herein of a document or agreement that is an exhibit to the Plan and with the provisions of that exhibit, the actual agreement or document shall govern; (i) the words “includes” and “including” are not limiting; (j) any reference to an Entity as Holder includes that Entity’s successors and assigns; (k) any immaterial effectuating provisions may be interpreted by the Debtors in a manner that is consistent with the overall purpose and intent of the Plan, all without further order of the Bankruptcy Court; (l) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (m) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (m) the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby; (n) whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter; and (o) all references in this Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

## **ARTICLE II.**

### **ADMINISTRATIVE AND PRIORITY CLAIMS**

Certain types of Claims are not placed into Classes; instead, such Claims are unclassified Claims. Such unclassified Claims are not considered Impaired, and their Holders are not entitled to vote on the Plan because they automatically receive specific treatment provided for them in the Bankruptcy Code. As such, the Debtors did not place the following Claims in any Class. The respective treatment for these Claims is provided below.

#### **A. Establishment of Administrative Claims Bar Date**

1. Except as otherwise provided in the Plan or another order of the Bankruptcy Court, any Entity that seeks allowance of an Administrative Claim shall file with the Bankruptcy Court and serve on counsel for the Debtors or the Reorganized Debtors (as applicable) a request for payment of such Administrative Claim by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of an Administrative Claim must include at a minimum: (a) the name of the Holder seeking allowance of an Administrative Claim; (b) the amount of the Administrative Claim sought; (c) the basis asserted for allowance of the Administrative Claim; and (d) all supporting documentation that justifies allowance of the Administrative Claim asserted. Any Entity that is required to file and serve a request for allowance of an Administrative Claim by the Administrative Claims Bar Date that fails to file and serve a timely request will be forever barred, estopped, and enjoined from asserting any request for allowance of such Administrative Claim or participating in Distributions under the Plan on account thereof.

2. A request for payment of an Administrative Claim consistent with the foregoing paragraph will be considered timely filed only if it is filed with the Bankruptcy Court and actually received by parties identified in Article II.A.1 of this Plan by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of Administrative Claims may not be delivered by facsimile, telecopy, or electronic mail transmission. The Administrative Claims Bar Date shall not apply to (a) Claims for Accrued Professional Compensation, or (b) Allowed Administrative Claims that arise in the ordinary course of the Debtors' business, including Administrative Claims arising from or with respect to the sale of goods or services on or after the Petition Date, executory contracts and unexpired leases, and all Administrative Claims that are Intercompany Claims, shall be paid or otherwise satisfied in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions without further action by the Holders of such Administrative Claims or further approval by the Bankruptcy Court.

3. Notwithstanding anything to the contrary in this Plan, the Debtors' and the Committee's Professionals shall not be required to file a request for payment of any Administrative Claim by the Administrative Claims Bar Date for fees and expenses allowable under sections 330, 331, or 503(b)(2-6) of the Bankruptcy Code, because Professionals will instead file final fee applications as required by the Article II.C of this Plan, the Bankruptcy Code, the Bankruptcy Rules, and the Confirmation Order.

#### **B. Administrative Claims**

In full and final satisfaction, settlement, release, and discharge of each Allowed Administrative Claim, except to the extent that a Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Administrative Claim, the Debtors or Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Administrative Claim any unpaid amount of that Allowed Administrative Claim as follows: (a) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed (or, if not then due, when such Allowed Administrative Claim becomes due, or as soon as reasonably practicable); (c) when and upon such terms as may be agreed upon by the Holder of the Allowed Administrative Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

#### **C. Professional Compensation and Reimbursement Claims**

The deadline for Professionals to submit final applications for approval of Accrued Professional Compensation to the Bankruptcy Court shall be sixty (60) days after the Effective Date. Any Professional or other Entity that is required to file and serve a final application for approval of Accrued Professional Compensation that fails to file and serve a timely application will be forever barred, estopped, and enjoined from asserting any request for payment of Accrued Professional Compensation or participating in Distributions under the Plan on account thereof.

All Professionals employed by the Debtors or the Committee (including Ordinary Course Professionals) shall be paid from the Professional Fee Escrow.

Except as otherwise specifically provided in the Plan, on and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented fees and expenses of the Professionals on or after the Effective Date, in each case, related to implementation and consummation of the Plan. Upon the Effective Date, any requirement that Professionals comply with Sections 327 through 331 and 1103 of the Bankruptcy Code or any order of the Bankruptcy Court entered before the Effective Date governing the retention of, or compensation for services rendered by, Professionals after the Effective Date shall terminate, and the Reorganized Debtors may employ or pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **D. Priority Tax Claims**

In full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, except to the extent that a Holder of an Allowed Priority Tax Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Priority Tax Claim, the Debtors or the Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Priority Tax Claim any unpaid amount of that Allowed Priority Tax Claim as follows: (a) on the Effective Date or as soon as practicable thereafter; (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed; (c) through equal annual installment payments in Cash, of a total value, as of the Effective Date, equal to the Allowed amount of such Claim, over a period ending not later than five (5) years after the Petition Date; (d) when and upon such terms as may be agreed upon by the Holder of the Allowed Priority Tax Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

### **ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### **A. Summary**

1. Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and is within the range of reasonableness. All distributions made to Holders of Allowed Claims and Allowed Equity Interests in any Class are intended to be and shall be final.

2. Except for the Claims addressed in Article II of this Plan, all Claims and Equity Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and the remainder is classified in one or more other Classes to the extent that any portion of the Claim or Equity Interest qualifies within the description of such other Classes, without duplication. A Claim or an Equity Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. Further, the provision in this Plan for a Class of Claims or Equity Interests does not presume, and does not constitute any admission or determination regarding, the existence or validity of any Claim (including any purported Secured Claims) or Equity Interest within such Class.

3. This Plan is intended to deal with all Claims against and Equity Interests in the Debtors of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously Allowed by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code, including unclassified Claims. However, only Holders of Allowed Claims and Equity Interests will receive any distribution under this Plan, and no Holder of a Claim or Equity Interest shall receive any distribution unless and until such Claim or Equity Interest is Allowed. For purposes of determining Pro Rata distributions under this Plan, Disputed Claims shall be included in the Class in which such Claims would be included if Allowed, until such Claims are finally disallowed. This Plan will not provide any distributions on account of a Claim or Equity Interest to the extent that such Claim or Equity Interest has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date.

4. In accordance with section 1123(a)(1) of the Bankruptcy Code, as set forth above, the Debtors have not classified Administrative Claims, Accrued Professional Compensation Claims, or Priority Tax Claims, and the Plan describes their treatment under this Plan in Article II.

5. The following table classifies Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation, and Distribution under this Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, unless a Final Order provides otherwise. Each Class set forth below is treated under this Plan as a distinct Class for voting and Distribution purposes.

6. As set forth in the following table, Classes 3 – 5 and 7 are Impaired under the Plan. The treatment of Allowed Claims and Equity Interests in the Impaired Classes under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed Claim or Equity Interest in each such Impaired Class. Subject to the provisions of the Solicitation Procedures Order, Holders of Claims in the Impaired Classes 3 – 4 are entitled to vote on the Plan. Because Holders of Claims and Equity Interests in Classes 5 and 7 will not receive any distribution under the Plan, they are conclusively presumed to have rejected the Plan, and are not entitled to vote. Holders in Claims in Classes 1 – 2 and 6 are Unimpaired, deemed to accept the Plan, and not entitled to vote on the Plan.

## **B. Classification and Treatment of Claims and Equity Interests**

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Secured Claims	Unimpaired	Deemed to Accept
2	Other Priority Claims	Unimpaired	Deemed to Accept
3	Credit Agreement Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Deemed to Reject
6	Intercompany Equity Interests	Unimpaired	Deemed to Accept
7	FM Equity Interests	Impaired	Deemed to Reject

## 1. Other Secured Claims (Class 1)

(a) **Classification:** Class 1 consists of Other Secured Claims.

(b) **Treatment:** Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive the following, at the Debtors' option:

(i) payment in full in Cash equal to the amount of such Allowed Other Secured Claim;

(ii) the collateral securing its Allowed Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Allowed Other Secured Claim; or

(iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.

(c) **Voting:** Class 1 is Unimpaired, and, therefore, Holders of Other Secured Claims in Class 1 are deemed to accept and not entitled to vote to accept or reject the Plan.

## 2. Other Priority Claims (Class 2)

(a) **Classification:** Class 2 consists of Other Priority Claims.

(b) **Treatment:** In full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim, on or as soon as practicable after the later of the Effective Date or the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, will either be paid the full amount of such Holder's Allowed Other Priority Claim, or such lesser amount as the Debtors or the Reorganized Debtors (as applicable) and the Holder of the Other Priority Claim may agree to in writing, in Cash.

(c) **Voting:** Class 2 is Unimpaired, and, therefore, Holders of Other Priority Claims in Class 2 are deemed to accept and not entitled to vote to accept or reject the Plan.

### **3. Credit Agreement Secured Claims (Class 3)**

(a) **Classification:** Class 3 consists of Credit Agreement Secured Claims.

(b) **Treatment:** On the Effective Date, Holders of Allowed Credit Agreement Secured Claims will become bound by the A&R Credit Documents and receive, in full and final satisfaction, settlement, release, and discharge of each Allowed Credit Agreement Secured Claim, their Pro Rata share of each of the A&R Term Loans. On the Effective Date, except as set forth in Article IV.F hereof, the Credit Agreement shall be deemed replaced by the A&R Credit Agreement, without the need for any Holder of an Allowed Credit Agreement Secured Claim that does not vote for the Plan or votes to reject the Plan to execute the A&R Credit Documents, including, without limitation, the A&R Credit Agreement, and each Lien and security interest that secures obligations arising under the Credit Agreement shall be reaffirmed, ratified, and deemed granted by each Reorganized Debtor to secure all obligations of the Reorganized Debtors arising under the A&R Credit Agreement.

(c) **Voting:** Class 3 is Impaired, and, therefore, Holders of Credit Agreement Secured Claims in Class 3 are entitled to vote to accept or reject the Plan.

### **4. General Unsecured Claims (Class 4)**

(a) **Classification:** Class 4 consists of General Unsecured Claims.

(b) **Treatment:** Each Holder of an Allowed General Unsecured Claim not otherwise paid during the pendency of the Chapter 11 Cases (other than any Holder of a Credit Agreement Deficiency Claim or any Holder of an ESM Claim) shall receive (i) its Pro Rata share of the General Unsecured Creditor Initial Distribution, and (ii) its Pro Rata share of Litigation Trust Assets, subject to the Sharing Allocation with respect to the Hunt Causes of Action.

(c) **Voting:** Class 4 is Impaired and, therefore, Holders of General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

### **5. Intercompany Claims (Class 5)**

(a) **Classification:** Class 5 consists of Intercompany Claims.

(b) **Treatment:** On the Effective Date or as soon thereafter as is practicable, Intercompany Claims may be extinguished or compromised by distribution, contribution, or otherwise Reinstated, at the sole option of the Debtors or the Reorganized Debtors (as applicable) on or after the Effective Date.

(c) **Voting:** Class 5 is Impaired. Because the Holders of Intercompany Claims are not expected to receive any distributions under this Plan, such Holders of Intercompany Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims.

## **6. Intercompany Equity Interests (Class 6)**

(a) **Classification:** Class 6 consists of Intercompany Equity Interests.

(b) **Treatment:** On the Effective Date, all Intercompany Equity Interests shall remain effective, outstanding, and be Reinstated and shall be owned and held, directly or indirectly, by Reorganized FM.

(c) **Voting:** Class 6 is Unimpaired and, therefore, Holders of Intercompany Equity Interests in Class 6 are deemed to accept and not entitled to vote to accept or reject the Plan.

## **7. FM Equity Interests (Class 7)**

(a) **Classification:** Class 7 consists of FM Equity Interests.

(b) **Treatment:** On the Effective Date, all FM Equity Interests shall be deemed cancelled, released, discharged, and extinguished without further action by the Debtors or Reorganized Debtors.

(c) **Voting:** Class 7 is Impaired. Holders of Equity Interests in Class 7 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of FM Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such FM Equity Interests.

## **C. Objections and Defenses**

Except as otherwise provided in the Plan or prior order of the Bankruptcy Court, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to, or setoffs or recoupments against any Claim.

Further, except as otherwise provided in the Plan or prior order of the Bankruptcy Court, the failure of any party to object to any Claim in the Chapter 11 Cases prior to the Effective Date shall be without prejudice to the rights of the Reorganized Debtors to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by the Holder of such Claim. Procedures for objections to Claims are set forth in Article VI of this Plan.

#### **D. Release of Liens**

Any and all Liens securing any Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Nothing in this Plan shall preclude the Debtors or the Reorganized Debtors (as applicable) from challenging the validity of any alleged Lien on any asset of any Debtor or the value of the property that secures any alleged Lien, and all such rights are expressly preserved. By way of further clarification, the rights to surcharge the collateral securing the Credit Agreement Secured Claims has been waived to the extent and subject to the exceptions set forth in paragraph 22 of the Final Cash Collateral Order.

#### **E. Surcharge Under Section 506(c) of the Bankruptcy Code**

Except as otherwise set forth in this Plan or any prior order of the Bankruptcy Court, all rights of Holders of Secured Claims under this Plan are subject to the rights of the Debtors or the Reorganized Debtors (as applicable) to surcharge the applicable collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

#### **F. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Reorganized Debtors (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim that is disputed, contingent, or unliquidated, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

#### **G. Distribution Cap**

In no event shall any Holder of an Allowed Claim receive a distribution of a value exceeding one hundred percent (100%) of the amount of such Holder's Allowed Claim.



#### **H. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Unimpaired Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to or setoffs or recoupments against any Unimpaired Claim.

#### **I. Elimination of Vacant Classes**

Any Class of Claims that does not have a holder of an Allowed Claim, or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

#### **J. Presumed Acceptance by Voting Classes That Do Not Vote**

If a Class contains Claims eligible to vote on the Plan and no holder of a Claim in such Class eligible to vote on the Plan votes to accept or reject the Plan, the Plan shall be presumed accepted by the Class.

#### **K. Nonconsensual Confirmation**

If any Impaired Class of Claims entitled to vote does not vote to accept the Plan, the Debtors reserve the right to amend the Plan, to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes that are deemed to reject the Plan, the Debtors intend to request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by those Classes.

### **ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **A. Substantive Consolidation for Voting and Distribution Purposes**

Except as otherwise provided in this Plan, the Plan treats the Debtors as comprising a single Estate solely for the purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan with respect to Allowed Claims. Accordingly, voting on the Plan shall be conducted and counted on a consolidated basis.

On the Effective Date, (a) the assets of the Debtors and their Estates will be merged and/or treated as if they are merged into a consolidated Estate for the purpose of making distributions on account of Allowed Claims against the Debtors and their Estates; (b) any Claim filed or asserted against any of the Debtors will be deemed a Claim against the consolidated Estate (and any duplication of claims arising from both primary operative documents and guaranty and/or other secondary obligations, or other Claims for which more than one Debtor may be liable, shall be eliminated and all such Claims against the Debtors shall be treated as a single Claim that eliminates

such duplications); (c) any obligation of any of the Debtors or their Estates will be deemed to be an obligation of the consolidated Estate; (d) all guarantees by one of the Debtors in favor of any of the other Debtors shall be eliminated, (e) all guarantees executed by any of the Debtors in favor of any Creditor shall be deemed to be a single obligation, and (f) any and all Intercompany Claims shall be eliminated and not entitled to any distribution under the Plan. For the avoidance of doubt, Holders of Allowed Claims or Allowed Equity Interests who assert identical Claims against or Equity Interests in multiple Debtors shall be entitled to only a single satisfaction of such Claims or Equity Interests.

This substantive consolidation shall not (i) affect any Debtor's status as a separate and independent legal entity; (ii) affect the Debtors' organizational structure; (iii) constitute a change of control of any Debtor for any purpose; (iv) cause a merger or consolidation of any legal entities; (v) cause a transfer of any Debtor or Estate assets; (vi) affect any valid, enforceable, and unavoidable Liens (other than any Liens that secure any Claims eliminated as a result of the substantive consolidation and any Liens against any collateral that cease to exist as a result of the substantive consolidation); (vii) cause any Lien to attach to any property of any Debtor or Estate to which such Lien would not attach in the absence of the substantive consolidation provided for in this Article (*e.g.*, holders of floating Liens on particular classes of property shall not attach to property of a Debtor that did not secure such Claim on the Effective Date); (viii) create new collateral with respect to any Lien, charge, or other encumbrance securing the payment or performance of any Claim; (ix) make any Debtor or Estate assets or proceeds thereof available for the satisfaction of any Secured Claim that would not be available for the satisfaction of such Secured Claim in the absence of the substantive consolidation provided for in this Article; (x) create any Claim in a Class different from the Class in which such Claim would have been placed in the absence of this substantive consolidation; (xi) change the priority or nature of any Claim; (xii) affect any Debtor's independent ownership of any assets for any purposes other than the substantive consolidation described herein; or (xiii) result in the substantive consolidation of the Debtors. Except as otherwise expressly provided by or permitted in the Plan, all Debtors shall continue to exist as separate and independent legal entities.

The treatment set forth in this Article shall not (a) affect any Cause of Action available to any Debtor or Estate, including Chapter 5 Actions (except with respect to Intercompany Claims) or the ability of the Debtors or Reorganized Debtors (as applicable) to pursue such Causes of Action or object to Claims, and all such Causes of Action and rights of objection are preserved as they existed immediately before the Effective Date for the Debtors or Reorganized Debtors (as applicable) to pursue; (b) constitute any admission by any Debtor, Reorganized Debtor, or Estate with respect to any Cause of Action or right of objection; (c) have any estoppel effect with respect to any Cause of Action or right of objection; or (d) constitute or affect admissible evidence in connection with any litigation of any Cause of Action or objection. The treatment described in this Article serves only as a mechanism to effect a fair distribution of value to the Holders of Allowed Claims.

Upon the Effective Date, without the need for further order of the Bankruptcy Court or motion of, or notice from, the Debtors or the Reorganized Debtors, the Chapter 11 Cases of each of the Reorganized Debtors shall be deemed closed as of the Effective Date, without prejudice to the right of any party in interest to seek to reopen any of the Chapter 11 Cases under section 350(b)

of the Bankruptcy Code; *provided, however*, that the case of Xinergy shall remain open until Xinergy files a motion seeking entry of a final decree closing its Chapter 11 Case. All motions, contested matters, adversary proceedings, and other matters with respect to the closed Chapter 11 Cases and those Debtors and Reorganized Debtors shall be administered in Xinergy's Chapter 11 Case. The caption of Xinergy's Chapter 11 Case shall be amended to reflect that it is the only remaining open Chapter 11 Case for the Debtors and Reorganized Debtors. A docket entry shall be made in each of the closed Chapter 11 Cases that reflects their closure.

## **B. Restructuring Transactions**

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors or Reorganized Debtors (as applicable) may take all actions consistent with this Plan as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with this Plan.

On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor or an affiliate of a Reorganized Debtor; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; or (iv) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter. None of the transactions contemplated in this Article IV.B shall constitute a change of control under any agreement, contract, or document of the Debtors.

On the Effective Date or as soon thereafter as is reasonably practicable, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, or necessary or appropriate to effectuate this Plan, including, without limitation: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan and having other terms to which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation and amendments thereto, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable law; (iv) the Restructuring Transactions; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including, without limitation, making filings or recordings that may be required by applicable law.

On the Effective Date, all of the Debtors' membership interests in the Alabama Coal Cooperative shall be deemed held by Best Coal, Inc.

## **C. Sources of Consideration for Distributions under the Plan**

All Distributions shall be funded by existing Cash on hand with the Debtors and their Estates as of the Effective Date, the assets of the Reorganized Debtors, or the Litigation Trust Assets.

#### **D. Vesting of Assets**

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or pursuant to a Final Order of the Bankruptcy Court, on the Effective Date, all property in each Estate, all Causes of Action and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for professional fees, disbursements, expenses, or related support services without application to the Bankruptcy Court. Notwithstanding the foregoing, the escrow provided for in Article II.C of this Plan shall not vest in any of the Reorganized Debtors; *provided, however*, when all Claims for Accrued Professional Compensation owing to Professionals have been resolved, any remaining amount in such escrow shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court. Notwithstanding the foregoing, the Litigation Trust Assets shall be transferred to the Litigation Trust as of the Effective Date or as soon as reasonably practicable thereafter and shall not vest in the Reorganized Debtors.

#### **E. Continued Corporate Existence**

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or as a result of any Restructuring Transactions, on the Effective Date, each Debtor shall continue to exist after the Effective Date as a separate corporation or other form of Entity under governing state or foreign law, as the case may be, with all the powers of such corporation or other form of Entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of formation and operating agreement (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of formation and operating agreement (or other analogous formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable law).

#### **F. Cancellation of Existing Securities and Agreements**

Except for purposes of evidencing a right to Distributions under the Plan and with respect to the A&R Credit Documents as provided under the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share

certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

#### **G. Governing Bodies**

The composition of the New Boards shall be disclosed in the Plan Supplement. The members of the applicable governing body of each Debtor prior to the Effective Date, in their capacities as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of the applicable Debtor on the Effective Date.

#### **H. Exemption from Certain Taxes and Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, transfer tax, sale or use tax, mortgage recording tax or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee or governmental assessment. Such exemption under section 1146(a) of the Bankruptcy Code specifically applies, without limitation, to: (1) the creation and recording of any mortgage, deed of trust, Lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; (4) the issuance, distribution and/or sale of any securities or Equity Interests of the Debtors or the Reorganized Debtors; and (5) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including (a) any merger agreements, (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution, (c) deeds, (d) bills of sale, or (e) instruments of transfer or assignment executed in connection with any Restructuring Transaction occurring under the Plan.

#### **I. Exemption from Securities Laws**

The issuance of and the distribution under this Plan of the New FM Units shall be exempt from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code. The New FM Units may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder is an “underwriter” with respect to such New FM Units, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such section 1145 exempt New FM Units generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.

#### **J. Operations of the Debtors Between the Confirmation Date and the Effective Date**

The Debtors shall continue to operate as debtors in possession during the period from the Confirmation Date through and until the Effective Date. The retention and employment of the Professionals retained by the Debtors shall terminate as of the Effective Date; *provided, however,*

that the Debtors shall exist, and their Professionals shall be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code.

#### **K. Automatic Stay**

The automatic stay provided for under section 362 of the Bankruptcy Code shall remain in effect in the Chapter 11 Cases until the Effective Date at which time the injunctions described in this Plan shall come into effect with no gap in time.

#### **L. The Committee**

Upon the Effective Date, the Committee shall be deemed dissolved, and their members shall be deemed released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from or in connection with the Chapter 11 Cases. The retention and employment of the Professionals retained by the Committee shall be deemed terminated as of the Effective Date; *provided, however*, that the Committee shall continue to exist, and their Professionals shall continue to be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code and, as appropriate, motions seeking the enforcement of the provisions of the Plan or the Confirmation Order.

#### **M. Preservation of Causes of Action**

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly stated otherwise in the Plan, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action (including, without limitation, any Causes of Action identified in the Schedule of Retained Causes of Action and all Retained Chapter 5 Actions), whether arising before or after the Petition Date, and such rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action in accordance with the best interests of the Reorganized Debtors, and the Reorganized Debtors, through their authorized agents or representatives, shall retain and have the exclusive right, authority and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors or the Reorganized Debtors (as applicable) expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Debtors or Reorganized Debtors (as applicable) expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the confirmation or consummation of the Plan. Notwithstanding anything to the contrary in this Plan, the Confirmation Order, or the Plan Supplement, (i) all Chapter 5 Actions

other than Retained Chapter 5 Actions shall be released and not pursued by the Debtors, the Reorganized Debtors, or the Litigation Trust, and (ii) all Hunt Causes of Action shall be transferred to and pursued by the Litigation Trust. All proceeds of the Hunt Causes of Action shall be subject to the Sharing Allocation.

**N. A&R Credit Documents**

On the Effective Date, the A&R Credit Documents shall be executed and delivered, and the Reorganized Debtors shall be authorized to execute, deliver and enter into, the A&R Credit Agreement and the other A&R Credit Documents, without the need for any further corporate action and without further action by the Holders of Claims or Equity Interests.

All Liens and security interests granted and continuing pursuant to the A&R Credit Documents shall be (i) valid, binding, perfected, and enforceable Liens and security interests in the personal and real property described in and subject to such document, with the priorities established in respect thereof under applicable law, (ii) granted in good faith and deemed not to constitute a fraudulent conveyance or fraudulent transfer, and (iii) not otherwise subject to avoidance, recharacterization, or subordination (whether equitable, contractual or otherwise) under any applicable law. The Debtors, the Reorganized Debtors, and the Entities granted such Liens and security interests are authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such Liens and security interests under any applicable law and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interest to third parties.

**O. Authorization, Issuance, and Delivery of New FM Units**

On the Effective Date, the Debtors are authorized to issue or cause to be issued and shall issue the New FM Units without the need for any further corporate or shareholder action. Fifty-one percent (51%) of the New FM Units will be issued to John McNab, and forty-nine percent (49%) of the New FM Units will be issued to Michael Jamison.

**P. Establishment and Funding of Litigation Trust**

On the Effective Date, the Litigation Trust shall be established in accordance with Article VIII hereof. The Litigation Trust will be funded in accordance with this Plan and the Litigation Trust Agreement.

**ARTICLE V.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distribution Dates**

Distributions to Holders of Claims shall be made as provided in Articles II and III of the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act

may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. The Disbursing Agent shall give the Litigation Trustee no less than five (5) days' notice of any proposed Distribution to Holders of Claims. To the extent the Disbursing Agent does not receive any objection to such proposed Distribution within three (3) Business Days, the Disbursing Agent may make such Distribution. To the extent the Litigation Trustee objects to such proposed Distribution, the parties shall meet and confer regarding such proposed Distribution and seek relief from the Bankruptcy Court, as appropriate.

## **B. Disbursing Agents**

1. All Distributions under the Plan shall be made by the Reorganized Debtors as Disbursing Agent or such other entity designated by the Reorganized Debtors as Disbursing Agent. The Litigation Trustee shall transfer any proceeds of the Litigation Trust Assets to the Disbursing Agent so that the Disbursing Agent can make Distributions of such proceeds.

2. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform their duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent them with respect to their responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, this Plan, or deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

3. The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (a) liability for actions taken in accordance with the Plan or in reliance upon information provided to them in accordance with the Plan or (b) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan.

4. Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business. The Reorganized Debtors shall pay up to \$1,000 of any fees payable to the Bankruptcy Administrator on account of the Distribution of any proceeds of the Litigation Trust Assets. Any other fees payable to the Bankruptcy Administrator on account of the Distribution of any proceeds of the Litigation Trust Assets shall be deducted from such Distribution by the Disbursing Agent.

## **C. Record Date for Distributions**

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred under Bankruptcy Rule 3001 on or prior to the Voting Record Date will be treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Voting Record Date. The Debtors or Reorganized Debtors (as applicable) shall have no obligation to recognize any transfer of any Claim occurring after the Voting Record Date. In making any Distribution with respect to any Claim, the Reorganized Debtors shall, in the Reorganized Debtors' sole discretion, be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is



listed on the Proof of Claim filed with respect thereto or identified on the Schedules as the Holder thereof as of the close of business on the Voting Record Date and upon such other evidence or record of transfer or assignment that was known to the Debtors or Reorganized Debtors (as applicable) as of the Voting Record Date and is available to the Reorganized Debtors.

**D. Delivery of Distributions**

Subject to Bankruptcy Rule 9010 and except as otherwise provided in this Plan, Distributions to the Holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each Holder as set forth in the Schedules, unless superseded by the address set forth on Proofs of Claim filed by such Holder, or (b) the last known address of such Holder if no Proof of Claim is filed or if the Debtors or Reorganized Debtors (as applicable) have been notified in writing of a change of address.

**E. Undeliverable and Unclaimed Distributions**

In the event that any Distribution to any Holder of an Allowed Claim made by the Disbursing Agent is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder or is notified in writing of such Holder's then-current address. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes undeliverable, as set forth below. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind.

Any Distribution that remains uncashed for a period of one hundred twenty (120) days shall be deemed undeliverable and the Distribution shall revert to the Reorganized Debtors, free and clear of such Holder's interest in the Distribution, to be distributed pursuant to the Plan. The Holder, shall be forever barred from asserting any such Claim on account of the Distribution against the Debtors, the Reorganized Debtors, or their respective assets. No such funds or other property shall escheat to any federal, state, or local government or other entity for any reason. Nothing contained in the Plan shall require the Debtors or Reorganized Debtors (as applicable) to attempt to locate any Holder of an Allowed Claim.

**F. Manner of Cash Payments under the Plan**

Except as otherwise provided in this Plan, Cash payments made under the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Disbursing Agent.

**G. Compliance with Tax Requirements**

The Disbursing Agent may withhold and pay to the appropriate taxing authority all amounts required to be withheld under the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or Distribution on account of Claims. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to the applicable Holders of the Claims. For tax purposes, Distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated,

if applicable, to unpaid interest that accrued on such Claims. The Disbursing Agent shall be authorized to collect such tax information from the applicable Holders of Claims (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan. In order to receive Distributions under the Plan, all Holders of Claims that are entitled to receive Distributions under the Plan will need to identify themselves to the Disbursing Agent and provide tax information to the extent the Disbursing Agent deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each Holder). The Disbursing Agent may refuse to make a Distribution to any Holder of a Claim that is entitled to receive a Distribution but that fails to furnish such information within the time period specified by the Disbursing Agent and such Distribution shall be waived and forfeited under the Plan. If the Disbursing Agent fails to withhold in respect of amounts received or distributable with respect to any such Holder and such Disbursing Agent is later held liable for the amount of such withholding, such Holder shall reimburse the Disbursing Agent for such liability.

**Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any taxing authority, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Disbursing Agent in connection with such distribution.**

#### **H. Interest on Claims**

Except as specifically provided for in this Plan or the Confirmation Order or required by the Bankruptcy Code, interest shall not accrue on Claims and no Holder of a Claim shall be entitled to interest on any Claim accruing on or after the Petition Date. Interest shall not accrue on any General Unsecured Claim that is a Disputed Claim in respect of the period from the Effective Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided in this Plan or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or similar charges.

#### **I. Setoff and Recoupment**

The Debtors or Reorganized Debtors (as applicable) may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made under the Plan in respect thereof, any Claims, rights, Causes of Action, or defenses of any nature whatsoever that any of the Debtors or the Estates may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Estates of any right of Claim, claim, defense, Cause of Action, right of setoff or recoupment that any of them may have against the Holder of any Claim.

#### **J. De Minimis Distributions; Charitable Donation**

Notwithstanding anything to the contrary herein, the Reorganized Debtors shall not be required to make a Distribution to any Holder if the dollar amount of the Distribution is less than fifty dollars (\$50) or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. The Reorganized Debtors may hold the Distributions to be made to such Holder until the aggregate amount of such Distributions is in an amount equal to or greater than the greater of fifty dollars (\$50.00) or such amount that exceeds the cost of making the Distribution. If the aggregate Distributions of such Holder do not meet or exceed such amount, then the Reorganized Debtors shall not be required to make such Distributions to such Holder.

On or about the time that the final Distribution is made, the Reorganized Debtors may make a charitable donation with undistributed funds if, in the reasonable judgment of the Reorganized Debtors, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the Holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to an entity not otherwise related to the Debtors or Reorganized Debtors (as applicable).

#### **K. Statutory Fees**

All fees due and payable under section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors, on behalf of the Debtors, shall pay any and all such fees payable by the Debtors, when due and payable, and shall file with the Bankruptcy Court quarterly reports for each of the Debtors, in a form reasonably acceptable to the Bankruptcy Administrator. Each Debtor shall remain obligated to pay fees under section 1930 of title 28 of the United States Code until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

#### **L. No Distributions on Late-Filed Claims**

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a Proof of Claim was required to be filed and was first filed after the applicable Bar Date in the Chapter 11 Cases shall automatically be deemed a late-filed Claim that is disallowed in the Chapter 11 Cases, without the need for (a) any further action by the Debtors or Reorganized Debtors (as applicable), or (b) an order of the Bankruptcy Court.

#### **M. Claims Paid or Payable by Third Parties**

Except as otherwise provided herein, the Debtors or Reorganized Debtors (as applicable) shall reduce a Claim, and such Claim shall be disallowed, without a Claims objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent. To the extent a Holder of a Claim (i) receives a distribution under the Plan on account of such Claim and receives payment from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent on account of such Claim, and (ii) the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim, the Holder shall, within two weeks of receipt thereof, repay or return to the Debtors or Reorganized Debtors (as applicable) the portion

of the Plan distribution (up to the full amount of the Plan distribution) that, together with the payment from the third party, exceeds 100% of the Allowed amount of the Claim. Any and all rights of the Debtors or Reorganized Debtors (as applicable) to seek return or repayment of a distribution under the Plan from the Holder of a Claim on account of payment of such Claim by a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent are expressly reserved.

No distributions under the Plan shall be made on account of any Allowed Claim that is payable by a third party, including pursuant to one of the Debtors' Insurance Policies, until the holder of such Allowed Claim has exhausted all remedies with respect to such third party or Insurance Policy. To the extent that one or more of the Debtors' insurers or another third party agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then upon (i) execution such agreement and (ii) the Debtors or Reorganized Debtors (as applicable) receiving notice thereof, the applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court.

#### **N. Distributions Free and Clear**

Except as otherwise provided herein, any Distributions under the Plan shall be free and clear of any Liens, Claims, and encumbrances, and no other Entity shall have any interest (legal, beneficial or otherwise) in any Estate property distributed pursuant to the Plan.

#### **O. Not Securities; Section 1145 Exemption**

The respective rights of the Holders of Claims and Equity Interests arising under the Plan are not intended to be "securities" under applicable laws, but the Debtors do not represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Debtors intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

### **ARTICLE VI. DISPUTED CLAIMS AND CLAIM OBJECTIONS**

#### **A. Payments and Distributions on Disputed Claims and Claims That Have Otherwise Not Been Allowed**

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Reorganized Debtors in their sole discretion, no partial payments and no partial distributions will be made with respect to a Disputed Claim or Claim that has otherwise not been Allowed until such disputes are resolved by settlement or Final Order and the Claim has been Allowed.

#### **B. Disputed Claims Reserve**

1. On each date Distributions are to be made under the Plan to Holders of Allowed Claims, the Reorganized Debtors shall retain on account of Disputed Claims an amount the Reorganized Debtors estimate is necessary to fund the Pro Rata share of such Distributions to

Holders of Disputed Claims if such Disputed Claims were Allowed (or such lesser amount as may be estimated in accordance with Article III.F of this Plan), with any Disputed Claims that are unliquidated or contingent being reserved for in an amount reasonably determined by the Reorganized Debtors (the “*Disputed Claims Reserve*”).

2. Cash retained on account of such Disputed Claims shall be retained in the Disputed Claims Reserve for the benefit of the Holders of such Disputed Claims pending a determination of their entitlement thereto under the terms of this Plan. To the extent that the property placed in the Disputed Claims Reserve consists of Cash, that Cash may be deposited in an interest-bearing account at a qualified institution.

3. If any Disputed Claim is disallowed or Allowed in an amount that is lower than the aggregate assets retained in the Disputed Claims Reserve on account of such Disputed Claim, then, the excess assets reserved for such Claim shall automatically revert in the Reorganized Debtors and thereafter may be used consistent with the provisions of this Plan without restriction. Such assets shall not escheat to any federal, state, or local government or other Entity for any reason.

4. Payments on any Disputed Claim that becomes an Allowed Claim shall be distributed by the Disbursing Agent from the Disputed Claims Reserve on the next scheduled Distribution date after the Claim is Allowed. Distributions shall be made only to the extent of the aggregate distributions that the Holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the Disputed Claims Reserve). Distributions to each Holder of a Disputed Claim that has become an Allowed Claim (and to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim) shall be made in accordance with the provisions of the Plan.

5. The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made therefrom under the Plan have been effectuated.

### **C. Claim Objections**

From and after the Effective Date, the Reorganized Debtors and the Litigation Trust shall have the exclusive right and standing to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further order or approval of the Bankruptcy Court; and (iii) litigate to final resolution objections to Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

### **D. Objection Deadline**

All objections to Disputed Claims shall be filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, with notice only to those parties set forth on the Post-Effective Date Notice List.

### **E. Disallowance of Untimely Claims**

Except as provided herein or otherwise agreed by the Debtors or Reorganized Debtors (as applicable), any and all Holders of Claims filed after the applicable Bar Date shall not be treated as Creditors for purposes of voting and distribution pursuant to Bankruptcy Rule 3003(c)(2) unless on or before the Voting Deadline (in the case of voting) or the Confirmation Date (in the case of distributions), such late Proofs of Claim are deemed timely filed by a Final Order of the Bankruptcy Court.

Claims for which Proofs of Claim or requests for allowance were required to be filed by a Bar Date occurring before the Effective Date, and with respect to which no Proof of Claim or request for allowance was filed before the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the Effective Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates, unless such Proofs of Claim or requests for allowance are deemed timely filed by a Final Order of the Bankruptcy Court before the Effective Date.

Claims for which Proofs of Claim or requests for allowance are required to be filed after the Effective Date pursuant to a Bar Date established by this Plan, and with respect to which no Proof of Claim or request for allowance is filed by the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the applicable Bar Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates.

#### **F. Allowance of Claims**

Except as expressly provided herein or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court enters a Final Order in the Chapter 11 Cases allowing such Claim. Except as expressly provided in the Plan or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), the Reorganized Debtors, on and after the Effective Date, will have and retain any and all rights and defenses the Debtors had with respect to such Claims.

### **ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS**

#### **A. Assumption or Rejection of Executory Contracts and Unexpired Leases**

In accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, except as otherwise provided in the Plan or Confirmation Order, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired leases (a) that has been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date, (b) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (c) is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement and is not thereafter removed in any amended Plan Supplement filed prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such

rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases. Upon the occurrence of the Effective Date, each Executory Contract or Unexpired Lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement and any amendments thereto filed prior to the Effective Date shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Reorganized Debtors or their assignees in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing or providing for its assumption or applicable federal law. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. With respect to each such executory contract and unexpired lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement, the Debtors shall have designated a proposed Cure Claim, and the assumption of such executory contracts and unexpired leases may be conditioned upon the disposition of all issues with respect to such Cure Claim. In addition to any rights afforded the Debtors or Reorganized Debtors (as applicable) in this Article VII of the Plan, the Debtors reserve the right to remove any executory contract or unexpired lease from the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date through the filing of an amended Plan Supplement.

#### **B. Claims Based on Rejection of Executory Contracts and Unexpired Leases**

Claims created by the rejection of executory contracts and unexpired leases under this Plan must be filed with the Bankruptcy Court and served on the Reorganized Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease under this Plan for which Proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.E herein. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III herein.

#### **C. Objections to Assumption and Assignment and Proposed Cure Claims**

The Debtors or Reorganized Debtors (as applicable), except as otherwise agreed by the parties, will pay Cure Claims for any and all undisputed defaults under any Executory Contract or Unexpired Lease that is assumed or assigned by the Debtors in accordance with, and to the extent required by, Section 365 of the Bankruptcy Code. Proposed Cure Claims with respect to any Executory Contract or Unexpired Lease that is assumed and assigned by the Debtors shall be filed with the Plan Supplement, and any amendments thereto will be filed prior to the Effective Date. Any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan (including, for the avoidance of doubt, requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors) must be filed on or before the deadline to object to Plan confirmation. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or assignment or Cure Claim will be deemed to have assented to such assumption, assignment, or Cure Claim. In

the event there is a dispute as of the Effective Date regarding the amount required to cure defaults under any Executory Contract or Unexpired Lease that the Debtors propose to assume or assign, the Debtors or Reorganized Debtors (as applicable) shall have until thirty (30) days after entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed by the parties, to determine whether to assume, assign or reject the related Executory Contract or Unexpired Lease. In the event the Debtors or Reorganized Debtors determine to assume or assign the applicable Executory Contract or Unexpired Lease related to the disputed Cure Claim, such disputed Cure Claim shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

#### **D. Limited Extension of Time to Assume or Reject**

In the event of a dispute as to whether a contract is executory or a lease is unexpired is pending before the Court as of the Effective Date, the right of the Debtors or the Reorganized Debtors (as applicable) to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. In the event the Debtors or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. In the event the Reorganized Debtors become aware after the Effective Date of the existence of an Executory Contract or Unexpired Lease, the right of the Reorganized Debtors to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Reorganized Debtors become aware of the existence of such contract or lease. In the event the Debtor or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. Any cure amount to be paid in connection with a motion to assume filed under this Article VII.D of the Plan shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

#### **E. Indemnification and Reimbursement**

Subject to the occurrence of the Effective Date, all Allowed Claims against the Debtors for indemnification, defense, reimbursement, or limitation of liability of current or former directors, officers, or employees of the Debtors against any Claims, costs, liabilities or Causes of Action as provided in the Debtors' articles of organization, certificates of incorporation, bylaws, other organizational documents, or applicable law, shall, to the extent such indemnification, defense, reimbursement, or limitation is owed in connection with one or more events or omissions occurring before the Petition Date, be (a) paid only to the extent of any applicable insurance coverage, and (b) to the extent a Claim is Allowed, treated as Allowed General Unsecured Claims to the extent such Claims are not covered by any applicable insurance, including deductibles. Nothing contained herein shall affect the rights of directors, officers, or employees under any Insurance Policy or coverage with respect to such Claims, costs, liabilities, or Causes of Action or limit the rights of the Debtors, the Estates, or the Reorganized Debtors to object to, seek to subordinate or otherwise



contest or challenge Claims or rights asserted by any current or former officer, director or employee of the Debtors.

#### **F. Reservation of Rights**

Notwithstanding anything to the contrary in the Plan other than with respect to disputes over Cure Claims set forth in Article VII.C, prior to the Effective Date, the Debtors may amend any decision with respect to the assumption or rejection of any Executory Contract or Unexpired Lease at any time prior to the Effective Date. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder.

### **ARTICLE VIII. LITIGATION TRUST**

#### **A. Litigation Trust Agreement**

The Litigation Trust shall be governed and administered in accordance with the Litigation Trust Agreement and this Plan, including, but not limited to (a) distributions to Litigation Trust Beneficiaries, (b) authority, appointment, and compensation of the Litigation Trustee, (c) vesting of Litigation Trust Assets, and (d) payment of costs and expenses of the Litigation Trust. There shall be no bonding of the Litigation Trustee.

#### **B. Litigation Trust Assets**

On the Effective Date, or on such other date as is set forth in the Litigation Trust Agreement, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Debtors shall transfer their interests in the Litigation Trust Assets (and shall be deemed to transfer) to the Litigation Trust, free and clear of all Claims, Liens, charges, encumbrances, rights, and interests, without the need for any Entity to take any further action or obtain any approval, and the Litigation Trust shall be authorized as the representative of the Estates to pursue such Hunt Causes of Action.

#### **C. Preservation of Privilege and Defenses**

No action taken by the Debtors or Reorganized Debtors in connection with this Plan, shall be (or be deemed to be) a waiver of any privilege or immunity of the Debtors or Reorganized Debtors, as applicable, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding any privileged information provided by the Debtors or Reorganized Debtors to the Litigation Trustee, the Litigation Trust, or any party or person associated with the Litigation Trust, such privileged information shall be without waiver in recognition of the joint and/or successorship interest in prosecuting any Cause of Action on behalf of the Estates and shall remain privileged. The Litigation Trust shall have no right to waive the attorney-client privilege, work product, or other protection of any information received from the Reorganized Debtors. The Debtors and the Reorganized Debtors retain the right to waive their own privileges.

## **ARTICLE IX. CONDITIONS PRECEDENT**

### **A. Conditions Precedent**

The following are conditions precedent to the Effective Date that must be satisfied or waived:

1. There shall be no stay, injunction, or appeal in effect with respect to the Confirmation Order, and the Confirmation Order shall have become a Final Order.

2. The Bankruptcy Court shall have entered the Solicitation Procedures Order in form and substance acceptable to the Debtors.

3. All agreements and instruments that are exhibits to the Plan or Plan Supplement shall be in a form acceptable to the Debtors and have been duly executed and delivered.

4. All other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtors or, if waivable, waived by the Entities entitled to the benefit thereof.

5. The New FM Units shall have been issued and authorized and shall be consistent with the Plan.

### **B. Waiver**

Notwithstanding the foregoing conditions in Article X.A, the Debtors reserve, in their sole discretion, the right to waive the occurrence of any condition precedent or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court or without any other formal action other than proceeding to consummate the Plan; *provided, however*, that such waiver will be reflected in the notice of occurrence of the Effective Date filed pursuant to Article X.E. Any actions required to be taken on the Effective Date or Confirmation Date (as applicable) shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

### **C. Effect of Failure of Conditions**

In the event the Effective Date does not occur, upon motion by any party in interest, made before the time that each of the conditions precedent to the Effective Date has been satisfied or waived: (a) the Confirmation Order shall be vacated, (b) no Distributions under the Plan shall be made, (c) the Debtors and all Holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged, and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Entity

or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors unless extended by Bankruptcy Court order. Notwithstanding the foregoing, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) before the Bankruptcy Court enters a Final Order granting such motion. If each of the conditions to the Effective Date is not satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) on or before the date that is ninety (90) days following the Confirmation Date, the Confirmation Order shall automatically be vacated without further order of the Bankruptcy Court; *provided, however*, that any party in interest may file a motion to extend such date.

**D. Substantial Consummation**

“Substantial Consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

**E. Notice of Effective Date**

The Debtors shall file with the Bankruptcy Court a notice of occurrence of the Effective Date within a reasonable period of time after the conditions in Article IX have been satisfied or waived pursuant to Article X.B.

**ARTICLE X.  
INDEMNIFICATION, RELEASE, INJUNCTIVE, AND RELATED PROVISIONS**

**A. Term of Bankruptcy Injunction or Stay**

Unless otherwise provided in the Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise (excluding any injunctions or stays contained in the Plan or the Confirmation Order), and in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order.

**B. Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, including the agreements and documents contained in the Plan Supplement, the distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of

the Bankruptcy Code, whether or not the Holder of such a Claim has accepted the Plan. Any default or “event of default” by the Debtors with respect to any Claim or Equity Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring.

### **C. Releases**

**1. Releases by the Debtors and their Estates.** Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, for the good and valuable consideration provided by each of the Released Parties, each of the Debtors, the Estates, each of the Debtors’ and the Estates’ current and former affiliates (collectively, the “*Debtor Releasing Parties*”) shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties from any and all Causes of Action and any other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including, without limitation, those that any of the Debtors would have been legally entitled to assert, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however*, that the foregoing release shall not prohibit the Reorganized Debtors from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; *provided further*, that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in this Article X.C.1 do not release (1) any Causes of Action identified in the Schedule of Retained Causes of Action or (2) any post-Effective Date obligations of any party or Entity: (A) arising under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; or (B) expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents.

**2. Releases by Holders of Claims and Equity Interests.** For good and valuable consideration, as of the Effective Date, each of the Releasing Parties (regardless of whether a Releasing Party is a Released Party), shall be deemed to have, to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, fully, completely, unconditionally, irrevocably, and forever released the Released Parties of and from any and all Causes of Action, and any other debts, obligations, rights, suits, judgments damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or

omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however* that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in this Article X.C.2 do not release any post-Effective Date obligations of any party or Entity arising under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

3. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in this Article X.C under Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action released by this Plan; (b) in the best interests of the Debtors and all Holders of Claims and Equity Interests; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to the assertion of any Claim or Cause of Action thereby released.

#### **D. Exculpation**

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any act or omission arising after the Petition Date and through the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, other agreement or document created or entered into in connection with the Plan, or any other post-petition act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however*, that the foregoing provisions of this Article X.D shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence.

#### **E. Injunctive Provisions**

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims or Equity Interests that have been released, discharged or are subject to exculpation pursuant to Article IX of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and/or the Released Parties:

1. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests;

2. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
3. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
4. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff; and
5. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan or under any document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan from bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan.

#### **F. Releases of Liens and Cancellation of Documents**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created under the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against property of the Estates distributed under the Plan shall be fully released and discharged and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interest shall revert to the Debtors.

In addition, on the Effective Date, except to the extent otherwise provided in this Plan, any and all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtors shall be deemed inoperative and unenforceable solely as against the Debtors and their Estates.

Nothing contained in this Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to any prior order of the Bankruptcy Court.

### **ARTICLE XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, to the extent legally permissible, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related

to the Chapter 11 Cases, the Debtors, the Reorganized Debtors, the Estates, and the Plan until the Chapter 11 Cases are closed, including jurisdiction to issue any order necessary to administer the Debtors' Estates and enforce the terms of this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to, without limitation:

A. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest against the Debtors, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

B. grant, deny or otherwise resolve any and all applications of Professionals or Entities retained in the Chapter 11 Cases by the Debtors or the Committee for allowance of compensation or reimbursement of expenses authorized by the Bankruptcy Code, the Plan, or order of the Bankruptcy Court, for periods ending by the Effective Date;

C. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired leases to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;

D. ensure that Distributions to Holders of Allowed Claims are accomplished under the provisions of the Plan, including by resolving any disputes regarding the Debtors' or the Reorganized Debtors' entitlement to recover assets held by third parties;

E. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date;

F. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and the Confirmation Order;

G. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan, the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order;

H. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan;

I. enforce Article X.A, Article X.B, Article X.C, and Article X.D hereof;

J. enforce the injunctions set forth in Article X.E hereof;

K. resolve any cases, controversies, suits or disputes with respect to the releases, injunction, and other provisions contained in Article IX herein, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions of this Plan;

L. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked, or vacated;

M. resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document adopted in connection with the Plan or the Disclosure Statement;

N. recover all assets of the Debtor and property of the Debtor's Estates, wherever located;

O. hear and determine any issue arising under this Plan;

P. adjudicate any adversary proceeding or other proceeding which may be commenced against any Entity arising from, related to, or in connection with (i) any Chapter 5 Action; and (ii) claims against third parties relating to the facts and circumstances surrounding the same;

Q. hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

R. enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

S. resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof, or with respect to any other reserves established pursuant to this Plan and the administration thereof;

T. resolve any disputes concerning whether an Entity had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is waived, released, disallowed, or otherwise unenforceable hereunder, or for any other purpose;

U. hear any other matter not inconsistent with the Bankruptcy Code; and

V. enter an order and a Final Decree closing the Chapter 11 Cases.

**All Creditors who have filed Claims in the Chapter 11 Cases shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for the purposes of pursuit of Causes of Action by the Reorganized Debtors.**



## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. Modification of Plan**

Subject to the limitations contained in the Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; provided, however, that any pre-Confirmation Date amendments shall not materially or adversely affect the interests, rights or treatment of any Allowed Claims or Equity Interests under the Plan; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors (as applicable) may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan (as and to the extent permitted hereby) filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, by contacting the Claims Agent at [fminfo@donlinrecano.com](mailto:fminfo@donlinrecano.com) or by reviewing such document on the internet at <https://www.donlinrecano.com/Clients/fm/Dockets>. The documents annexed to the Disclosure Statement or contained in any modification or supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

### **B. Extension of Time**

For cause shown, any deadlines herein that are applicable to the Debtors or the Reorganized Debtors and which are not otherwise extendable, may be extended by the Bankruptcy Court.

### **C. Post-Effective Date Notice List**

Because certain Entities may not desire to continue to receive notices after the Effective Date, this Plan provides for the establishment of a Post-Effective Date Notice List. Entities on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under this Plan (as described herein). Any Entity desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Reorganized Debtors and their counsel. On or before sixty (60) days after the Effective Date, the Reorganized Debtors shall compile a list of all Entities on the Post-Effective Date Notice List and file such list with the Bankruptcy Court. Those parties set forth in Article XII.L of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request.

#### **D. Revocation of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order, and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

#### **E. Binding Effect**

On the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Equity Interest in, a Debtor and such Holder's respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is Impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not such Holder is entitled to a Distribution under the Plan.

#### **F. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

#### **G. Governing Law**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Alabama without giving effect to the principles of conflict of laws thereof.

#### **H. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Effective Date occurs. Neither the filing of the Plan, any statement or provision contained herein or the Disclosure Statement, nor the taking of any action by the Debtors or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Debtors or other Entity with respect to the Holders of Claims or Equity Interests or other parties-in-interest; or (b) any Holder of a Claim or Equity Interest or other party-in-interest prior to the Effective Date.

#### **I. Article 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under this Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the

United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any prohibited tax or governmental assessment and to accept for filing and recordation instruments or other documents transfers of property without the payment of any tax or governmental assessment.

**J. Section 1125(e) Good Faith Compliance**

Confirmation of the Plan shall act as a finding by the Bankruptcy Court that the Debtors and each of their respective representatives have acted in “good faith” under section 1125(e) of the Bankruptcy Code.

**K. Further Assurances**

The Debtors, the Reorganized Debtors, and all Holders of Claims receiving Distributions hereunder, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**L. Service of Documents**

Any pleading, notice, or other document required or permitted to be made in accordance with this Plan upon the Debtors shall be made in writing and shall be delivered personally, by facsimile transmission, electronic mail or by first class U.S. mail, postage prepaid, as follows:

**To the Debtors:**

FM Coal, LLC  
P.O. Box 1608  
Jasper, Alabama 35502

with a copy to:

Waller Lansden Dortch & Davis, LLP  
1901 Sixth Avenue North, Suite 1400  
Attn: Jesse S. Vogtle, Jr., Eric T. Ray, and Paul Greenwood  
Email: jesse.vogtle@wallerlaw.com, eric.ray@wallerlaw.com, and  
paul.greenwood@wallerlaw.com

and

Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, Tennessee 37219  
Attn: John C. Tishler and Tyler N. Layne  
Email: john.tishler@wallerlaw.com and tyler.layne@wallerlaw.com

**To the Reorganized Debtors:**

FM Coal, LLC  
P.O. Box 1608  
Jasper, Alabama 35502  
Attn: John McNab, General Manager

**M. Filing of Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**N. Severability**

The provisions of the Plan shall not be severable unless the Debtors agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

**O. Entire Agreement**

The Plan, and any supplements or amendments hereto, supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**P. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Equity Interests (regardless of whether such Claims or Equity Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors. All Claims and debts shall be as fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

*[Remainder of Page Intentionally Left Blank]*

Dated: March [\_\_\_], 2021

FM Coal, LLC on behalf of itself and  
all other Debtors

/s/ Michael Costello

Name: Michael Costello

Title: Sole Member of FM Coal, LLC

**EXHIBIT B**

**Plan of Reorganization**

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

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**NOTICE OF (A) ENTRY OF THE CONFIRMATION ORDER;  
(B) EFFECTIVE DATE OF THE PLAN; (C) SUBSTANTIAL CONSUMMATION  
OF THE PLAN; AND (D) BAR DATES FOR CERTAIN ADMINISTRATIVE,  
PROFESSIONAL AND REJECTION CLAIMS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**1. Confirmation of the Plan.** The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby give notice that, on [●], 2021, the Honorable Tamara O. Mitchell, United States Bankruptcy Judge for the Northern District of Alabama, entered an order [Dkt. No. [●]] (the “Confirmation Order”) confirming the Debtors’ *Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Plan”).<sup>2</sup> The Plan is attached as Exhibit A to the Confirmation Order.

**2. Effective Date.** Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, as set forth in Article VIII.E of the Plan, on [●], 2021 (the “Effective Date”).

**3. Substantial Consummation.** The Debtors hereby give notice that, as defined by section 1101(2) of the Bankruptcy Code, the Plan has been substantially consummated.

**4. Discharges, Releases, Exculpation and Injunctions.** The Plan provides for discharges, releases, exculpation and injunctions of certain conduct. The injunctions in the Plan include, among other things, a permanent injunction of the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released, exculpated or satisfied pursuant to the Plan.

**5. Bar Date for Allowed Accrued Professional Compensation Claims.** All final requests for payment of Accrued Professional Compensation Claims (the “Final Fee Applications”) must be filed no later than [●], 2021 (*i.e.*, sixty (60) days after the Effective Date).

---

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinerger of Alabama, Inc. (3009).

<sup>2</sup> Unless otherwise defined in this Notice, capitalized terms used herein have the meanings set forth in the Plan.

The procedures for processing Final Fee Applications are set forth in the Plan. If a Professional or other Entity does not timely submit a Final Fee Application, such Entity shall be forever barred from seeking payment of such Professional Fee Claim from the Debtors, their Estates or the Reorganized Debtors.

**6. Bar Date for Administrative Claims.** Requests for payment of Administrative Claims, other than Claims for Accrued Professional Compensation, must be filed with the Court and served on counsel for the Reorganized Debtors by 5:00 p.m., prevailing Central time, no later than the Final Administrative Claims Bar Date on [●], 2021 (*i.e.*, the thirtieth (30th) day following the Effective Date).

**7. Bar Date for Rejection Damages Claims.** Except as set forth in Article VII of the Plan, all executory contracts and unexpired leases of the Debtors have been rejected as of the Effective Date. Claims created by the rejection of executory contracts and unexpired leases under the Plan must be filed with the Court and served on the Reorganized Debtors no later than [●], 2021 (*i.e.*, the thirtieth (30th) day following the Effective Date). Any Claims arising from the rejection of an executory contract or unexpired lease under the Plan for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX.E of the Plan. Unless otherwise ordered by the Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III therein

**8. Post-Effective Date Notice List.** Because certain Persons and Entities may not desire to continue to receive notices after the Effective Date, the Plan provides for the establishment of a Post-Effective Date Notice List. Persons and Entities on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under the Plan (as described in the Plan). Any Person or Entity desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, on or before [●], 2021 (*i.e.*, thirty (30) days after the Effective Date), and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Reorganized Debtors and their counsel. On or before [●], 2021 (*i.e.*, sixty (60) days after the Effective Date), the Reorganized Debtors shall compile a list of all Persons on the Post-Effective Date Notice List and file such list with the Court. Those parties set forth in Article XI.L of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request. Notwithstanding the foregoing, Post-Effective Date notices and pleadings shall be served on all parties whose rights are directly affected by such notices or pleadings, even if such parties did not submit a request to be included on the Post- Effective Date Notice List.

**9. Copies of Plan and Confirmation Order.** Any party in interest who wishes to obtain a copy of the Plan, any exhibits to the Plan or the Confirmation Order may view and download such documents at (i) the Debtors' case website (<https://www.donlinrecano.com/Clients/fm/Index>); or (ii) the Court's website (<https://www.alnb.uscourts.gov/>) (PACER account required).



*[Remainder of Page Intentionally Left Blank]*

Dated: [●], 2021  
Birmingham, Alabama

WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ Jesse S. Vogtle, Jr.

Jesse S. Vogtle, Jr.

Eric T. Ray

Paul Greenwood

1901 Sixth Avenue North, Suite 1400

Birmingham, Alabama 35203

Telephone: (205) 214-6380

Facsimile: (205) 214-8787

Email: Jesse.Vogtle@wallerlaw.com

Eric.Ray@wallerlaw.com

Paul.Greenwood@wallerlaw.com

*-and-*

John Tishler

Tyler N. Layne

511 Union Street, Suite 2700

Nashville, TN 37219

Telephone: (615) 244-6380

Facsimile: (615) 244-6804

Email: John.Tishler@wallerlaw.com

Tyler.Layne@wallerlaw.com

*Attorneys for the Debtors and Debtors in Possession*

**EXHIBIT C**

**WARRIOR MET SETTLEMENT AGREEMENT**

## **CLAIM COMPROMISE AGREEMENT**

This claim compromise agreement (this “**Agreement**”), is effective as of March 3, 2021 (the “**Effective Date**”), by and among: (i) Warrior Met Coal Land, LLC and Warrior Met Coal Mining, LLC (collectively, “**Warrior Met**”); and (ii) FM Coal, LLC (“**FM Coal**”), Cane Creek, LLC (“**Cane Creek**”), M. S. & R. Equipment Co., Inc. (“**MS&R**”), Cedar Lake Mining, Inc. (“**Cedar Lake**”), Best Coal, Inc. (“**Best Coal**”), and Xinergy of Alabama, Inc. (“**Xinergy**” and together with FM Coal, Cane Creek, MS&R, Cedar Lake and Best Coal, the “**Debtors**”). The Debtors and Warrior Met are collectively referred to in this Agreement as the “**Parties**” and individually as a “**Party**”.

### **RECITALS**

- A. On September 1, 2020 (the “**Petition Date**”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”), thereby initiating Case No. 20-02783-TOM-11 (jointly administered) (the “**Bankruptcy Case**”) in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the “**Bankruptcy Court**”).

### **The Access Agreement**

- B. Prior to the Petition Date, Cedar Lake purchased certain personal property and equipment from a third party (collectively, the “**Equipment**”) located on real property owned by Warrior Met and situated in Tuscaloosa County, Alabama (the “**Tuscaloosa Property**”).
- C. With the approval of the Bankruptcy Court (under the *Order Approving Compromise and Settlement* dated November 9, 2020 [Doc. 245]) Warrior Met and Cedar Lake entered into a certain Permit to Access Property dated November 9, 2020 (the “**Access Agreement**”). Under the Access Agreement, Warrior Met granted Cedar Lake a right of entry and access to the Tuscaloosa Property for a period of sixty (60) days beginning on November 9, 2020 for the purpose of removing the Equipment. Despite Cedar Lake’s best efforts, the Equipment has not been removed from the Tuscaloosa Property as of the Effective Date of this Agreement.

### **The Administrative Claim**

- D. Unrelated to the Equipment or the Access Agreement, on January 20, 2021, Warrior Met filed in the Bankruptcy Case an administrative expense claim [Doc. 342] in the amount of \$1,042,451.25 (as subsequently amended, the “**Administrative Claim**”). The Administrative Claim alleges that Cane Creek wasted or spoiled certain America sandstone owned by Warrior Met (“**Rock**”) incidental to Cane Creek’s coal mining operations at its Flat Top Mine. Cane Creek filed an objection to the Administrative Claim, denies any wrongdoing and alleges that the value of the Administrative Claim is \$0.00. On February 23, 2021, Warrior Met amended the Administrative Claim to the amount of \$101,695.50 [Doc. 418], to which Cane Creek continues to object, denies any wrongdoing and alleges that the value is \$0.00. Warrior Met filed a similar unsecured claim in the amount of \$4,271,551.88 [Claim 50-1] for Rock it alleges Cane Creek spoiled or wasted prior to the Petition Date, which Warrior Met subsequently amended to

the amount of \$950,000.00 (as amended, the “**Prepetition Claim**”). As part of the overall compromise evidenced by this Agreement, Cane Creek has agreed to not object to the Prepetition Claim.

- E. In addition to filing the Administrative Claim and the Prepetition Claim, Warrior Met (i) filed an objection [Doc. 395] (the “**Plan Objection**”) to the Debtors’ First Amended Joint Plan of Reorganization [Doc. 276] (the “**Plan**”), and (ii) voted to reject the Debtors’ Plan.

#### **The Surface Coal Mining Lease**

- F. Warrior Met is the fee simple owner of certain real property located in Jefferson County, Alabama, generally described as follows (the “**Jefferson County Property**”):

Section 19 - part of the NE4/NE4

Section 20 - part of the NW4/NW4 and the SW4/NW4

- G. Cane Creek desires to enter into a lease with Warrior Met of the Jefferson County Property, pursuant to which Cane Creek would lease from Warrior Met the right to mine coal from the Jefferson County Property. Warrior Met is willing to enter into a lease on acceptable terms as part of the overall compromise evidenced by this Agreement.

#### **The Stockpiled Rock**

- H. Pursuant to and as set forth more specifically in that certain Statutory Warranty Deed dated December 29, 2014 and recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Book LG 201510, Page 1133, a copy of which is attached to the Prepetition Claim as Exhibit A (the “**Deed**”), Warrior Met owns certain non-coal minerals, including the Rock, located at the Flat Top Mine, and mining rights associated with their extraction and recovery. As set forth more specifically in the Administrative Claim and Prepetition Claim, Warrior Met and MM Mineral Holdings, LLC (“**MM Mineral**”) are parties to a Quarry Rock Permit (the “**QSP**”) and related lease pursuant to which Warrior Met receives a per-ton royalty on each ton of its Rock that is processed and sold by MM Mineral, when such Rock is delivered to or retrieved by MM Mineral from the Flat Top Mine. Warrior Met retains ownership of the Rock at all times until processed Rock is sold to a third party by MM Mineral.

- I. Cane Creek and MM Mineral entered into a certain Operating Contract dated March 7, 2017 (the “**Prior Contract**”), pursuant to which Cane Creek agreed to haul Warrior Met’s Rock removed from its Flat Top Mine to a location leased by MM Mineral (the “**Staging Area**”), for MM Mineral to crush and process the Rock into a salable product. In return, MM Mineral agreed to pay Cane Creek between \$0.75 and \$1.50 for each ton of processed Rock sold by MM Mineral from the Staging Area. Although Cane Creek agreed in the Prior Contract that it would haul Rock removed from its Flat Top Mine to the Staging Area, the Prior Contract imposes no minimum amount or production tonnage quota of Rock that Cane Creek must haul.

- J. The Bankruptcy Court entered an order on November 12, 2020 [Doc. 251], authorizing Cane Creek's (i) rejection of the Prior Contract and (ii) entry into a new contract with MM Mineral (the "**MM Mineral Contract**"). A copy of the MM Mineral Contract is attached hereto as **Exhibit 1** and incorporated herein by reference. Under the MM Mineral Contract, Cane Creek delivers Warrior Met's Rock to MM Mineral and makes Rock available to MM Mineral at the Flat Top Mine in exchange for compensation, among other terms more particularly set forth in the MM Mineral Contract. Any Rock received by MM Mineral under the MM Mineral Contract remains subject to the terms of the QSP.
- K. Warrior Met's Rock unearthed in Cane Creek's coal mining operations at its Flat Top Mine that is not delivered to MM Mineral at the Staging Area or received by MM Mineral under the MM Mineral Contract (now or in the future) is collectively referred to in this Agreement as "**Stockpiled Rock**".

#### **This Agreement**

- L. The Parties have negotiated in good faith and desire to:
- (i) Enter into that certain Amended and Restated Permit to Access Property attached hereto as **Exhibit 2** and incorporated herein by reference (the "**Amended Access Agreement**"), thereby allowing Cedar Lake additional time for the Equipment to be removed from the Tuscaloosa Property, under the terms more particularly set forth in the Amended Access Agreement;
  - (ii) Compromise the Administrative Claim, but only under the terms and conditions set forth in this Agreement; and
  - (iii) Enter into that certain Surface Coal Mining Lease attached hereto as **Exhibit 3** and incorporated herein by reference (the "**Coal Mining Lease**"), under which Cane Creek will acquire the right to mine coal on the Jefferson County Property, under the terms more particularly set forth in the Coal Mining Lease.
- M. Accordingly, the Parties have agreed to enter into this Agreement under the terms set forth in this Agreement.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Incorporation of Recitals:** The Parties each agree that, to the best knowledge of each, the recitals set forth above are true and correct. Each of the definitions and recitals set forth above is expressly incorporated into this "Agreement" section of this Agreement. Each of the Parties agrees not to contest the accuracy of any of the recitals set forth above.

2. **The Amended Access Agreement:** Contemporaneously with the execution of this Agreement, the Parties are executing and entering into the Amended Access Agreement.

3. **The Coal Mining Lease:** Contemporaneously with the execution of this Agreement, the Parties are executing and entering into the Coal Mining Lease.

4. **Compromise of the Administrative Claim:** Cane Creek and Warrior Met agree to compromise the Administrative Claim as follows:

- (i) Warrior Met's Administrative Claim is reduced to \$25,000.00 (the "**Compromised Administrative Claim**"), which shall be paid to Warrior Met within five (5) calendar days of the effective date of the Plan (the "**Effective Date**");
- (ii) Warrior Met will have access to all of the Stockpiled Rock at Cane Creek's Flat Top Mine to remove Stockpiled Rock or have Stockpiled Rock removed on its behalf, so long as (1) such activities do not interfere with Cane Creek's mining operations, as provided in the Deed, and (2) such activities do not violate Alabama law or any rules or regulations of the Alabama Surface Mining Commission. Warrior Met assumes all legal and financial responsibility for, and will reimburse, defend, indemnify and hold harmless Cane Creek, its officers, directors, agents, servants, employees, affiliates and/or shareholders (collectively, the "**Indemnitees**"), from and against, any and all losses, costs, liabilities, suits, administrative proceedings, claims, debts, demands, causes of action, fines, penalties and expenses (including without limitation reasonable attorneys' fees and expenses) (collectively, "**Claims**") as a result of injuries to, and deaths of, persons (including without limitation employees of Warrior Met and its subcontractors), and damage to or destruction of property (real, personal, and mixed) by whomsoever asserted, claimed or alleged, resulting or arising from, or alleged to have resulted or arisen from, Warrior Met's or its designated subcontractor's access to or occupancy of Cane Creek's real property for removal of Stockpiled Rock, or the operations and activities of Warrior Met or its designated subcontractors in removing Stockpiled Rock under this Agreement, irrespective of when such injury, death or damages occurs.
- (iii) Cane Creek will provide Warrior Met sixty days (60) written notice prior to the commencement of reclamation at the Flat Top Mine to allow Warrior Met an opportunity to remove or have removed any Stockpiled Rock from the area to be reclaimed in Warrior Met's discretion, it being expressly acknowledged and agreed by the parties that Warrior Met shall have no obligation to remove any Stockpiled Rock and no liability to perform any reclamation or other activities at the Flat Top Mine, as such reclamation liability shall remain at all times with Cane Creek;

- (iv) Cane Creek ratifies and reaffirms its obligation to not sell Warrior Met's Rock to any third party, other than delivering Rock to MM Mineral and/or making Rock available to MM Mineral under the MM Mineral Contract. Cane Creek may continue to deliver Rock and/or make Rock available to MM Mineral in exchange for compensation under the MM Mineral Contract. Nothing in this Agreement impacts in any way the MM Mineral Contract or interferes in any way with Cane Creek's ability to deliver Rock and/or make Rock available to MM Mineral in exchange for compensation under the MM Mineral Contract for so long as the QSP remains active and in good standing;
- (v) Cane Creek assumes all legal and financial responsibility for, and will reimburse, defend, indemnify and hold harmless Warrior Met, its officers, directors, agents, servants, employees, affiliates and/or shareholders (collectively, the "**Indemnitees**"), from and against, any and all losses, costs, liabilities, suits, administrative proceedings, claims, debts, demands, causes of action, fines, penalties and expenses (including without limitation reasonable attorneys' fees and expenses) (collectively, "**Claims**") as a result of injuries to, and deaths of, persons (including without limitation employees of Cane Creek and its subcontractors), and damage to or destruction of property (real, personal, and mixed) by whomsoever asserted, claimed or alleged, resulting or arising from, or alleged to have resulted or arisen from Cane Creek's or its designated subcontractor's removal, stockpiling or transportation of Rock and/or Stockpiled Rock, irrespective of when such injury, death or damages occurs;
- (vi) Immediately upon the execution of this Agreement (or as soon as reasonably possible), Warrior Met shall (1) withdraw its Plan Objection in its entirety, and (2) change its ballot in the Bankruptcy Case to a vote in favor of the Debtors' Plan on or before 4:00 p.m. Central Standard Time on March 3, 2021; and
- (vii) As part of the overall compromise evidenced by this Agreement,, the Debtors will not object to allowance of the Prepetition Claim.

5. **Bankruptcy Court Approval:** The Debtors and Warrior Met shall seek the Bankruptcy Court's approval of this Agreement by disclosing and incorporating all material terms of this Agreement into an order to be entered by the Bankruptcy Court confirming the Debtors' Plan (the "**Confirmation Order**").

6. **Release of Warrior Met:**

(i) In consideration of the agreements of Warrior Met contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Debtors, on their own behalf and for each of their respective successors, assigns, and other legal representatives, hereby absolutely, unconditionally



and irrevocably release, remise and forever discharge Warrior Met, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Warrior Met and all such other persons being hereinafter referred to collectively as the **“Warrior Met Released Parties”**), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a **“Claim”** and collectively, **“Claims”**) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which any one or more of the Debtors or any of their respective successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Warrior Met Released Parties or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement; provided, that nothing herein shall release the Warrior Met Released Parties from, or excuse the Warrior Met Released Parties from compliance with, any obligations under this Agreement, including but not limited to the indemnity obligations of Warrior Met set forth herein, or under the Amended Access Agreement or the Coal Mining Lease to be entered pursuant hereto.

(ii) The Debtors understand, acknowledge and agree that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(iii) The Debtors agree that no fact, event, circumstance, evidence or transaction which could now be asserted or which is presently existing but may hereafter be discovered shall affect in any manner the final, absolute, and unconditional nature of the release set forth above.

## **7. Release of the Debtors:**

(i) In consideration of the agreements of the Debtors contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and upon full payment of the Compromised Administrative Claim, Warrior Met, on its own behalf and for its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges each of the Debtors, and each of the Debtors' successors and assigns, and their respective present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (each of the Debtors and all such other persons being hereinafter referred to collectively as the **“Debtor Released Parties”**), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a **“Claim”** and collectively, **“Claims”**) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Warrior Met or any of its successors,

assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Debtor Released Parties or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement; provided, that nothing herein shall release the Debtor Released Parties from, or excuse the Debtor Released Parties from compliance with, any obligations under this Agreement, or under the Amended Access Agreement or the Coal Mining Lease to be entered pursuant hereto.

(ii) Warrior Met understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(iii) Warrior Met agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which is presently existing but may hereafter be discovered shall affect in any manner the final, absolute, and unconditional nature of the release set forth above.

**8. Adequate Consideration:** The Parties each hereby acknowledge and agree that the agreed compromises under this Agreement constitute full and adequate consideration for the execution and delivery by each Party of this Agreement.

**9. Representations and Warranties:** To induce each other to enter into this Agreement and as partial consideration for the terms and conditions contained herein, each of the Debtors and Warrior Met respectively makes the following representations and warranties, each and all of which shall survive the execution and delivery of this Agreement and all of the other documents executed in connection herewith: (a) except for such actions required in Section 5 of this Agreement (Bankruptcy Court Approval), each Party has the requisite power and authority to deliver and perform this Agreement and any documents executed by it in connection herewith; (b) except for such actions required in Section 5 of this Agreement (Bankruptcy Court Approval), all actions required to be taken by a Party for the authorization, execution, delivery and performance of this Agreement and any other documents contemplated hereby have been taken; (c) the respective person executing this Agreement on behalf of each Party is duly authorized; (d) this Agreement is, and any documents executed pursuant hereto will be, legal, valid, and binding obligations of the party or parties thereto, enforceable against each such party in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium and other laws or equitable principles affecting creditors' rights generally; and (e) except for such actions required in Section 5 of this Agreement (Bankruptcy Court Approval), the execution, delivery and performance by each Party of this Agreement and the documents related thereto will not (i) require any consent or approval of any person or entity which has not been obtained prior to, and which is not in full force and effect as of, the date of this Agreement; (ii) result in the breach of, default under, or cause the acceleration of any obligation owed under any loan, credit agreement, note, security agreement, lease indenture, mortgage, loan document or other agreement by which any of them are bound or affected.

**10. Survival of Representations and Warranties:** All of the representations and warranties contained in this Agreement and in all other documents and instruments executed

in connection herewith or otherwise relating to this Agreement shall survive the execution of this Agreement and are material and have been or will be relied upon by the other Party, notwithstanding any investigation made by any person, entity or organization on behalf of the Party so relying.

**11. Cooperation; Other Documents:** At all times following the execution of this Agreement, the Parties shall execute and deliver, or shall cause to be executed and delivered, and shall do or cause to be done all such other acts and things as the other may reasonably deem to be necessary or desirable to assure the other Party of the benefit of this Agreement and the documents comprising or relating to this Agreement.

**12. Remedies Cumulative:** The respective rights, powers and remedies of the Parties in this Agreement are cumulative and not exclusive of any right, power or remedy provided by law or equity, and no failure or delay on the part of either Party in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. The Parties each expressly reserve and preserve all of its rights and remedies to enforce this Agreement.

**13. Notices:** Any written notice required to be given under this Agreement shall be sent to the following by mail, and shall be deemed given upon such mailing and sending:

If to the Debtors:

FM Coal, LLC  
4650 Flat Top Road  
Graysville, AL 35073  
Attn: John McNab

With a copy to:

Jesse S. Vogtle, Jr. Esq.  
Waller Lansden Dortch & Davis, LLP  
1901 Sixth Avenue North, Suite 1400  
Birmingham, AL 35203

If to Warrior Met:

Warrior Met Coal Land, LLC  
16243 Highway 216  
Brookwood, AL 35444  
Attn: Roger Crabb

with a copy to:

Jayna Lamar  
Maynard, Cooper & Gayle, P.C.

1901 Sixth Avenue North, Suite 1700  
Birmingham, Alabama 35203

**14. Integration; Effect:** This Agreement, together with the exhibits attached hereto, which are incorporated into this Agreement by reference, constitutes the entire agreement of the Parties pertaining to the subject matter hereof and all prior negotiations and representations relating thereto are merged herein. The terms and conditions set forth in this Agreement are the product of joint draftsmanship by all Parties, each being represented or having the opportunity to be represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to or in connection with this Agreement shall not be construed against any of the Parties because of draftsmanship. This Agreement is not intended to modify and does not modify the rights, remedies and obligations of Warrior Met and/or any of the Debtors pursuant to any contract or agreement, loan or security agreement, guaranty or debt instrument, except to the extent expressly set forth herein. This Agreement shall inure to the benefit of, and be binding upon, the representatives, successors and assigns of the Parties hereto, respectively.

**15. Counsel:** The Parties each acknowledge, agree, represent and warrant that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood by each Party, and that each Party has had the full benefit and advice of counsel of their own selection in regard to understanding the terms, meaning and effect of this Agreement.

**16. Counterparts:** This Agreement may be executed in a number of identical counterparts and delivered either by original paper, facsimile or a scanned copy by email, each of which for all purposes shall be deemed an original, and all of which constitute collectively one (1) document and Agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart, and counterpart pages may be combined into one (1) single document.

**17. Governing Law: Consent to Jurisdiction and Venue.** IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE PARTIES HEREBY CONSENT AND AGREE THAT THE STATE COURTS FOR THE COUNTY OF JEFFERSON OR FEDERAL COURTS LOCATED IN THE NORTHERN DISTRICT OF ALABAMA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN DEBTORS AND WARRIOR MET PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT; PROVIDED, THAT WARRIOR MET AND THE DEBTORS ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF ALABAMA; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE EITHER PARTY

FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE MOVING PARTY. THE PARTIES EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND HEREBY WAIVE ANY OBJECTION WHICH THEY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

**Mutual Waiver of Jury Trial.** BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY, THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN WARRIOR MET AND DEBTORS ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED THERETO.

[Signatures on the Following Page]

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IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals,  
all as of the day and year first above written.

**WARRIOR MET COAL LAND, LLC  
WARRIOR MET COAL MINING, LLC**



By: Philip K. Saunders  
Its: VP-Engineering

**FM COAL, LLC**

By: John McNab  
Its: General Manager

**CANE CREEK, LLC**

By: John McNab  
Its: General Manager

**CEDAR LAKE MINING, INC.**

By: John McNab  
Its: General Manager

**M. S. & R. EQUIPMENT CO., INC.**

By: John McNab  
Its: General Manager

**BEST COAL, INC.**

By: John McNab  
Its: General Manager

**XINERGY OF ALABAMA, INC.**

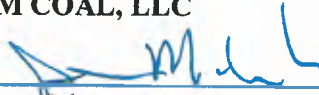
By: John McNab  
Its: General Manager

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals,  
all as of the day and year first above written.

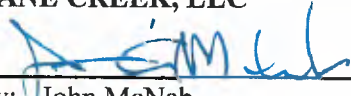
**WARRIOR MET COAL LAND, LLC**  
**WARRIOR MET COAL MINING, LLC**

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


**FM COAL, LLC**

  
By: John McNab  
Its: General Manager

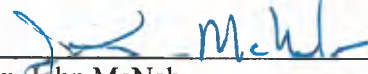
**CANE CREEK, LLC**

  
By: John McNab  
Its: General Manager

**CEDAR LAKE MINING, INC.**

  
By: John McNab  
Its: General Manager

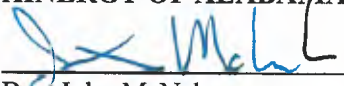
**M. S. & R. EQUIPMENT CO., INC.**

  
By: John McNab  
Its: General Manager

**BEST COAL, INC.**

  
By: John McNab  
Its: General Manager

**XINERGY OF ALABAMA, INC.**

  
By: John McNab  
Its: General Manager

# **Exhibit 1**

## **The MM Mineral Contract**

[Attached]



## **HAULING AGREEMENT**

This **HAULING AGREEMENT** (the "Agreement") is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and among **MM MINERAL HOLDINGS, LLC** ("**MM**") and **CANE CREEK, LLC**, along with its successors and/or assigns ("Cane Creek" and together with MM, collectively, the "Parties" and each a "Party").

### **Recitals**

A. Cane Creek is the owner of certain mineral and mining rights for that certain real property located in Jefferson County, Alabama as more fully described in the Quitclaim Deed dated December 29, 2014 (the "Deed"), and recorded with the Judge of Probate, Jefferson County, Alabama, on January 5, 2015, as instrument number 20150105000005890 (the "Real Property") and attached hereto as Exhibit A.

B. Pursuant to the Deed, the Grantor (as defined therein and a/k/a Warrior Met) reserved certain rights (the "Reserved Mineral and Mining Rights") which include, among other things, the Grantor's title and ownership in certain sandstone overburden located on the Real Property (the "Sandstone").

C. Cane Creek has license and authority to remove the Sandstone from the Real Property so that it may mine coal on the Real Property, but does not own the Sandstone.

D. MM has contracted with the Grantor, who owns and continues to own the Sandstone at all times prior to the sale thereof, to process and sell the Sandstone.

E. The Parties previously entered into that certain Operating Agreement dated March 7, 2017 (the "Prior Agreement"), which the parties have agreed Cane Creek will reject and terminate.

F. Pursuant to the Prior Agreement, Cane Creek provided MM with Sandstone which MM currently holds in stock (the "Existing Sandstone").

G. Pursuant to the Prior Agreement, MM agreed to pay certain royalties to Cane Creek upon the sale of the Existing Sandstone (the "Existing Sandstone Royalties").

H. Cane Creek desires to provide the Sandstone to MM for the purpose of MM processing and selling the Sandstone, and MM desires to receive the Sandstone, but only upon the terms and conditions set forth in this Agreement.

### **Agreement**

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the covenants herein set forth and confirmed, the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, Cane Creek and MM agree as of the Effective Date as follows:

1. **Acknowledgement of Recitals.** Cane Creek and MM acknowledge and agree that the foregoing "Recitals" are true, correct, and complete, and agree that the same are incorporated by reference into the body of this Agreement.

2. **Cane Creek to Provide Sandstone.** Cane Creek agrees to provide the Sandstone to MM upon the following terms and conditions:

a. Except for Cane Creek's internal use of the shot rock in the ordinary course of its mining, Cane Creek shall provide all Sandstone on the Real Property exclusively to MM and shall not provide, transfer, or ship any Sandstone to any other party or purchaser during the Term (as defined herein) of this Agreement.

b. MM shall pay Cane Creek:

i. Fees computed as follows:

1. \$1.00 per ton of Sandstone (the "Shipping Point Fee") for any and all Sandstone that MM receives at the Real Property; or

2. \$1.75 per ton of Sandstone (the "Destination Fee" and together with the Shipping Point Fee, collectively, the "Hauling Fees") for any and all Sandstone that Cane Creek provides and ships, and that MM receives at, MM's designated location (the "MM Premises").

ii. MM shall pay the Hauling Fees to Cane Creek on the 20<sup>th</sup> day of each month unless such day falls on a weekend or Federal holiday in which case said payment will be due on the following business day. In calculating Hauling Fees, Sandstone shall be considered sold by MM when it is received from Cane Creek, processed by MM, and (a) delivered to customers, (b) delivered to a separate distribution facility for later sale to customers, or (c) used by MM in its own operations. Sandstone will not be considered sold if it is simply transported to other lands for further processing. Sandstone which is processed on lands other than the MM Premises will be considered sold when it is ultimately transported from such other lands for delivery to customers, delivery to a separate distribution facility for later sale to customers, or use by MM in its own operations.

iii. MM shall be liable for all royalties due under that separate contract between MM and Warrior Met dated \_\_\_\_\_, \_\_\_\_\_.

iv. The Existing Sandstone, which is owned by Warrior Met, that has been delivered by Cane Creek under the Prior Agreement, must be segregated and an estimate of its current tonnage performed by McGehee Engineering Corp ("McGehee"). McGehee must perform such estimate within six (6) months of the date of this Agreement. Each Party shall be responsible for one-half (½) of the cost of the estimate. For any

Existing Sandstone that is not segregated and estimated, Hauling Fees on account of such Existing Sandstone shall be deemed to be at the new rates set forth herein.

- v. All future sales of the Existing Sandstone shall be remitted and priced pursuant to the Prior Agreement, *i.e.*, \$1.50/ton. Furthermore, for the avoidance of doubt, with respect to MM's obligations to pay Royalties for Existing Sandstone pursuant to the Prior Agreement, such obligations shall survive and remain fully intact even if an order is entered by the Bankruptcy Court in Cane Creek's currently existing bankruptcy case that authorizes Cane Creek to reject and terminate the Prior Agreement.

3. **Term.** The initial period of this Agreement will begin on the Effective Date and terminate at 5:00 PM (local time where the Real Property is located) on the second (2<sup>nd</sup>) anniversary of the Effective Date (the "**Initial Term**"), unless earlier terminated as provided herein. The Initial Term will be extended automatically for one (1) additional period of two (2) years (the "**Renewal Term**") unless (a) Cane Creek notifies MM not less than ninety (90) days prior to the expiration of the Initial Term that Cane Creek does not desire to extend the Agreement, or (b) Cane Creek's mining operations at the Real Property are shut down. Regardless of the expiration of Cane Creek's requirements under this Agreement, MM is obligated to remit payments under this Agreement or the Prior Agreement until all Sandstone is sold and/or MM provides notice that is has ceased selling Sandstone, *i.e.*, MM's obligations to remit Hauling Fees to Cane Creek shall remain until such time as MM no longer sells the Sandstone or the Sandstone is exhausted and MM provides notice of same to Cane Creek.

4. **Number of Tons.** The number of tons of Sandstone that are provided from the Real Property each month shall be determined by the scale weight of each truck load transported from the Real Property either by Cane Creek or MM. If scale weight process cannot be performed due to the size of the trucks, or any other reason, parties will estimate the shipment size and engage McGehee or similar engineer to verify. Non-scale weighted trucks will be reconciled monthly. The parties shall share equally in the engineer costs associated with this paragraph 4.

5. **Reporting.** Cane Creek, and its duly authorized agents, employees, attorneys, and representatives, shall be entitled, at Cane Creek's sole expense, to enter upon the MM Premises from time to time at reasonable intervals and during regular business hours of MM, upon reasonable advance notice to MM, in order to carry out such inspections as Cane Creek may deem reasonably appropriate to insure compliance with the terms hereof, including, without limitation, the right to review, audit, and make copies of any applicable Sandstone production, weight, freight, and sales records of MM. All information obtained by Cane Creek under this Section relating to the business of MM will be kept strictly confidential and will not be disclosed to any other party unless otherwise required by law. Cane Creek acknowledges and agrees that the requirements of applicable laws prohibit MM from allowing persons not employed by MM to inspect the portion of the MM Premises used in MM's operations unaccompanied and that Cane Creek will have to schedule with MM any inspection of MM's operations on the MM Premises.

MM shall keep accurate and complete records, including freight bills and invoices, covering its operation and the removal of Sandstone from the Real Property or sale of Sandstone. MM shall furnish Cane Creek monthly reports showing the quantity of Sandstone of various grades received from Cane Creek and sold during the preceding quarter on or before the twenty-fifth day of the quarter following the quarter for which said records are made.

6. **MM's Sale of Processed Sandstone to Cane Creek.** MM agrees to sell Sandstone processed to 1½ in crusher run road material – or otherwise as the parties may agree – to Cane Creek for consideration of \$6.00 (the “Repurchased Sandstone”) loaded on Cane Creek (or its assignees) trucks at MM's premises. At the Parties' agreement, MM may credit any balance owed by Cane Creek to MM for the Repurchased Sandstone against any balance owed by MM to Cane Creek for the Hauling Fees. Cane Creek covenants and agrees that it will not use the Repurchased Sandstone for any purpose other than its own internal uses, and further covenants and agrees that it will not sell the Repurchased Sandstone to any third party.

7. **Conditions Precedent.** The following must be satisfied prior to the effectiveness of this agreement:

- a. MM agrees that it will provide an accounting of the Existing Sandstone pursuant to Paragraph 2.b.iv and remit all Royalties due under the Prior Agreement when due as prescribed in the Prior Agreement and hereby agrees to remit those amounts into the Court in the existing adversary proceeding filed by MM in the United States Bankruptcy Court for the Northern District of Alabama, *adversary proceeding no. 20-45-TOM* (the “Interpleader”) unless otherwise ordered by the Court.
- b. MM agrees that it is solely liable to Warrior Met for all royalties due Warrior Met under the Prior Agreement including any and all future royalties from the Existing Sandstone.
- c. In all respects, MM agrees to fully cooperate with Cane Creek in the prosecution of its claims against Freddy Hunt including but not limited to providing any information of payment(s) made to Freddy Hunt under the Prior Agreement, or any payments made to Freddy Hunt outside of the Prior Agreement.

8. **Default.** If either party should fail to keep or shall violate any conditions, stipulations, terms, or obligations contained in this Agreement, it shall be deemed in breach of this Agreement. Unless termination is permitted immediately otherwise in this Agreement, the non-defaulting Party may give the defaulting party thirty (30) days written notice to cure the breach and if such failure or violation shall continue for a period of thirty (30) days after the defaulting Party receives written notice from the non-defaulting Party to cure such breach, then in such event, the defaulting Party is in default. For the avoidance of doubt, the Parties acknowledge that in no event is Cane Creek obligated to deliver or provide MM with any quantity of Sandstone if Cane Creek ceases mining the project. In any event, MM is obligated to pay all future Royalties and Hauling Fees until MM's stock of all Sandstone, under the Prior Agreement and this Agreement, is exhausted.

9. **No Waiver.** Neither a Party's continued performance after default nor a Party's delay in enforcement of this Agreement shall be deemed to constitute a waiver of any or all defaults under the Agreement. No failure to exercise, or any delay by either Party in exercising, any right, power or privilege hereunder shall preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided to the Parties in this Agreement are cumulative and not exclusive of each other or of any right and remedy provided to any party by law or in equity. Except as otherwise expressly provided herein, no notice to or demand upon a Party in any instance shall, in itself, entitle a Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of a Party to any other or further action in any circumstance without notice or demand. Acceptance by Cane Creek of any payments or reimbursements referred to in this Agreement shall not constitute a waiver by Cane Creek of any of its rights hereunder or at law or equity whatsoever. The acceptance by Cane Creek of any payment or reimbursement hereunder shall not be deemed to be a waiver of any preceding breach by MM of any term, covenant or condition of this Agreement regardless of Cane Creek's knowledge of such preceding breach at the time of the acceptance of such payment.

10. **Integration; Effect.** This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof and all prior negotiations and representations relating thereto are merged herein. The terms and conditions set forth in this Agreement are the product of joint draftsmanship by all parties, each being represented or having the opportunity to be represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to or in connection with this Agreement shall not be construed against any of the parties because of draftsmanship. This Agreement shall inure to the benefit of, and be binding upon, the representatives, successors and assigns of the Parties hereto, respectively. This Agreement may be executed in whole or in counterparts, each of which shall be an original but all of which, when taken together, shall constitute but one agreement. This Agreement may be executed by facsimile signatures, which shall be binding on the Parties hereto as if it were an original document.

11. **Counsel.** The Parties acknowledge, agree, represent, and warrant that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood by the Parties and have been fully and unconditionally consented to by them and that they have had full benefit and advice of counsel of their own selection in regard to understanding the terms, meaning and effect of this Agreement.

12. **Governing Law: Consent to Jurisdiction and Venue.** IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING UNDER HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE PARTIES HEREBY CONSENT AND AGREE THAT THE STATE COURTS FOR THE COUNTY OF JEFFERSON OR FEDERAL COURTS LOCATED IN THE NORTHERN DISTRICT OF ALABAMA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING



TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT; PROVIDED, THAT THE PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF ALABAMA; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO THE PARTIES FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. THE PARTIES EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND THE PARTIES HEREBY WAIVE ANY OBJECTION WHICH THEY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE PARTIES HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREE THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE PARTY AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF THE PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

13. Mutual Waiver of Jury Trial; Arbitration. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY, THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS FOLLOWING A NON BINDING MEDIATION. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF NON BINDING MEDIATION, TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN THE PARTIES ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED THERETO. A JUDGMENT MAY BE ENTERED UPON THE AWARD BY ANY COURT OF COMPETENT JURISDICTION.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals, all as of the day and year first above written.

ACCEPTED AND AGREED TO AS OF THE 9TH DAY OF NOVEMBER 2020.

CANE CREEK, LLC

Michael T. Costello  
By: MICHAEL T. COSTELLO  
Its: AUTHORIZED REPRESENTATIVE

MM MINERAL HOLDINGS, LLC

David Reed  
By: DAVID REED  
Its: PRESIDENT MM Holdings

## **Exhibit 2**

### **The Amended Access Agreement**

**[Attached]**



## AMENDED AND RESTATED PERMIT TO ACCESS PROPERTY

THIS AMENDED AND RESTATED PERMIT TO ACCESS PROPERTY (this "Permit") by and between **Warrior Met Coal Land, LLC** and **Warrior Met Coal Mining, LLC**, located at 16243 Highway 216, Brookwood, AL 35444, its successors and assigns ("Warrior"), and **Cedar Lake Mining, Inc.**, located at P.O. Box 1608, Jasper AL 35502, its successors and assigns ("Permittee"), is dated as of January 9, 2021 ("Effective Date"), amending and restating in its entirety that Permit to Access Property by and between Warrior and Permittee dated as of November 9, 2020 (the "Original Permit").

### RECITALS

A. On January 31, 2018, Permittee purchased certain personal property, fixtures and equipment, including without limitation that described on Exhibit A hereto (the "Equipment") from Bowie Refined Coal, LLC ("Bowie").

B. The Equipment is located on the real property owned by Warrior, located in Tuscaloosa County, Alabama, and described in Exhibit B hereto (the "Premises"). The Premises are commonly referred to as the Bowie 7 Plant Site. The Premises currently are permitted by the Alabama Surface Mining Commission and regulated by the U.S. Department of Labor Mine Safety and Health Administration ("MSHA").

C. Permittee requested that Warrior grant to it a permit and license to enter and access the Premises for the sole purpose of removing the Equipment from the Premises, and Warrior and Permittee entered into the Original Permit establishing the terms and conditions upon which Warrior would allow such access.

D. Permittee was unable to complete the removal of the Equipment within the term of the Original Permit, and Permittee requested additional time to access the Premises to retrieve the balance of the Equipment,

E. Warrior is willing to extend the term of the permit and license to allow Permittee additional time in which to access the Premises in order to complete the removal of the Equipment, but only pursuant to the terms and conditions set forth in this amendment and restatement of the Original Permit.

NOW, THEREFORE, in consideration of the Recitals which are incorporated into this Permit by reference and the mutual agreements and payments set forth herein, the parties agree as follows:

1. Grant of Right of Entry and Access. Warrior grants to Permittee, a personal permit and license to enter into and access the Premises for the sole purpose of removing the Equipment from the Premises at Permittee's sole cost and expense. Permittee assumes the obligation to, and agrees that it shall, remove all of the Equipment and dispose (off-site) of any and all debris, trash, parts, fluids and inventory relating to the Equipment or generated in connection with Permittee's exercise of the rights hereunder (collectively, "Debris"). This permit and license will extend to Permittee's employees and contractors, provided, that Permittee will remain fully liable and responsible hereunder for the acts and omissions of such employees and contractors. Permittee shall maintain the Premises in good condition and repair during the Term (as hereinafter defined). Warrior shall not be obligated or required to make any repairs or do any work on or about the Premises or any part thereof, and Permittee accepts the Premises in its "AS IS, WHERE IS, WITH ALL FAULTS" condition. Permittee acknowledges and agrees that the permit and license granted under this Permit does not transfer to Permittee any right, title

or interest in or to the Premises other than the limited, personal license to use the same under this Permit. The rights granted herein are subject to and conditioned upon all existing easements for railroads, roads, transmission lines, telegraph lines, pipe lines, and leases; all rights of way of record; all set-backs and zoning requirements; and any acts of condemnation or force majeure. Permittee and its contractors shall not block the access roads at any time. All loading shall be done on the Premises and not in the access roads.

2. MSHA Training. Permittee acknowledges and agrees that the Premises and the Warrior property on which the access roads are located are regulated by MSHA. Entry onto the Premises and access roads is restricted to individuals who have completed training sufficient to meet the requirements of MSHA ("MSHA Training"), which MSHA Training is administered and documented by Permittee. Permittee must provide to Warrior documentation for each individual who will enter the Premises or use the access roads prior to their access or entry. Under no circumstances shall Permittee permit any person to enter onto the Premises and access roads unless such person has first completed MSHA Training within the immediately preceding year. Warrior shall have the right to escort persons off the Premises and access roads if the foregoing documentation has not been provided.

3. Restrictions on Access and Use. Permittee shall have the rights of ingress and egress to the Premises along the existing access roads depicted in Exhibit B only. Permittee shall not use or create on any other portions of the Premises roads or access ways, and Permittee shall not make or allow others to make any improvements to the Premises or other Warrior property other than as expressly set forth in this Permit. Permittee agrees that there is to be NO HUNTING ON THE PREMISES OR OTHER WARRIOR PROPERTY, AND NO REPRESENTATIVE OR INVITEE OF PERMITTEE MAY BRING ANY FORM OF FIREARM ONTO THE PROPERTY. PERMITTEE AGREES THAT VIOLATION OF THIS PROVISION WILL RESULT IN IMMEDIATE TERMINATION OF THIS PERMIT. Permittee shall make reasonable efforts to keep unauthorized persons from entering the Premises. Permittee shall accompany any contractor accessing the Premises on Permittee's behalf to assure that such contractor complies with the terms of this Permit. Permittee shall not push down, cut or remove any timber from the Premises without the prior written consent of Warrior, which may be withheld for any reason. If Permittee, its employees or contractors push down, cut or remove any timber without first obtaining Warrior's consent, in addition to other fees due hereunder, Permittee shall promptly pay to Warrior the reasonable market value of any such timber as determined by Warrior. Permittee is solely responsible for any needed improvements on the road. There shall be no staging or parking of vehicles along the access road or adjacent property. All vehicles shall be parked or staged inside the boundaries of the Bowie 7 site as shown on Exhibit B. At the close of Permittee's business and access period, Permittee must restore the road to the same or better condition than it was in when Permittee first accessed the Premises. ANY VEHICLE TRAFFIC IN AREAS OTHER THAN THE MARKED AREAS ON THE EXHIBIT "B" SHALL RESULT IN AN IMMEDIATE TERMINATION OF THIS PERMIT.

4. Term. The term of this Permit ("Term") begins on November 9, 2020 and terminates (the "Termination Date") on the earlier of : (i) June 9, 2021, or (ii) the date on which Permittee has removed all of the Equipment from the Premises, paid any expenses owed hereunder, and complied fully with its obligations described in this Permit (collectively, the "Permittee Obligations").

5. Consideration. In consideration of the grant of the permit and license hereunder, and to reimburse Warrior for the costs of bonds and other expenses incurred by Warrior as a result of Permittee's storage of the Equipment at the Premises since January 31, 2018, Permittee will pay a license fee to Warrior by wire transfer to an account designated by Warrior, which shall be fully earned upon execution of this Permit, as follows:

\$5,000 for access through January 9, 2021 (previously paid by Permittee);

\$7,500 for access between January 10, 2021 and February 9, 2021;

\$10,000 for access between February 10, 2021 and March 8, 2021; and

\$10,000 for each month or partial month thereafter until the Termination Date, due on the 9<sup>th</sup> day of each of March, April and May, unless the Termination Date has occurred prior to the due date in any of such months. Permittee's failure to make any of the aforesaid payments on or before the due date shall be an event of default. Permittee is not entitled to a period of time to cure any default set forth in this Section 5.

6. Indemnity. Permittee shall indemnify, defend and hold harmless Warrior, its agents, officers, directors, servants, employees, shareholders, parent companies, affiliated companies, and its and their successors and assigns (collectively, "Warrior Parties") from and against any and all claims, suits, demands and actions which may be brought against or incurred by any of the Warrior Parties arising out of or resulting from any use of access to the Premises by Permittee, its agents, employees, contractors and invitees ("collectively, "Permittee Parties") or as a result of any injury to persons or damage to property arising out of or occurring in or resulting from the performance of the rights and license granted herein (collectively, "Claims"), and shall pay or cause to be paid all losses, costs, damages, fines, penalties and expenses (including reasonable attorney's fees, expenses and court costs) (collectively, "Costs") incurred by any Warrior Parties in connection with such Claims.

7. Release. Permittee hereby releases, acquits and discharges Warrior Parties from any and all actions, causes of action, claims, demands, losses, expenses, damages, costs, injuries, and liabilities incurred or which may be incurred by any Permittee Parties now or in the future on account of any known or unknown injuries, losses, or damages, whether direct or indirect, sustained in connection with or arising out of or incurred in or resulting from the performance of the rights granted herein. Permittee's release hereunder expressly includes, without limitation, (a) all loss and damage to any property whatsoever, including personal property and equipment of Permittee and its contractors and the loss of or interference with any use or service thereof, and (b) all loss and damage on account of injury to or death of any person whomsoever, including but not limited to any Permittee Parties, caused by, arising out of or resulting in any manner from the condition, existence, use or access to the Premises; provided, that nothing herein shall serve to release Warrior Parties from liability for any willful or wanton misconduct or gross negligence.

8. Hazardous Materials. Permittee agrees that it shall cause no pollutants, hazardous waste or other toxic or hazardous substance (collectively, "Hazardous Materials"), as defined under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"), or any other federal, state, or local statute, ordinance, or regulation relating to the protection of the environment (collectively the "Regulations") to be discharged, released, disposed of, or allowed to escape, or stored, treated, or generated on, in or about the Premises. Permittee's operations shall be conducted in compliance with the Regulations. To the extent resulting from the location of the Equipment on the Premises since January 31, 2018 or from the exercise of the rights hereunder, Permittee agrees to remediate, clean up and dispose of any Hazardous Materials released, disposed of, or allowed to escape, or stored, treated, or generated on, in or about the Premises in accordance with applicable Regulations. Permittee will provide to Warrior evidence reasonably acceptable to Warrior that any such Hazardous Materials have been remediated and that no further action in regard to the same is required by applicable regulatory authorities. PERMITTEE ACKNOWLEDGES AND ACCEPTS THAT THE LIST OF EQUIPMENT ON EXHIBIT "A" MENTIONS NUCLEAR DEVICES. PERMITTEE WILL SAFELY REMOVE AND DISPOSE OF ANY NUCLEAR DEVICES FOLLOWING ALL FEDERAL AND MSHA RULES, AND WILL TAKE WHATEVER EFFORTS ARE NECESSARY TO PREVENT CONTAMINATION TO THE PREMISES. PERMITTEE

FURTHER ACKNOWLEDGES AND ACCEPTS THAT NO EXPLOSIVES MAY BE USED ON THE SITE. Permittee agrees to defend, indemnify, and hold harmless Warrior Parties from and against any Claims and all Costs arising on account of any breach or alleged breach by any Permittee Parties of this Section 8 and such indemnity shall survive the expiration or earlier termination of this Permit; provided, however, that any liability of Permittee hereunder shall be limited to the extent of available insurance coverage for such Claims and Costs.

9. Fire Control. Permittee agrees that it shall not intentionally start any fire on the Premises and will use the utmost caution to prevent accidental fire incidents. If Permittee starts a fire or notices a fire, it must immediately contact authorities with Tuscaloosa County 911, the Brookwood Fire Department, and Warrior, and work diligently to extinguish the fire. Permittee is responsible for any fire damage outside the Premises resulting from any fire that starts within the Premises or any fire that is started by invitees of Permittee.

10. No Liens. Permittee shall not suffer or permit any lien, attachment or other encumbrance to be placed or remain on the Premises. In the event that any such lien, attachment or other encumbrance is not discharged or removed by Permittee, Warrior may discharge or remove the same at the expense of Permittee, including reasonable attorneys' fees reasonably related to such discharge or removal.

11. Compliance; Safety. Permittee is an independent contractor and shall have absolute charge, control and supervision of its and all of its employees and contractors entering the Premises under this Permit. Accordingly, Permittee agrees to: (a) comply fully and promptly with the requirements of all applicable statutes, regulations, ordinances, and rules of all governing bodies, including federal, state, county and municipal divisions of government; (b) obtain and pay for all other permits, licenses, and fees which may be required by any such bodies or departments in respect to performance hereunder; (c) provide proper and sufficient safeguards against accidents, damages, or injuries to persons or property happening or in connection with its performance hereunder; and (d) to comply promptly with the requirements of all employers' liability and compensation acts, federal, state, municipal and otherwise.

12. Insurance. Prior to entry onto the Premises and thereafter during the Term of this Permit, Permittee shall procure and maintain, at its sole cost and expense, a policy or policies of insurance covering the risks and meeting the requirements set forth in Exhibit C attached hereto.

13. Condition of Premises on Completion. Prior to the end the Term, Permittee shall notify Warrior in writing that the Equipment and any and all debris, trash, parts, fluids and inventory relating to the Equipment or generated in connection with Permittee's exercise of the rights hereunder have been removed from the Premises. Within two (2) business days after receipt of such notice, Warrior and Permittee shall jointly inspect the Premises to confirm that Permittee has completed all of the Permittee Obligations in accordance with this Permit. If Warrior, in its commercially reasonable opinion, determines that Permittee has not completed all of the Permittee Obligations in accordance with this Permit, Warrior will provide Permittee with written notice of the deficiencies and Permittee shall have until the end of the Term to complete all of the Permittee Obligations in accordance with this Permit. Permittee's failure to remove all of the Equipment and to satisfy all conditions of this Permit by June 9, 2021 shall be a default. Permittee is not entitled to a period of time to cure any default set forth in this Section 13.

14. Garbage Disposal. There shall be no disposal or burying of any garbage, trash, refuse or unused material or equipment on the Premises or any other property owned by Warrior. All such refuse items must be removed from the Premises by Permittee.

15. Notices. Any notice herein required or permitted to be given by either party shall be deemed given if and when hand delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, properly addressed to Warrior or Permittee as follows:

If to Warrior: Warrior Met Coal Land, LLC  
Attn: Roger A. Crabb and Suzan Sanderson  
16243 Hwy 216  
Brookwood, AL 35444

and to: Warrior Met Coal Mining, LLC  
Attn: Philip Saunders  
16243 Hwy 216  
Brookwood, AL 35444

If to Permittee: Cedar Lake Mining, Inc.  
Attn: John McNab  
P.O. Box 1608  
Jasper AL 35502  
johnm@msrequipment.com

and to: Cedar Lake Mining, Inc.  
Attn: Tim Turek, Financial Advisor  
Aurora Management Partners  
401 North Michigan Avenue, Suite 1620  
Chicago, IL 60611  
Phone 630 291 5280

16. Assignment.

A. Warrior may assign or transfer this Permit to any party at will.

B. The permit and license granted hereunder is personal in nature, and as such neither it, nor any rights of Permittee hereunder, may be assigned, conveyed or transferred by Permittee without the prior written consent of Warrior, which consent may be withheld by Warrior in its sole and absolute discretion; provided, however, that Permittee may, without first seeking the prior written consent of Warrior, assign any or all of its rights under this Permit (its personal permit and license) to enter into and access the Premises for the sole purpose of removing the Equipment from the Premises (collectively, the "Access and Removal Rights") to Randy Robison, or to a company owned or controlled by Randy Robison (a "Robison Entity"), but Permittee shall, notwithstanding such assignment, remain at all times liable for the Permittee Obligations, and the Access and Removal Rights shall terminate for Permittee and any allowed assignee should Permittee fail to comply with the Permittee Obligations. In addition, such Robison Entity, or any assignee of the Access and Removal Rights with the prior written consent of Warrior, must comply with the insurance provisions set forth in Section 12 of this Permit and Exhibit C attached to this Permit to the satisfaction of Warrior.

17. Severability. If any term, covenant or restriction established by this Permit shall be invalid or unenforceable, the remainder of this Permit shall not be affected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

18. Miscellaneous. This Permit is to be governed by the laws of the State of Alabama and both parties hereto submit to the venue and jurisdiction of the courts of competent jurisdiction, both state and federal, situated in Tuscaloosa or Jefferson County, Alabama. This Permit may be amended or modified only by another writing duly signed and dated by both parties and such writing should be appended to the end hereof.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have executed this Permit on this the \_\_\_\_ day of \_\_\_\_\_, 2021, effective as of the Effective Date.

**WARRIOR:**

**Warrior Met Coal Land, LLC  
Warrior Met Coal Mining, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PERMITTEE:**

**Cedar Lake Mining, Inc.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**EQUIPMENT**

*(List Attached Hereto)*



### Alabama No. 7 Equipment

1. Dredge Moby Dick, S# 50300, Ellicott
2. Approximately 75,000 feet of various sized HDPE piping (8", 10", 12", 14")
3. 4 Slurry Line Flow Meters/Nuclear Density Gauge
4. 4 6x8 Gould's booster pumps w/pump smart VFD controls and containments
5. 6'x16' S.D. Horizontal Trash Screen/Mechanism/Motor/Drive Support/Deck Material/VBelt Drive Guard/Discharge Chute/Underflow Pan
6. 75,000 Gallon Plant Feed Tank/Mixer
7. 10x8 EXU Plant Feed Pump/125 HP Motor/Drive/Guard
8. Two (2) 7'-6" wide x 80" Radius Deslime Sieve Bends/Supports/Discharge Chutes/Effluent Chutes
9. 8'x16' S.D. Horizontal Deslime Screen/Mechanism/Motor/Drive Support/Deck Material/V-Belt Drive Guard/Discharge Chute/Underflow Pan
10. 14' Diameter Raw Coal Classifying Cyclone Feed Sump
11. 12/10 FXU Raw Coal Classifying Cyclone Feed Pump/350 HP Motor/Drive/Guard
12. Raw Coal Cyclone Feed Pipe/Flow Meter/Nuclear Density Gauge
13. Eight (8) 15" Diameter Raw coal Classifying Cyclones/Tub/Support Frame
14. Spiral Feed Box/Two (2) Distributors/Two (2) Banks of Ten (10) Triple Start 2-Stage Spirals/Launders
15. Two (2) 6'-0" Wide x 80" Radius Spiral Clean Coal Sieves/Supports/Discharge Chutes/Effluent Chutes
16. Two (2) Midds Diverters
17. Splitter Box
18. Two (2) 6'x12' Spiral Refuse Screens/Mechanisms/Motors/Drive Supports/Deck Material/V-Belt Drive Guard/Discharge Chute/Underflow Pan
19. 14' Diameter Desliming Cyclone Feed Sump
20. 12/10 FXU Desliming Cyclone Feed Pump/Motor/Drive/Guard
21. Forty (40) 6" Diameter Desliming Cyclones/Tub/Distributor/Manifold
22. One (1) Bank of Four (4) 300 Cu.Ft. Flotation Cells
23. Flotation Reagent Storage & Addition System
24. De-Aeration Tank
25. 44"x132" Screen Bowl Centrifuge/Discharge Chutework/Effluent Chutework/Screen Bowl Drain
26. Effluent Sump
27. 4/4 CXU Effluent Pump/Drive/Guard
28. 120'-0" Diameter Refuse Thickener/Mechanism/Tank/Bridge/Weir/Feed Flume/Overflow Flume/Motor & Drive

29. 6x5 EXU Thickener Underflow Pump/Motor/Drive/Guard
30. Thickener Underflow Pump Line/Flow Meter/Nuclear Density Gauge
31. Clarified Water Tank
32. 12/10 FXU Clarified Water Pump/Drive/Guard
33. Pond Return Pump Line/Flow Meter
34. Head Tank
35. Wash Down Pump/20 HP Motor/Drive/Guard
36. Flocculant Storage & Addition System
37. Cooling Water Pump/20 HP Motor/Drive/Guard
38. Air Compressor
39. Clean-Up Pump/Motor/Drive
40. 30" Clean Coal Collecting Conveyor/Mechanicals/Motor/Channel Pan  
Sections/Supports/Belting/Platework
41. 30" Clean Coal Radial Stacker/Mechanicals/Motor/Structural/Support/Tramming  
System/Belting
42. Moisture & Ash Analyzer
43. Clean Coal Belt Scale
44. Cross Belt Sampler
45. 30" Refuse Conveyor/Mechanicals/Motor/Channel Pan  
Sections/Trusswork/ Supports/Belting/Platework
46. Electrical Including Power Transformers/Motor Control Centers/Motors/Operators  
Control Panels/Field Control Devices/PLC Apparatus and Control/Lighting &  
Fixtures/HVAC/ Communications/Instrumentation//Heat/Control Room Connex
47. All Engineering, Detailing and Maintenance Manuals in storage container behind office
48. All Piping/Valves/Fittings in preparation plant
49. Model PS200 Pump smart Controller
50. Foreman's Office and Tool Room 45" Connex
51. Yamatake Convertor/Detector
52. 12" Pipe Float don't know how many
53. 2000 Gallon Tank with Pump and Meter Fuel Tank
54. 8' x 12' Building (Coal lab w/ash oven and scales)
55. 1000 Gallon Tank & Vents
56. 40' Connex
57. 40' Storage Container
58. Lockers
59. 550 Gallon Dual Wall Tank
60. Office Trailer

- 61. Bath House/Change Room
- 62. Duralabel Pro Label Printer
- 63. Preparation Plant Facility/Structural Steel/Grating/Handrail/Ladders/Stairs/Roof
- 64. Truck Scale

**EXHIBIT B**

**PREMISES**

## EXHIBIT B - PREMISES



The Premises is located north of Milldale Road in Sec. 23 of T20S-R7W, Tuscaloosa County.

The Red Line depicts the approximate outline of the Premises.

The Yellow Line depicts the only access road that Permittee may use, including the two drives up to the Premises. Any vehicle traffic in areas other than the marked areas shall result in an immediate cancelation of the Permit.

**EXHIBIT C**  
**INSURANCE**

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

1. **INSURANCE REQUIREMENTS.** Without limiting, negating or reducing Permittee's undertaking to protect, indemnify, hold harmless, reimburse, and defend Warrior as provided in the Permit to which this Exhibit C is attached, Permittee shall, at its own cost and expense, procure and keep in force and effect, with an insurance company or companies rated A- VII or better by A.M. Best, the minimum insurance coverage set forth below. Warrior has the right to modify or increase the minimum limits & type of insurance required subject to changes in the size, scope or type of operations conducted by Permittee on the Premises. Required limits of insurance are minimum limits and will not be construed to limit either party's liability.
  - A. Workers' Compensation & Employer's Liability Insurance. Permittee and all its employees, workers, agents, servants and guests shall be covered by workers' compensation insurance, whether required by statute or available under a voluntary basis. Such coverage shall be applicable in the state or states in which said Premises is located. In addition, Permittee shall carry employer's liability insurance covering all Work hereunder in an amount not less than \$1,000,000 each accident for bodily injury by accident or disease, including \$1,000,000 disease aggregate.
  - B. Commercial General Liability Insurance. Commercial general liability insurance on an occurrence coverage form to include broad form contractual liability coverage. Other than standard exclusions applicable to asbestos, mold, lead, employment practices, ERISA, and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, premises liability, or contractual liability. Such insurance shall be in an amount not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate for bodily injury and property damage claims arising out of Permittee's products or completed operations and \$1,000,000 each occurrence and \$2,000,000 general aggregate for all other bodily injury or property damage claims.
  - C. Business Automobile Liability Insurance. To cover owned, non-owned, and hired vehicles used by Permittee with combined single limits in an amount not less than \$1,000,000 each accident covering liability for bodily injury and property damage.
  - D. Excess Liability Insurance. Permittee shall provide excess liability coverage to be in an amount not less than \$10,000,000 for personal injuries and property damage arising out of any one occurrence. This insurance shall be in excess of the foregoing employer's liability insurance, commercial general liability insurance, and business automobile liability insurance and shall be endorsed to provide a drop-down endorsement in the event underlying limits are exhausted by claims.
  - E. Pollution Liability Insurance. Permittee shall provide Permittee's pollution liability insurance covering both sudden and gradual pollution incidents arising from Permittee's occupancy of Premises or Work performed by or on behalf of such Permittee on subject Premises. Coverage may be claims-made and shall include bodily injury, property damage, and clean-up. The limits of liability shall be not less than \$3,000,000 each claim or incident and \$3,000,000 annual policy aggregate. As evidenced by certificates provided upon each renewal, Permittee agrees

to continuously maintain such pollution liability coverage for not less than five (5) years after termination of this lease and occupancy of Premises. If Permittee's pollution liability coverage is cancelled or not renewed prior to the expiration of the five (5) year period for any reason, Permittee agrees to purchase either coverage for an extended reporting period for the remaining duration of the five (5) years or the maximum period of time the insurer will provide an extended reporting period coverage.

## 2. ADDITIONAL INSURANCE PROTECTIONS REQUIRED

- A. Separation of Insureds and Additional Insured. All insurance policies of Permittee, with the exception of Workers' Compensation, shall include a separation of insureds endorsement and shall be endorsed to include "*Warrior Met Coal Land, LLC, Warrior Met Coal, LLC, its subsidiaries and their respective affiliates, employees, successors and assigns*" as an additional insured as respects to claims or liabilities arising from, or connected with Permittee's Work on or occupancy of said Premises. Separation of insureds and naming of additional insured shall be evidenced on the certificate of insurance.
- B. Insurance Shall be Primary. Permittee's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by Warrior shall be excess and non-contributory with Permittee's insurance.
- C. Funding of Deductible(s). The funding of deductibles and self-insured retentions maintained by the Permittee shall be the sole responsibility of the Permittee, including any amounts applicable to claims involving Warrior as an additional insured.
- D. Waiver of Subrogation. Permittee and its insurers, through terms of the policy or policy endorsement, agree to waive its right of recovery against "*Warrior Met Coal Land, LLC, Warrior Met Coal, LLC, its subsidiaries and their respective affiliates, employees, successors and assigns*" with respect to all insurance policies of Permittee as respects all loss, damage, claims, suits, or demands. The certificate of insurance must evidence the waiver of subrogation.
- E. Policy Cancellation or Non-Renewal. Permittee will notify Warrior by facsimile within two (2) business days of receipt of any proposed notice of policy cancellation, actual notice of policy cancellation, or refusal to renew.
- F. Certificate(s) of Insurance Required. Prior to commencement of this lease, Permittee shall furnish Warrior with certificate(s) of insurance attested by a duly authorized representative of the insurers evidencing that the required insurance is in force and effect and which provide sufficient information to verify that Permittee has complied with the insurance requirements set forth herein. Subsequent certificate(s) must be furnished upon each renewal of Permittee's insurance which falls within the term of this lease (and beyond the term of this lease as regards Pollution Liability insurance). In the event Permittee fails to furnish Warrior with acceptable certificate(s) of insurance prior to commencement of this lease, or prior to subsequent expiration date(s) of Permittee's insurance as required in this lease, Warrior shall have the right to terminate this Contract without any liability or further obligation to Permittee.



## **Exhibit 3**

### **The Coal Mining Lease**

[Attached]

## **SURFACE COAL MINING LEASE**

**THIS SURFACE COAL MINING LEASE** (this "Lease") is made and entered into as of the 3<sup>rd</sup> day of March, 2021 (the "Effective Date") by and between **WARRIOR MET COAL LAND, LLC**, a Delaware limited liability company ("Lessor"), and **CANE CREEK, LLC**, an Alabama limited liability company ("Lessee").

### **WITNESSETH:**

**WHEREAS**, on September 1, 2020 (the "Petition Date"), Lessee's parent, FM Coal, LLC, Lessee and certain affiliates (collectively, the "Debtors"), including Cedar Lake Mining, Inc. ("Cedar Lake"), filed petitions in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the "Bankruptcy Court"), commencing chapter 11 proceedings being jointly administered under Case No. 20-02783 as *In re FM Coal, LLC, et al.* (the "Bankruptcy Case").

**WHEREAS**, Lessor is the Fee Simple owner of certain lands or interests in lands located in Township 16 South, Range 4 West, Jefferson County, Alabama (the "Premises") that Lessor desires to lease, generally described as:

Section 19 – part of the NE4/NE4

Section 20 – part of the NW4/NW4 and the SW4/NW4

and more fully described and depicted in Exhibits "A" and "B" which are attached and made a part of this Lease.

**WHEREAS**, Lessee is in the business of mining coal, and desires to lease and mine coal from the Premises by highwall mining methods, and Lessor is willing to enter into this Lease for such purposes, on and subject to the terms and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the premises and the payments and covenants hereinafter contained to be made, kept and performed by Lessee, Lessor and Lessee agree as follows:

### **I. RIGHTS LEASED AND GRANTED; RESERVATIONS AND EXCEPTIONS.**

1.1. Coal. Lessor does hereby grant to Lessee, to the extent of Lessor's interest and subject to the reservations and conditions herein contained, the right to mine and remove, by highwall mining methods only, all coal in the America seam, and only coal, as may exist in, on and under the Premises.

**LESS AND EXCEPT, AND RESERVING TO LESSOR**, its successors and assigns, all coal (other than the highwall mineable coal hereby leased), oil, gas, casinghead gas, coal seam gas, coal bed methane, occluded natural gas, hydrocarbons, iron, sulfur, fireclay, red rock, sand, gravel, limestone, sandstone and all other aggregates, rock and minerals and rock and mineral substances (collectively, the "Reserved Minerals") in, on and under the Premises, together with all mining rights and privileges relating to the Reserved Minerals, including underground mining, auguring and surface mining, and including the right to use the surface for spoils disposal, access roads, temporary storage of inventory and equipment, and the construction of buildings, ponds and other

improvements, all as may be deemed necessary or appropriate by Lessor; provided, however, that any lease or agreement entered into by Lessor after the "Effective Date" (as defined in Lessee's confirmed Plan of Reorganization (the "Plan") in the Bankruptcy Case) in connection with the Reserved Minerals shall provide that the lessee or counterparty thereunder will not unreasonably interfere with Lessee's rights herein granted to use the surface to the extent that Lessee has made known to Lessor such planned use and has obtained Lessor's written consent thereto as provided below. Lessee expressly agrees that it shall not commit waste of or spoil the Reserved Minerals. If, in the course of mining the coal leased hereunder, Lessee disturbs or is required to remove any Reserved Minerals from the Premises, Lessee shall stockpile such Reserved Minerals on the Premises upon consultation with and at no cost to Lessor. If Reserved Minerals are stored on the Premises, Lessee will endeavor in good faith to provide Lessor with no less than ninety (90) days' notice of its intent to commence any reclamation on the Premises that could result in stored Reserved Minerals being buried or destroyed, to provide Lessor an opportunity to remove such Reserved Minerals from the area to be reclaimed in its discretion, it being recognized that Lessor shall have no obligation to remove any Reserved Minerals from the Premises; provided, however, that Lessee understands and agrees that it has no right to sell any Reserved Minerals, to process any Reserved Minerals for sale to third-parties, or to process any Reserved Minerals for its own use without the written consent of Lessor. Nothing set forth herein shall be interpreted as relinquishing Lessor's right to any Reserved Minerals.

1.2. No Use of Surface Lands. Lessee shall have no use of Lessor's surface lands for any mining or operational purposes without the prior written consent of Lessor. Lessee shall not have the right to grant easements or rights of way for private roads, or other roads, telegraph, telephone, or electrical or other transmission lines or easements of any kind on said surface without the prior written consent of Lessor. Lessor reserves for itself the paramount rights to the surface of the Premises and the free, unrestricted and unobstructed access to the Premises at all times for itself, its representatives, agents and assigns.

1.3. Right of First Refusal to Purchase Metallurgical Coal. Lessee hereby grants to Lessor a right of first refusal to purchase all metallurgical coal mined from the Premises during the Term of this Lease. The purchase price of said coal shall be the highest contract price, F.O.B. mine, for equivalent quality coal for which Lessee has a written valid purchase offer by a Bona Fide Purchaser (as defined in Section 6.4.1), less the royalty amount due to Lessor. The terms of this Right of First Refusal shall be the same as those set forth in the Right of First Refusal Agreement by and between Lessee and Walter Minerals, Inc., Lessor's predecessor in title, dated December 31, 2014, the terms of which are incorporated hereby by reference.

1.4. Timber Reserved. Lessee shall have no right to use any of the timber on the Premises except as herein provided. In the event it becomes necessary to remove any timber on the Premises in connection with Lessee's operations, Lessee shall, from time to time, give Lessor a minimum of six (6) months' written notice prior to starting operations on any quarter-quarter section and shall furnish Lessor with a map showing the extent of the proposed operations on each quarter-quarter section, and the timing of same, in order that Lessor may dispose of the timber. Lessee shall have the right to cut or remove any timber if Lessor should fail to cause the removal of timber within six (6) months from receipt of such notice, provided however, that Lessee shall pay to Lessor the fair market value of the timber which is cut or removed.

1.5. Protection of Existing Cell Tower and Access Road. Lessee acknowledges and accepts that there is a restriction around the existing cell tower and its access road in the North Half of NW4/NW4 of Section 20. There is to be no mining within the greater of:

1.5.1 Four hundred feet (400') of the cell tower lease site as measured horizontally on the surface, or

1.5.2 The distance of the angle of deflection for subsidence for the cell tower leased site and the access road, as calculated by a Mining Engineer or Physical Engineer licensed by the State of Alabama.

## **II. NO WARRANTY OF TITLE OR CONDITION OF PREMISES.**

2.1. No Warranties. This Lease is made without warranty of any kind, express or implied, as to Lessor's title to the Premises or the physical condition of the Premises or the extent of coal therein, any appurtenances thereunto belonging or appertaining, or the fitness thereof for any use or purpose. Lessee hereby acknowledges that it has made this Lease based solely upon its research, investigation and evaluation of the title to and the physical condition of the Premises and that no representations have been made by or on behalf of the Lessor with respect to such matters. This Lease is subject to existing leases, easements, rights of way, covenants, conditions, zoning and other matters which may exist on, about or with respect to the Premises.

2.2. Abandoned Mine Workings. Lessee acknowledges that there are or may be old mines or abandoned mine workings on, under or adjacent to the Premises. Lessee assumes all risks of every kind whatsoever with respect to mining or other operation at or near any such mine workings, and hereby releases and shall defend, indemnify and hold harmless Lessor, its predecessors, successors and assigns from all claims of every kind arising out of or related to the presence of any such workings on, under or about the Premises.

2.3. Challenge of Title. In the event of any claims or litigation by any third-party challenging Lessor's interest to any portion of the Premises, Lessor shall have the right but not the obligation to defend the same. If Lessor chooses not to defend its title, Lessee shall have the option to do so, at its sole cost and expense. Upon final determination by a court of competent jurisdiction in a proceeding to which Lessor is a party that Lessor's title to any portion of the Premises leased hereby is defective to such extent as to defeat Lessee's right to mine coal therefrom under this Lease, such portion shall thereupon be released from this Lease, and Lessor's sole liability and responsibility to Lessee shall be to refund to Lessee any Actual Production Royalties (as defined below) paid to Lessor by Lessee for coal mined from such released portion of the Premises. In no event shall Lessor be liable to Lessee for any direct or consequential damages sustained by Lessee as a result of Lessee's mining or other operations or presence on the affected portion of the Premises.

## **III. LESSEE TO SECURE OTHER SURFACE OR MINERAL RIGHTS.**

3.1. As to any portion of the Premises to which Lessor does not own the entire fee simple interest, Lessee shall, before beginning the mining of coal or other operations thereon, secure the necessary permission from the owners of the surface or minerals not owned by Lessor. Lessee shall use its reasonable, diligent best efforts to secure such permission so that mining operations on the Premises can commence promptly and proceed continuously and diligently thereafter.

#### **IV. TERM OF LEASE.**

4.1. Term. The term of this Lease shall be for a period of two (2) years commencing as of the Effective Date and ending on March 2, 2023 (the "Term"), if not sooner terminated by either party as otherwise expressly permitted elsewhere in this Lease.

#### **V. INDEPENDENT CONTRACTOR.**

5.1. Lessee is and shall be throughout the Term of this Lease an independent contractor and not an agent, servant, contractor or employee of nor partner with Lessor. Lessee has no authority to act or make any agreement on behalf of Lessor, and Lessor shall have no control or right to exercise any control over Lessee. Lessor's rights under this Lease to receive and inspect Lessee's mining plans and projections and other records, and to observe or inspect operations on the Premises, are reserved solely for the purpose of enabling Lessor to verify the amount of royalties due to be paid hereunder and to ascertain that Lessor's retained rights and interests in the Premises are protected, and shall not give or be deemed to give Lessor the right or obligation to exercise any control over, or to advise or assist, Lessee or Lessee's employees, contractors, agents or assigns.

5.2. In the event that any court or agency having jurisdiction over Lessor, Lessee, or any coal mine established on the Premises renders any ruling, opinion, verdict or judgment that Lessor is liable for or has any responsibility for any acts or omissions to act on the part of Lessee, including without limitation the payment of any sum of money to any other person, firm or other entity, this Lease shall then and thereafter be terminable at the option of Lessor upon thirty (30) days written notice to Lessee.

#### **VI. ROYALTIES PAYABLE; CALCULATIONS AND PAYMENT.**

6.1. Advance Royalty. On the Effective Date, Lessee shall pay to Lessor the sum of [REDACTED] as an advance royalty ("Advance Royalty"). Said Advance Royalty shall be credited against Actual Production Royalties (as defined in Section 6.4 below); provided, however, that any Advance Royalty which is not recovered against Actual Production Royalties prior to termination of this Lease, for any reason, shall be forfeited by Lessee.

6.2. Monthly Minimum Royalty. Lessee shall pay Lessor a minimum royalty ("Monthly Minimum Royalty") for each month during the Term of this Lease of [REDACTED] per month, effective on the first day of the first calendar month following the Effective Date of this Lease and payable on or before the 20th day of that month and each month thereafter whether as payment for coal removed during the said month or as an advanced payment of royalty, and regardless of the quantity of coal removed during the said month. All Monthly Minimum Royalties will be credited against Actual Production Royalties; provided however, Lessee's non-payment of any monthly minimum royalty due hereunder shall be an event of default of Lessee, at Lessor's option, regardless of whether or not there is any outstanding credit due Lessee for Advance Royalty or Monthly Minimum Royalty payments previously made. In the event Lessee is unable to mine and/or remove coal from the Premises during all of any calendar month as a result of an Event of Force Majeure (as defined below), the Minimum Monthly Royalty due for such month shall be waived by Lessor provided that Lessee provides written notice of such Event of Force Majeure immediately upon its occurrence. No such waiver shall extend longer than six (6) calendar months.

6.2.1 Events of Force Majeure. "Events of Force Majeure" shall mean strikes and other labor troubles, acts of God, acts of a public enemy, governmental actions or inactions, material shortages and other similar conditions of force majeure that are beyond the reasonable control of Lessee, despite its good faith diligent efforts. Coal prices, mining and related costs and other economic conditions or fluctuations in the market shall not be deemed Events of Force Majeure.

6.3. Recovery of Advance Royalty and Monthly Minimum Royalties. Monthly Minimum Royalties and Advance Royalty shall be recoverable from Actual Production Royalties due for coal removed as follows: a) When Actual Production Royalties exceed the Monthly Minimum Royalty amount the excess of the Actual Production Royalty above the Monthly Minimum Royalty shall be credited against the cumulative Advance Royalty and Monthly Minimum Royalties until such time as the balance of the Advance Royalty and Monthly Minimum Royalty paid is zero. When all Advance Royalty and Monthly Minimum Royalties paid have been recovered then the full Actual Production Royalty is due and payable on or before the 20<sup>th</sup> day of that month and each month thereafter. b) Any Monthly Minimum Royalty paid in excess of Actual Production Royalties during any month shall be credited against Actual Production Royalties due thereafter; provided, however, that any Advance Royalty or Monthly Minimum Royalty which is not recovered against Actual Production Royalties prior to termination of this Lease, for any reason, shall be forfeited by Lessee.

6.4. Actual Production Royalties. Lessee shall pay to Lessor a production royalty ("Actual Production Royalty") for each ton of 2,000 pounds of coal mined from the Premises in accordance with the following schedule:

Fee Simple Property: [REDACTED] of the Gross Sales Price, F.O.B. Loading Point or a Minimum Production Royalty of [REDACTED] per ton, whichever is greater;

Such royalties shall be determined and paid as provided in the following paragraphs.

6.4.1 Definition of Terms.

"Gross Sales Price", shall mean the final and actual sales price at which the coal mined from the Premises hereunder is sold to a Bona Fide Purchaser (as defined below), F.O.B. Loading Point (as defined below), plus BTU bonus or minus BTU penalty and plus synfuel credits, if any, without deducting from said Gross Sales Price any mining costs, overhead, on-site transportation or handling charges, on-site washing costs, brokerage fees, sales commissions, coal analysis charges or fees, taxes, advertising, or any other costs or charges whatsoever; except, however, in the case of coal mined hereunder and sold F.O.B. some point other than the Loading Point, the Gross Sales Price may upon Lessor's prior written approval, which may be withheld in Lessor's sole discretion, be reduced by deducting therefrom reasonable transportation charges paid by and not reimbursed to Lessee beyond the Loading Point. Should Lessee sell coal from the Premises that has been mined, blended or commingled ("Blended Coal") with coal mined elsewhere than from the Premises prior to the Loading Point, the Gross Sales Price used for calculation of the royalty payable to Lessor for Lessor's proportionate share of such Blended Coal shall be the Gross Sales Price of the Blended Coal. No coal mined from the Premises shall be mined, blended or commingled with coal from off the Premises without the prior written consent of Lessor, which consent may not be unreasonably withheld.



“Loading Point” shall mean the local point (mine, washer or preparation plant) from which coal mined hereunder is shipped to its final destination market.

“Bona Fide Purchaser” shall mean a third-party purchaser who pays valuable consideration in good faith in an arms-length transaction without intending to take unfair advantage of Lessor or Lessee and in no instance shall include a person, persons, party, company, or other entity affiliated or related in any manner whatsoever with Lessee, its agents, or assigns. **No coal mined from the Premises shall be sold to or used by a non-Bona Fide Purchaser without the prior written consent of Lessor, which consent Lessor may withhold in its sole discretion.** It is the intent herein that all sales of coal mined by Lessee, its agents, or assigns under this Lease shall be at the actual sales price of coal sold on the open market at the highest price then obtainable to a non-related and unaffiliated final user of the coal in an arms'-length transaction. Without limiting the generality of the foregoing sentence, if Lessee substitutes any coal mined from the Premises for coal mined elsewhere to satisfy any contracts that Lessee may have to supply coal, and the coal mined elsewhere is sold at a higher price than paid under said contract, the term “Gross Sales Price” shall be the higher price paid for the coal mined elsewhere. If Lessee, its agents, or assigns should sell coal to a purchaser and Lessor gives notice in writing to Lessee that, in Lessor’s judgment, said purchaser is not a Bona Fide Purchaser, and thereafter Lessee does not or is not able to justify to Lessor’s satisfaction that said purchaser is a Bona Fide Purchaser, Lessor shall have the right to substitute for the reported sales price of all the coal sold to said purchaser, the prevailing market price of coal of similar quality and quantity recently sold F.O.B. Loading Point to Bona Fide Purchasers by Lessee and others as determined by Lessor. Lessee agrees that in such event, Lessor’s judgment shall be final and Lessee shall reimburse Lessor, upon demand, for any and all amounts of royalties due Lessor from any sales price adjustment.

#### 6.4.2. Determination of Tonnages.

6.4.2.1. The amount of coal mined from the Premises shall be determined on the basis of the weights used by Lessee in billing purchasers of such coal subject to reasonableness verification by and reconciliation to Engineering Maps / Measurements as noted below. All scales used to determine the tonnages of such coal shall be certified by the State of Alabama at least once per year as being accurate.

6.4.2.2. Lessee shall provide to Lessor quarterly “Engineering Maps / Measurements”, satisfactory to Lessor and made by a Registered Professional Land Surveyor or equivalent employee of Lessee, showing Lessee’s mining progress on the Premises during the preceding quarter. The maps shall be to the scale of one inch equals 100 feet and shall include, at a minimum, mine name, mine permit number, surveyor’s name and place of business, date of map, the date/time period of mining, coal thickness measurements each 100 feet for each seam present and/or mined, area extent of mining and the tons of coal removed from each seam “Engineering Measurements”. Submission of said maps shall be at the sole expense of Lessee and, in all cases, furnished to Lessor in both hard copy print and in electronic format such as AutoCad.

6.4.2.3. If, in the opinion of the Lessor, the Engineering Maps / Measurements reveal that the tonnages mined from the Premises during the relevant period unreasonably

exceeds the tonnages on which Lessee has paid Actual Production Royalties or has added to its stockpiles, Lessee shall provide to Lessor explanations for the differences. If the tonnage differences cannot be reconciled within reason, then the tonnages based on the Engineering Maps and Measurements shall govern and until Lessee submits the issue to arbitration and obtains a ruling favorable to Lessee, in which event Lessee shall be entitled to recover any overpayments of Actual Production Royalty to Lessor as a credit against future Actual Production Royalty payable to Lessor, if Lessee is still mining the Premises, but to the extent that Actual Production Royalties are not available, Lessor shall make payment directly to Lessee.

6.5. Lessor Independent Verification of Tonnages Reported. Lessor shall have the right, but not the obligation, to make its own determination of tonnages removed in accordance with generally accepted practices used by geologists and mining engineers in the coal mining industry. If such measurements do not develop tonnage figures which reasonably coincide with those submitted by Lessee, and Lessor's and Lessee's tonnage figures cannot be reconciled, then Lessor's tonnage figures shall govern unless and until Lessee submits the issue to arbitration and obtains a ruling favorable to Lessee, in which event Lessee shall be entitled to recover any overpayments of Actual Production Royalty to Lessor as a credit against future Actual Production Royalty payable to Lessor. In determining by measurement the amount of washed coal mined from the Premises, due allowance shall be made for washer loss using float and sink analyses and available historical records of similar quality coal mined from the same seam or seams and mined as close as possible to the Premises.

6.5.1 Monthly Royalty Statements. On or before the 20th day of each month Lessee shall furnish Lessor a statement ("Lessee's Statement"), on a form prepared by Lessor or prepared by Lessee and approved by Lessor, certified by an officer of Lessee duly authorized to make such certification, which shall contain the following information with respect to coal production and sales in the month immediately preceding the month in which the statement is given:

1. Beginning and ending inventory or stockpile tonnages of coal mined from the Premises;
2. The number of tons of coal shipped / sold from the Premises to Bona Fide Purchasers;
3. The Gross Sales Price per ton of all coal shipped/sold from Lessee's operations of which the Premises are a part (irrespective of whether mined from the Premises or from land owned or leased by Lessee from others);
4. Computation of Actual Production Royalties payable, according to type of ownership, based on the number of tons sold or used or consumed by Lessee from the Premises during the preceding month;
5. A listing of individual tonnages and invoice prices to support weighted average sales prices whenever there are different sales prices to the same customer during the month.



6. A listing, by customer, of each coal shipments' origination and destination points, and the freight rate (if applicable).
7. Computation of the reduction of Advance Royalty/Minimum Monthly Royalty, if any.

Such monthly Lessee's Statements shall be supported by at least the following information which shall be maintained on a current basis at the office of Lessee and shall be made available to Lessor upon request:

- i) Purchasers' tonnage statements to Lessee of coal delivered which have been received by Lessee with payment of the Gross Sales Price therefor.
- ii) Lessee's invoices to all purchasers with respect to coal.
- iii) Legible copies of truck scales tickets for each and every load or part thereof of coal shipped from the Premises.
- iv) Documentation supporting the Engineering Maps and Measurements provided under Determination of Tonnages above.
- v) Such other information and supporting data, as Lessor may reasonably require, to confirm and verify the accuracy of any statement or document furnished by Lessee to Lessor.

6.6. Service Charge on Overdue Royalty Payments. A service charge of one and one-half percent (1-1/2%) per month shall be paid by Lessee on all royalty payments which have not been paid by Lessee on the date due hereunder.

6.7. Royalty Payments and Submission of Reports. All Monthly Minimum Royalties and Actual Production Royalties for each month shall be due and payable on or before the 20th day of the following month. All such payments shall be submitted, together with Lessee's monthly Statement, to Lessor at the following address unless written notice shall have been given by Lessor of some other address:

Warrior Met Coal Land, LLC  
Attn: Suzan Sanderson  
16243 Hwy 216  
Brookwood, AL 35444

## **VII. AUDIT; INSPECTIONS.**

7.1. For the purposes of (i) assuring itself that Lessee is not committing waste on the Premises or in any other way diminishing the value of Lessor's valuable assets relative to the said Premises, including without limitation the Reserved Minerals, (ii) verifying the accuracy of Lessee's payments due hereunder and (iii) verifying Lessee's complete performance including without limitation the accuracy of the reports and information provided to Lessor hereunder (but not for the purpose of exercising dominion or control over Lessee's operations), Lessor and its engineers, agents, and representatives shall have the right and privilege, but not the obligation, at

all reasonable times during the Term of this Lease and for two (2) years thereafter, of entering upon, examining and surveying the Premises and said mining operations thereon and inspecting, examining and verifying all books, accounts, sales, sales contracts, maps and plans of Lessee. In the event that Lessor determines that additional royalties should have been paid, Lessee shall promptly pay all such royalties into escrow until the determination as to the amount of royalties can be determined by arbitration and Lessor obtains a ruling favorable to Lessor. Should a determination be made that Lessee has overpaid the royalties Lessee shall be entitled to recover any overpayments of Actual Production Royalty from Lessor as a credit against future Actual Production Royalty payable to Lessor, but to the extent that Actual Production Royalties are not available, Lessor shall make payment directly to Lessee.

#### **VIII. DATA FURNISHED BY LESSEE; THIRD PARTY RECORDS.**

8.1. Should Lessee conduct any prospecting resulting in Lessee obtaining any of the following information, Lessee shall furnish a copy of it to Lessor. Such information would include drill hole logs describing the depth and thickness of each rock strata and coal seam of any exploratory test holes and a map to the scale of one inch equals 100 feet showing locations and surface elevations of each test hole for all prospecting on the Premises and all contiguous property in which Lessor has an interest. Additionally, reports of coal analysis from any and all coal sampled on the Premises, be it from drill hole core, channel sample, test pit or some other method, will be given to the Lessor at Lessee's sole expense. Lessee shall also provide to Lessor copies of all mining plans prepared by Lessee, which plans shall be provided to Lessor promptly upon preparation of same, and as often as prepared by Lessee but in any event no less often than annually. Lessee shall also provide to Lessor copies of all mining and related permits, including all applications and supporting documents and amendments thereto at the time they are submitted to or received from the applicable permitting authorities.

8.2. To the extent of Lessee's right to do so, Lessee hereby authorizes and directs all third parties with whom Lessee shall have any dealings with respect to coal mined from the Premises (including, but not limited to contract miners, third parties to whom such coal is sold or who transports, processes, washes, screens or handles such coal), to make available to Lessor, for inspection and copying, all information relating to coal mined from the Premises, as may be reasonably required by Lessor to verify or determine the royalties due to be paid by Lessee under this Lease, or any other matter relating to the performance of Lessee's obligations hereunder. Lessee agrees to make known to such third parties, as necessary or required, the contents of this Lease with respect to the requirement of this paragraph and to use all reasonable means to insure that said third party shall comply with this provision. All information obtained by Lessor shall be held in strict confidence, except, as it may be needed with respect to the enforcement of any provisions of this Lease.

#### **IX. TAXES.**

9.1. Lessor shall in accordance with law assess and pay ad valorem taxes on the interests owned by Lessor in the Premises, including unmined coal. Lessee shall in accordance with law assess and pay ad valorem taxes on all structures, machinery, equipment and other property used or placed by Lessee upon said Premises. Lessee shall also be responsible for and pay all severance, tonnage, license, privilege taxes, or other taxes as may be assessed on coal which Lessee may mine or have the right to mine hereunder. Lessee shall have the right in good faith to contest, at its sole expense, any tax, charges, levy, or assessment assessed or imposed upon Lessee.

## **X. COMMENCEMENT OF OPERATIONS; CONTINUOUS USE**

10.1. As a material part of the consideration for Lessor's entering into this Lease, Lessee has represented, warranted and does hereby covenant that it shall promptly commence mining on the Premises and thereafter pursue an aggressive, continuous mining operation thereon in order to maximize the benefits of current coal market conditions. Toward that end, Lessee shall commence mining on the Premises on or before the end of the sixth calendar month after the Effective Date, subject only to Events of Force Majeure. If Lessee fails to commence mining operations and the production of coal by that date, or if the commencement of said mining and production is delayed by more than six (6) months past that date by Events of Force Majeure, then Lessor may terminate this Lease upon thirty (30) days written notice to Lessee. If Lessee's mining operations are commenced but Lessee shall thereafter suspend said operations for more than six (6) consecutive months for any reason, including Events of Force Majeure, this Lease shall then terminate at the option of Lessor on thirty (30) days written notice to Lessee regardless of whether or not Monthly Minimum Royalties have been paid by Lessee during the time said operations are suspended, as it is further the intentions of the parties that the Premises be mined continuously hereunder.

## **XI. MINE OPERATIONS.**

11.1. Compliance with Laws. Lessee shall conduct all operations on the Premises in accordance with all federal, state and local laws, regulations, rules and ordinances, including without limitation those pertaining to zoning, subdivision, reclamation, air and water pollution and mining. Lessee shall, at its expense, procure all necessary licenses, certificates and permits required by federal, state or local governments or agencies. After reclamation, Lessee shall obtain any certificates required by federal, state or local laws, ordinances or regulations, present or future, as applicable. Upon approval of the total State of Alabama Surface Mining Commission Bond Release Request of Lessee, all obligations of Lessee to Lessor under this Lease shall terminate and Lessee shall have no further liability hereunder for any claim or cause of action to Lessor.

11.2. Fire Protection; Trespass. Lessee shall exercise care in the use of fire in or near all woodlands, drifts, coal openings, slate dumps, and improvements within or near the Premises, and especially to so handle and dispose of waste from the mines as not to expose any coal seam to fire damage, in the event any slate or waste dump should become ignited. Should fire threaten at any time, Lessee shall promptly take steps to restrict and extinguish it, and notify Lessor or its authorized agent. Lessee shall also guard and protect from injury or trespass all openings made on the Premises during the term of this Lease, whether or not the Premises are in actual operation, and generally to so handle the Premises during the term of this Lease as to safeguard the interests of all concerned.

11.3. Best Mining Practices; Liability for Unmined Coal. Lessee shall mine the Premises in accordance with the best mining practice so that there will be no needless loss or waste of coal. The term "best mining practice" as used herein, shall mean those modern mining methods employed by a prudent mining operator using modern mining equipment and techniques in the conduct of diligent and aggressive mining operations in an attempt to recover the maximum amount of economically minable and merchantable coal from the Premises. Any question as to the "best mining practice" shall be submitted to arbitration. Should the result of arbitration be that Lessee failed to mine all coal which could be economically mined by a prudent mining operator prior to the termination of this Lease or by Lessee's actions makes the recovery of said unmined

coal uneconomical, then Lessee shall promptly pay Lessor for all such unmined coal estimated to be recoverable by arbitration at the same Actual Production Royalty rate paid most recently for coal of the same character or quality mined hereunder. No determination of "best mining practice" shall require Lessee to mine the coal seam to an extent that it would exceed an average ratio of 30 bank cubic yards overburden to (1) one ton of coal. Lessee in its sole discretion may exceed such ratio.

11.4. Environmental Laws. Lessee shall not allow any dumping or release of any petroleum products, chemicals or Hazardous Substances (as hereinafter defined) on the Premises. Lessee shall not allow any toxic, hazardous or contaminated substances or gases, including but not limited to asbestos and raw materials which include hazardous constituents or any other similar substances or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to Environmental regulations, contamination, clean-up or disclosure (collectively, "Hazardous Substances") such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Toxic Substance Control Act ("TSCA") or state super lien or environmental clean-up or disclosure statutes as all such acts and statutes exist now or are hereafter amended (such acts and statutes referred to herein as "Environmental Laws"), to exist or be stored, located, discharged, possessed, managed, processed or otherwise handled on the Premises. Lessee covenants to hold Lessor harmless from and against any loss, cost, damage, fines and expenses (including attorney's fees and expenses) arising out of the presence of Hazardous Substances on or about the Premises or the violation of any Environmental Laws with respect thereto, the occurrence of which Hazardous Substances on the Premises or the violation of any Environmental Laws arises from the acts or omissions of Lessee, its agents, invitees, contractors and employees. This indemnity shall survive the termination of this Lease and shall inure to the benefit of the Lessor, its successors and assigns; provided, however, that upon approval of the total State of Alabama Surface Mining Commission Bond Release Request of Lessee all obligations of Lessee to Lessor under this Lease shall terminate and Lessee shall have no further liability hereunder for any claim or cause of action to Lessor.

## **XII. REMOVAL OF EQUIPMENT AND IMPROVEMENTS.**

12.1. Where Lessor owns surface rights, within 90 days after the date of termination of this Lease, Lessee shall remove in a good and workmanlike manner all tools, machinery, equipment, structures and all property of every nature and description which belong to Lessee and have been placed upon the Premises; provided, however, that all royalties and other payments due under this Lease shall have been paid and all obligations of Lessee hereunder kept and performed; provided, further, however, that in the event all royalties and other payments due shall not have been paid when due, and all other obligations of Lessee shall not have been performed when due, Lessee's right to remove such tools, machinery, equipment and structures shall be limited as provided in Section XIII (Liens) section of this Lease.

12.2. Where Lessor owns surface rights, in the event of failure of Lessee to remove within 180 days after the date of termination of this Lease any and all tools, machinery, equipment, structures and property which belong to Lessee and have been placed upon the Premises, said tools, machinery, equipment, structures and property shall, at the sole election of Lessor, become the

absolute property of Lessor or may be removed from the Premises by Lessor at the sole cost and expense of Lessee.

### **XIII. LIENS.**

13.1 Lessee Shall Cause No Liens. Lessee shall cause any and all liens and encumbrances in any way arising out of its occupancy of the Premises or the conduct of its operations in, on or under the Premises to be promptly canceled and discharged of record. If any lien is filed against the Premises or Lessee's interest in this Lease and not discharged within sixty (60) days after such lien is filed, Lessor, at Lessor's option, may take such action as it deems necessary to have such lien discharged, whereupon Lessee shall reimburse, indemnify and hold harmless Lessor for all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred in connection therewith. Nothing herein contained, however, shall prevent Lessee from contesting in good faith, and at its expense, any claim of lien, provided that, in event such contest is unsuccessful, Lessee shall pay and discharge the lien and all costs associated therewith promptly after final determination of the contest.

13.2 Purchase Money Lien on Coal *in situ* and Purchase Money Security Interest in Mined Coal. Lessor shall have and is hereby granted a purchase money lien and charge on all coal *in situ* and a purchase money security interest in any and all coal that has been mined from the Premises to secure Lessee's obligations hereunder including without limitation the obligation to pay any and all rents, royalties, and other amounts due or to become due to Lessor under this Lease. In the event of a continuing failure of Lessee to comply with the provisions of this Lease for thirty (30) days or more after Lessor shall have given to Lessee written notice of default and of the intention of Lessor to enforce the lien and/or security interests hereby given, Lessor shall have the right to take possession of said coal and, after giving ten (10) days' notice by posting notices on the Premises, sell the same on the open market on Lessor's terms, and Lessor may apply the proceeds of said sales in the following order of priorities: first, to the payment of any expense incurred in securing possession of said coal, advertising, selling or conveying same, including reasonable attorney's fees and expenses; second, to the payment of all sums of money as herein provided; and third, the balance, if any, to be turned over to Lessee. Lessor shall have the right to purchase the coal at such sales.

13.3 Security Interest. All machinery, vehicles, buildings, structures, equipment, tracks and improvements (collectively, "Lessee's Property") placed by Lessee on the Premises shall in all respects remain the property of Lessee; provided, however, that in order to further secure Lessee's obligations hereunder, including without limitation the obligation to pay any and all rents, royalties, minimum royalties and any other amounts due or to become due hereunder, Lessee hereby grants Lessor a security interest in and upon all such Lessee's Property. Lessee shall not remove from the Premises any such Lessee's Property until all sums of money due Lessor are paid, and all other obligations hereunder have been completely performed.

13.4 UCC Remedies. Upon default by Lessee, the lien and security interests hereby granted may be enforced as provided by the Uniform Commercial Code as it has been adopted in the State of Alabama. This Lease and any short form lease hereof shall constitute financing statements within the meaning of the said UCC in which Lessor is the secured party and Lessee is the debtor. Lessee further agrees to execute such further financing statements or instruments with respect to the security interests hereby granted as Lessor may request from time to time.



#### **XIV. INDEMNIFICATION AND INSURANCE**

14.1 **Indemnity Obligation.** Lessee hereby assumes all legal and financial responsibility for, and will reimburse, defend, indemnify and hold harmless Lessor, its officers, directors, agents, servants, employees, affiliates and/or shareholders (collectively, the "Indemnitees"), from and against, any and all losses, costs, liabilities, suits, administrative proceedings, claims, debts, demands, causes of action, fines, penalties and expenses (including without limitation reasonable attorneys' fees and expenses) (collectively, "Claims") as a result of injuries to, and deaths of, persons (including without limitation employees of Lessee and its subcontractors), and damage to or destruction of property (real, personal, and mixed) by whomsoever asserted, claimed or alleged, resulting or arising from, connected with, or related or incidental to, or alleged to have resulted or arisen from, have been connected with, or have been related or incidental to Lessee's non-compliance with any provision of this Lease or Lessee's use or occupancy of the Premises or operations and activities under this Lease, irrespective of whether such injury, death or damage results, or is alleged to have been caused or contributed to by the sole or concurring negligence of the Indemnitees and irrespective of whether such injury, death or damages occurs during the Term of this Lease, or subsequent to the expiration or termination hereof. The indemnity obligations of Lessee herein shall survive the expiration or termination of this Lease.

14.2 **Insurance Requirements.** To protect both Lessor and Lessee from expenses or claims arising out of bodily injuries, including death, and any damages to the property of any other lessees, adjoining landowners, riparian owners and any other person or entity, resulting or arising from, connected with, or related or incidental to the operations conducted by, or acts or omissions of, Lessee, its servants, employees, subcontractors, agents, assigns, guests, licensees, successors and/or personal representatives, during the Term of this Lease, but without in any way limiting the scope of the provisions in this Lease relating to Lessee's assumption of risk and/or its agreement to hold harmless and indemnify Indemnitees, Lessee shall, at its expense, carry insurance coverage as listed in Exhibit "C" which is attached to this Lease, and said insurance shall cover all such claims, with Lessor as an additional named insured for the duration of this Lease.

#### **XV. WORKERS COMPENSATION.**

15.1 Lessee, in all of its operations hereunder, is and shall be an independent contractor. Lessor shall not be liable for the payment of any sums due to any persons engaged in Lessee's operations, including without limitation amounts due Lessee's employees or employees of any subcontractors under Alabama's Workers Compensation Statutes, Federal Black Lung Act, or any other law.

#### **XVI. DEFAULT.**

16.1 Upon the occurrence of any Event of Default (as hereinafter defined), Lessor may at its option terminate this Lease and the rights granted to Lessee herein shall thereupon immediately cease and terminate.

16.2 The following shall be "Events of Default" under this Lease:

16.2.1 Failure by Lessee to pay any royalties or other monies provided for in this Lease within ten (10) days after the due date, including without limitation the Advance Royalty.

16.2.2 Failure by Lessee in the performance of any other obligation, covenant or

duty under this Lease which failure continues for a period of thirty (30) days after written notice from Lessor to Lessee specifying such failure and requiring the same to be remedied or, if the failure is such that it cannot be cured within thirty (30) days despite Lessee's diligent efforts, Lessee fails to proceed immediately and diligently to correct such failure.

16.2.3 The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy (other than the petition filed to commence the Bankruptcy Case) or its failure to lift any execution, garnishment or attachment promptly, which execution, garnishment or attachment is of such size to seriously impair the ability of Lessee to carry on its operations.

16.2.4 The commission by Lessee of any act of bankruptcy or its adjudication as bankrupt (other than in connection with the Bankruptcy Case) or an assignment by Lessee for the benefit of creditors.

16.2.5 Other than the Bankruptcy Case, the entry by Lessee into any agreement of composition with creditors or the approval by a court of competent jurisdiction as having been filed in good faith of a petition applicable to Lessee in any proceedings for the reorganization of Lessee instituted under the provisions of the general bankruptcy act, as amended, or under similar act that may hereafter be enacted.

16.2.6 Default by Cedar Lake Mining, Inc. under that certain Amended and Restated Permit to Access Property by and between Warrior Met Coal Land, LLC and Warrior Met Coal Mining, LLC dated as of January 9, 2021, which amends and restates the Permit to Access Property dated November 9, 2020;

16.2.7 Default by Lessee under that certain Claim Compromise Agreement dated as of March \_\_\_, 2021 (the "Claim Compromise Agreement"), or default under the Claim Compromise Agreement by any of the other "Debtors" (as that term is defined in the Claim Compromise Agreement); or

16.2.8 The failure by Lessee to obtain confirmation by the Bankruptcy Court in the Bankruptcy Case of the Plan, or a default under such Plan after confirmation, or the conversion of the Bankruptcy Case to a proceeding under Chapter 7 of the Bankruptcy Code.

16.3 No termination as a result of an Event of Default by Lessor shall bar the recovery of accrued royalties or damages for the breach of any of the terms, conditions or covenants on the part of Lessee contained herein. The receipt of royalties after breach of covenant or after condition broken shall not be deemed a waiver by Lessor of its right to recover damages. The failure of Lessor to recognize or act on any default by Lessee of the terms, conditions or covenants of this Lease shall not constitute a waiver of Lessor's right to later act on that default or on any other default by Lessee of the terms, conditions or covenants of this Lease. No failure or failures to exercise any right of the Lessor under this Lease shall be deemed as a waiver or bar to the subsequent exercise or enforcement by Lessor of any provision of this Lease or any right of the Lessor hereunder.

**XVII. CONDEMNATION.**

17.1 If the Premises or any part thereof is taken by exercise, or threat of exercise, of the right of eminent domain, the entire award made with respect to such taking shall belong to Lessor. Lessee shall have no right to receive any portion of such award nor any right to intervene in any legal proceedings respecting such taking, and this Lease, as to so much of the Premises as is taken, shall terminate as of the effective date of taking. Lessee hereby waives only right it might otherwise have to participate in any proceedings respecting a taking of any part or all of the Premises by eminent domain.

**XVIII. NOTICES.**

18.1 All notices given hereunder by either party to the other shall, for the purposes of this Lease, be deemed given when delivered by courier or sent via United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid and addressed as follows:

If by mail or delivered by courier to Lessor:

Warrior Met Coal Land, LLC  
Attn: Roger Crabb and Suzan Sanderson  
16243 Hwy 216  
Brookwood, AL 35444

With a copy to Lessor:

Warrior Met Coal, Inc.  
Attn: Phil Monroe, VP Legal  
16243 Hwy. 216  
Brookwood, AL 35444

If by mail to Lessee:

Cane Creek, LLC  
Attn: John McNab  
PO Box 1608  
Jasper, AL 35502

If delivered by courier to Lessee:

FM Coal, LLC  
Attn: John McNab  
9865 HWY 269  
Parrish, AL 35580

With a copy to Lessee:

Cane Creek, LLC  
Attn: Chris Rice  
PO Box 1608  
Jasper, AL 35502



or at such other address as shall have been given by notice in writing by the party changing its address to the other party.

#### **XIX. INTERFERENCE WITH LESSOR'S OPERATIONS.**

19.1 If action by Lessee's employees or persons identifiable as family, friends, associates of, sympathizers with, or antagonists of any of Lessee's employees or Lessee's mining operations in general interferes with, disrupts, or threatens to interfere with or disrupt Lessor's operations or the operations of any of its related companies (including without limitation Warrior Met Coal, Inc. or its successor(s) in interest), in any manner, at any location whether by reason of a labor dispute (other than a nationwide economic strike in the coal industry), picketing, boycotting or otherwise, or if the presence of Lessee or Lessee's agents or employees upon the Premises, or the fact that this Lease has been made results in acts by third parties which causes or threatens any such interference, Lessor may immediately, at its sole discretion, suspend this Lease upon notice to Lessee. Said suspension shall be removed when Lessee has satisfactorily resolved or removed said interference or disruption with Lessor's operations. During any period of suspension under the provisions of this paragraph, the payment of Monthly Minimum Royalties shall be waived. This Lease shall cease and terminate at the option of Lessor if such suspension is not removed within six (6) months of its commencement.

#### **XX. STOCKPILING OF COAL.**

20.1 Lessee shall not stockpile any coal mined from the Premises, at any location, for a period exceeding ninety (90) days without the prior written consent of Lessor, which consent may be withheld in Lessor's discretion. Lessee shall aggressively pursue the sale of mined coal. The term "stockpile" as used herein shall mean the physical act of storing, stocking, piling, reserving, saving, or hoarding of any coal mined from the Premises, for any reason whatsoever, at any location whatsoever, on which the Actual Production Royalty due Lessor hereunder has not been paid to Lessor.

#### **XXI. ARBITRATION.**

21.1 In the event of any difference of opinion or any controversy which cannot be otherwise resolved between Lessor and Lessee regarding the provision(s) of this Lease, such difference shall be arbitrated in the following manner: Lessor and Lessee hereby agree to abide by the written findings of the majority of three competent professional mining engineers or certified professional geologists as arbitrators, one of which shall be appointed by Lessor, one by Lessee and the third jointly by the two first chosen. If either Lessor or Lessee fails to appoint such arbitrator after ten days written request of the other party to do so, or if the said arbitrators shall fail to appoint a third arbitrator within twenty days after their selection as arbitrators, then upon the motion of either Lessor or Lessee, the presiding judge of the Circuit Court of the county in which the Premises are located shall have the power to appoint the third arbitrator. The reasonable compensation of any arbitrators not in the employ of or designated by the respective parties and the cost of the arbitration shall be equally divided between Lessor and Lessee.

**XXII. RECORDING OF LEASE.**

22.1 A Memorandum of Lease will be prepared by Lessor and shall be recorded by Lessee in the records of the Probate Judge of Jefferson County, Alabama within thirty (30) days of the execution of this Lease. The recording costs shall be the sole responsibility of the Lessee.

**XXIII. NO WAIVER.**

23.1 No failure or failures by Lessor to exercise any right under this Lease shall be deemed to be waiver or bar to the subsequent exercise or enforcement by Lessor of any right hereunder.

**XXIV. CAPTIONS.**

24.1 The captions of articles and paragraphs in this Lease, which are used for convenience only, shall in no way define, limit or prescribe the scope or intent of this Lease or any provisions thereof.

**XXV. ASSIGNMENTS**

25.1 This Lease is personal to Lessee and mining by Lessee is of the essence hereof; therefore, Lessee may not assign or transfer, whether by operation of law or otherwise, or mortgage or sublet, this Lease in whole or in part, or any interest herein, without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. Lessee specifically waives and relinquishes all rights to make any transfer or assignment without such written consent. Except as herein restricted, this Lease shall inure to and be binding upon the respective successors and assigns of the parties hereto.

[signature pages follow]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in duplicate as of the date and year first above written.

**LESSOR**

**WARRIOR MET COAL LAND, LLC**

---

By: Philip K. Saunders

Its: Vice President – Engineering

**LESSEE**

**CANE CREEK, LLC**

---

By: John McNab

Its: \_\_\_\_\_

STATE OF ALABAMA     )

TUSCALOOSA COUNTY    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Philip K. Saunders, whose name as Vice President – Engineering of WARRIOR MET COAL LAND, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John McNab, whose name as General Manager of CANE CREEK, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such General Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

## **EXHIBIT "A"**

### **Legal Description of Leased Premises**

The American seam of coal and the mining rights to portions of the following land parcels located in Township 16 South, Range 4 West, Jefferson County, Alabama, that are in the permitted mining areas of Lessee and where the coal is mineable by highwall mining methods:

Section 19 – that part of the NE4/NE4 owned by Lessor that is within the permitted mining area of Lessee.

Section 20 – that part of the NW4/NW4 and the SW4/NW4 owned by Lessor, that lies to the west of Flat Top Road and is within the permitted mining area of Lessee.

This Lease gives Lessee the rights to mine only the America seam of coal from the Premises. The rights granted do not give Lessee any rights to use the surface of the described Premises without first obtaining Lessor's prior consent or to mine any other seam of coal from the Premises.

**LESSEE ACCEPTS THE LIMITATION THAT THERE IS TO BE NO MINING WITHIN THE LONGER OF THESE DISTANCES FROM THE EXISTING CELL COMMUNICATIONS TOWER AND ITS ACCESS ROAD IN NORTH HALF OF THE NW4/NW4 OF SECTION 20:**

- a. **FOUR HUNDRED FEET (400') FROM THE LEASED SITE OF THE CELL TOWER AND THE ACCESS ROAD; OR**
- b. **A GREATER DISTANCE FROM THE LEASE SITE OF THE CELL TOWER AND THE ACCESS ROAD, BASED ON THE ANGLE OF DEFLECTION OF EXPECTED SUBSIDENCE, AS CALCULATED BY A LICENSED MINING OR PHYSICAL ENGINEER LICENSED BY THE STATE OF ALABAMA.**

Source of Title: DEED BOOK: 2016 PAGE: 048400

Net Mineral Acres Leased = 3.698 acres

Parts of Tax Parcel #s:

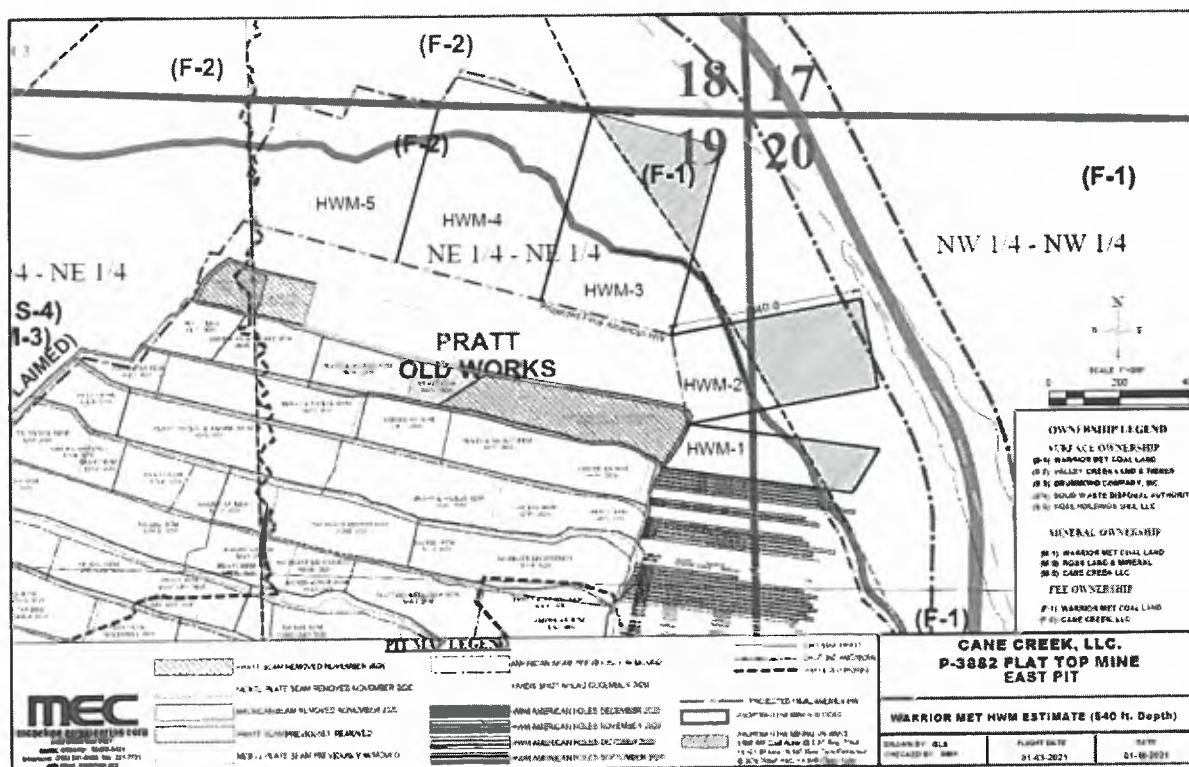
15 00 19 1 000 001.002

15 00 20 2 000 001.000

## EXHIBIT "B"

### Map of Leased Premises

The areas depicted on the map in the red cross hatch are the Leased Premises, as defined in Exhibit "A".



## **EXHIBIT "C"**

### **Insurance Requirements**

1. **INSURANCE REQUIREMENTS.** Without limiting, negating or reducing Lessee's undertakings to protect, indemnify, hold harmless, reimburse, and defend Lessor as provided in in the Lease, Lessee shall, at its own cost and expense, procure and keep in force and effect, with an insurance company or companies rated A- VII or better by A.M. Best, the minimum insurance coverage set forth below. Lessor has the right to modify or increase the minimum limits & type of insurance required subject to changes in the size, scope or type of operations conducted by Lessee on the Premises. Required limits of insurance are minimum limits and will not be construed to limit either party's liability.

A. Workers' Compensation & Employer's Liability Insurance. Lessee and all its employees, workers, agents, servants and guests shall be covered by workers' compensation insurance, whether required by statute or available under a voluntary basis. Such coverage shall be applicable in the state or states in which said Premises is located. In addition, Lessee shall carry employer's liability insurance covering all work hereunder in an amount not less than \$1,000,000 each accident for bodily injury by accident or disease, including \$1,000,000 disease aggregate.

B. Commercial General Liability Insurance. Lessee shall provide commercial general liability insurance on an occurrence coverage form to include broad form contractual liability coverage. Other than standard exclusions applicable to asbestos, mold, lead, employment practices, ERISA, and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, premises liability, or contractual liability. Such insurance shall be in an amount not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate for bodily injury and property damage claims arising out of Lessee's products or completed operations and \$1,000,000 each occurrence and \$2,000,000 general aggregate for all other bodily injury or property damage claims.

C. Business Automobile Liability Insurance. To cover owned, non-owned, and hired vehicles used by Lessee, Lessee shall provide business automobile liability insurance with combined single limits in an amount not less than \$1,000,000 each accident covering liability for bodily injury and property damage.

D. Excess Liability Insurance. Lessee shall provide excess liability coverage in an amount not less than \$10,000,000 for personal injuries and property damage arising out of any one occurrence. This insurance shall be in excess of the foregoing employer's liability insurance, commercial general liability insurance, and business automobile liability insurance and shall be endorsed to provide a drop-down follow form endorsement in the event underlying limits are exhausted by claims.

E. Pollution Liability Insurance. Lessee shall provide Lessee's pollution liability insurance covering both sudden and gradual pollution incidents arising from Lessee's occupancy of Premises or work performed by or on behalf of Lessee on subject Premises. Coverage may be claims-made and shall include bodily injury, property damage, and clean-up. The limits of liability shall be not less than \$3,000,000 each claim or incident and \$3,000,000 annual policy aggregate.

As evidenced by certificates provided upon each renewal, Lessee agrees to continuously maintain such pollution liability coverage for not less than five (5) years after termination of this Lease and occupancy or use of Premises. If Lessee's pollution liability coverage is cancelled or not renewed prior to the expiration of the five (5) year period for any reason, Lessee agrees to purchase either coverage for an extended reporting period for the remaining duration of the five (5) years or the maximum period of time the insurer will provide an extended reporting period coverage.

## **2. ADDITIONAL INSURANCE PROTECTIONS REQUIRED**

A. Separation of Insureds and Additional Insured. All insurance policies of Lessee, with the exception of Workers' Compensation, shall include a separation of insureds endorsement and shall be endorsed to include "Warrior Met Coal Land, LLC, Warrior Met Coal, Inc., its subsidiaries and their respective affiliates, employees, successors and assigns" as an additional insured as respects to claims or liabilities arising from, or connected with Lessee's work on or occupancy or use of said Premises. Separation of insureds and naming of additional insured shall be evidenced on the certificate of insurance.

B. Insurance Shall be Primary. Lessee's required insurance coverages shall be primary insurance, and any insurance or self-insurance maintained by Lessor shall be excess and non-contributory with Lessee's insurance.

C. Funding of Deductible(s). The funding of deductibles and self-insured retentions maintained by the Lessee shall be the sole responsibility of the Lessee, including any amounts applicable to claims involving Lessor as an additional insured.

D. Waiver of Subrogation. Lessee and its insurers, through terms of the policy or policy endorsement, agree to waive its right of recovery against "Warrior Met Coal Land, LLC, Warrior Met Coal, Inc., its subsidiaries and their respective affiliates, employees, successors and assigns" with respect to all insurance policies of Lessee as respects all loss, damage, claims, suits, or demands. The certificate of insurance must evidence the waiver of subrogation.

E. Policy Cancellation or Non-Renewal. Lessee will notify Lessor by facsimile within two (2) business days of receipt of any proposed notice of policy cancellation, actual notice of policy cancellation, or refusal to renew.

F. Certificate(s) of Insurance Required. Prior to commencement of this Lease, Lessee shall furnish Lessor with certificate(s) of insurance attested by a duly authorized representative of the insurers evidencing that the required insurance is in force and effect and which provide sufficient information to verify that Lessee has complied with the insurance requirements set forth herein. Subsequent certificate(s) must be furnished upon each renewal of Lessee's insurance which falls within the Term of this Lease (and beyond the Term of this Lease as regards Pollution Liability insurance). In the event Lessee fails to furnish Lessor with acceptable certificate(s) of insurance prior to commencement of this Lease, or prior to subsequent expiration date(s) of Lessee's insurance as required in this Lease, Lessor shall have the right to terminate this Lease without any liability or further obligation to Lessee.



**EXHIBIT D**

**NELSON BROTHERS SETTLEMENT AGREEMENT**

## CLAIM COMPROMISE AGREEMENT

**THIS CLAIM COMPROMISE AGREEMENT** (the "Agreement"), is effective as of the 9th day of February, 2021 (the "Effective Date"), by and among **NELSON BROTHERS, LLC** ("**NB**"), and **FM COAL, LLC** ("**FM Coal**"), **CANE CREEK, LLC** ("**Cane Creek**"), **CEDAR LAKE MINING, INC.** ("**Cedar Lake**"), **MS&R EQUIPMENT CO., INC.** ("**MS&R**"), and **BEST COAL COMPANY** ("**Best Coal**" and together with FM Coal, Cane Creek, Cedar Lake, and MS&R, collectively, the "Debtors" and together with NB, the "Parties").

### Recitals

A. On September 1, 2020 (the "Petition Date"), the Debtors each commenced their bankruptcy cases (each a "Case" and collectively, the "Cases") by filing voluntary petitions pursuant to Chapter 11, Title 11 United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of Alabama (the "Bankruptcy Court").

B. In the 90 days prior to the Petition Date (the "Preference Period"), the Debtors purchased certain products from NB on account, and the Debtors made payments to NB.

C. The Debtors made certain payments to NB during the Preference Period (the "Preference Payments").

D. In the 20 days prior to the Petition Date (the "503(b)(9) Period"), the Debtors purchased certain "goods", as that term is used in 11 U.S.C. § 503(b)(9), from NB (the "503(b)(9) Goods") which remained unpaid as of the Petition Date.

E. As of the Petition Date, the balance claimed by NB from the Debtors for the 503(b)(9) Goods is \$251,836.36 (the "503(b)(9) Claim"), consisting of the following:

<u>Debtor</u>	<u>503(b)(9) Claim</u>
MS&R	\$106,033.11
Best Coal	\$5,667.63
Cane Creek	\$127,431.20
Cedar Lake	\$12,704.42
<b>Total</b>	<b><u>\$251,836.36</u></b>

F. The Debtors and NB desire to compromise NB's liability to the Debtors for the Preference Payments and desire to compromise the Debtors' liabilities to NB for the 503(b)(9) Goods, but only upon the terms and conditions set forth in this Agreement.

### Agreement

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the covenants herein set forth and confirmed, the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Debtors and NB agree as of the Effective Date as follows:

1. **Acknowledgement of Recitals.** Debtors and NB acknowledge and agree that the foregoing "Recitals" are true, correct, and complete, and agree that the same are incorporated by reference into the body of this Agreement.

2. **Compromise of Preference Payments.** The Debtors agree to waive any and all claims pursuant to 11 U.S.C. §§ 547 and 550 that the Debtors may have to avoid or recover the Preference Payments from NB. This waiver is in addition to the waiver and release set forth in Section 6, below.

3. **Compromise of 503(b)(9) Claim.** NB agrees to compromise the 503(b)(9) Claim as follows:

a. The Debtors shall be liable to NB on the 503(b)(9) Claim in the amount of \$160,000.00 (the "Compromised 503(b)(9) Claim") to be apportioned among the Debtors as follows:

<b><u>Debtor</u></b>	<b><u>Compromised 503(b)(9) Claim</u></b>
MS&R	\$67,000.00
Best Coal	\$4,000.00
Cane Creek	\$80,000.00
Cedar Lake	<u>\$9,000.00</u>
<b>Total</b>	<b><u><u>\$160,000.00</u></u></b>

b. The Debtors shall pay to NB the Compromised 503(b)(9) claim in six (6) equal consecutive monthly payments of \$26,666.67 (the "Payments"), commencing on the later of April 15, 2021, or the date that is 45 days after the Bankruptcy Court enters and order confirming the Debtors' plans, or joint plan, of reorganization, and then continuing every 30 days thereafter for the subsequent and consecutive 5 monthly periods.

4. **Bankruptcy Court Approval.** The Debtors and NB shall seek the Bankruptcy Court's approval of this Agreement by disclosing and incorporating all material terms of this Agreement into an order to be entered by the Bankruptcy Court confirming the Debtors' plans, or joint plan, of reorganization (the, "Confirmation Order").



5. **No Effect on Post-Petition Claims.** The Debtors acknowledge and agree that they have purchased and continued to purchase goods and services from NB after the Petition Date (the “Post-Petition Liabilities”). Nothing herein shall modify the Debtors’ obligations to NB for the Post-Petition Liabilities, including but not limited to, NB’s ability to seek payment of the Post-Petition Liabilities as an administrative expense claim in the Case.

6. **Release of NB.**

a. In consideration of the agreements of NB contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Debtors, on their own behalf and for their successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably release, remise and forever discharge NB, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (NB and all such other persons being hereinafter referred to collectively as the “NB Releasees” and individually as a “NB Releasee”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “Claim” and collectively, “Claims”) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Debtors or any of their successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the NB Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement.

b. Debtors understand, acknowledge and agree that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

c. Debtors agree that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute, and unconditional nature of the release set forth above.

7. **Release of Debtors**

a. Except as set forth herein, in consideration of the agreements of Debtors contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and upon full payment of the Compromised 503(b)(9) Claim, NB, on its own behalf and for their successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably release, remise and forever discharge Debtors, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Debtors and all such other persons being hereinafter referred to collectively as the “Debtor Releasees” and individually as a “NB Debtor Releasee”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off,



demands and liabilities whatsoever (individually, a “Claim” and collectively, “Claims”) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which NB or any of their successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Debtor Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement.

b. NB understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

c. NB agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute, and unconditional nature of the release set forth above.

d. Further, despite anything to contrary herein, NB specifically acknowledges, ratifies and incorporates herein the terms of that certain Trade Agreement executed by and between NB and the Debtors on or about September 30<sup>th</sup>, 2020 whereby NB agreed to “completely waive and fully release any and all claims, of any kind or nature, whether known or unknown, that [NB] has or may have against each and every one of the Debtors or their respective bankruptcy estates, that arose prior to the Petition Date” except for the Compromised 503(b)(9) Claim being resolved herein.

**8. Future Relationship.** Upon the Debtors' exit from bankruptcy via a confirmed plan of reorganization, and so long as Debtors are not in breach of this Agreement, NB and Debtors mutually agree to, in good faith, enter into a two-year supply contract with 30-day payment terms, based upon indexed pricing to be negotiated between the parties.

**9. Adequate Consideration.** The Parties each hereby acknowledge and agree the the agreed compromises under this Agreement constitute full and adequate consideration for the execution and delivery by each Party of this Agreement.

**10. Indemnification.** If, after receipt of any payment from Debtors for any indebtedness owed by Debtors, NB is compelled to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then Debtors shall be liable for, and shall indemnify, defend and hold harmless NB with respect to the full amount so surrendered relating to Debtors, including any fees and costs incurred by NB in connection therewith. The provisions of this section shall survive the termination of this Agreement and shall be and remain effective notwithstanding the payment of the Compromised 503(b)(9) Claims or any other action which NB may have taken in reliance upon the receipt of such payment.

**11. Representations and Warranties.** To induce each other to enter into this Agreement and as partial consideration for the terms and conditions contained herein, each of the Debtors and NB respectively make the following representations and warranties, each and all of



which shall survive the execution and delivery of this Agreement and all of the other documents executed in connection herewith: (a) except for such actions required in Section 4 of this Agreement, each Party has the requisite power and authority to deliver and perform this Agreement and any documents executed by it in connection herewith; (b) except for such actions required in Section 4 of this Agreement, all actions required to be taken by a Party for the authorization, execution, delivery and performance of this Agreement and any other documents contemplated hereby have been taken; (c) the respective person executing this Agreement on behalf of each Party is duly authorized; (d) this Agreement is, and any documents executed pursuant hereto will be, legal, valid, and binding obligations of the party or parties thereto, enforceable against each such party in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium and other laws or equitable principles affecting creditors' rights generally; and (e) except for such actions required in Section 4 of this Agreement, the execution, delivery and performance by each Party of this Agreement and the documents related thereto will not (i) require any consent or approval of any person or entity which has not been obtained prior to, and which is not in full force and effect as of, the date of this Agreement; (ii) result in the breach of, default under, or cause the acceleration of any obligation owed under any loan, credit agreement, note, security agreement, lease indenture, mortgage, loan document or other agreement by which any of them are bound or affected.

**12. Survival of Representations and Warranties.** All of the representations and warranties contained in this Agreement and in all other documents and instruments executed in connection herewith or otherwise relating to this Agreement shall survive the execution of this Agreement and are material and have been or will be relied upon by the other Party, notwithstanding any investigation made by any person, entity or organization on behalf of the Party so relying.

**13. Cooperation; Other Documents.** At all times following the execution of this Agreement, the Parties shall execute and deliver, or shall cause to be executed and delivered, and shall do or cause to be done all such other acts and things as the other may reasonably deem to be necessary or desirable to assure the other Party of the benefit of this Agreement and the documents comprising or relating to this Agreement. Specifically, but not limited thereto, NB agrees to withdraw, or otherwise consent to the expungement or disallowance of, any and all proofs of claim filed in the Cases to the extent said claims assert a claim or seek recovery in an amount in excess of the Compromised 503(b)(9) Claim.

**14. Remedies Cumulative.** The respective rights, powers and remedies of the Parties in this Agreement are cumulative and not exclusive of any right, power or remedy provided by law or equity, and no failure or delay on the part of either Party in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. The Parties each expressly reserve and preserve all of its rights and remedies to enforce this Agreement.

**15. Notices.** Any written notice required to be given under this Agreement shall be sent to the following by mail, and shall be deemed given upon such mailing and sending:

If to Borrowers:

FM Coal, LLC  
4650 Flat Top Road  
Graysville, AL 35073  
Attn: John McNab

With a copy to:

Jesse S. Vogtle, Jr. Esq.  
Waller Lansden Dortch & Davis, LLP  
1901 Sixth Avenue North, Suite 1400  
Birmingham, AL 35203

If to NB:

Nelson Brothers, LLC  
820 Shades Creek Parkway, Suite 200  
Birmingham, AL 35209  
Attn: Jason Baker

with a copy to:

Daniel D. Sparks, Esq.  
Christian & Small, LLP  
1800 Financial Center  
505 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

**16. Integration; Effect.** Except as specifically set forth in paragraph 7(d) herein, this Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof and all prior negotiations and representations relating thereto are merged herein. The terms and conditions set forth in this Agreement are the product of joint draftsmanship by all parties, each being represented or having the opportunity to be represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to or in connection with this Agreement shall not be construed against any of the parties because of draftsmanship. This Agreement is not intended to modify and does not modify the rights, remedies and obligations of NB and Debtors pursuant to any loan or security agreement, guaranty or debt instrument, except to the extent expressly set forth herein. This Agreement shall inure to the benefit of, and be binding upon, the representatives, successors and assigns of the parties hereto, respectively. This Agreement may be executed in whole or in counterparts, each of which shall be an original but all of which, when taken together, shall constitute but one agreement. This Agreement may be executed by facsimile signatures, which shall be binding on the Parties hereto as if it were an original document.



17. **Counsel.** The Parties each acknowledge, agree, represent, and warrant that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood by each Party and have been fully and unconditionally consented to by it and that it has had full benefit and advice of counsel of their own selection in regard to understanding the terms, meaning and effect of this Agreement.

18. **Governing Law: Consent to Jurisdiction and Venue.** IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE PARTIES HEREBY CONSENT AND AGREE THAT THE STATE COURTS FOR THE COUNTY OF JEFFERSON OR FEDERAL COURTS LOCATED IN THE NORTHERN DISTRICT OF ALABAMA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN DEBTORS AND NB PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT; PROVIDED, THAT NB AND DEBTORS ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF ALABAMA; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE EITHER PARTY FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE MOVING PARTY. THE PARTIES EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND HEREBY WAIVE ANY OBJECTION WHICH THEY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

19. **Mutual Waiver of Jury Trial; Arbitration.** BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR



**OTHERWISE BETWEEN NB AND DEBTORS ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED THERETO.**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals, all as of the day and year first above written.

ACCEPTED AND AGREED TO AS OF THE 9th DAY OF FEBRUARY 2020.

NELSON BROTHERS, INC as manager of  
NELSON BROTHERS, LLC

  
By: Jason Baker

Its: Director of Finance

FM COAL, LLC

By: John McNab

Its: General Manager

CANE CREEK, LLC

By: John McNab

Its: General Manager

CEDAR LAKE MINING, INC.

By: John McNab

Its: General Manager

MS&R EQUIPMENT CO., INC.

By: John McNab

Its: General Manager

BEST COAL COMPANY

By: John McNab

Its: General Manager

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals, all as of the day and year first above written.

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BEST COAL COMPANY

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