

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re:

Chapter 11

CARBON RESOURCES, LLC,  
Debtor.

Case No. 10-16104-j11

**AGREED ORDER APPROVING DEBTOR'S MOTION FOR AUTHORITY  
TO SELL SUBSTANTIALLY ALL OF CARBON RESOURCES, LLC'S  
ASSETS AND EXECUTE AGREEMENTS RELATED THERETO**

Upon the motion, dated September 30, 2011 (Docket No. 88) (the "Sale Motion"),<sup>1</sup> of Carbon Resources, LLC ("Carbon Resources"), debtor and debtor in possession (the "Debtor"), filed in the above-captioned chapter 11 case (the "Carbon Resources Chapter 11 Case"), and in the Chapter 11 case of related debtor WRCC, LLC ("WRCC") (Case No. 11-13700-j11) (WRCC Docket No. 25) (together, the "Sale Motions"), for entry of an order pursuant to sections 105(a), 363 and 1146 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rules 2002, 6004, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the District of New Mexico (the "Local Rules"), (i) authorizing the sale (the "Sale") of substantially all of Carbon Resources' assets, along with certain assets of its non-debtor affiliate Western Reserve Coal Company Incorporated, a Nevada corporation ("Western Reserve"), that will be transferred to Carbon Resources at or prior to Closing, free and clear of all liens, claims, interests and encumbrances except as provided under the terms of that certain Asset Purchase Agreement, effective as of September 12, 2011 (the

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sale Motion or the Purchase Agreement (as defined herein).



**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:**

**A. Findings of the Court.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

**B. Jurisdiction and Venue.** This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Carbon Resources Chapter 11 Case, the WRCC Chapter 11 Case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

**C. Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363 and 1146 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007 and 9014, and the applicable Local Rules.

**D. Petitions.** On December 10, 2010, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On August 16, 2011, WRCC filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the WRCC Chapter 11 Case (together with the Carbon Resources Chapter 11 Case, the "Bankruptcy Cases"). Since the respective petition dates of each Bankruptcy Case, Carbon Resources and WRCC have continued in possession and management of their respective businesses and properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

**E. Notice.** As evidenced by the certificate of service filed with this Court (Docket No. 97) (i) due, proper, timely, adequate and sufficient notice of the Sale Motion has been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9006, 9007 and 9014 and this Court's order shortening notice (Docket No.

99); (ii) such notice was good and sufficient, and appropriate under the particular circumstances;

and (iii) no other or further notice of the Sale Motion shall be required.

**F. Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Sale Motion and the relief requested therein, including, but not limited to, the sale of the Assets and the Purchase Agreement, has been given to all interested persons and entities, including, without limitation, the following: (i) the Office of the United States Trustee for the District of New Mexico; (ii) counsel for the Purchaser; (iii) counsel for the Debtor's prepetition secured lender, PCM Venture II, LLC; (iv) all individuals or entities identified on the Schedules filed in either of the Bankruptcy Cases as of the date of the Sale Motion; (v) all individuals or entities that have filed Proofs of Claim in either of the Bankruptcy Cases as of the date of the Sale Motion; (vi) all entities known or reasonably believed to have asserted any claims or interests against the Assets or the respective interests of Carbon Resources or WRCC in the Assets, and any other entities known to have recorded a lien, interest or encumbrance in or upon the Assets, to the extent that the addresses of such parties are reflected in documents recorded against such Assets in the official records of the Office of the Recorder of Carbon County or at the respective offices of the Secretaries of State for Utah, New Mexico, Arizona or Nevada; (viii) any employees of Carbon Resources or WRCC; (ix) the Internal Revenue Service and governmental taxing authorities that have or, as a result of the sale of the Assets, may have claims, contingent or otherwise, against Carbon Resources or WRCC; (x) the taxing authorities in the jurisdictions in which Carbon Resources or WRCC operate; (xi) all other interested governmental and environmental authorities or entities known by Carbon Resources or WRCC to assert jurisdiction over Carbon Resources or WRCC and to have an interest in the sale of the Assets; (xii) all non-Debtor parties to the leases, subleases, executory contracts or other agreements identified on Exhibits "A," "B", "C-1," "C-2" and "D" to the Purchase Agreement;

(xiii) all persons, if any, who have filed objections to the Sale Motion; and (xvi) all persons who have filed a notice of appearance in the Bankruptcy Cases. The respective deadlines for each of the foregoing persons and entities to file an objection to the Sale Motion have now expired, with the PCM Objections being the only objections timely filed and received.

**G. Arm's-Length Sale.** The Purchase Agreement and other documents and instruments related to and connected with the sale of the Assets and the consummation thereof were negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. Neither the Purchaser nor any of its affiliates or its representatives is an "insider" of either the Debtor or WRCC, as that term is defined in section 101(31) of the Bankruptcy Code. None of the Debtor, WRCC, the Purchaser or their respective affiliates or their representatives has engaged in any conduct that would cause or permit the Purchase Agreement or any other documents and instruments related to or connected with the sale of the Assets and the consummation thereof to be avoided under section 363(n) of the Bankruptcy Code, or has acted in any improper or collusive manner with any person. The terms and conditions of the Purchase Agreement and other documents and instruments related to and connected with the sale of the Assets and the consummation thereof, including without limitation the consideration provided in respect thereof, are fair and reasonable, and the sale of the Assets is not avoidable and shall not be avoided under section 363(n) of the Bankruptcy Code.

**H. Good Faith Purchaser.** The Purchaser and its affiliates and their respective representatives have proceeded in good faith and without collusion in all respects in connection with this proceeding. Such persons are therefore entitled to all of the benefits and protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the

sale of the Assets shall not affect the validity of such sale (including, without limitation, the other documents and instruments related to or connected with the sale of the Assets and the consummation thereof). No stay pending appeal of this Order (the “Sale Order”) has been requested, and the stay contained in Bankruptcy Rule 6004(h) has been and hereby is waived as set forth in paragraph 18 below.

**I. Corporate Authority.** Subject to the entry of this Sale Order, Carbon Resources and WRCC have (i) full corporate power and authority to perform all of their obligations under the Purchase Agreement and all other documents and instruments related to and connected with the sale of the Assets and the consummation thereof, and Carbon Resources’ and WRCC’s prior execution and delivery of, and performance of obligations under, the Purchase Agreement and other documents and instruments is hereby ratified; (ii) all of the corporate power and authority necessary to consummate the sale of the Assets; and (iii) taken all corporate action necessary to authorize and approve the Purchase Agreement and other documents and instruments related to or connected with the sale of the Assets and the consummation thereof. Furthermore, no further consents or approvals are required to consummate the sale of the Assets or otherwise perform obligations under the Purchase Agreement or other documents and instruments, other than those expressly provided for in the Purchase Agreement.

**J. Sale in the Best Interests.** Good and sufficient reasons for approval of the Purchase Agreement and the sale of the Assets have been articulated to the Court in the Sale Motion, and the relief requested in the Sale Motion and set forth in this Sale Order is in the best interests of the Debtor, WRCC, and their respective estates, creditors and other parties in interest in the Bankruptcy Cases.

**K. The Carbon Resources Assets and The Other Assets.** The Carbon Resources Assets constitute property of the Debtor’s estate and title thereto is vested in the Debtor’s estate

within the meaning of section 541(a) of the Bankruptcy Code. The Other Assets constitute property of the Debtor's estate and title thereto is or shall be vested in Carbon Resource's estate within the meaning of section 541(a)(7) of the Bankruptcy Code at or prior to Closing as a condition to Closing. Accordingly, the Debtor has or will have as of the date of Closing all right, title and interest to and in both the Carbon Resources Assets and the Other Assets that may be required to transfer and convey the Assets to the Purchaser in the manner contemplated by the Purchase Agreement.

WRCC, and each of their respective creditors and estates, and all other parties in interest. No available alternative to the sale of the Assets exists that would provide a greater value to the Debtor, WRCC, each of their respective creditors or equity interest holders, or other parties in interest.

**M. Business Justification.** The Debtor has demonstrated both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the sale of the Assets pursuant to Bankruptcy Code section 363. Such business judgment and compelling circumstances include, but are not limited to, the fact that (a) the Purchase Agreement constitutes the highest and best offer for the Assets; and (b) consummation of the Purchase Agreement and the transactions contemplated thereby presents the best opportunity to realize the highest value for the Assets and avoid potential decline and devaluation thereof. After consideration of the circumstances described in the Sale Motion, including, but not limited to (i) the extensive efforts undertaken by the Debtor and its non-debtor affiliates to market the Assets for sale both prior to and during the pendency of the Bankruptcy Cases; and (ii) the consent by the Debtor's equity holders to the consummation of the sale of the Assets under the terms and conditions set forth in the Purchase Agreement, the Court has determined that the sale of the Assets outlined in the Sale Motion and in the Purchase Agreement presents the best opportunity to ensure the payment in full of the claims of all creditors of the Debtor's estate and will provide a greater recovery for the Debtor's creditors and other parties in interest than would be provided by any other practical alternative method.

**N. Sale Free and Clear.** The transfer of the Assets to the Purchaser under the Purchase Agreement will be a legal, valid, and effective transfer, and vests or will vest, at Closing, the Purchaser with all right, title and interest of the Debtor and WRCC to the Assets free and clear of all Liens, Claims, Indebtedness and encumbrances of any kind or nature



whatsoever (collectively, the “Interests”) excepting those Interests set forth on **Exhibit 3** to the Sale Motion (collectively, the “Permitted Encumbrances”) and Assumed Liabilities because (i) with respect to the Carbon Resources Assets (including, but not limited to WRCC’s assets), one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) have been satisfied; or (ii) with respect to the Other Assets, Western Reserve has undertaken to ensure that the Other Assets have been or shall prior to Closing be conveyed, transferred or assigned to the Debtor free and clear of all Interests excepting Permitted Encumbrances and Assumed Liabilities. Furthermore, with respect to the Carbon Resources Assets, (i) holders of Interests and (ii) all parties who did not object to the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests in the Carbon Resources Assets are adequately protected by having their Interests attach to the net proceeds ultimately attributable to the Carbon Resources Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests had against the Carbon Resources Assets or their proceeds as of the filing of the Carbon Resources Chapter 11 Case, subject to any rights, claims and defenses the Debtor or WRCC and their respective estates, as applicable, may possess with respect thereto.

**O. Free and Clear Findings Required by Purchaser.** The Purchaser would not have entered into the Purchase Agreement and will not consummate the sale of the Assets and related transactions, thus adversely affecting the Debtor, WRCC and their respective estates and creditors, if the sale of the Assets to the Purchaser as set forth in the Purchase Agreement was not free and clear of all Interests of any kind or nature whatsoever (excepting Permitted Encumbrances and Assumed Liabilities), or if the Purchaser would, or in the future could, be liable for any of the Interests.

**P. No Fraudulent Transfer.** The Purchase Agreement was not entered into, and the sale of the Assets and related transactions are not consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor or WRCC under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, the District of Columbia or any other applicable law. Neither the Debtor nor the Purchaser has entered into the Purchase Agreement or are consummating the sale of the Assets and related transactions with any fraudulent or otherwise improper purpose.

**Q. No Successor Liability.** Except for the Permitted Encumbrances and Assumed Liabilities, the transfer of the Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser having any liability or responsibility for, or any Assets being recourse for, (i) any Interest asserted against the Debtor or WRCC or against an insider of the Debtor or WRCC against any of the Assets or any other assets of the Debtor or WRCC, or (ii) the satisfaction in any manner, whether at law or in equity, whether by payment, setoff, recoupment, or otherwise, directly or indirectly, and whether from the Assets or otherwise, of any Interest or Excluded Liabilities, or (iii) any liability or responsibility to third parties, the Debtor or WRCC, except as expressly set forth in the Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Assets from the Debtor to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or their respective properties (including the Assets) to any liability for Interests (excepting Permitted Encumbrances and Assumed Liabilities) against the Debtor or WRCC or their respective Interests in such Assets by reason of such transfer or otherwise under the laws of the United States or any state, territory, possession thereof, the District of Columbia or any other applicable law applicable to such transaction, including, without limitation, any successor liability or similar theories. For the avoidance of doubt, notwithstanding the consummation of the sale of the Assets and related

transactions, the Purchaser shall not have any obligations or liabilities to any employee of the Debtor or WRCC or in respect of any employee benefits owing to any employee of the Debtor or WRCC by such entities or by any plan or program administered by the Debtor or WRCC for the benefit of the employees of the Debtor or WRCC on or prior to Closing, and any obligations of the Purchaser shall be limited to those obligations expressly agreed to by the Purchaser under the Purchase Agreement, which arise on and following the Closing.

**R. Transfer Pursuant to Section 1146(a).** The sale of Assets pursuant to the Purchase Agreement constitutes an element of a plan of liquidation or reorganization under chapter 11 of the Bankruptcy Code. The transfers to the Purchaser pursuant to this Sale Order are transfers occurring “under” a plan as such term is used in section 1146(a) of the Bankruptcy Code, and accordingly shall not be taxed under any law imposing a stamp tax or similar tax.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Sale Motion Is Granted.** The Sale Motion and the relief requested therein is GRANTED and APPROVED.

2. **PCM Objections.** The PCM Objections are resolved pursuant to the terms of this Stipulated Order.

3. **Other Objections Overruled.** Any other objections to the entry of this Sale Order or the relief granted herein and requested in the Sale Motion that have not been withdrawn, waived or resolved as set forth herein, and all reservation of rights included in such objections, are overruled on the merits with prejudice.

4. **Approval.** The Purchase Agreement and all other documents and instruments related to and connected with the sale of the Assets, transactions related thereto and the consummation thereof, and all of the terms and conditions thereto, are hereby approved. The Debtor and WRCC are hereby authorized and directed to (i) execute any additional instruments

or documents reasonably necessary to implement the Purchase Agreement and any related transactions, and prior execution by the Debtor and WRCC of such agreements, documents, and instruments is hereby ratified; (ii) perform all obligations under the Purchase Agreement and other documents and instruments related to or connected with the sale of the Assets, transactions related thereto and the consummation thereof, and any prior performance of such obligations and any prior consummation of any transactions relating to the sale of the Assets is hereby ratified; and (iii) take all other and further actions reasonably necessary to consummate and implement the sale of the Assets and any transactions related thereto and perform all obligations under the Purchase Agreement and all other documents and instruments related to and connected with the sale of the Assets and the consummation thereof.

5. **Free and Clear.** Except as expressly provided for in the Purchase Agreement or this Sale Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtor and, to the extent applicable, WRCC, are authorized and directed to transfer the Assets to the Purchaser and the Purchaser shall take title to and possession of the Assets, upon Closing, with respect to the Carbon Resources Assets (including, but not limited to WRCC's assets) and the Other Assets, free and clear of all Interests excepting Permitted Encumbrances and Assumed Liabilities, with all such Interests to attach to the net proceeds ultimately attributable to the Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests had against the Assets or their proceeds as of the filing of the respective Bankruptcy Cases, subject to any rights, claims and defenses the Debtor or WRCC and their respective estates, as applicable, may possess with respect thereto.

6. **Transfer Pursuant to Section 1146(a).** The transfer of the Assets pursuant to the Purchase Agreement is a transfer pursuant to section 1146(a) of the Bankruptcy Code, and

accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer or any other similar tax.

7. **Valid Transfer.** As of the Closing, (i) the transactions set forth in the Purchase Agreement shall effect a legal, valid, enforceable and effective sale and transfer of the Assets to the Purchaser with title to such Assets free and clear of all Interests of any kind whatsoever as set forth in paragraph 4 hereof and in the Purchase Agreement (excepting Permitted Encumbrances and Assumed Liabilities); and (ii) the Purchase Agreement, along with any other documents or instruments related to or connected with the sale of the Assets, any transactions related thereto and the consummation thereof, and the sale of the Assets, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtor or WRCC, any successor trustee appointed with respect thereto in their respective Bankruptcy Cases, and each other person and entity.

8. **General Assignment.** On the Closing, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtor's and WRCC's interests, as applicable, in the Assets. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the sale of the Assets and any transactions related thereto, and to reflect the effectiveness of same.

9. **Additional Protection.** Except as expressly permitted by the Purchase Agreement as to Permitted Encumbrances and Assumed Liabilities, all persons and/or entities asserting Interests against the Debtor, WRCC or their respective interests in the Assets who or which received notice of the Sale Motion are hereby forever estopped and precluded from (i) pursuing such Interests against the Assets, excluding sale proceeds reserved herein; (ii) asserting, commencing or continuing in any manner any action against the Purchaser (or any of its

subsidiaries or affiliates) or any director, officer, agent, representative or employee of the Purchaser (collectively the "Protected Parties") or against any Protected Party's assets or properties (including, without limitation, the Assets) on account of such Interests; (iii) the enforcement, attachment, collection or recovery, by any manner or means, of any judgment, award or decree of order against the Protected Parties or any assets or properties of the Protected Parties (including, without limitation, the Assets) on account of such Interests; (iv) creating, perfecting or enforcing any encumbrance of any kind against the Protected Parties or any properties or assets of the Protected Parties (including, without limitation, the Assets) on account of such Interests; (v) asserting any set off, right of subrogation or recoupment or other affirmative defense of any kind against any obligations due to the Protected Parties on account of such Interests; (vi) any action, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Sale Order; and (vii) asserting that with respect to the Debtor or WRCC that the Purchaser is a successor, successor-in-interest or pursuant to any other statutory or legal or equitable theory, including, without limitation, worker's compensation, occupational disease, pension and employee benefits, labor and employment, bulk sales or tax laws or obligations, *provided, however*, that the Purchaser shall not be relieved of liability with respect to obligations expressly assumed pursuant to the Purchase Agreement. Following the Closing, no holder of an Interest against the Debtor or WRCC who or which received notice of the Sale Motion shall interfere with the Purchaser's title to or use and enjoyment of the Assets, and all such Interests (excepting Permitted Encumbrances and Assumed Liabilities), if any, shall be, and hereby are transferred and attached to the proceeds from the sale of the Assets in the order of their priority, with the same validity, force and effect which they have against such Assets as of the Closing, subject to any and all rights, claims and defenses that the Debtor, WRCC and their respective estates, as applicable, may possess with respect thereto. Any person

or entity that is presently, or on the date of Closing may be, in possession of any of the Assets is directed to and shall surrender possession of the Assets to the Purchaser on the date of Closing.

10. **No Successor Liability.** Neither the Purchaser nor its affiliates, successors or assigns shall, as a result of the consummation of the sale of the Assets or transactions related thereto: (i) be a successor to the Debtor, WRCC or their respective estates; (ii) have, *de facto* or otherwise, merged or consolidated with or into the Debtor, WRCC or their respective estates; or (iii) be a continuation or substantial continuation of the Debtor, WRCC or any enterprise of the Debtor or WRCC. Except for the Permitted Encumbrances and Assumed Liabilities, the transfer of the Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser, its affiliates or shareholders, or the Assets having (i) any liability or responsibility for any Interest against the Debtor, WRCC or any insider or the Debtor or WRCC; (ii) any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, and Interest or Excluded Liability; or (iii) any liability or responsibility to the Debtor or WRCC except as is expressly set forth in the Purchase Agreement.

11. **Binding Effect of Order.** This Sale Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. The terms and provisions of the Purchase Agreement and all other documents and instruments related to or connected with the sale of the Assets, any transactions related thereto

and the consummation thereof, the sale of the Assets itself, and this Sale Order shall be binding in all respects upon the Debtor, WRCC, their respective estates, all creditors of (whether known or unknown) and holders of equity interests in the Debtor, WRCC, Western Reserve, the Purchaser and their respective affiliates, successors and assigns, and any and all third parties, notwithstanding the subsequent appointment of any trustee of the Debtor or WRCC under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

12. **Release of Interests.** Other than as to PCM's Interests, which are specifically governed by paragraph 21 below, this Sale Order (i) shall be effective as a determination that, on Closing, and except with respect to Permitted Encumbrances and Assumed Liabilities, all Interests of any kind or nature whatsoever existing as to the Assets prior to the Closing, have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities set forth in paragraph 11 hereof. On Closing, and excepting Permitted Encumbrances and Assumed Liabilities, the Debtor, WRCC and persons holding an Interest in the Assets as of the Closing are authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release their Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Interest in the Assets shall not have delivered to the Debtor or WRCC prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens or other interests which the person or entity has with respect to the Assets, then the Purchaser, the Debtor and/or WRCC are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Assets.



13. **Release of Purchaser.** The Purchaser is hereby generally released from any and all claims and defenses that the Debtor, WRCC or any party claiming through the Debtor or WRCC may have against the Purchaser, other than claims against the Purchaser arising under the Purchase Agreement.

14. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement and enforce the terms and provisions of this Sale Order, all amendments thereto and any waivers and consents thereunder, including, without limitation, retaining jurisdiction to (i) compel delivery of the Assets to the Purchaser; (ii) interpret, implement and enforce the provisions of this Sale Order, any order issued in connection with the Assume/Assign/Reject Motions and any related order; and (iii) protect the Purchaser, its affiliates or shareholders against any Interests against the Debtor, WRCC or the Assets or any kind or nature whatsoever (excepting Permitted Encumbrances and Assumed Liabilities).

15. **Fees, Expenses and Other Obligations.** All obligations of the Debtor and WRCC under the Purchase Agreement and any and all of the documents delivered by the Debtor and WRCC in connection with the Purchase Agreement shall be paid, subject to PCM's rights as a secured creditor under its Loan Documents (as defined in PCM's Motion for Relief from Stay, Docket No. 45) and the Bankruptcy Code, to the extent due and owing, in the manner provided in the Purchase Agreement and this Sale Order. All such obligations shall constitute allowed administrative claims in the respective Bankruptcy Cases of Carbon Resources and WRCC, with first priority administrative expense under section 507(a)(1) of the Bankruptcy Code. Until satisfied, all such obligations shall continue to have the protections provided in this Sale Order, and shall not be discharged, modified or otherwise affected by any reorganization plan for Carbon Resources or WRCC, except by an express agreement with the Purchaser.

16. **Sale Proceeds.** Any and all valid and perfected Interests in the Assets shall attach to any proceeds of such Assets immediately upon receipt of such proceeds by the Debtor or WRCC, as applicable, in the order of priority, and with the same validity, force and effect which they had against such Assets as of the filing of the Carbon Resources Chapter 11 Case or the WRCC Chapter 11 Case, as applicable, subject to any rights, claims and defenses the Debtor, WRCC, their respective estates or any trustee for the Debtor or WRCC, as applicable, may possess with respect thereto, in addition to any limitations on the use of such proceeds pursuant to any provision of the Purchase Agreement or this Sale Order. The sale proceeds shall be distributed pursuant to this Sale Order, as set forth in the Carbon Resources Chapter 11 Plan, as amended, and/or any chapter 11 plan filed by WRCC.

17. **Subsequent Orders and Plan Provisions.** The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the Bankruptcy Cases and the entry of any other order that may be entered in the Bankruptcy Cases, including any order (i) confirming any plan of reorganization; (ii) converting the Bankruptcy Cases from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the Bankruptcy Cases; or dismissing the Bankruptcy Cases. The terms and provisions of this Sale Order, as well as the rights granted under the Purchase Agreement and agreements identified therein, shall continue in full force and effect and be binding upon any successor, reorganized debtor, or chapter 7 or chapter 11 trustee applicable to the Debtor or WRCC, notwithstanding any such conversion, dismissal or order entry.

18. **Failure to Specify Purchase Agreement Provisions.** The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

19. **No Stay of Order.** Notwithstanding the provisions of Bankruptcy Rule 6004 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry pursuant to Bankruptcy Rule 6004(h). Time is of the essence in approving the sale of the Assets and the transactions related thereto, and the Debtor and the Purchaser intend to close the sale of the Assets and related transactions as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to Closing, or risk that its appeal will be foreclosed as moot.

20. **Additional Encumbrances.** The procedures addressing Disputed Additional Encumbrances Disputes in the Sale Motion are hereby approved. Attached hereto as **Exhibit A** is a list of those parties that do hold or may assert an easement, encumbrance, right or other Interest in the Carbon Resources Real Estate or Other Real Estate as of the date of this Order (collectively, the “Additional CR/OA Encumbrances”). The respective rights of the Purchaser, the Debtor and any non-Debtor party holding the Additional CR/OA Encumbrances listed on Exhibit A are hereby preserved unless such Additional CR/OA Encumbrances are eliminated or otherwise resolved within the meaning of Sections 4.3 through 4.5 of the Purchase Agreement. If not eliminated or otherwise resolved within the meaning of Sections 4.3 through 4.5 of the Purchase Agreement, and upon the Purchaser’s election to proceed to Closing as set forth under Section 4.4(c) of the Purchase Agreement, then on Closing, such Additional CR/OA Encumbrances shall constitute “Permitted Encumbrances” within the meaning of this Order and the Purchase Agreement.

21. **PCM Objections.** Notwithstanding any provisions of this Sale Order to the contrary, the PCM Objections have been resolved and PCM’s Allowed Secured Claim (as defined below) shall be treated as follows:

(1) **PCM's Allowed Secured Claim.** PCM holds a valid, perfected, first priority lien in and against, among other things, the Debtor's sub-leasehold estate as more fully set forth in the Loan Documents (as defined in PCM's Motion for Relief from Stay, Docket No. 45) (collectively, the "Carbon Resources Collateral"). PCM also holds a valid and perfected first priority lien in the membership interests of the Debtor, which are owned by WRCC (the "Membership Interest Collateral"). Neither the Debtor nor WRCC has or holds any defense or offsets to the PCM secured claim or any claim against PCM. The amount of PCM's allowed secured claim ("PCM's Allowed Secured Claim") is set forth in the "Stipulated Order Authorizing the Use of Cash Collateral" ("Stipulated Cash Collateral Order"), and calculated as follows:

A. **PCM has an allowed secured claim in the amount of:**

- 1) \$3,000,000.00 in original principal, plus accrued and capitalized interest, as set forth in the Debt Calculation Schedule 1 ("Debt Schedule 1"), which is attached to the Stipulated Cash Collateral Order as **Exhibit B**, and incorporated herein by this reference; plus
- 2) \$115,972.90 in post-petition attorneys' fees and costs to PCM's lead counsel, Snell & Wilmer, as of October 31, 2011; plus
- 3) \$13,296.93 in post-petition attorneys' fees and costs to PCM's local counsel, Rodey, Dickason, Sloan, Akin & Robb, as of October 31, 2011; and plus
- 4) All reasonable attorneys' fees and costs incurred by PCM's lead counsel, Snell & Wilmer, and incurred by PCM's local

counsel, Rodey, Dickason, Sloan, Akin & Robb, from and after November 1, 2011, both to the date of receipt by PCM of full payment of PCM's Allowed Secured Claim; minus

5) All post-petition adequate protection payments received by PCM, which will be applied against the claim in accordance with the Loan Documents.

**B. PCM's Discounted Claim Upon Early Payment.**

Notwithstanding the full amount of PCM's Allowed Secured Claim as set forth in Paragraph 21(1)(A), if the sale of the Carbon Resources Collateral to Purchaser closes and PCM receives payment in full, except for Additional Attorneys' Fees (as defined below), on or before December 1, 2011, PCM's Allowed Secured Claim will be discounted to the amount of:

1) \$2,850,000.00 in original principal, plus accrued and capitalized interest, as set forth in the Debt Calculation Schedule 2 ("Debt Schedule 2"), which is attached to the Stipulated Cash Collateral Order as **Exhibit C**, and incorporated herein by this reference; plus

2) \$115,972.90 in post-petition attorneys' fees and costs to PCM's lead counsel, Snell & Wilmer, as of October 31, 2011; plus

3) \$13,296.93 in post-petition attorneys' fees and costs to PCM's local counsel, Rodey, Dickason, Sloan, Akin & Robb, as of October 31, 2011; and plus

4) All reasonable attorneys' fees and costs incurred by PCM's lead counsel, Snell & Wilmer, and incurred by PCM's local

counsel, Rodey, Dickason, Sloan, Akin & Robb, from and after November 1, 2011, both to the date of receipt by PCM of full payment of PCM's Allowed Secured Claim; minus

5) All post-petition adequate protection payments received by PCM, which will be applied against the claim in accordance with the Loan Documents.

C. **Estimation of Additional Attorneys' Fees and Costs.** To the extent that a portion of PCM's Allowed Secured Claim (or discounted claim) is for attorneys' fees and costs incurred from and after November 1, 2011 for both Snell & Wilmer and Rodey, Dickason, Sloan, Akin & Robb (the "Additional Attorneys' Fees"), PCM, upon request, must provide to the Debtor an estimation of the Additional Attorneys' Fees. To obtain the estimate, the Debtor must make a written request no less than five (5) business days prior to the date of closing. PCM must then provide a good faith estimate, in writing, of the Additional Attorneys' Fees within three (3) business days of the request. Any estimation provided by PCM shall not be construed as a final figure and is subject to change.

(2) **Allocation of Proceeds from Sale.** The Debtor, WRCC and the Purchaser agree and the Court finds that the net proceeds attributable to the sale of Carbon Resources' Collateral to Purchaser is and will at all times remain substantially in excess of the amount of PCM's Allowed Secured Claim, including the Additional Attorneys' Fees.

(3) **Payment of PCM's Allowed Secured Claim at Closing.** PCM's Allowed Secured Claim shall be paid in full at, and as a condition of, closing of

the Sale to Purchaser authorized by this Sale Order, as follows: (i) except for the Additional Attorneys' Fees, PCM's Allowed Secured Claim (or discounted claim if payment is received by PCM on or before December 1, 2011) shall be paid in full at and from closing by wire transfer to PCM; and (ii) the Debtor and WRCC shall escrow 300% of PCM's good faith estimate of the Additional Attorneys' Fees in a separate escrow account, and PCM's valid and perfected first priority liens in the Carbon Resources Collateral shall attach to the escrow pending a stipulation or determination of the actual amount of the Additional Attorneys' Fees.

(4) **Procedure to Determine and Pay Additional Attorneys' Fees.** The following procedure will apply to determining the amount and payment of the Additional Attorneys' Fees.

A. Within ten (10) business days of the closing of the Sale to Purchaser authorized by this Sale Order, PCM shall file and serve upon the Debtor a redacted copy of the billing statements for Snell & Wilmer and Rodey, Dickason, Sloan, Akin & Robb setting forth the amount of PCM's Additional Attorneys' Fees incurred prior to Closing. If PCM fails to file and serve upon the Debtor, within ten (10) business days of the closing of the Sale to Purchaser authorized by this Sale Order, a redacted copy of the billing statements for Snell & Wilmer and Rodey, Dickason, Sloan, Akin & Robb setting forth the amount of PCM's Additional Attorneys' Fees, then PCM irrevocably waives any and all Additional Attorneys' Fees, except for any attorneys' fees and costs incurred after Closing.

B. Any objection by the Debtor to all or any portion of PCM's Additional Attorneys' Fees shall be filed and served within five (5) business days from the date of PCM's filing. If the Debtor fails to file a written objection to PCM's filing of Additional Attorneys' Fees within five (5) business days of the date of PCM's filing or files a notice of no objection, the Debtor irrevocably waives any and all objections to the Additional Attorneys' Fees and PCM shall be paid the full amount of the Additional Attorneys Fees within ten (10) business days from the date of PCM's filing.

C. Any objection by the Debtor to the Additional Attorneys' Fees, in whole or in part, must specifically identify each and every time entry or cost item that the Debtor objects to and set forth the specific objection to the objected to time entry or cost item. If the Debtor objects to some, but not all, of the items of the Additional Attorneys' Fees, PCM shall be paid from the escrow within ten (10) business days of PCM's filing the full amount of the sum of the time entries and costs items contained within the Additional Attorneys' Fees to which the Debtor has not objected.

D. Upon the filing of any objection to the Additional Attorneys' Fees by the Debtor, the objecting party shall request that the Court conduct a status hearing within seven (7) business days. PCM and the Debtor shall use their respective best efforts to fully brief and/or adjudicate the Debtor's objection to the Additional Attorneys Fees by no later than January 31, 2012.



(5) **Treatment of PCM's Liens in the Carbon Resources Collateral.** This Sale Order (i) shall be effective as a determination that at closing, all Interests of any kind or nature whatsoever held by PCM in the Carbon Resources Collateral shall be deemed to transfer and attach to the proceeds of the sale of the Carbon Resources Collateral to the Purchaser, which liens shall be deemed automatically perfected pursuant to this Sale Order, and PCM shall not be required to take any further action to perfect such liens. Upon such transfer and attachment to the proceeds from the sale of the Carbon Resources Collateral to the Purchaser, the sale of the Carbon Resources Collateral to the Purchaser shall be free and clear of PCM's liens. Solely with respect to the Carbon Resources Collateral being sold to the Purchaser pursuant to this Sale Order, the Debtor, WRCC, PCM and all persons holding an Interest in the Carbon Resources Collateral being sold to the Purchaser are authorized and directed to execute such documents and take all other action as may be reasonably necessary to release PCM's Interests in the Carbon Resources Collateral being sold to the Purchaser, as such Interests may have been recorded or may otherwise exist.

(6) **Preservation of PCM's Liens.** Until PCM has been paid in full, PCM's liens on the proceeds of the Carbon Resources Collateral being sold pursuant to this Order and the Purchase Agreement and on all of PCM's other collateral under the Loan Documents, except for PCM's lien on the Membership Interest Collateral, are preserved and shall remain in full force and effect.

(7) **Release of PCM's Liens in the Membership Interest Collateral.** PCM's lien in the Membership Interest Collateral shall be deemed unconditionally released, discharged and terminated upon payment of PCM's

Allowed Secured Claim as follows: (i) except for the Additional Attorneys' Fees, PCM's Allowed Secured Claim (or discounted claim if payment is received by PCM on or before December 1, 2011) by wire transfer to PCM; and (ii) the escrow of 300% of PCM's good faith estimate of the Additional Attorneys' Fees in a separate escrow account. Upon the foregoing payment to PCM and the establishment of the escrow, PCM will to return to WRCC any and all certificates of membership interests in Carbon Resources which it may hold.

(8) **Release of PCM's Liens.** Upon payment in full of PCM's Allowed Secured Claim (or discounted claim if payment is received by PCM on or before December 1, 2011), including but not limited to the Additional Attorneys' Fees, PCM's lien in the proceeds of the sale of the Carbon Resources Collateral being sold pursuant to this Sale Order and the Purchase Agreement and on all of PCM's other collateral under the Loan Documents shall be deemed unconditionally released, discharged and terminated. Within a commercially reasonable time, PCM shall file termination statements, instruments of satisfaction, releases of all liens or other interests held by PCM.

22. **Closing Conditions and Termination Rights.** Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in the Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

**AGREED TO BY:**

Dated: \_\_\_\_\_, 2011

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Philip J. Montoya  
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(505) 244-1152 Fax: (505) 242-2836

Dated: \_\_\_\_\_, 2011

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Dated: \_\_\_\_\_, 2011

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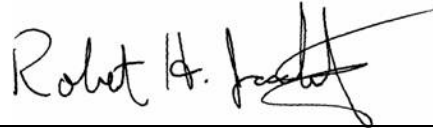
Dated: \_\_\_\_\_, 2011

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Fund PTY LTD ACN 149 580 085  
Modrall Sperling Roehl Harris & Sisk, P.A.  
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(505) 848-1871 Fax: (505) 848-9710

**SO ORDERED.**

Dated: \_\_\_\_\_, 2011



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UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: November 17, 2011

# EXHIBIT A

PERMITTED ENCUMBRANCES/ADDITIONAL ENCUMBRANCES

Fotini Telonis Othos, Thermopylon #7 Lamia, Greece	Evangelos George Telonis Othos, Thermopylon #7 Lamia, Greece	Thomas George Telonis Othos, Thermopylon #7 Lamia, Greece
John George Telonis Othos, Thermopylon #7 Lamia, Greece	Attorney for Telonis Family Nick Sampinos, Esq. 190 North Carbon Avenue Price, Utah 84501	Jerrold L. Gibson P.O. Box 20553 Billings, Montana 59104
Marlene G. Robinson 3439 Honeycut Road Salt Lake City, Utah 84106	Susan G. Bradley 7624 South 3400 East Salt Lake City, Utah 84121	Robert H. Ruggeri 3314 Music Lane Grand Junction, Colorado 81506
Kimball Blair 974 Dale Street Pasadena, California 91106	PCM Venture II, LLC, an Arizona limited liability company 5685 N. Scottsdale Road Suite E-100 Scottsdale, Arizona 85250	PCM Venture II, LLC, Attn: Peter L. Ax 5685 N. Scottsdale Road Suite E-100 Scottsdale, Arizona 85250
Carbon County Court House Building Price, Utah 84501 Attn: County Clerk	Western Reserve Coal, Inc. 3430 El Serrito Drive Salt Lake City, Utah 84109 Attn: F.A. Fornelius	Western Reserve Coal Company Incorporated 34 Vale Hermosa Sandia Park, New Mexico 87047
WRCC, LLC c/o Western Reserve Coal Co. Inc. P.O. Box 11789 Albuquerque, New Mexico 87192	Carbon Resources, LLC 34 Valle Hermosa Sandia Park, NM 87047 Attn: William Reeves	Hilda Hammond 2912 Redwood Avenue Costa Mesa, California 92626
Pleasant Valley Coal Partners P.O. Box 3357 Park City, Utah 84060	Bishops Gate Coal Corporation c/o Delbert Quigley 601 California Street, Suite 301 San Francisco, California 94108	Catellus Development Corporation 201 Mission Street San Francisco, California 94105
SPF Minerals Corporation 6200 Uptown Blvd. N.E. Suite 400 Albuquerque, New Mexico 87110	Hanson Natural Resources 99 Wood Avenue South Iselin, New Jersey 08830	Utah Department of Transportation 4501 South 2700 West Salt Lake City, Utah 84114

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Scotfield Special Service District  
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