

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION**

IN RE:

CHAPTER 11

FORTRESS RESOURCES, LLC
dba McCoy Elkhorn Coal Company

CASE NO. 15-70730

DEBTOR

**DEBTOR'S DISCLOSURE STATEMENT TO ACCOMPANY
DEBTOR'S PLAN OF ORDERLY LIQUIDATION AND DISTRIBUTION**

This Disclosure Statement ("Disclosure Statement") and the accompanying ballots are being furnished by the Debtor ("Plan Proponent") to the Debtor's Creditors and holders of Interests pursuant to Code §§ 1125(a) and 1126(b) in connection with a solicitation by the Debtor of ballots for the acceptance of the Plan of Orderly Liquidation and Distribution ("Plan") under Chapter 11 of the Code.

All capitalized phrases, words or terms as used in this Disclosure Statement, unless the context dictates otherwise, shall have the definitions contained in the Plan, a copy of which is attached hereto as Exhibit 1, which should be read first. All references to docket entries or document numbers shall refer to those filed in the Case, except as otherwise provided.

Pursuant to Rule 3018 of the Bankruptcy Rules and the Code, the Bankruptcy Court ("Court") has fixed the close of business on _____, **2016** as the record date for the receipt of ballots accepting or rejecting the Plan. This solicitation period for ballots will expire at 5:00 p.m. local time in Lexington, Kentucky on the aforesaid date (the "Voting Deadline"), unless and until the Court, in its discretion, extends the period of time in which ballots may be accepted. **EXCEPT TO THE EXTENT ALLOWED BY THE COURT, BALLOTS THAT ARE RECEIVED AFTER THE EXPIRATION OF THE VOTING DEADLINE MAY NOT BE ACCEPTED OR USED BY THE DEBTOR IN CONNECTION WITH THE DEBTOR'S MOTION FOR CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.**

Pursuant to Code §1126, certain holders of impaired claims or interests, as determined by the Court, will be entitled to vote to accept or to reject the Plan, or, in some cases, will be deemed to have accepted the Plan without voting.

All Creditors and holders of Interests are advised and encouraged to read this Disclosure Statement and the Plan in their entirety. Plan summaries and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan, any exhibits, and the Disclosure Statement as a whole.

This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan, and nothing contained herein shall constitute an admission of any fact or liability, stipulation, or waiver by the Debtor, or be deemed advice on the legal effect of the Plan on or to any Claimant. Some items of information in this Disclosure Statement are estimates and assumptions which, though made in good faith, may prove not to be true or realistic, and some financial projections may be materially different from actual future experience.

This Disclosure Statement shall not be admissible in any non-bankruptcy proceeding involving the Debtor and any party, nor shall it be construed to be conclusive advice on the tax or other legal effects of the Plan as to Holders of Claims against, or Interests in, the Debtor; provided, however, that in the event the Debtor defaults under the Plan, the Disclosure Statement may be admissible in a proceeding relating to such default for the purpose of establishing the existence of such default.

Amendments to the Plan's classification of Creditors and treatment of those Classes that do not materially and adversely change the treatment of that Class or the other Classes may be made to the Plan either before or after the Confirmation hearing without re-solicitation of Creditors in the Classes that are not impaired by such an amendment. Although amendments may occur on or prior to the hearing on confirmation of the Plan resulting in amendments to the Plan, no such amendments are envisioned at this time.

The Debtor is required under Code §1122 to classify the Claims of their Creditors or Interests of their shareholders into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class. While the Plan Proponent believes that they have classified all Claims and Interests in compliance with Code §1122, it is possible that a party may challenge the Plan Proponent classification of such Claims or Interests and the Court may find that a different classification is required for the Plan to be confirmed. In such event, the Plan Proponent may modify the Plan to provide for whatever reasonable classification might be required by the Court for Confirmation and to use the acceptances received from any Creditor pursuant to this Disclosure Statement for obtaining the approval of the Class or Classes in which such Creditor or Interest-holder is ultimately deemed to be a member. Any such reclassification of Creditors and Interests could adversely affect the Class in which such Creditor or Interest was initially a member, or any other Class under the Plan, by changing the composition of such Class and the required vote thereof for approval of the Plan. A reclassification of the Claims of Creditors and Interests after approval of the Plan could necessitate the re-solicitation of ballots for a completely new plan of liquidation and distribution.

Likewise there are often changes required by the Court in the Plan, which changes arise during the Confirmation hearing. These changes often are technical matters relating to Code provisions; other times they are substantive matters that affect only one or a limited number of Creditors or Interests. If such changes are required to the Plan, the Plan Proponent may make those changes so without obtaining the approval of the Class or Classes affected so long as such change or changes do not materially and adversely affect the rights of those Creditors and Interests.

The statements contained in this Disclosure Statement are made as of the date hereof, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with the Plan shall, under any circumstances, create any implication that the information contained herein is correct as of any time subsequent to the date hereof.

This Disclosure Statement has been prepared by the Plan Proponent using financial information and other information available to it from the Debtor and/or other parties, the pleadings, and their preliminary investigations. The valuations placed upon Assets are based upon information provided by the Debtor. **NO INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY AN INDEPENDENT PUBLIC ACCOUNTANT. THE REPRESENTATIONS IN THIS DISCLOSURE STATEMENT ARE THOSE OF THE PLAN PROPONENT. NO REPRESENTATIONS CONCERNING THE PLAN PROPONENT IS AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THIS PLAN WHICH ARE OTHER THAN AS CONTAINED IN THIS DOCUMENT SHOULD NOT BE RELIED UPON BY ANY PERSON OR ENTITY.**

THE DEBTOR IS REPRESENTED BY BUNCH AND BROCK, 805 SECURITY TRUST BUILDING, 271 WEST SHORT STREET, LEXINGTON, KENTUCKY 40507. BUNCH AND BROCK, AND THEIR RESPECTIVE ATTORNEYS, HAS NOT EXPRESSED AN OPINION ON ANY INFORMATION SET FORTH HEREIN. BUNCH AND BROCK HAS NO ACTUAL KNOWLEDGE OF ANY INFORMATION WHICH WOULD CONFLICT WITH THE INFORMATION SET FORTH HEREIN.

THE DISTRIBUTION PROPOSED BY THE PLAN

All of the Debtor's assets have been or will be liquidated during the Chapter 11 process, except the prosecution and collection of the various Causes of Action being prosecuted by the Debtor's Counsel and Counsel for the Committee. After Confirmation of the Plan, the Debtor will pay all funds held by it in cash to Callidus Capital Corporation and to the Fortress Unsecured Creditors Liquidating Trust as required by paragraph 7 of the Final Cash Collateral Order (Doc. No. 176). Net proceeds from the collections from the prosecution of the Causes of Action will also be paid over to the Fortress Unsecured Creditors Liquidating Trust.

The Fortress Unsecured Creditors Liquidating Trustee will reserve funds to pay for the administration of the Debtor, their professionals, U.S. Trustee fees and related expenses. At some point in time (normally after conclusion of the claims reconciliation process), the trust will make distribution will be made to the Creditors in the order of the priorities set forth in the Plan. Distributions will continue until all funds are exhausted, at which time the Fortress Unsecured Creditors Liquidating Trust shall terminate Debtor's Counsel shall be discharged of his duties.

The Debtor believes this Plan accounts for the various rights of the multiple Classes of Creditors. It recommends a vote favorable to Confirmation of the attached Plan.

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1. Debtor's Plan of Orderly Liquidation and Distribution (see Docket No. 206)
2. Liquidating Trust Agreement (to be supplied)
3. List of Active Litigation and Potential Litigation Targets (see Exhibit 2 of the Debtor's Plan at Docket No. 206)
4. Liquidation Analysis (to be supplied)

I. INTRODUCTION

General

The Plan Proponent is furnishing this Disclosure Statement and ballots to all the Debtor's Creditors and Interest holders as of the date hereon pursuant to Code §§ 1125 and 1126 and Bankruptcy Rule 3018 for the purpose of soliciting ballots from the holders of Claims in Impaired Classes for the acceptance of the Plan. As required by the Code, confirmation of a reorganization plan pursuant to Chapter 11 depends upon receipt of a sufficient number of votes in favor of the Plan. **YOUR VOTE IS IMPORTANT.**

The Plan is being proposed by the Debtor after negotiations and editing with the Committee and Secured Creditors.

The Confirmation of the Plan described herein is subject to other conditions in addition to the acceptances by one or more Classes of Impaired Creditors and there can be no assurance that such Plan will be confirmed or ultimately consummated.

This Disclosure Statement describes various transactions contemplated under the Plan. **A copy of the Plan is attached hereto as Exhibit 1 and is made a part of this Disclosure Statement.** The following overview is qualified in its entirety by the specified information contained in the Plan, and the terms and phrases defined in the Plan are used in this Disclosure Statement. **You are urged to read carefully the entire Plan and to consult with your attorney about the Plan and its impact upon your legal rights prior to voting for or against the Plan.** Any inconsistency between statements in this Disclosure Statement and terms in the Plan shall be governed by the terms of the Plan.

A. Purpose of Disclosure Statement

The Debtor could not feasibly reorganize as a going concern and has liquidated or will liquidate all of their assets during the pendency of this Case. The Plan Proponent believes that the Plan will provide for the Debtor's Creditors with the maximum possible recovery from the Debtor's collective assets and the funds that may be derived from the prosecution of the Causes of Action.

For a Class of Claims to accept the Plan, votes representing at least two-thirds in amount and more than half in number of Claims voting in that Class must be cast votes in favor of acceptance of the Plan with regard to the Debtor. If, upon the expiration of the Voting Deadline, the Debtor receives ballots approving the Plan from the requisite number of holders of Claims in each Class of Impaired Classes voting on the Plan, the Debtor, subject to certain conditions described herein, will move the Court for Confirmation of the Plan. For the Plan to be confirmed, the Plan must be accepted by at least one Impaired Class of Claims or Interests. A Claim that will not be repaid in full or as to which legal rights are altered, or an interest that is adversely affected, is "impaired." Generally, a holder of an impaired Claim or Interest is entitled to vote to accept or

reject the Plan if such Claim or Interest has been at least provisionally allowed under Code §502. Certain impaired Creditors may not be authorized to vote because their Class will be legally deemed to have voted to reject or to accept the Plan.

The Plan Proponent also believes that this Disclosure Statement contains information that is in compliance with the “adequate information” requirement of Code §1125(a). Under the Code, the solicitation of acceptances of a plan of reorganization or plan of liquidation must be preceded or accompanied by disclosure materials containing information of a kind, sufficient in detail, to enable solicited Creditors to make informed judgments about the Plan and the acceptance or rejection thereof. The Plan Proponent believes that this Disclosure Statement contains information that is sufficient to enable the Debtor’s impaired Creditors to make an informed judgment in regard to the Plan, and to the best of the Plan Proponent’s knowledge, the contents of this Disclosure Statement are accurate and complete in all material respects.

II. HISTORY OF THE DEBTOR

A. Background and Events Preceding the Bankruptcies

Fortress Resources, LLC (the US-operating entity of Canadian-based Opes Resources, Inc.), acquired a portion of the former assets of McCoy Elkhorn Coal Corporation (an operating affiliate of James River Coal Company) on September 5, 2014; primarily the Bevins Branch Preparation Plant and Loading Facility with its associated mine complexes. James River Coal had idled its McCoy Elkhorn affiliate in September 2013, furloughing 288 employees. During the period between the idling and acquisition, McCoy Elkhorn was kept in a “hot idle” status which allowed for immediate resumption of the operations when necessary. In addition to acquiring the assets, Fortress Resources acquired the rights to the “McCoy Elkhorn Coal” name. Presently, Fortress operates the mines and plants under McCoy Elkhorn Coal Company with the federal (most notably the Mine Safety and Health Administration, “MSHA”) and state regulatory agencies. Due to current, depressed market conditions, Fortress sought bankruptcy protection on November 5, 2015.

Fortress leases 30.2 million tons of clean, recoverable deep mineable Reserves in the central portion of Pike County, Kentucky; of which 85% is presently under permit with the Kentucky Department of Mine Reclamation, Division of Permits. The total reserve base, including 8.9 million classified as “Resource Tons”, is 39.1 million tons.

The principal coal seams within the reserve property include the Millard (aka Glamorgan), Upper Elkhorn No. 2, Upper Elkhorn No. 3 and Fireclay (aka Hazard 4). The outcropping of these seams is primarily above drainage that allows for drift mine access or surface mining; however, Fortress controls a large reserve in the below-drainage, high quality (metallurgical/PCI) Millard seam.

Since the September 2014 acquisition, Fortress has aggressively moved to reactivate the

formerly-idled mines and preparation facility. The following mines and plants are in active, either producing or nonproducing, status:

- Bevins Branch Preparation Facility - MSHA ID 15-10445; ability to process and load 2.5 million clean tons per year.
- Mine No. 16 (Elkhorn #2 Seam) - MSHA ID 15-18250; presently idled, but has a historical production rate of 250k tons per year.
- Mine No. 15 (Millard Seam) - MSHA ID 15-18775; historical production rate of 450k clean tons per year.
- Mine No. 23 (Elkhorn #3 Seam) - MSHA ID 15-18721; historical production rate of 600k clean tons per year.
- Jarisa, Inc. Mine No. 15A (contract operator, Elkhorn #2 Seam) - MSHA ID 15-19048; production rate of 150k tons per year.

Prior to the bankruptcy filing, Fortress' proposed production plan was to produce approximately 1.2 million tons per year; 500k tons of Metallurgical/PCI sales, 500k tons of thermal sales, and 200k tons of stoker sales.

Fortress' employees, especially the operational managers, are predominantly former McCoy Elkhorn employees. This allowed for the successful reactivation of the operation prior to the bankruptcy filing. Fortress' former workforce consisted of 233 employees, of which 34 employees remain to keep the operation in a "hot idle" status. The remaining employees are highly-skilled and experienced employees with an approximate average of +20 years in the coal industry.

One of Fortress' core beliefs is that for a company to provide long-term success for its employees and itself is to focus on safety. Safety compliance with MSHA and Kentucky Division of Mine Safety is a priority. Presently, none of the mines, nor the Bevins Branch Facility, are under scrutiny by MSHA for a Pattern of Violation. In fact, each mine and plant is within the safety compliance goals established by MSHA's violation rate and Violations Issued per Inspector Day, "VPID."

B. Activities During Chapter 11

Prior to the Petition Date, the Debtor's officers began to realize that sales of coal and coal prices were declining. This meant that the Debtor would become both bankrupt and insolvent. To prevent a closing of operations, a proliferation of state court collection suits and environmental actions, the Debtor sought advice from bankruptcy lawyers, *i.e.*, Counsel Bunch & Brock in Lexington, Kentucky. Their recommendation was to file a Chapter 11 bankruptcy to explore reorganization and liquidation options. During the pendency of the Chapter 11 case, it became

apparent to the Debtor that an orderly court-supervised sales of its assets and distribution of the Distributable Cash would be required.

Upon the filing on November 5, 2015, the Debtor moved the Court for an emergency hearing on the use of Cash Collateral. The Debtor's assets, including Cash, was liened to Callidus and the Code provides that Cash Collateral cannot be used by a debtor in bankruptcy, without the Secured Creditors or the Court's permission. After a hearing in the Court on December 8, 9 and 10, 2015, the Court entered a Final Cash Collateral Order (Doc. No. 176) on December 16, 2015. This Debtor and Callidus subsequently entered into an Agreed Amendment to said Cash Collateral Order (Doc. No. 193) on January 5, 2016.

These Orders required the Debtor to move the Callidus Collateral to the surface above the mines on or before January 30, 2016, and Section 004 of Mine #15 to the surface by February 15, 2016; and for the Debtor to file a Plan on or before January 15, 2016. The Debtor has complied with the time limitation by filing the Debtor's Plan of Orderly Liquidation and Distribution (Doc. No. 206) attached hereto as Exhibit 1.

During the week of January 11, 2016, a group of former employees filed an adversary action in the Bankruptcy Case against the Debtor, seeking damages for all former employees for being laid off or terminated without the required WARN Act notice. The Debtor denies said claims of the former employees and will defend this action. If the Debtor prevails, there will be no effect to this Plan, except that Cash for distribution will be reduced due to attorneys' fees for defense. If the Debtor loses, there could be a substantial increase in Priority Claims, thus reducing the distribution to Unsecured Creditors.

C. Future Operations

On January 22, 2016, the Debtor ceased all coal mining operations and no future operations are contemplated by the Plan. This Case shall continue for the purpose of Liquidating Assets, the Callidus Collateral and the Unsecured Assets, and the distribution of the resulting Cash.

III. RECOMMENDATION OF THE PLAN PROPONENT

The Debtor, as the Plan Proponent has approved the terms of the Plan and believes that the Plan is in the best interests of all of the Creditors, will permit the maximum recovery for all Classes of Claims, and is the fairest method of distribution of the Debtor's assets. The Plan Proponent believes all Classes voting will support the Plan with favorable votes.

IV. THE PLAN

Set forth below is a brief description of the Plan which highlights its major terms and provisions. The following description is qualified in its entirety by reference to the Plan itself, a copy of which is attached hereto as Exhibit 1.

A. Concept of the Plan

The concept of the Plan is to allow the Creditors to receive distributions based on the priority of their Claims. When Debtor's scheduled assets of value have been liquidated, only Cash remains, along with potential recoveries from prosecution of the Causes of Action. After collections, the Cash will be distributed to the Creditors in the order of priority fixed by the Code and the Plan.

B. Classification and Treatment of Claims and Interests

Code §1123 provides that a plan of reorganization shall classify the claims of each respective Debtor's Creditors and Interest holders. The Plan divides Claims and Interests into Classes and sets forth the treatment afforded to each Class. Under the Plan, each Claim or Interest is either unimpaired or impaired. A Claim is unimpaired under the Plan if the Plan (i) leaves unaltered the legal, equitable and contractual rights of the holder of such Claim, (ii) provides for cash payment of the full amount of such Claim on the Effective Date of the Plan or (iii) notwithstanding any contractual provision or law that entitles the holder of the Claim to demand or receive accelerated payment after the occurrence of a default, cures any such default, reinstates the maturity of the Claim as it existed before the default, and compensates the holder of the Claim for any damages incurred as a result of any reasonable reliance by such holder on any provision or law that entitles the holder of such Claim to demand accelerated payment. All Claims that are not unimpaired by the definition set out above are impaired. As discussed below, only the Creditors that are or may be impaired under the Plan are entitled to vote to accept or reject the Plan, excepting those impaired creditors who will be legally deemed to have voted to reject the Plan.

Similarly, Code § 1123(a)(4) requires that a plan must provide the same treatment for each Claim or interest of a particular Class, unless the holder of a particular Claim or interest agrees to a less favorable treatment of its Claim or Interest. The Plan Proponent believes that it has complied with Code § 1123(a)(4).

The following is a summary of the various Classes of Creditors' Claims of the respective Debtor under the Plan and of the payment provisions made therein for each Class:

- Class 1 (Priority Claims): Class 1 shall consist of all Allowed Priority Claims as defined in Code §507, Priority Tax Claims, Twenty Day Claims, Employee Wage Claims and Assumption Claims.
- Class 2 (Reclamation Claims): Class 2 shall consist of all Allowed Reclamation Claims.

- Class 3 (Secured Claim of Callidus): Class 3 shall consist of the Secured Claim of Callidus.
- Class 4 (Secured Claim of American Electric): Class 4 shall consist of the Secured Claim of American Electric.
- Class 5 (Secured Claim of CAFO): Class 5 shall consist of the Secured Claim of CAFO.
- Class 6 (Secured Claim of First Insurance): Class 6 shall consist of the Secured Claim of First Insurance.
- Class 7 (Secured Claim of Lexon Surety): Class 7 shall consist of the Secured Claim of Lexon Surety.
- Class 8 (Unsecured Claims): Class 8 shall consist of all Unsecured Claims.
- Class 9 (Interests of the Preferred Shareholders): Class 9 shall consist of the interests of the Preferred Shareholders.
- Class 10 (Interests of the Common Shareholders): Class 10 shall consist of the interests of the Common Shareholders.

The Debtor believes this is the proper classification of the various Claims.

Unclassified Claims

The Unclassified Claims comprise the various Claims granted priority under Code §§ 503(b) and 507(b) and all fees and charges assessed against the estate under Chapter 123 of Title 28, United States Code, including the U.S. Trustee's fees. Such fees and expenses normally include all allowances of compensation and reimbursement of expenses to the extent allowed by the Code for attorneys, accountants and other professionals designated in the Plan as "Professionals."

Professionals. All Professionals seeking payment of Professional Claims must file their respective requests for allowance and payment thereof no later than thirty (30) days after the Effective Date. Professionals who do not file and serve a request for allowance and payment by the aforesaid bar date will be forever barred from asserting such Claims; provided, however, that Professionals who have previously had their Claims Allowed by Court Order do not need to file any further Application or request for Allowance unless the amount they are seeking has increased subsequent to entry of said Order. Any Allowed Professional Claim will be paid by the Trust after entry of a Final Order allowing such Claim, before any distribution to those Claims treated under Plan Article IV.

The U.S. Trustee Fees. All U.S. Trustee fees due and owing for the Debtor will be paid in full on or before the Effective Date by the Debtor. The Trustee will pay the post-Effective Date U.S. Trustee fees in the ordinary course as they are incurred until this Case is converted, dismissed or closed, whichever occurs first.

Administrative Claims. Each Claimant, other than Professionals, holding an Administrative Claim will receive either: (i) the amount of such Claimant's Allowed Administrative Claim in one cash payment on the Effective Date or as soon thereafter as is practicable if the Claims are not Allowed by the Effective Date; (ii) the amount of such Claimant's Allowed Administrative Claim shall be paid as soon as practicable if the Claim becomes an Allowed Administrative Claim after the Effective Date; or (iii) such other treatment agreed upon by the Trustee and such Claimant. All Claimants seeking payment of Administrative Claims must file their respective requests for allowance and payment thereof no later than thirty (30) days after the Effective Date.

Debtor's Claims and Classification

The Debtor has various and different Claims asserted against them, determined by the Plan to be Classified Claims. These Claims are treated differently in the Plan in conformity with the priorities set forth in the Code. These Classifications and the estimated amounts of Claims in each Class are set forth below. The estimated amount of Claims in each Class is an estimate of Allowed Claims after a reclassification or reduction of such claims through objection to same. Attached hereto as Exhibit 5 is the classification of Claims for **voting purposes only**. Voting in a particular Class or voting with a particular amount does not affect the validity of such Claim. The Plan Proponent reserves the right to move for the designation of the vote of any Creditor, notwithstanding the inclusion of such claim on Exhibit 5. **The Debtor and their respective Professionals have not performed an in-depth review of Claims, nor has a determination of allowance been made with regard to any Claim. The actual allowance of any Creditor's Allowed Claim may vary materially based on future analysis.**

Secured Claims	\$24,055,838.00
Priority Claims	\$ 70,613.00
Unsecured Claims	\$ 7,165,124.00

Under the Plan, distribution will be made to creditors in the order of priority established by the Code.

V. BACKGROUND OF THE LIQUIDATING TRUSTEE

A. Liquidating Trustee

After Confirmation of the Plan, the Trustee of the Fortress Liquidating Trust, and any

Professional and the Trust Representative, when chosen, shall be indemnified and held harmless from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including, but not limited to, attorneys' fees, arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Liquidating Trust Agreement, the Estates or the implementation or administration of the Plan, except to the extent it is finally determined by a final and non-appealable order from a federal court with competent jurisdiction within the Eastern District of Kentucky that such Indemnified Party was grossly negligent or acted in bad faith or in a manner whereby such Indemnified Party new or should have known to be not in, or opposed to, the best interest of the Beneficiaries, or, with respect to any criminal action or proceeding, had reasonable cause to believe its conduct was unlawful.

VI. METHODS OF EFFECTING PAYMENTS TO CLASSES

A. Duties of Liquidating Trustee

The Plan provides that the Debtor will deliver to the Liquidating Trustee all Assets, the Callidus Collateral, and the Unencumbered Assets. He shall cause the sales of the foregoing pursuant to the terms of the Plan. Thereafter, the Liquidating Trustee shall be charged with carrying out the terms of the Plan.

Transfer of Assets to the Trust. On the Effective Date, the Debtor grants, releases, transfers, conveys and delivers to the Fortress Unsecured Creditors Trust ("Liquidating Trust") and its successors, to be held in trust and to be applied as specified in the Plan, the Confirmation Order, and the Trust Agreement. Through the transfer of the Estate's assets, and except as otherwise provided herein or in the Plan, such assets are the Trust's Assets and the Trust has the sole and exclusive right, title and interest in and possession of the Trust Assets for purpose of liquidation.

Establishment of Liquidating Trust: On the Effective Date, the Debtor will execute the Fortress Liquidating Trust Agreement in substantially the form attached as Exhibit 2 to the Disclosure Statement. The Fortress Unsecured Creditors Trust Agreement is incorporated into the Plan. The terms of the Liquidating Trust Agreement shall control over the summary below. The Trustee will be authorized and directed to take all steps necessary in furtherance of the Plan and fulfillment of the purpose of the Trust. On the Effective Date, the Assets and all rights to the Assets will be delivered, transferred to or paid over to the Trust. Thereafter all such Assets will be vested in and owned by the Trust.

- Purpose of Liquidating Trust: The Trust shall be established on behalf of and for the sole benefit of the Beneficiaries and for the sole purpose of liquidating the Trust Assets and distributing the Trust Assets or proceeds thereof to the Beneficiaries pursuant to the Plan and in accordance with Treas. Reg. §301.7701-4(d). The Trust has no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the sole purpose of the Trust. It

shall not be the objective or purpose of this Trust to, and the Trustee shall have no authority to, conduct a trade or business except as reasonable and necessary to, and consistent with, the liquidation of the Liquidating Trust Assets. In particular, the Liquidating Trust, through the Liquidating Trustee, will do the following: (a) accept and place all Liquidating Trust Assets into the Liquidating Trust; (b) litigate and enforce all Causes of Action, claims and interests belonging to the Debtor, Debtor-in-Possession and/or the Estates in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, including without limitation, Avoidance Actions, (c) administer the Estates and Assets, (d) object to and resolve all Disputed Claims, (e) make all distributions in accordance with the Plan to the extent such distributions are to be made from the Liquidating Trust Assets including the payment of United States Trustee fees accruing in the Chapter 11 Case after the Effective Date until the termination of the Liquidating Trust, (f) take all actions and executing all agreements, instruments, and other documents necessary to implement the provisions of the Plan, (g) retain professionals and other agents, and (h) take such steps as are reasonable and necessary to accomplish the Liquidating Trust's purpose, all as provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trust Assets shall be held for the exclusive and sole benefit of the Beneficiaries and shall only be used to fund distributions to such Beneficiaries in accordance with the Plan and to fund payment of costs, fees, and expenses incurred in connection with the administration of the Liquidating Trust or the Plan.

- Appointment of the Liquidating Trustee. Chairman of the Unsecured Creditors Committee will be the initial trustee of the Liquidating Trust and is appointed as the representative of the Debtor's estate under Code §1123(b)(3)(B). In the event that he ceases to serve as Trustee for any reason, a successor will be designated pursuant to the Liquidating Trust Agreement. Counsel for the Debtor shall be the attorneys to prosecute all Avoidance Actions and reconcile all Claims and Disputed Claims. Counsel for the Unsecured Creditors Committee shall prosecute all claims and causes of action against the Debtor's owners, management, officers, directors for pre-petition negligence in the operation and/or management of the Debtor. Upon the designation of the Liquidating Trustee, the identity and connections of said trustee, if any, with the Debtor, its creditors, any parties in interest in the Case or the United States Trustee must be disclosed in writing and filed with the Court.
- Powers of the Liquidating Trustee. The Liquidating Trustee will have the powers, rights and interests of a trustee under Code §1106. The powers of the Liquidating Trustee will include all rights and powers necessary and appropriate to implement the provisions of the Liquidating Trust Agreement and to administer the Liquidating Trust, including, without limitation, the power to: (i) sell the Debtor's Assets, the Callidus Collateral and the Unencumbered Assets; (ii) make all distributions in accordance with the Plan; (iii) retain professionals and other agents; (iv) take such steps as are reasonable and necessary to accomplish the Liquidating Trust's purpose; (v) file all

post-Effective Date tax returns on behalf of the Liquidating Trust; and (vi) otherwise perform the functions and take actions provided for or permitted in the Plan, the Liquidating Trust Agreement, all as provided in and subject to the terms and provisions of the Plan, the Confirmation Order and the Fortress Liquidating Trust Agreement. The Liquidating Trustee will be responsible for paying or satisfying all liabilities including: (a) any post-Effective Date expenses necessary or appropriate on the part of the Liquidating Trust in respect of consummation of the Plan; (b) any post-Effective Date expenses incurred for the benefit of or in connection with the operation of the Liquidating Trust; and (c) any other obligations of the Liquidating Trust expressly set forth in the Plan or the Liquidating Trust Agreement. Without limiting the foregoing, from and after the Effective Date, the Liquidating Trust will dispose of the assets of the Liquidating Trust in accordance with the provisions of the Plan, the Confirmation Order and the Liquidating Trust Agreement.

- Exculpation of Liquidating Trustee. The Fortress Unsecured Creditors Trustee shall not be held personally liable, directly or indirectly, for any decision, action, inaction, activity or inactivity arising from the exercise of its duties as Fortress Unsecured Creditors Trustee, except for fraud, gross negligence or gross mismanagement.
- Tax Treatment. The Debtor, the Liquidating Trustee and the Beneficiaries shall treat the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. For income tax purposes, the Debtor shall be treated for tax purposes as the grantor and deemed the owner of its shares of the Liquidating Trust Assets, and shall include in its taxable income the allocable share of each item of the Liquidating Trust’s income, gain, deduction, loss and credit.
- Termination of the Trust. The Liquidating Trust shall terminate on the earlier of (1) the complete liquidation, administration and distribution of its assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and this Liquidating Trust Agreement or (2) the fifth anniversary of the date of the formation of the Trust, subject to one or more finite extensions approved by the Bankruptcy Court.

Sales of Assets. The sales of the Assets, the Mine Sites, the Mineral Leases, Mining Permits, and the Unencumbered Assets shall be determined by the following provisions:

- Continuation/Cessation of Mining. The Debtor shall continue its mining activities in Section 004 of Mine 15 until January 22, 2016. On the aforesaid date all mining activities shall cease.
- Sale(s) by Debtor’s Officers and Shareholders. The Debtor’s officers and Common Shareholders may sell the Debtor and/or the Debtor’s assets as a going concern up to and through February 22, 2016, or as extended by Order of the Court.

- Sale of Assets. Subject to a prior sale of substantially all the assets of the Debtor pursuant to the Debtor's Sale Motion (Docket No. 201), the Debtor shall, on or before February 11, 2016, hire the Auctioneer and shall, through such Auctioneer, cause the sale of the Assets, the Callidus Collateral and the Unencumbered Assets, pursuant to ordinary business and auction provisions and pursuant to the terms of this Plan, but excluding the Debtor's accounts receivables, any avoidance actions arising under chapter 5 of title 11 of the United States Code or state law, any claims or causes of action against the Debtor's management, owners, directors or officers, including any insurance proceeds related thereto, and Cash. The assets, if sold separately pursuant to Plan §6.12.6(b), shall be sold in the following order (a) the Mining Sites, Mine Permits, and Mining Leases for Mine #21 and Mine #23, Big Groundhog Slurry Impoundment, Mine #16, Bevins Branch Plant, Lick Branch Slurry Impoundment, and the Little Groundhog Refuse Fill; (b) the Mining Sites, Mine #16 and Mine #23; and (c) separately for the Mine Permits and the Mining Lease for the Mine #23, Elkhorn #1 Seam Joes Creek, Mine #27 Joes Creek, Mine #29, Smith Fork No. 1 Mine, Mine #8A, and the Primary Energy Loadout without the Callidus Collateral; (d) the Callidus Collateral; (e) the Unencumbered Assets; and (f) any other unsold property of the Debtor, grouped or separated by the Auctioneer in its sole discretion.
- Retrieval of Assets from the Mines. (a) All of the Callidus Collateral, not used in the mining operations pursuant to Plan §6.12.1 above, shall be pulled to the surface of the mines, adequately secured and stored by the Debtor and inventoried and accounted for by the Auctioneer, on or before February 15, 2016, except for delays caused by state or federal regulations outside the control of the Debtor. (b) Upon cessation of mining at Mine No. 15 pursuant to Plan §6.12.1 above, all remaining mining equipment therein shall be pulled to the surface of the Mine No. 15 and inventoried and accounted for by the Auctioneer on or before February 23, 2016, except for delays caused by state or federal regulations outside the control of the Debtor.
- Sold Assets Status. Any Purchaser and/or Purchasers shall receive the Transferred Assets free and clear of any and all liens, claims and encumbrances pursuant to Code §363(b) with any and all liens, claims and encumbrances attaching to the sale price or sale prices in the same order and priority that existed as of the Petition Date.
- Removal of Assets: Abandonment if Not Sold. (a) If all Assets, Unencumbered Assets, Callidus Collateral, the Mining Sites and Mining Permits are purchased under Plan §6.12.4, nothing shall be removed from the Mining Sites, and the Purchaser shall be sold and shall receive sold assets as is, where is. (b) If the Assets, Callidus Collateral, the Mining Sites, Mine Permits, and Unencumbered Assets are not sold pursuant to Code §6.12.3, then the Callidus Collateral shall be pulled to the surface of the mines at the Debtor's cost, and sold separately by the Auctioneer and the Purchasers shall remove such purchased items from the staging area at their cost. (c) (i) If the sale of all the Unencumbered Assets and the Callidus Collateral have not been completed and

closed within thirty (30) days after the Effective Date, or (ii) if the Debtor defaults or fails to comply with the provisions set forth in Plan §§ 6.12.1, 6.12.2, 6.12.3 and 6.12.4, except for delays caused by state or federal regulations outside the control of the Debtor, then the stay shall be lifted by the Court as the Secured Creditors' Collateral and the Court shall appoint a trustee with instructions to sell the Unencumbered Assets.

- Times and Places of Auctions. The Sale Date and the places for the sales of the Assets, the Callidus Collateral and the Unencumbered Assets shall be determined by the Auctioneer after consultation with Counsel, Callidus, and the Other Secured Creditors.
- Conduct of Auctions; Abandonment of the Callidus Collateral. The Auctioneer shall offer for sale to the highest and best bidder the Callidus Collateral and Unencumbered Assets on or before February 15, 2016. On the Effective Date or February 15, 2016, whichever date is earlier, if, the Callidus Collateral has not been sold, then the Callidus Collateral shall be abandoned under Code §554, shall no longer be property of the estate under Code §541, and the automatic stay in effect pursuant to Code §362 shall be deemed lifted. Callidus shall liquidate the Callidus Collateral in a commercially reasonable manner outside of the Court's jurisdiction.
- Choice of Winning Bids; Sales Tax. The Debtor shall accept the higher or highest of the offers and the aggregate offers set forth in Plan §6.12.3. Such Purchaser's purchases shall be subject to and have added on the purchase price the applicable Kentucky sales and use taxes or the sales and use taxes in existence in the state where the sales take place.
- Approval by the Court. The Debtor has filed "Debtor's Motion for an Order (A) Authorizing Sale of Substantially All Debtor's Assets of Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Section 363(b) and (f); and (B) Waiving the Stay Imposed by Fed. R. Bankr. P. 6004(h); and (C) Assumption and Assignment of Contracts & Leases Under § 365" [Docket No. 201] (the "Sale Motion") AND the "Debtor's Motion for an Order (A) Approving Bidding Procedures and Related Deadlines; (B) Scheduling Date and Time for Sale Hearing; (C) Approving Form and Manner of Notice of Same; (D) Approving Form and Manner of Notice of Proposed Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases and Related Cure Claims; and (E) Approving Shortened Notice and Expedited Hearing on the Same" [Doc. No. 202] for entry of a Sale Order and a Bidding Procedures Order by the Court. Said Motions shall be heard before the Court on January 27, 2016. The Sale Motion is attached hereto as Exhibit 7 and the Motion to Approve Bidding Procedures is attached hereto as Exhibit 8. The proposed Bidding Procedures Order and the Sale Order shall contain all closing information and conditions that are normal and usual in such sale Orders used in the Court.
- Closing of the Sale(s). The Debtor's Counsel or the Auctioneer, as determined after consultation, shall conduct the closings of the sale(s) and shall have authority to pay

from the sale proceeds the costs, commissions and related expenses normally and ordinarily incurred in such transactions, and supply a report and accounting of all funds to Counsel, who shall file a report of sale(s) with the Court. Debtor's Counsel shall comply with the requirements set forth in Plan §6.12.13, *infra*.

- Right to Use a Stalking Horse. Nothing in the foregoing sale provisions shall preclude or be interpreted to preclude the Debtor from entering into a buy-sell agreement with any Person or Entity for a sale of all of the Debtor's Assets, the Unencumbered Assets, and Callidus Collateral, the Mining Sites, the Mining Permits and the Unexpired Leases and Executory Contracts, in total, and thereafter to use that agreement to obtain higher prices from other potential purchasers. The right of the Debtor to use a stalking horse shall expire on February 3, 2016.
- Disposition of Funds from Sales. The net funds remaining after the closing of the sales shall be deposited in the DIP Account subject to distribution pursuant to the terms of this Plan, if applicable, or pending further Order of the Court.
- Abandonment of Remaining Assets. If, at the end of all sales by the Auctioneer, there are remaining assets that are not sold and are not saleable, as determined by the Auctioneer, such assets shall be abandoned pursuant to Code §554(c) without further order of the Court, and such disposition shall be included in Counsel's report of sale(s) with the Court.

Distributions from the Liquidating Trust. All distributions from the Liquidating Trust to the holders of interests in the Liquidating Trust will be made in accordance with such claimants' respective Pro Rata shares of the beneficial interests held therein at such time and in such amounts as determined by the Liquidating Trustee, as appropriate, pursuant to the Fortress Liquidating Trust Agreement and/or this Plan. The Liquidating Trustee will make distributions as when appropriate; however, the Liquidating Trustee will cause the Liquidating Trust to retain sufficient funds as reasonably necessary for the Liquidating Trust to: (a) meet contingent liabilities and maintain the value of its assets during liquidation; (b) pay reasonable expenses of administering the Liquidating Trust that have been incurred (including, but not limited to, any taxes imposed on the Liquidating Trust or fees and expenses in connection with the post-Effective Date administration and liquidation of the assets of the trust); and (c) satisfy other post-Effective Date liabilities incurred by the Liquidating Trust in accordance with the Plan. Subject to Plan Section 6.12, the distributions from the Liquidating Trust will be subject to the following provisions:

- Interim Distribution: Interim distributions to a Class of Claims under the Plan will occur as soon as practicable after (i) all objections to any such Claims have been resolved or reserved for, and (ii) Claims in prior classes have been paid or satisfactory reserves for payment of such Claims and other fees and/or charges required or permitted to be paid under the Plan and/or the Liquidating Trust Agreement have been made.

- Final Distribution: Final Distribution to Creditors under the Plan will occur as soon as practicable after (i) all of the Assets (including Causes of Action) are liquidated and all proceeds of the liquidation are deposited into the Liquidating Trust, and (ii) all objections to Claims have been resolved.
- Disclaimer: The Liquidating Trustee and its agents and attorneys are under no duty to take any action to either (a) attempt to locate any Creditor, (b) obtain an executed Internal Revenue Service Form W-8 or W-9 from any Creditor, or (c) to issue IRS 1099 forms to the Creditors.
- Monitoring of Disbursements. The Trust Representative may monitor the collection, accounting, treatment and distribution of all proceeds by the Liquidating Trustee. The Liquidating Trustee will make available its books and records to any member of the Trust Committee at any reasonable time, upon reasonable written notice; provided however, the Liquidating Trustee will have no obligation to share any information that may be subject to any privilege or may hinder the prosecution of any Cause of Action.
- Delivery of Distributions; Undeliverable and Unclaimed Distributions: All distributions under the Plan on Allowed Claims will be sent to the address of a Creditor as listed on their Proof of Claim unless the Liquidating Trustee, as appropriate, has been notified in writing of a change of address. Six months after any distribution date, all undeliverable or unclaimed payments or distributions made to any Creditor under the Plan, including but not limited to, un-negotiated checks, shall revert to the Liquidating Trust to be redistributed pursuant to the terms of this Plan, and will be forfeited as to the affected Creditors. Any Creditor whose payment is forfeited under this provision will thereafter be treated as having a Disallowed Claim, and the holder of any such Claim will not be entitled to any other or further distribution under this Plan on account of such Claim. EACH CREDITOR MUST KEEP THE LIQUIDATING TRUSTEE ADVISED OF ANY CREDITOR'S CHANGE OF ADDRESS.
- Minimum Distributions: If a distribution to be made to a Creditor holding an Allowed Claim would be \$100.00 or less in the aggregate, notwithstanding any contrary provision of this Plan, no such distribution will be made to such holder by the Trust Committee.
- Set Off and Recoupment Rights: Except as specifically provided in the Plan, no Person or Entity will retain any contractual or statutory right to set off or to recoup any asset in which the Liquidating Trust has an interest in satisfaction of that Claimant's prepetition Claim. Any right to set off or to recoup a Claim against an Asset, any asset of the Liquidating Trust that is not specifically retained by a Creditor is waived and forever barred.

- Allocations of Distributions Between Principal and Interest: To the extent that any Allowed Tax Claim entitled to a distribution under the Plan by the Liquidating Trust is comprised of indebtedness and accrued but unpaid interest thereon, such distribution will be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest, unless otherwise specifically set forth herein.
- No Interest on Claims: Except as specifically provided for in the Plan, interest will not accrue on any Claims and no Claimant will be entitled to interest accruing on or after the Petition Date from the Liquidating Trust.

Professionals and Employees: The Liquidating Trust, with the consent of the Trust Committee, may from time to time retain any professionals, including but not limited to, attorneys, financial advisors or accountants, as may be appropriate under the circumstances. The Liquidating Trustee will, in the ordinary course of business and without the necessity for any approval by the Court, pay on behalf of the Liquidating Trust the reasonable and necessary fees and expenses of such professionals retained by the Liquidating Trust, including, but not limited to Bunch & Brock as Counsel. The Liquidating Trust may also hire employees as the Liquidating Trustee deems appropriate under the circumstances and Bunch & Brock shall be the attorneys to prosecute the Avoidance Actions, the claims reconciliation process and the Disputed Claims at their normal hourly rate.

Conflicts Between Trust and Plan. If there arises any inconsistencies between the Liquidating Trust Agreement provisions and the provisions of the Plan pertaining to the Debtor, then the provisions of the Plan shall control.

Surcharge: If any Creditor claims a security interest in the proceeds of any asset or any other cash on deposit in any of the Debtor's accounts as of the Effective Date, the Liquidating Trustee will, pursuant to Code §506(c), be entitled to surcharge such claimed collateral for the payment of all Allowed Administrative Claims and the initial funding of the Liquidating Trust and subsequent costs of implementing and performing the Plan without further order of the Court.

Documents and Privileges. On the Effective Date, the Debtor and the Committee shall irrevocably transfer, assign and deliver to the Liquidating Trust (i) any and all the right, title and interest in and to any and all papers, documents, maps, records, files, or other communications, whether in paper or electronic format, in its possession or in the possession of its professionals or custodians and (ii) without waiver, all of their respective rights, title and interests in and to any attorney client privilege, work product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Claims and Causes of Action transferred to the Liquidation Trust, which shall vest in the Liquidating Trustee, in trust, and, consistent with Code § 1123(b)(3)(B), for the benefit of the Liquidating Trust beneficiaries.

Payment Over to Liquidating Trustee. All collections of proceeds from prosecution of the

Causes of Action less attorneys' fees and costs will be paid or turned over to the Liquidating Trustee.

Insurance Policies. Any of the Debtor's insurance policies which provide liability or indemnity coverage to directors, officers, and/or employees with respect to all past, present or future actions, suits, and proceedings against the Debtor or its past or present directors, officers, and/or employees will remain in full force and effect for their prescribed terms. Nothing contained herein constitutes or be deemed a waiver of any Cause of Action that the Debtor or its respective estates may hold against any Person or Entity, including, without limitation, the insurer under any of the Debtor's policies of insurance. Nothing in this paragraph should be interpreted to be an indemnification or guarantee for the benefit of any defendant in the Causes of Action.

Distributions Relating to Allowed Insurance Claims. Payments from the Debtor's insurance carrier(s) to a Claimant on an Allowed Insurance Claim are deemed to be in full satisfaction of such Creditor's Claim, which Claim will be disallowed upon receipt by such Creditor of any insurance policy proceeds. Nothing contained herein will constitute or be deemed a waiver of any Cause of Action that the Debtor may hold against any Person or Entity, including, without limitation, insurers under any policies of insurance for any wrongful settlement or non-settlement decisions, or any reason whatsoever.

Stay of Pending Litigation. Except to the extent that (i) relief from stay has previously been granted or (ii) any Person or Entity waives its claim against the Liquidating Trust to pursue only any Insurance Claims, then on the Effective Date all prepetition lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, against any of the Debtor or its Assets, will be permanently stayed, except to the extent that such Debtor's names, as necessary parties under applicable procedural rules, may be used but the judgment shall not be collectible from the Debtor, the Committee, or the Liquidating Trust. Except as set forth in the Plan, the entry of the Confirmation Order will have no effect on any insurance coverage of the Debtor with respect to any Claim. The Debtor, the Committee, or the Liquidating Trustee reserve the right to seek approval and enforcement of an alternative dispute resolution process for the resolution of any Claim or Insurance Claim. The foregoing will not be deemed consent to such a process by the Debtor, the Committee, or the Liquidating Trustee, or as a waiver of any right to oppose the imposition of such a process by the Debtor, the Committee, or the Liquidating Trustee by any Person or Entity.

B. Post-Effective Date Involvement of Professionals

The Confirmation Order will constitute an Order of withdrawal of all Professionals employed by the Debtor as of the Effective Date, except for (a) Debtor's Counsel who may continue to serve as special counsel to the Liquidating Trustee, except for purposes of objecting to Fee Claims, i.e., requests for final attorneys' fee allowances and Court appearances relating to Fee Claims, and (b) the Counsel for the Unsecured Creditors' Committee, who may continue to serve

as special counsel to prosecute the Debtor's claims and causes of action against the Debtor's owners, management, officers and directors in order to obtain any D&O insurance proceeds.

C. Quarterly Reports and U.S. Trustees Fees

The Liquidating Trustee will file with the U.S. Trustee any reports required by the Plan until such time as the Case is closed or dismissed and serve copies of the same on all such parties requesting a copy of same.

VII. PROVISIONS FOR ENVIRONMENTAL WORK

Nothing in the Plan should be construed or interpreted to limit the United States of America through the Office of Surface Mining ("OSM") or the Commonwealth of Kentucky from taking appropriate action to (1) take federal enforcement actions as needed, pursuant to 30 C.F.R. Parts 842 and 843; (2) pursue the individuals who owned or controlled the Debtor through alternative enforcement actions under 30 C.F.R. Part 847; and (3) link the Debtor's owners/controllers to violations on the Applicant Violator System. Nothing in this paragraph, however, shall cause, permit or authorize OSM from seeking any financial recovery from the Debtor or the Liquidating Trust.

VIII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Under Code §365, the Debtor may assume or reject Executory Contracts and Unexpired Leases. Except as otherwise provided in the Confirmation Order, on the Confirmation Date all executory contracts and unexpired leases that existed Pre-Petition between the Debtor's and any Person or Entity will be deemed accepted pursuant to either a sale of the assets to another coal company who intends to operate the mine, or if no Person or Entity accepts them, then they will be deemed rejected and, if not accepted, their resulting Rejection Claims, if any, will become general Unsecured Claims in Class 8 with respect to the Debtor.

IX. LEGALLY BINDING EFFECT; DISCHARGE OF CLAIMS AND INTERESTS

Upon Confirmation, the provisions of the Plan will bind all Creditors, whether or not they accept the Plan. The distributions provided for in the Plan will be in exchange for and in complete satisfaction of all Claims against the Debtor or any of its Assets, including any Claim or interest accruing after the Chapter 11 filing date.

X. MODIFICATION OF THE PLAN

The Debtor may propose amendments to or modifications of the Plan under Code §1127 at any time prior to the Confirmation and may jointly revoke or withdraw the Plan at any time prior to the Confirmation Hearing. After the Effective Date, the Liquidating Trustee may remedy any defects or omissions and may reconcile any inconsistencies in this Plan or in the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of this Plan so long as the interests of the Creditors are not materially and adversely affected.

XI. JURISDICTION OF BANKRUPTCY COURT

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Court will retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Case or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Court's jurisdiction pursuant to 28 U.S.C. § 1334 or 28 U.S.C. § 157, including, without limitation, jurisdiction: (a) to hear and determine all controversies relating to or concerning the classification or allowance of Claims, including Professional Fees, disputed, contingent, or unliquidated Claims; (b) to determine and fix all Claims arising from the rejection of any executory contracts or leases; (c) to hear any pending motions for rejection, assumption or assignment of any executory contract or lease and to fix and determine any amounts alleged due and owing thereunder in order to cure defaults; (d) to enable the Debtor, or the Liquidating Trustee to commence all and consummate any proceedings which they may bring prior to the closing of the Bankruptcy Case to set aside any liens or encumbrances, to recover any assets, or damages to which the Debtor or Liquidating Trustee may be entitled under applicable provisions of the Bankruptcy Code or other federal, state, or local law; (e) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including Causes of Action and objections to Claims, involving the Debtor or the Committee, that may be pending as of the Effective Date, or that may be filed by the Liquidating Trustee after the Effective Date; provided, however, the Liquidating Trustee shall reserve the right to prosecute Causes of Action in all proper jurisdictions; (f) to recover all Assets and properties of the Debtor, wherever located; (g) to permit amendments to the Schedules; (h) to make such orders as are necessary or appropriate to carry out the provisions of the Plan, including ruling on motions regarding the liquidation of the Assets contemplated under the Plan; (i) to modify this Plan pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure at the request of the Liquidating Trustee; (j) to hear any matters regarding interpretation, implementation or consummation of the Plan and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order; (k) to decide issues concerning federal tax liability, reporting and withholding which may arise in connection with the Confirmation or consummation of the Plan; (l) to enter final decrees closing this Chapter 11 Case. Nothing herein limits the Court's powers under Code §105 and Bankruptcy Rule 9011.

XII. CLAIMS AND CAUSES OF ACTION

Notice to Targets of Causes of Action. The Plan provides notice to all Creditors and other parties in interests that the Liquidating Trust will have the right to investigate, prosecute, enforce, settle, adjust, collect, or otherwise dispose of the Causes of Action. **ALL CREDITORS, PERSONS, ENTITIES, AND OTHER PARTIES WHO RECEIVED DIRECTLY OR INDIRECTLY, PAYMENTS, OFFSETS, RECOUPMENTS AND/OR REBATES, OR TRANSFERS OF PROPERTY FROM THE DEBTOR WITHIN THE ONE (1) YEAR PERIOD PRECEDING THE PETITION DATE OR WITHIN SUCH LONGER PERIOD OF TIME AS MAY APPLY UNDER APPLICABLE LAW INCLUDING, WITHOUT LIMITATION, PERSONS INCLUDED IN THE LIST OF TARGETS OF CAUSES OF ACTION, ATTACHED AS EXHIBIT 2 TO THE PLAN (AND INCORPORATED HEREIN BY THIS REFERENCE, THE SAME AS IF SET FORTH AT LENGTH HEREIN), ARE HEREBY NOTIFIED THAT THEY MAY BE SUBJECT TO SUIT TO RECOVER ANY PREFERENCES, FRAUDULENT TRANSFERS, OR OTHER AVOIDABLE TRANSFERS AND TO PURSUE ANY OTHER CAUSES OF ACTION.** The inclusion in or omission of a Person or Entity in Exhibit 2 to the Plan does not mean that a decision has been made to assert, or not to assert, a Cause of Action against such Person or Entity. In addition, all officers and current and former officers, directors, shareholders, members, employees, partners, investors, agents, attorneys, accountants, equity holders, responsible parties and any other professional Person of the Debtor, its affiliates, or their parents are hereby notified that they may be subject to an action under applicable law as a result of any action or inaction, decision or lack of decision or transaction or non-transaction, made or incurred pre-petition that resulted, directly or indirectly, in harm to one or more of the Debtor.

Reservation of Causes of Action Beyond Confirmation. The Debtor specifically reserves the Causes of Action to the Liquidating Trust and expressly reserves such rights to survive beyond Confirmation, the finality of Confirmation, and all other legal effects of Confirmation, provided, however, this reservation shall not mean and will not be construed to mean that the exclusion of any Person or Entity from Exhibit 2 in the Disclosure Statement, frees, releases or exonerates that Person from Causes of Action, and the Liquidating Trust and its attorneys will have the right to investigate, pursue, prosecute and collect any unknown, but later discovered, Causes of Action against any Person or Entity, specifically including the right to add parties to existing adversaries as discovery in those proceedings uncovers additional parties that have received avoidable transfers or have taken acts that have harmed the Debtor.

XIII. FEASIBILITY OF THE PLAN

A. Discussion of Feasibility

A review of attached Exhibits, taken together, indicate viability of the Plan and feasibility of performance. The Plan is one of an orderly liquidation of all Assets, the Callidus Collateral, and

the Unencumbered Assets, and distribution which, based on the complexities of the Case and the Professionals knowledge of these matters, better serves the Creditors' interests as a Chapter 11 liquidation rather than as a Chapter 7 liquidation.

B. Disclaimer of Projections

The financial projections present the expected results of distribution of the Debtor's assets to the best of the Plan Proponent's belief. WHILE THE PLAN PROPONENT BELIEVES THAT THE ASSUMPTIONS SET FORTH IN THE DISCLOSURE STATEMENT ARE REASONABLE, THEIR VALIDITY MAY BE AFFECTED BY THE OCCURRENCE OF EVENTS AND THE EXISTENCE OF CONDITIONS NOT NOW CONTEMPLATED AND BY OTHER FACTORS, MANY OF WHICH ARE BEYOND THE CONTROL OF THE DEBTOR AND THE LIQUIDATING TRUSTEE. THE PROJECTIONS ARE, THEREFORE, NOT INTENDED TO BE REPRESENTATIONS OF ACTUAL FUTURE PERFORMANCE. ACTUAL OPERATING RESULTS DURING THE PROJECTED PERIODS WILL VARY FROM THE PROJECTIONS AND SUCH VARIATIONS MAY BE MATERIAL.

XIV. VOTING PROCEDURES AND REQUIREMENTS

ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED BASED UPON THE VOTE OF THE BALLOTS OF THE CREDITORS HOLDING ALLOWED CLAIMS THAT ACTUALLY VOTE ON THE PLAN. IT IS THEREFORE IMPORTANT THAT CLAIMANTS VOTE TO ACCEPT OR REJECT THE PLAN.

A. Ballots and Voting Deadline

A ballot form to be used for voting to accept or reject the Plan is posted on the Debtor's website, along with this Disclosure Statement and form of the Ballot. Creditors should read the Ballot carefully and follow the instructions contained therein. In voting to accept or reject the Plan, Creditors must use only the Ballot on the website or provided by Bunch & Brock. Creditors entitled to vote must complete, sign, and return the Ballots to Counsel for the Debtor on or before the Voting Deadline. Bankruptcy Rule 3018(a) permits a Creditor, for cause, to petition the Court to permit it to change or withdraw its vote on a plan. Any such petition must be made before the Confirmation Hearing, unless otherwise permitted by the Court. The Debtor will present the results of the voting to the Bankruptcy Court at the Confirmation Hearing.

Pursuant to Bankruptcy Rule 3018, the Court has fixed, or will fix, a specific date shown on the face of the enclosed Ballot as the deadline for impaired Creditors to vote and submit their acceptances or rejections of the Plan and the date for them to be received by Counsel. Except to the extent allowed by the Court, Ballots that are received after the expiration of the cutoff date will not be accepted or counted by the Debtor for Confirmation of the Plan or any modification thereof.

B. Classes Entitled to Vote

Only Classes that are impaired under the Plan are entitled to vote to accept or reject the Plan. Code § 1124 provides that a class of claims or interest is considered to be impaired under a plan of reorganization unless the plan does not alter the legal, equitable, and contractual rights of the holders of such claims or interests. Such classes are considered impaired unless all outstanding defaults, other than defaults relating to the insolvency or financial condition of the Debtor or the commencement of a bankruptcy case, are to be cured and the holders of claims or interests in such classes are to be compensated for any damages incurred as a result of any reasonable reliance by such holders on any contractual provisions or applicable law to demand accelerated payment. Pursuant to these reasons, the Plan Proponent has determined that all the Classes of Creditors are impaired under the Plan, except for the Common Shareholders, and will be entitled to vote for or against the Plan as set forth therein. The Common Shareholders, as the Plan Proponent, will not be allowed to vote for or acceptance or rejection of the Plan.

Contested, disputed, contingent, and/or unliquidated Claims are not entitled to vote to accept or reject the Plan. If your Claim has been estimated for voting purposes, then you will be allowed to vote your Claim in the amount estimated by that Court Order. If Ballots are erroneously sent to a Creditor not entitled to vote, then the Ballot will not be counted in the calculation of the Creditors voting to accept or reject the Plan. If you are a Creditor holding a contested or disputed claim, you may ask the Court to have your Claim temporarily allowed purpose of voting pursuant to Bankruptcy Rule 3018 for the purpose of voting.

C. Vote Required For Class Acceptance

The Court will determine whether the impaired Classes described above have accepted the Plan by determining whether sufficient acceptances have been received from the holders of Allowed Claims in such classes. An impaired Class of Claims will be determined to have accepted the Plan if the holders of Allowed Claims in that class casting votes in favor of the Plan (i) hold at least two-thirds of the allowed amount of the Allowed Claims of the holders in such class who vote and (ii) comprising more than one-half the number of holders of the Allowed Claims in such class voting on the Plan. Ballots of holders of impaired Claims that are signed and returned, but not expressly voted either for acceptance or rejection of the Plan, will be counted as Ballots for the acceptance of the Plan. Except as may be allowed by the Bankruptcy Court, a Ballot accepting the Plan may not be revoked. Ballots that are not signed, but are otherwise completed and regular, shall be counted as a vote.

D. Confirmation Hearing

The Code requires the Court, after the return of the Ballots and by notice, to hold a Confirmation Hearing. The Confirmation Hearing will be heard on the date fixed by notice to the Creditors, a few days after the Voting Deadline has lapsed. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement made

at the Confirmation Hearing. The Confirmation Hearing will be scheduled for a day and time certain in Lexington, Kentucky, and a separate notice thereof will be sent to all creditors.

E. Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Court will determine whether the requirements of Code § 1129 have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. Such requirements include:

(A) Best Interests Test. With respect to each impaired class of Creditors and interests, each holder of an Allowed Claim or allowed interest in such class has either (i) accepted the Plan or (ii) receives or retains under the Plan, on account of its Claim or interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor was to be liquidated under Chapter 7 of the Code.

To determine what the holders in each impaired class of claims and interests would receive if the Debtor were to be liquidated, the Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets in the context of a Chapter 7 liquidation case. The cash amount that would be available for satisfaction of the allowed claims and allowed interests of the Debtor would consist of the funds presently held by the Debtor as well as any proceeds realized from the Causes of Action. Such total amount would be reduced by the costs and expenses of the liquidation and by such additional administrative and priority claims that might result from the use of a Chapter 7 proceeding for the purposes of liquidation.

The Debtor's costs of liquidation under Chapter 7 would include the fees payable to the trustee appointed in the Chapter 7 case, as well as those that might be payable to additional attorneys and other professionals that the trustee might engage. Any Chapter 7 trustee and its professionals would need to familiarize themselves with this Case, likely at substantial costs to the estate. Such costs of liquidation would also include any unpaid expenses incurred by the Debtor during the Chapter 11 Case, such as compensation for attorneys and accountants. In addition, claims may arise by reason of the breach or rejection of obligations incurred and executory contracts entered into by the Debtor during the pendency of the Chapter 11 case.

To determine if the Plan is in the best interests of each impaired class of the Creditors, the present value of the distributions from the proceeds of the liquidation of the Debtor's assets and properties (after subtracting the amounts attributable to the Claims described above) are then compared with the present value offered to each of the classes of Creditors recognized under the Plan.

In applying the "best interests" test, it is possible that Claims and interests in a Chapter 7 case may not be classified in the same manner as provided in the Plan. In the absence of a contrary determination by the Bankruptcy Court, all Allowed Claims which have the same rights upon liquidation would be treated as one class for the purpose of determining the potential distribution of the liquidation proceeds under a Chapter 7 case of the Debtor. The distributions from the

liquidation proceeds would be calculated *pro rata* according to the amount of the Allowed Claim held by each creditor in such class. The Debtor believes that the most likely outcome of a liquidation proceeding under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior class of Creditors receives any distribution until all senior classes of Creditors are paid in full with interest, and no interest holder receives any distribution until all creditors are paid in full with interest.

The Plan Proponent believes that a Chapter 11 Confirmation of the Plan is preferable to Chapter 7 liquidation because the Plan maximizes the distributions to all Classes of Creditors, and any alternative to Confirmation would result in substantial delays and another layer of administrative expenses, including a Chapter 7 Trustee's commissions and his attorneys' fees, resulting in less value for the Creditors.

(B) Feasibility of the Plan. In order for the Plan to be confirmed, the Court must also determine that the need for further reorganization or a subsequent liquidation of the Debtor is not likely to result following Confirmation of the Plan. Insofar as the Plan contemplates that a complete liquidation of the Debtor's assets and distribution of all Cash, then no further reorganization or subsequent liquidation would be likely.

(C) Acceptance by Impaired Classes. Code § 1129(a)(8) requires that each Impaired Class must accept the Plan by the requisite votes for Confirmation to occur. As described herein, a class of Impaired Claims will have accepted the Plan if at least two-thirds in amount and more than half in number of Claims in such class voting to accept or reject the Plan have voted in favor of acceptance.

F. Conditions Precedent to Confirmation

At the Confirmation hearing, the Court will determine whether the Plan meets all the requirements of Code § 1129 governing the Confirmation of a plan of reorganization, including but not limited to:

- That the Plan Proponent has complied with the provisions of Chapter 11, specifically the provisions of Code §§ 1122 and 1123 governing classification of Claims and interests and contents of a plan of reorganization.
- That the Plan Proponent has proposed the Plan in good faith and not by means forbidden by law.
- That the Plan Proponent has disclosed any payment made or promised by the Debtor to any person for services in connection with the Chapter 11 Case.
- That one or more of the Classes of impaired claims or interests has voted to accept the Plan.

- That the Plan does not discriminate unfairly against and is fair and equitable to any non-accepting class of impaired claims or interests.
- That the Plan is in the best interests of creditors and interest holders, i.e., each holder of an Allowed Claim or allowed interest either has accepted the Plan or will receive on account of that claim or interest an amount of property with a value, as of the Effective Date of the Plan, that is not less than the amount that the holder would receive if the Debtor were liquidated under Chapter 7 of the Code on the Effective Date. *See **EXHIBIT 4*** for a liquidation analysis.
- That the Plan is feasible, i.e., Confirmation is not likely to be followed by the need for liquidation or further reorganization of the Debtor.

The Plan Proponent believes that the Plan upon Confirmation would satisfy all of the statutory requirements of Chapter 11 of the Code.

G. Effect of Confirmation

If the Court orders Confirmation of the Plan, then the Liquidating Trustee will be obligated to implement the Plan and begin paying the Allowed Claims from either the Liquidating Trust. Confirmation makes the Plan binding upon the Debtor and all Creditors, regardless of whether or not they have accepted the Plan.

H. Incorporation of Exhibits

All of the Exhibits attached hereto are incorporated into this Disclosure Statement, the same as if set forth at length herein.

XV. FEDERAL TAX CONSEQUENCES OF THE PLAN

A. Consequences to the Debtor. Although the Debtor has sold assets since the Petition Date, the Plan Proponent believes that any asset sold was sold for less than its tax basis. Consequently, it is not believed that the Debtor would have any tax consequences as a result of this Plan.

B. Consequences to the Typical Holder of a Claim. For a Creditor, there may be tax consequences. The recipient of a distribution from the Debtor under the Plan may be considered by the IRS and state and/or local taxing authorities to have received taxable income.

C. Disclosure. The Debtor and Counsel for the Debtor make no representations or warranties of any kind regarding the tax implication to a Creditor. It is strongly recommended that Creditors consult your own tax attorney and/or CPA regarding the actual tax consequences applicable to your particular circumstance.

XVI. CONCLUSION

The Plan constitutes an economically-viable opportunity and a reasonable method for Creditors to receive an orderly distribution of the Debtor's liquidated Assets. The Creditors all receive distributions per the Plan's priority schedule until they are paid in full or to the maximum extent possible according to the terms therein. Since liquidation in a Chapter 7 would likely produce no greater return for the Unsecured Creditors than compared to the terms of the Plan, the Creditors will receive more money through the Plan as compared to a conversion to Chapter 7. The acceptance of the Plan is therefore economically and legally justified. To that extent, ultimate potential benefits far outweigh any disadvantages or risks.

The materials provided in this Disclosure Statement are intended to assist you in reviewing the Plan in an informed manner. If the Plan is confirmed, you will be bound by the terms of the Plan. You are urged to study these materials and make such further inquiries as you may deem appropriate.

FORTRESS RESOURCES, LLC

By: /s/ Gary J. Smith
GARY J. SMITH, Managing Member

PREPARED BY:

BUNCH & BROCK

By: /s/ W. Thomas Bunch, Esq.
W. Thomas Bunch, Esq.
W. Thomas Bunch II, Esq.
Matthew B. Bunch, Esq.
271 West Short Street, Suite 805
Lexington, Kentucky 40507
Telephone: (859) 254-5522
Facsimile: (859) 233-1434
wtb@bunchlaw.com
tom@bunchlaw.com
matt@bunchlaw.com

ATTORNEYS FOR THE DEBTOR