

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**In re:**

**XINERGY LTD., et al.,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 15-70444 (PMB)**

**(Jointly Administered)**

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF THE ASSETS OF TRUE ENERGY, LLC OUTSIDE THE ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion, dated December 11, 2015 [Doc. No. 571] (the “Motion”) of the above-captioned debtors and debtors-in-possession (the “Debtors”) pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court having entered the *Order (I) Approving Bidding Procedures for the Sale of All or Substantially All of the Assets of True Energy, LLC, (II) Scheduling Bid Deadlines and the Auction, (III) Approving the Form And Manner of Notice Thereof and (IV) Granting Related Relief* [Doc. No. 592] (the “True Energy Bidding Procedures Order”), among other things, (i) authorizing the Debtors to solicit and consider offers for the True Energy Assets (as defined herein) and conduct an Auction<sup>2</sup> in accordance with the True Energy Bidding

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

<sup>2</sup> Capitalized terms not otherwise defined here shall have the meaning ascribed to such terms in the Motion.

Procedures, (ii) approving the form and manner of notice of the Auction and Sale Hearing, and (iii) approving the manner in which the notice of the assumption and assignment of the Assumed and Assigned Contracts and True Energy Cure Amounts related thereto (if any) (the “True Energy Assumption and Assignment Notice”) would be provided and the procedures related to the assumption and assignment of the Assumed and Assigned Contracts; and the Debtors having solicited Bids in accordance with the True Energy Bidding Procedures; and the Debtors (in consultation with the Committee and DIP Agent) having selected A & G Coal Corporation as the Successful Bidder for the assets set forth in Article 2 (the “True Energy Assets”) to the asset purchase agreement attached hereto as Exhibit A (the “APA”) among the Successful Bidder and True Energy in accordance with the True Energy Bidding Procedures; and the Bankruptcy Court having conducted a hearing on January 21, 2016 (the “Sale Hearing”), to consider approval of (i) the APA, (ii) the sale and transfer (the “Sale”) of the True Energy Assets free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, mortgages, pledges, charges, security interests, obligations, liabilities, contractual commitments or interests of any kind or nature except as expressly provided in the APA and/or this Order, and (iii) the transactions (including, without limitation, the assumption and assignment of the Assumed and Assigned Contracts), Transaction Documents (as defined in the APA) and other agreements contemplated thereby (collectively, the “Transactions”); and (iv) the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the APA, the Sale, and the Transactions; and upon the record of the hearing to consider approval of the True Energy Bidding Procedures (the “True Energy Bidding Procedures Hearing”), the Sale Hearing, the *Declaration of Michael R. Castle in Support of the Debtors Chapter 11 Petition and First*

*Day Pleadings* [Doc. No. 18], and these chapter 11 cases and proceedings, and after deliberation thereon, and good cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>3</sup>

A. 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.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Bankruptcy Court has jurisdiction over this matter and over the property of the Debtors' estates, including the True Energy Assets to be sold, transferred or conveyed pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The True Energy Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

E. The statutory predicates for the relief sought in the Motion and the basis for the approvals and authorizations herein are (i) sections 105(a), 363, and 365 of the Bankruptcy Code, and (ii) Bankruptcy Rules 2002, 6004, and 6006.

F. On April 6, 2015 (the "Petition Date"), each of the Debtors filed with the Court its respective voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing

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<sup>3</sup> All findings of fact and conclusions of law announced by the Bankruptcy Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 8, 2015, the Court entered a final order authorizing joint administration of these chapter 11 cases [Doc. No. 184].

G. As evidenced by the affidavits of service filed with the Bankruptcy Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, and the Sale Hearing have been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007, and in compliance with the True Energy Bidding Procedures Order. The Debtors also gave due and proper notice of the assumption, sale, and assignment of each Assumed and Assigned Contract to each non-debtor party to each such Assumed and Assigned Contract by listing each Assumed and Assigned Contract on the True Energy Assumption and Assignment Notice filed on January 19, 2016 [Doc. No. 635]. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assumed and Assigned Contracts, or of the entry of this Order is necessary or shall be required.

H. No section of any Assumed and Assigned Contract which purports to prohibit, restrict, or condition the use, tradename, or assignment of any such Assumed and Assigned Contract to the Successful Bidder shall have any force or effect.

I. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) the Office of the United States Trustee for the Western District of Virginia (the "U.S. Trustee"); (ii) the Committee; (iii) DIP Agent; (iv) all applicable federal, state, and local taxing and regulatory

authorities; (v) all parties that have requested special notice pursuant to Bankruptcy Rule 2002; (vi) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the True Energy Assets; (vii) all Contract Parties; (viii) counsel to the Successful Bidder; (ix) all potential bidders previously identified or otherwise known to the Debtors; and (x) any sureties providing bonding for any permits proposed to be transferred (collectively, the “Notice Parties”).

J. Other parties interested in bidding on the True Energy Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the True Energy Assets.

K. The Successful Bidder had no undue advantage over other potential buyers or bidders and the conditions of section 363(n) of the Bankruptcy Code have been satisfied. The Debtors and the Successful Bidder have not engaged in any conduct that would cause or permit the APA or the Transactions to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

L. The Debtors have demonstrated a sufficient basis and compelling circumstances authorizing them to enter into the APA, sell the True Energy Assets and assume and assign the Assumed and Assigned Contracts under sections 363 and 365 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors’ business judgment and in the best interests of the Debtors, their estates and their creditors. Such business reasons include, but are not limited to, the fact that (i) there is substantial risk of deterioration of the value of the True Energy Assets if the sale is not consummated quickly; (ii) the APA constitutes the highest or best offer for the True Energy Assets; (iii) the APA and the Closing (as defined in the APA) will present the best opportunity to realize the value of the True Energy Assets on a going concern basis and avoid

decline and devaluation of the True Energy Assets; and (iv) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the APA, creditors' recoveries may be diminished.

M. The True Energy Bidding Procedures set forth in the True Energy Bidding Procedures Order were non-collusive, in good faith, substantively and procedurally fair to all parties.

N. The Debtors and their professionals have complied, in good faith, in all respects with the True Energy Bidding Procedures Order. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the True Energy Bidding Procedures Order, the Debtors (i) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the True Energy Assets, (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the True Energy Assets, and (iii) considered any bids submitted on or before the Bid Deadline.

O. The offer of the Successful Bidder, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates; (iv) constitutes full and adequate consideration and reasonably equivalent value for the True Energy Assets; and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

P. The Successful Bidder is not an “insider” or “affiliate” of the Debtors as those terms are defined in the Bankruptcy Code. The Successful Bidder is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of sections 363(m) and (n) of the Bankruptcy Code with respect to all of the True Energy Assets. The APA was negotiated and entered into in good faith, based upon arm’s length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Successful Bidder have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or implicate or cause the application of section 363(n) of the Bankruptcy Code to the APA or to the consummation of the sale transaction and transfer of the True Energy Assets, including the Assumed and Assigned Contracts to the Successful Bidder. The Successful Bidder is entitled to all the protections and immunities of section 363(m) of the Bankruptcy Code.

Q. The Debtors have full corporate power and authority to execute the APA and all other documents contemplated thereby, and the sale of the True Energy Assets and the consummation of the transactions contemplated by the APA and the Transaction Documents have been duly and validly authorized by all necessary corporate authority by the Debtors. No consents or approvals, other than as may be expressly provided for in the APA, are required by the Debtors to consummate such transactions.

R. The Debtors have advanced sound business reasons for seeking to enter into the APA and to sell and/or assume and sell and assign the True Energy Assets, as more fully set forth in the Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors’ business judgment to sell the True Energy Assets and to consummate the transactions contemplated by the APA. Notwithstanding any requirement for approval or consent by any

person, the transfer of the True Energy Assets to the Successful Bidder and the assumption and assignment of the Assumed and Assigned Contracts is a legal, valid and effective transfer of the True Energy Assets including any Assumed and Assigned Contracts.

S. The terms and conditions of the APA, including the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable, and the transactions contemplated by the APA are in the best interests of the Debtors' estates.

T. Except as expressly set forth in this Order or otherwise provided in the APA, the True Energy Assets shall be sold free and clear of all mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics', materialmens' and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, pension, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or the Debtors' predecessors or affiliates, claims (as that term is used in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfilled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-

material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, “Liens, Claims, Encumbrances and Interests”) with such Liens, Claims, Encumbrances and Interests to attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Successful Bidder would not enter into the APA to purchase the True Energy Assets otherwise.

U. The transfer of the True Energy Assets to the Successful Bidder is a legal, valid and effective transfer of the True Energy Assets, and, except as may otherwise be provided in the APA, shall vest the Successful Bidder with all right, title and interest of the Debtors to the True Energy Assets free and clear of any and all Liens, Claims, Encumbrances and Interests. Except as specifically provided in the APA or this Order, the Successful Bidder shall not assume or become liable for any Liens, Claims, Encumbrances and Interests relating to the True Energy Assets being sold by the Debtors.

V. The transfer of the True Energy Assets to the Successful Bidder free and clear of all Liens, Claims, Encumbrances and Interests will not result in any undue burden or prejudice to any holders of any Liens, Claims, Encumbrances and Interests as all such Liens, Claims, Encumbrances and Interests of any kind or nature whatsoever shall attach to the net proceeds of the sale of the True Energy Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the True Energy Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. Except to the extent otherwise provided in the APA, all persons having Liens, Claims, Encumbrances or Interests of any kind or nature whatsoever against or in any of the Debtors or

the True Energy Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances or Interests against the Successful Bidder, any of their assets, property, successors or assigns, or the True Energy Assets.

W. Except to the extent otherwise provided in the APA, the Debtors may sell the True Energy Assets free and clear of all Liens, Claims, Encumbrances and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Liens, Claims, Encumbrances and Interests and (ii) non-debtor parties to the Assumed and Assigned Contracts, who did not object, or who withdrew their objections, to the sale of the True Energy Assets and the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All objections to the Motion have been resolved or overruled. Those holders of Liens, Claims, Encumbrances and Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims, Encumbrances and Interests, if any, attach to the proceeds of the sale of the True Energy Assets ultimately attributable to the property against or in which they claim or may claim any Claims, Encumbrances and Interests, with such Claims, Encumbrances and Interests being subject to treatment by separate order of this Bankruptcy Court.

X. Not selling the True Energy Assets free and clear of all Liens, Claims, Interests and Encumbrances, except as otherwise set forth in the APA, would adversely impact the Debtors' estates, and the sale of True Energy Assets other than one free and clear of all Liens, Claims, Interests and Encumbrances would be of substantially less value to the Debtors' estates.

Y. The Debtors and the Successful Bidder have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), (B) and

365(f) of the Bankruptcy Code, in connection with the sale and the assumption and assignment of the Assumed and Assigned Contracts. The Successful Bidder has demonstrated adequate assurance of future performance with respect to the Assumed and Assigned Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code. The Assumed and Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. Pursuant to the APA, the required cures and/or other payments or actions will be made to assume and assign the Assumed and Assigned Contracts to the Successful Bidder. The assumption and assignment of the Assumed and Assigned Contracts pursuant to the terms of this Order is integral to the APA and is in the best interests of the Debtors, their estates, their creditors and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

Z. The Successful Bidder is acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the APA at any time on or after the entry of this Order and cause has been shown as to why this Order, in the absence of a stay pending appeal, should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

AA. The transactions contemplated under the APA do not amount to a consolidation, merger or *de facto* merger of the Successful Bidder and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Successful Bidder and the Debtors, there is no common identity between the Debtors and the Successful Bidder, there is no continuity of enterprise between the Debtors and the Successful Bidder, the Successful Bidder is not a mere continuation of the Debtors or their estates, and the Successful Bidder does not constitute a successor to the Debtors or their estates. Other than the Assumed Liabilities (as defined in the APA), the Successful Bidder shall have no obligations with respect to any liabilities of the

Debtors, and the Debtors and the Committee will release and forever discharge the Successful Bidder and any of their affiliates, their successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the sale, except for liabilities and obligations under the APA.

BB. The sale of the True Energy Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The sale does not constitute a *sub rosa* chapter 11 plan.

CC. The total consideration provided by the Successful Bidder for the True Energy Assets is the highest and best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the True Energy Assets.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is granted as set forth herein.
2. All objections, responses, and requests for continuance concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied.
3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

Approval of Sale

4. The sale of the True Energy Assets, the terms and conditions of the APA (including all schedules and exhibits affixed thereto), and the Transactions contemplated thereby be, and hereby are, authorized and approved in all respects.
5. The sale of the True Energy Assets and the consideration provided by the Successful Bidder under the APA is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.
6. The Successful Bidder is hereby granted and is entitled to all of the protections provided to a good faith buyer under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assumed and Assigned Contracts as part of the sale of the True Energy Assets pursuant to section 365 of the Bankruptcy Code and this Order.

7. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any transfer under the APA or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal), and notwithstanding any reversal, modification or vacatur shall be governed in all respects by the original provisions of this Order and the APA, as the case may be.

8. The Debtors are hereby authorized to fully assume, perform under, consummate and implement the terms of the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the APA, this Order and sale of the True Energy Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of transfer, and to take all further actions as may reasonably be requested by the Successful Bidder for the purpose of assigning, transferring, granting, conveying and conferring to the Successful Bidder, or reducing to possession any or all of the True Energy Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the APA, without any further corporate action or orders of this Bankruptcy Court. Neither the Successful Bidder nor the Debtors shall have any obligation to proceed with the Closing of the APA until all conditions precedent to their respective obligations to do so have been met, satisfied or waived.

9. The Debtors and each other person or entity having duties or responsibilities under the APA, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and

empowered, subject to the terms and conditions contained in the APA, to carry out all of the provisions of the APA and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the APA, and any related agreements; to take any and all actions contemplated by the APA, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the APA, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Bankruptcy Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities.

10. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the APA, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of

the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable state law, and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the APA, any related agreements and this Order, and the transactions contemplated thereby and hereby.

11. Effective as of the Closing, (a) the sale of the True Energy Assets by the Debtors to the Successful Bidder shall constitute a legal, valid and effective transfer of the True Energy Assets notwithstanding any requirement for approval or consent by any person and vests the Successful Bidder with all right, title and interest of the Debtors in and to the True Energy Assets, free and clear of all Claims, Liens, Interests and Encumbrances of any kind (except as otherwise provided in the APA), pursuant to section 363(f) of the Bankruptcy Code, and (b) the assumption of any Assumed Liabilities by the Successful Bidder constitutes a legal, valid and effective delegation of any Assumed Liabilities to the Successful Bidder and divests the Debtors of all liability with respect to any Assumed Liabilities.

Transfer of Assets

12. Except to the extent specifically provided in the APA, upon the Closing, the Debtors shall be, and hereby are, authorized and empowered, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell the True Energy Assets to the Successful Bidder. Except as otherwise expressly provided in this Order and the APA, the sale of the True Energy Assets vests the Successful Bidder with all right, title and interest of the Debtors to the True Energy Assets free and clear of any and all Claims, Liens, Interests and Encumbrances and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or unified,

scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Claims, Liens, Interests and Encumbrances to attach only to the proceeds of the sale with the same priority, validity, force, and effect, if any, as they now have in or against the True Energy Assets, subject to all claims and defenses the Debtors may possess with respect thereto. The Motion shall be deemed to provide sufficient notice as to the sale of the True Energy Assets free and clear of Claims, Liens, Interests and Encumbrances. Following the Closing Date, except as otherwise expressly provided in this Order and the APA, no holder of any Claims, Liens, Interests and Encumbrances in the True Energy Assets may interfere with the Successful Bidder's use and enjoyment of the True Energy Assets based on or related to such Claims, Liens, Interests and Encumbrances, or any actions that the Debtors may take in their chapter 11 cases and no person may take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the APA or this Order.

13. The provisions of this Order authorizing the sale of the True Energy Assets, shall be self-executing, and neither the Debtors nor the Successful Bidder shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, the Debtors and the Successful Bidder, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Successful Bidder deem necessary or appropriate to implement and effectuate the terms of the APA and this Sale Order. Moreover, effective as of

the Closing, the Successful Bidder, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Successful Bidder, its successors and assigns, to demand and receive any and all of the True Energy Assets and to give receipts and releases for and in respect of the True Energy Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Successful Bidder, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Successful Bidder, its successors and assigns, may deem proper for the collection or reduction to possession of any of the True Energy Assets, and to do all acts and things with respect to the True Energy Assets which the Successful Bidder, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

14. Except as provided in the APA, on or before the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens, Claims, Encumbrances or Interests of any kind against the True Energy Assets, as such Liens, Claims, Encumbrances or 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 Liens, Claims, Encumbrances or Interests in or against the True Energy Assets shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances or Interests that the person or entity has with respect to the True Energy Assets, the Debtors 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 True Energy Assets prior to the Closing, unless the APA provides otherwise, and the Successful Bidder is authorized to file such documents after Closing.

15. To the extent provided in the APA and available under applicable law, the Successful Bidder shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and any other governmental authorization or approval of the Debtors with respect to the True Energy Assets and the Assumed and Assigned Contracts, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Successful Bidder, as of the Closing Date. To the extent any license or permit necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, the Successful Bidder shall apply for and obtain any necessary license or permit promptly after the Closing Date. Pursuant to section 10.1 of the APA, on or prior to the Closing Date, the Debtors and the Successful Bidder, as applicable, shall have prepared the appropriate permit transfer applications and, as soon as reasonably practicable thereafter, shall submit such applications to the appropriate Governmental Authorities. Thereafter the Debtors shall be authorized to take all necessary actions to have the appropriate permits transferred to the Successful Bidder within the time period set forth in section 10.1 of the APA (the “Final Transfer Date”). Pursuant to section 10.2 of the APA, during the period between the Closing Date and the Final Transfer Date, the Successful Bidder is prohibited from engaging in the activities set forth within, and pursuant to the terms of, section 10.2 of the APA.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the True Energy

Assets sold, transferred, or conveyed to the Successful Bidder on account of the filing or pendency of the Debtors' chapter 11 cases or the consummation of the Transactions.

17. All of the Debtors' interests in the True Energy Assets to be acquired by the Successful Bidder under the APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Successful Bidder. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the True Energy Assets acquired by the Successful Bidder under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the True Energy Assets to the Successful Bidder.

18. Except as expressly provided in the APA or this Order, the Successful Bidder is not assuming nor shall it or any affiliate of the Successful Bidder be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the True Energy Assets prior to the consummation of the transactions contemplated by the APA, or any liabilities calculable by reference to the Debtors or their operations or the True Energy Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the APA, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Successful Bidder or any affiliate of the Successful Bidder.

19. Except as otherwise provided in the APA, on the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective interests or claims against the True Energy Assets, if any, as may have been recorded or may otherwise exist.

20. Except as otherwise expressly provided in the APA, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the True Energy Assets are directed to surrender possession of the True Energy Assets to the Successful Bidder on the Closing Date or at such time thereafter as the Successful Bidder may request.

Assumed and Assigned Contracts

21. Subject to the terms of the APA, the occurrence of the Closing Date, and the filing of any objection within ten days of service of the True Energy Assumption and Assignment Notice, the assumption by the Debtors of the Assumed and Assigned Contracts and the assignment of such Assumed and Assigned Contracts to the Successful Bidder, as provided for or contemplated by the APA, be, and hereby is, authorized and approved pursuant to sections 363 and 365 of the Bankruptcy Code.

22. The Assumed and Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and assigned to the Successful Bidder at the Closing, pursuant to sections 363 and 365 of the Bankruptcy Code, subject only to the payment of all cures and/or other payments or actions required to assume and assign the Assumed and Assigned Contracts to the Successful Bidder pursuant to the terms of the APA.

23. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested in all right, title and interest of each Assumed and Assigned Contract. The Debtors shall cooperate with, and take all actions reasonably requested by, the Successful Bidder to effectuate the foregoing.

24. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, in accordance with the APA, the Debtors shall promptly pay or cause to be paid to the parties to any Assumed and Assigned Contracts the requisite True Energy Cure Amounts (as defined in the Motion), if any, set forth in the Cure Notice, served by the

Debtors on each of the parties to the Assumed and Assigned Contracts, with respect to the assumption and assignment thereof. The True Energy Cure Amounts are hereby fixed at the amounts set forth in the Cure Notice, served by the Debtors, or as mutually agreed upon, as the case may be, and the non-debtor parties to the Assumed and Assigned Contracts are forever bound by such True Energy Cure Amounts and are hereby enjoined from taking any action against the Successful Bidder or the True Energy Assets with respect to any claim for cure under any Assumed and Assigned Contracts.

25. All defaults or other obligations under the Assumed and Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by payment of the True Energy Cure Amounts and the non-debtor parties to such contracts shall be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist.

26. Any provision in any Assumed and Assigned Contract that purports to declare a breach, default or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and all Assumed and Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate True Energy Cure Amount, if any. No sections or provisions of any Assumed and Assigned Contract that purports to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor third party to the Assumed and Assigned Contracts shall have any force and effect with respect to the transactions contemplated by the APA and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy

Code and no assignment of any Assumed and Assigned Contract pursuant to the terms of the APA in any respect constitutes a default under any Assumed and Assigned Contract. The non-debtor party to each Assumed and Assigned Contract shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Successful Bidder shall enjoy all of the rights and benefits under each such Assumed and Assigned Contract as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

27. The Successful Bidder has satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Assumed and Assigned Contracts.

28. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assumed and Assigned Contracts occurring from and after Closing, pursuant to and in accordance with section 365(k) of the Bankruptcy Code.

29. The non-debtor parties shall be prohibited from charging any rent acceleration, assignment fees, increases or other fees to the Successful Bidder as a result of the assumption and assignment of the Assumed and Assigned Contracts.

30. Notwithstanding anything to the contrary herein or in the True Energy Bidding Procedures, no executory contract or unexpired lease shall be considered an Assumed and Assigned Contract under this Order unless and until such executory contract or unexpired lease shall have been assumed and assigned by the Debtors in accordance with the Assumption Procedures.

31. Any timely objection to the assumption and assignment of any Assumed and Assigned Contract that is filed and served in accordance with the Assumption Procedures that

has not been resolved, withdrawn or overruled on or prior to the Closing may be heard at a later date as set by the Bankruptcy Court after the Closing of the Sale. The Debtors may, in their sole discretion, resolve objections to proposed Cure Amounts without any further notice to or action by any party or order of the Court (including without limitation by determining with the Successful Bidder that an executory contract or unexpired lease shall not be an Assumed and Assigned Contract or by the Debtors paying any agreed Cure Amounts).

*Additional Provisions*

32. Nothing in this Order or the APA releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability (including but not limited to for reclamation and mitigation and any associated long-term protection requirements) to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under police or regulatory law. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order, subject to the Debtors' or Buyer's, as applicable, rights to assert in that forum or before this Court that any such laws are not in fact police or regulatory law or that such enforcement is impermissible under applicable law.

33. 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 transactions contemplated by the APA and this Order.

34. Pursuant to section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the True Energy Assets sold,

transferred or conveyed to the Successful Bidder on account of the filing or pendency of these chapter 11 cases or the consummation of the transactions contemplated by the APA.

35. The Successful Bidder has not assumed and is not otherwise obligated for any of the Debtors' liabilities other than the Assumed Liabilities and as otherwise set forth in the APA, and the Successful Bidder has not purchased any of the Excluded Assets (as defined in the APA). Consequently, except as expressly provided in this Order, all persons, Governmental Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Claims, Liens, Interests or Encumbrances based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Successful Bidder or the True Energy Assets, including asserting any setoff, right of subrogation or recoupment of any kind, to recover any Claims, Liens, Interests or Encumbrances or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the APA. All persons holding or asserting any interest in the Excluded Assets are hereby enjoined from asserting or prosecuting such Claims, Liens, Interests or Encumbrances or cause of action against the Successful Bidder or the True Energy Assets for any liability associated with the Excluded Assets.

36. The Successful Bidder is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Successful Bidder shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, liability or responsibility for any claim against the Debtors or against an insider of the Debtors, or similar liability except as otherwise expressly provided in the APA, and the Motion contains sufficient notice of such limitation. Except to the extent the Successful Bidder assumes the Assumed Liabilities pursuant to the APA, neither the purchase of the True Energy Assets by the Successful

Bidder, nor the fact that the Successful Bidder is using any of the True Energy Assets previously operated by the Debtors, will cause the Successful Bidder to be deemed a successor in any respect to the Debtors' businesses within the meaning of (i) any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, antitrust, environmental, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations); (ii) under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine; (iii) any employment or labor agreements, consulting agreements, severance arrangements, change-in-control agreements or other similar agreement to which the Debtors are a party; (iv) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of the Debtors; (v) the cessation of the Debtor's operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, obligations that might otherwise arise from or pursuant to the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.*, and all amendments and revisions thereof or the Worker Adjustment and Retraining Notification Act; (vi) liability or benefit obligations related to black lung claims and benefits under the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901 *et seq.*, the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 *et seq.*, the Black Lung Benefits Reform Act of

1977, Pub. L. NO. 95-239, 92 Stat. 95 (1978), the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, Title 11, 95 Stat. 1643, (1981), in each case, as amended, if applicable, and occupational pneumoconiosis, silicosis, or other lung disease disabilities and benefits arising under federal or state law; (v) environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (vi) any liabilities, debts or obligations of or required to be paid by, the Debtors for any taxes of any kind for any period; (vii) any liabilities, debts, commitments or obligations for any taxes relating to the operation of the True Energy Assets prior to Closing; or (viii) any litigation.

37. Except to the extent expressly included in the Assumed Liabilities or expressly provided in this Order, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities, including, but not limited to, the Debtors, the Committee, all creditors, debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Encumbrance or Interest of any kind or nature whatsoever against, in or with respect to any of the Debtors or the True Energy Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the True Energy Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the True Energy Assets to the Successful Bidder, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien,

Claim, Encumbrance or Interest, whether by payment, setoff, or otherwise, directly or indirectly, against the Successful Bidder or any affiliates, successors or assigns thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates, financial advisors and representatives (each of the foregoing in its individual capacity), or the True Energy Assets. For the avoidance of doubt, the foregoing shall not prevent the Debtors, their estates, successors or permitted assigns from pursuing claims, if any, against the Successful Bidder and/or their successors and assigns in accordance with the terms of the APA.

38. Other than the Assumed Liabilities or as otherwise provided for in the APA, the Successful Bidder shall have no obligations with respect to any liabilities of the Debtors, and the Debtors and their estates are deemed to release and forever discharge the Successful Bidder and any of its affiliates, successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the sale, except for liabilities and obligations under the APA.

39. Subject to the terms of the APA, the APA and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Successful Bidder, without further action or order of the Bankruptcy Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the APA and any related agreements.

40. Notwithstanding the language contained in Section 7.7 of the APA and corresponding Schedule 7.7, the rights and obligations of the Debtors in connection with collateral being held by Lexon shall be governed by the terms of the Collateral Trust Agreement

dated February 3, 2009 entered between Xinergy Corp. and Bond Safeguard Insurance Company, any other applicable agreements between one or more of the Debtors and Lexon regarding the issuance of surety bonds on behalf of any of the Debtors, and otherwise applicable law.

41. The failure specifically to include any particular provisions of the APA or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the Debtors and the Successful Bidder that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

42. To the extent any provisions of this Order conflict with the terms and conditions of the APA, this Order shall govern and control.

43. Nothing in this Order shall alter or amend the APA and the obligations of the Debtors and the Successful Bidder thereunder.

44. This Order and the APA shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtors and the Successful Bidder, their respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a Chapter 7 case if any of these chapter 11 cases is converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, 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 in or to the True Energy Assets.

45. The provisions of this Order are non-severable and mutually dependent.

46. Nothing in any order of this Bankruptcy Court or contained in any plan of reorganization or liquidation confirmed in the chapter 11 cases, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

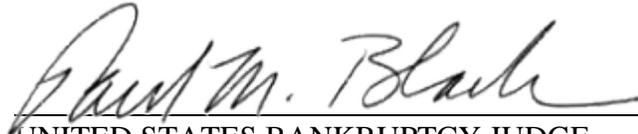
47. Notwithstanding Bankruptcy Rules 6004, 6006 and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing, and the Motion shall be deemed to provide sufficient notice of the Debtors' request for relief from stay. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Successful Bidder are free to close under the APA at any time, subject to the terms of the APA. In the absence of any person or entity obtaining a stay pending appeal, if the Debtors and the Successful Bidder close under the APA, the Successful Bidder shall be deemed to be acting in "good faith" and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the APA if this Order or any authorization contained herein is reversed or modified on appeal.

48. This Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the True Energy Bidding Procedures Order, and the APA in all respects and to decide any disputes concerning this Order and the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the True Energy Assets and any Assumed and Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of

those concerning the transfer of the assets free and clear of all Liens, Claims, Interests and Encumbrances.

Roanoke, Virginia

Dated: January 29, 2016

  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Justin F. Paget

Tyler P. Brown (VSB No. 28072)  
Henry P. (Toby) Long, III (VSB No. 75134)  
Justin F. Paget (VSB No. 77949)  
HUNTON & WILLIAMS LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8200  
Facsimile: (804) 788-8218  
Email: tpbrown@hunton.com  
hlong@hunton.com  
jpaget@hunton.com

*Counsel to the Debtors  
and Debtors in Possession*

SEEN AND AGREED:

/s/ Kelly C. Griffith (permission granted via e-mail dated 1/28/16)

Harris Beach PLLC  
Kelly C. Griffith, Esq. (VSB 43902)  
Lee E. Woodard, Esq.  
333 West Washington St.  
Suite 200  
Syracuse, NY 13202  
(315) 423-7100  
(315) 422-9331 (fax)  
kgriffith@harrisbeach.com  
lwoodard@harrisbeach.com  
*Counsel for Lexon Insurance Co. and  
Bond Safeguard Insurance Co.*

-and-

Harris Beach PLLC  
Bruce L. Maas, Esq.  
99 Garnsey Road  
Pittsford, NY 14534  
(585) 419-8650  
(585) 419-8811 (fax)  
*Counsel for Lexon Insurance Co. and  
Bond Safeguard Insurance Co.*

-and-

LENHART PETIT  
William E. Shmidheiser, III  
90 North Main Street, Ste. 201  
PO Box 1287  
Harrisonburg, VA 22803  
(540) 437-3137  
(540) 437-3101 (fax)  
*Local Counsel for Lexon Insurance Co. and  
Bond Safeguard Insurance Co.*

**EXHIBIT A**  
**Asset Purchase Agreement**

**CONFIDENTIAL  
EXECUTION COPY**

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**A & G COAL CORPORATION**

**AND**

**TRUE ENERGY, LLC**

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

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**THIS ASSET PURCHASE AGREEMENT IS SUBJECT TO REVISION BY SELLER AND MUST BE KEPT CONFIDENTIAL IN ACCORDANCE WITH THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BETWEEN THE RECIPIENT OF THIS AGREEMENT AND SELLER UNTIL AND UNLESS BANKRUPTCY COURT APPROVAL OF THIS AGREEMENT IS SOUGHT AS CONTEMPLATED BY SECTION 7.6 OF THIS AGREEMENT.**

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of this \_\_\_\_ day of January \_\_\_, 2016, by and among A & G COAL CORPORATION, a Virginia corporation (the “Purchaser”), and TRUE ENERGY, LLC, a Delaware Limited Liability Company (“Seller”).

**RECITALS:**

A. Seller is the owner of certain real property and the owner of a certain mining permit and other assets that are held, utilized or available to Seller in connection with coal mining, processing, selling, shipping and related operations now or previously conducted by or on behalf of Seller in Wise County, Virginia (the “Mining Operations”), all as further described herein.

B. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Purchased Assets (as defined herein), pursuant to the terms and subject to the conditions set forth in this Agreement.

C. Seller desires to assign to Purchaser, and Purchaser desires to assume from Seller, the Assumed Liabilities (as defined herein), pursuant to the terms and subject to the conditions set forth in this Agreement.

D. Seller is a debtor and debtor in possession in a pending bankruptcy case under Chapter 11 of Title 11 of the United States Code, as amended (the “Bankruptcy Code”), which is being jointly administered for procedural purposes only with the case of *In re Xinerger, Ltd.*, Case No. 15-70444 (the “Bankruptcy Case”) and is pending in the United States Bankruptcy Court for the Western District of Virginia (the “Bankruptcy Court”). Seller intends to seek approval of the Bankruptcy Court and the issuance of appropriate orders for the Contemplated Transactions (as defined herein).

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1.**

Definitions

1.1 Defined Terms. The terms defined in this Article 1 shall for all purposes of this Agreement have the meanings specified below, unless the context expressly or by necessary implication otherwise requires:

“Accounts Receivable” means any and all accounts receivable, notes receivable and other amounts receivable owed to Seller (whether current or non-current) in respect of the Purchased Assets, together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon, including all causes of action pertaining to the collection of amounts

payable, or that may become payable, to Seller with respect to products sold or services performed with respect to the Purchased Assets on or prior to the Closing Date.

“**Affiliate**” means a Person which, directly or indirectly, alone or through one or more intermediaries, controls, or is controlled by, or is under common control with a specified Person. For purposes of this definition, the term “**control**” (including the terms “**controlled by**” and “**under common control with**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning specified in the preamble hereto.

“**Assumed Liabilities**” has the meaning specified in Section 3.1.

“**Assumption Agreement**” means the Assignment and Assumption Agreement to be executed and delivered by Purchaser and Seller at the Closing, substantially in the form of Exhibit A hereto.

“**Auction**” means the auction, if any, conducted by Seller pursuant to the Bidding Procedures Order for all or substantially all of the assets of Seller in the event a Qualified Bid (as defined in the Bidding Procedures Order) is timely received prior to the Bid Deadline (as defined in the Bidding Procedures Order).

“**Bankruptcy Case**” has the meaning specified in Recital D.

“**Bankruptcy Code**” has the meaning specified in Recital D.

“**Bankruptcy Court**” has the meaning specified in Recital D.

“**Bidding Procedures Order**” means the order entered by the Bankruptcy Court, on December 23, 2015, as Document No. 592 in the Bankruptcy Case, which, among other things, authorizes the Seller to solicit bids for the sale of all or substantially all of the assets of Seller pursuant to section 105(a), 363 and 365 of the Bankruptcy Code.

“**Bill of Sale**” means the Bill of Sale to be executed and delivered by Seller to Purchaser at the Closing, substantially in the form of Exhibit B hereto.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in Pike County, Kentucky.

“**Closing**” has the meaning specified in Section 4.2.

“**Closing Date**” means the date of the Closing.

“**Coal Inventory**” has the meaning specified in Section 2.1(e).

“**Confidentiality Agreement**” means the Engagement and Confidentiality agreement between the parties hereto dated September 16, 2015.

“**Contemplated Transactions**” means, collectively, the purchase and sale of the Purchased Assets, the assignment and assumption of the Assumed Liabilities, and the other transactions provided for herein and in the other Transaction Documents.

“**Contract**” means any contract, agreement, collective bargaining agreement, indenture, mortgage, note, bond, loan, instrument, lease, conditional sale contract, license, franchise, sales order, purchase order, understanding, commitment or other binding arrangement of every type and description.

“**Disputes**” means any dispute, controversy, difference or claims, written or oral.

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Excluded Liabilities**” has the meaning specified in Section 3.2.

“**Final Transfer Date**” has the meaning specified in Section 10.1.

“**Governmental Authority**” means any federal, state, local, foreign or other governmental, regulatory or administrative agency, political subdivision, department, commission, board, bureau, division, court, authority, body, tribunal or instrumentality.

“**Improvements**” has the meaning specified in Section 2.1(b).

“**Law**” means any and all federal, state, local and foreign statutes (civil and criminal), laws, statutes, ordinances, regulations, codes, rules, permits, judgments, directives, orders and decrees now or hereinafter in effect.

“**Leased Property**” has the meaning specified in Section 2.1(a).

“**Liability**” or “**Liabilities**” means all debts, adverse claims, liabilities and obligations, direct, indirect or contingent, including, without limitation, those arising under any Law, or imposed by any court or any arbitrator of any kind, character or description, whether accrued, absolute, known, unknown, secured or unsecured, fixed, contingent, disputed or otherwise, and those arising in connection with products sold by, or under Contracts, agreements (whether written or oral), leases, commitments or undertakings of, such party, whether incurred before or after the Closing.

“**Lien**” means any mortgage, deed of trust, lien, lease, conditional sale agreement, title retention agreement, security interest, pledge or any other encumbrances of any kind.

“**Material Adverse Effect**” means any change or effect that is materially adverse to the business, results of operations, assets, or liabilities related to the Purchased Assets, taken as a whole; *provided, however*, that in determining whether there has been a Material Adverse Effect, any adverse effect relating to or arising in connection with the following shall be disregarded: (i) the taking of any action or inaction permitted or relating to this Agreement or the announcement of this Agreement, (ii) any change or effect resulting from the announcement of this Agreement (including any action or inaction by the customers, suppliers, landlords, employees, consultants or competitors of Seller and its Affiliates as a result thereof), (iii) any change or effect resulting

from the Auction, the Bankruptcy Case, or any case commenced by Seller under the Bankruptcy Code, (iv) actions or omissions taken or not taken by or on behalf of Seller or any of its Affiliates at the request of Purchaser or its Affiliates, (v) actions taken by Purchaser or its Affiliates, other than as contemplated by this Agreement, (vi) failure of Seller or any of its Affiliates to meet any internal or published projections, forecasts, estimates or predictions, (vii) changes or conditions (including in accounting rules, Law, regulation or other interpretation) affecting the industry in which Seller operates including, without limitation, the market price for coal or the costs of producing coal, the financial or securities markets, or the economy in general, (viii) any matter of which Purchaser is aware on the date hereof (excluding any impairments to Permit Eligibility) or (ix) conditions caused by acts of terrorism or war (whether or not declared) or any natural or man-made disaster or acts of God.

“**Mining Operations**” has the meaning specified in Recital A.

“**Permit Eligible**” means neither Purchaser nor any of its owners, officers, or directors (i) are listed on either the Applicant Violator System established by the United States Department of Interior, Office of Surface Mining or the Applicant Violator System maintained by the Virginia Department of Mines, Minerals and Energy to implement the permit blocking provisions contained in Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 or the comparable Virginia statute, so as to permit block the Purchaser under Federal or Virginia Law thereby making Purchaser ineligible to receive additional surface mining permits or to accept a transfer of the Permits as required in Article 10.

“**Permit Renewal**” means the written renewal of Virginia DMLR Permit No. 1102056 to be issued by the Virginia Department of Mines, Minerals and Energy pursuant to the pending application of Seller.

“**Permits**” has the meaning specified in Section 2.1(d).

“**Permitted Liens**” means: (i) Liens for Taxes, special assessments or other governmental charges not yet due and payable or that are being contested in good faith, (ii) statutory Liens and rights of set-off of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, customs brokers or agencies, suppliers and materialmen, and other Liens imposed by Law, in each case, incurred in the ordinary course of business (iii) licenses of or other grants of rights to use intellectual property, (iv) Laws now or hereafter in effect relating to real property, easements and similar Liens which do not have a Material Adverse Effect on the current use by Seller of the Leased Property subject thereto, (v) all matters that would be disclosed on an accurate current survey or title report of the Leased Property that does not materially interfere with the current use by Seller of the Leased Property, and (vi) Liens which do not materially and adversely interfere with the current operation of the Mining Operations, taken as a whole.

“**Person**” means an individual, corporation, limited liability company, partnership, association, trust, joint venture or other entity or organization, including, without limitation, a Governmental Authority.

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Purchased Equipment**” has the meaning specified in Section 2.1(g).

“**Purchaser**” has the meaning specified in the preamble of this Agreement.

“**Purchaser Designee**” means a wholly owned subsidiary of Purchaser designated by Purchaser in writing to Seller prior to the Closing.

“**Purchaser’s Representatives**” means Purchaser’s accountants, officers, employees, counsel, financial advisors and other authorized representatives.

“**Related Party**” shall mean (i) any current or former director or officer of Seller; or (ii) any “insider” of Seller, as such term is defined in section 101(31) of the Bankruptcy Code.

“**Sale Order**” has the meaning specified in Section 8.7.

“**Seller**” has the meaning specified in the preamble of this Agreement.

“**Seller Benefit Plan**” means a material employment, consulting, severance, termination, retirement, profit sharing, bonus, incentive or deferred compensation, retention bonus or change in control agreement, pension, savings, retirement, life, health, disability, accident, medical, insurance, vacation, paid time off, long term care, or other employee compensation or benefit plan, program, arrangement, agreement, fund or commitment (including any “employee benefit plan” as defined in Section 3(3) of ERISA but excluding any stock option, restricted stock or other equity-based benefit plan), for the benefit of any director, officer or other Employee of Seller maintained or contributed to by Seller.

“**Seller’s Representatives**” means the accountants, officers, employees, counsel, financial advisors and other authorized representatives of Seller.

“**Tax**” or “**Taxes**” means: (i) any all taxes (whether federal, state, local or foreign) including, without limitation, net or gross income, gross receipts, net proceeds, profits, property, sales, use, capital stock, net worth, occupation, value added, ad valorem, transfer, franchise, recapture, excise, windfall, withholding, payroll, social security, workers’ compensation, unemployment compensation or employment taxes, tariffs, imposts, duties, levies, fees or governmental charges of any nature whatsoever, whether disputed or not, together with any interest, penalties or additions to tax imposed with respect to any of the foregoing, and (ii) any obligations under any agreements or arrangements with respect to any tax or taxes described in clause (i) above.

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

“**Transaction Documents**” means this Agreement, the Assumption Agreement, the Bill of Sale, and any other Contract to be entered into by or among any or all of the parties, as applicable, in connection with the Closing.

“**Transfer Taxes**” has the meaning specified in Section 11.2(a).

1.2 Construction. The terms “hereby,” “hereto,” “hereunder” and any similar terms as used herein refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The terms “including,” “includes” or similar terms when used herein shall mean “including, without limitation.” The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless otherwise indicated, references to (a) Articles, Sections, Schedules and Exhibits refer to Articles, Sections, Schedules and Exhibits of and to this Agreement and (b) references to \$ (dollars) are to United States Dollars.

**ARTICLE 2.**  
**Sale and Purchase of Assets**

2.1 Assets Purchased. Upon the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell, transfer, convey, assign and deliver to Purchaser, and Purchaser agrees to purchase, take, acquire and accept from Seller, at the Closing Date, all of Seller’s right, title and interest in and to certain of the assets, properties, privileges, claims, rights, titles and interests in, under and to the assets identified below, whether real, personal or mixed, tangible or intangible, whether identifiable or contingent, wherever situated or located (the “**Purchased Assets**”), in each case free and clear of all claims and Liens other than Permitted Liens, including any such assets acquired by Seller after the date hereof but prior to the Closing; provided, however, that the Purchased Assets shall not include any Excluded Assets. The Purchased Assets shall consist of the following (except to the extent listed or otherwise included as an Excluded Asset):

(a) all interests of Seller in the real property leases (the “**Leased Property**”) and described on Schedule 2.1(a) hereto, together with all of the rights, benefits, privileges, easements, rights-of-way, licenses, tenements, hereditaments and appurtenances thereon or in any way appertaining thereto and all Improvements located thereon or thereunder and any options or rights to acquire any additional real property interests or rights which pertain to the Purchased Assets, if any;

(b) all right, title and interest of Seller in and to any and all mines, buildings, fixtures, structures, and other improvements (“**Improvements**”), located on or under the Leased Property;

(c) all books and records of Seller pertaining to the ownership or other interests of Seller in the Purchased Assets, wherever located, including all permitting and reclamation records and similar materials, reserve reports, engineering studies and similar data and records regarding title to the Purchased Assets, subject to the rights of Seller under Section 7.4(c) hereof;

(d) subject to the provisions of Section 7.7 and Article 10 hereof, the specific mining permits, surface disturbance permits and other environmental permits, licenses and other governmental approvals described on Schedule 2.1(d) (the “**Permits**”). Notwithstanding the

foregoing, and for the avoidance of doubt, the Purchased Assets shall not include any cash or cash equivalent collateral posted by Seller or its Affiliates with any bonding entity related to any Permits;

(e) all other coal inventory located on the Leased Property as of the Closing Date, if any (“**Coal Inventory**”), and all raw materials, components and other parts, works-in-process and finished goods;

(f) all pre-paid recoupable, royalty payments paid by Seller in relation to the Leased Property; and

(g) the mobile equipment listed on Schedule 2.1(g) (the “**Purchased Equipment**”).

2.2 Excluded Assets. The following assets (the “**Excluded Assets**”) are excluded from the Purchased Assets and shall not be purchased and sold hereunder and no definition of Purchased Assets shall be deemed to include any Excluded Assets:

(a) the cash, cash equivalents, bank accounts, securities, investments, notes receivable and other advances receivable and Accounts Receivable of Seller as of the Closing Date, including, but not limited to cash, cash bonds, certificates of deposit, and cash equivalents securing or otherwise serving as collateral for any performance and reclamation bonds related to any of the Permits;

(b) the minutes and general corporate records of Seller and Seller’s other records not pertaining to the Leased Property or the Purchased Assets;

(c) Seller’s rights under this Agreement, and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof;

(d) all of Seller’s machinery, equipment (excluding the Purchased Equipment), vehicles, materials, spare parts, tools, molds, computers, management information systems (including all software and hardware related thereto), telephone systems, furniture, fixtures and supplies at or related to the Mining Operations, together with all manufacturers’ or other warranties pertaining to the same;

(e) all of Seller’s mining and other supplies (including office supplies), tools, spare parts, fuel and explosives on hand as of the date hereof located at or near the Mining Operations or held for use in the Mining Operations;

(f) all of Seller’s open purchase orders with customers and suppliers of the Mining Operations;

(g) the goodwill, customer relationships and other intangible property relating to any of the Purchased Assets, the Assumed Liabilities or the Mining Operations;

(h) all rights, claims and causes of action against any Related Party and all rights, claims and causes of action under director and officer, fiduciary, employment practices and similar insurance policies maintained by Seller;

(i) any shares of capital stock or other equity interests owned by Seller, including any shares of capital stock or other equity interests of Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of Seller;

(j) any Seller Benefit Plan or stock option, restricted stock or other equity-based benefit plan of Seller, and Seller's right, title and interest in any assets of or relating thereto;

(k) any Tax receivable or Tax refund relating to the Purchased Assets with respect to any period ending on or prior to the Closing;

(l) any and all claims and causes of actions which Seller have or may have as of the Closing against Persons other than Seller (regardless of whether or not such claims and causes of action have been asserted by Seller) and all rights of indemnity, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, possessed by Seller as of the Closing (regardless of whether such rights are currently exercisable), including, but not limited to, all preference or avoidance claims and actions of Seller (including, without limitation, any such claims and actions arising under Sections 544, 545, 546, 547, 548, 549, 550 and 551 of the Bankruptcy Code), any inter-company claims as between Seller and Xinergy, Ltd. or its Affiliates, and all other causes of action arising under Chapter 5 of the Bankruptcy Code;

(m) any and all insurance deposits, advance payments and unearned premiums;  
and

(n) assets of the Mining Operations that are also used in the other businesses of Seller.

### 2.3 Risk of Loss and Compliance with Law.

(a) Legal and equitable title and risk of loss with respect to the Purchased Assets shall not pass to Purchaser until such Purchased Assets are transferred at the Closing.

(b) Notwithstanding any language in this Agreement to the contrary, nothing in this Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory Liability (including but not limited to for reclamation and mitigation and any associated long-term protection requirements) to a Governmental Authority that any entity would be subject to as the owner or operator of the Leased Property after the Closing Date; provided, however, that the foregoing shall not limit, diminish or otherwise alter the Seller's or Purchaser's defenses, claims, causes of action, or other rights under applicable non-bankruptcy Law with respect to any Liability that may exist to a Governmental Authority as the owner or operator of the Leased Property. Nothing in this Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the

discontinuation of any obligation thereunder (including without limitation the transfer of Permits under Section 2.1(d)), without compliance with all applicable legal requirements under all applicable Laws. Nothing in this Agreement divests any tribunal of any jurisdiction it may have under any Law to interpret the Agreement or the Sale Order or to adjudicate any defense asserted under any of the foregoing, subject to the Seller's and Purchaser's rights to assert in that forum that any such Laws are not in fact police or regulatory Law or that such enforcement is impermissible under applicable Law.

2.4 Sale Free and Clear. Seller acknowledges and agrees, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising claims or Liens of, against or created by Seller or its bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, other than the Permitted Liens, if any, and the Assumed Liabilities, shall be fully released from and with respect to the Purchased Assets. On the Closing Date, the Purchased Assets shall be transferred to Purchaser free and clear of all claims and Liens other than (a) the Permitted Liens, if any, and (b) the Assumed Liabilities to the fullest extent permitted by Section 363 of the Bankruptcy Code.

2.5 "As Is, Where Is". THE PURCHASED ASSETS ARE BEING ACQUIRED BY PURCHASER ON AN "AS IS, WHERE IS" BASIS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER AND ITS PROFESSIONALS ARE MAKING NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT THOSE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE 5 OF THIS AGREEMENT. IT IS UNDERSTOOD THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, PURCHASER IS SOLELY RELYING ON ITS OWN DUE DILIGENCE AND IS ACQUIRING THE PURCHASED ASSETS "AS IS, WHERE IS" AND "WITH ALL FAULTS" WITHOUT ANY IMPLIED REPRESENTATION, WARRANTY OR GUARANTEE AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, OR AS TO THE CONDITION OF THE PURCHASED ASSETS, OR AS TO THE CONDITION, SIZE, EXTENT, QUANTITY, TYPE OR VALUE OF SUCH PROPERTY, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL SUCH IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES.

### ARTICLE 3.

#### Assumption of Obligations and Liabilities

3.1 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, and in partial consideration of the transfer to Purchaser of the Purchased Assets, Seller shall assign to Purchaser, and Purchaser shall assume at the Closing and as of the Closing Date, all of the Liabilities of Seller to the extent such obligations relate to the Purchased Assets and such Liabilities are not Excluded Liabilities (collectively, the "**Assumed Liabilities**"), including any Liabilities relating to such Assumed Liabilities that result solely from the action or inaction of Purchaser and arise from events occurring on and after the Closing Date. Without limiting the generality of the foregoing, the Assumed Liabilities shall include the following (except to the extent listed or otherwise included as an Excluded Liability):

(a) all obligations, including, but not limited to, reclamation and environmental obligations, existing or arising under the Permits, regardless of whether such obligations arise from activities occurring prior to or after the Closing Date; and

(b) the obligation of Purchaser to obtain replacement performance or reclamation bonds related to any Permits.

3.2 Excluded Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume, or in any way be liable or responsible for, whether arising by contract, tort, operation of Law or otherwise, any Liabilities of Seller that do not relate to the Purchased Assets (collectively, the “**Excluded Liabilities**”). Except as specifically provided in Section 3.1, Purchaser shall not assume and Seller shall retain all Excluded Liabilities. Subject to Bankruptcy Court approval, the Excluded Liabilities shall include, but not be limited to, all Liens relating to the Leased Property; all obligations or Liabilities relating to all Contracts, leases, and equipment; all obligations or Liabilities with respect to workers’ compensation and occupational disease (including, but not limited to, pneumoconiosis or black lung); payments and benefits related to the Leased Property or Purchased Assets under all past or existing Laws, including, but not limited to, any such obligations and Liabilities of Seller with respect to any of Seller’s predecessors, all accrued post-petition labor expenses, employee wages (salary, benefits and vacation), production Taxes, and royalties, in each case which accrued prior to the Closing Date, and Seller agrees that it shall retain sole responsibility for all such claims, payments and benefits with respect to all Persons, filed prior to the Closing, as well as any future filings that relate back to conditions or events that occurred when Seller had ownership and/or control of the Purchased Assets.

**ARTICLE 4.**  
**Consideration; Closing**

4.1 Purchase Price.

(a) The aggregate cash price for the Purchased Assets to be paid by Purchaser to Seller shall be \$125,000.00 (the “**Purchase Price**”). As additional consideration for the Purchased Assets, and subject to the terms and conditions of this Agreement, and the entry and effectiveness of the Sale Order, at the Closing, Purchaser shall assume the Assumed Liabilities.

(b) Purchaser shall pay the Purchase Price in cash or immediately available funds by wire transfer at the Closing to an account designated in writing by Seller.

4.2 Closing. The sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities contemplated hereby (the “**Closing**”) shall occur electronically or via facsimile commencing at 11:00 a.m. local time on a convenient date chosen by the parties within five (5) days after the latest of (i) entry of the Sale Order if the Sale Order is not stayed prior to such date, (ii) the lifting, dissolution or removal of any stay of the Sale Order or (iii) after the issuance of the Permit Renewal; *provided, however,* that if the parties mutually agree to a physical closing, then the Closing shall take place at the offices of A & G Coal Corporation, located at 302 S. Jefferson Street, Suite 600, Roanoke, Virginia 24011 or at such other place as

the parties agree in writing. The Closing shall be deemed to have occurred on the opening of business on the Closing Date.

4.3 Deliveries by Seller. At or prior to the Closing, Seller shall deliver the following to Purchaser:

- (a) the Bill of Sale, duly executed by Seller;
- (b) the Assignment and Assumption Agreement, duly executed by Seller;
- (c) such other instruments of assignment or conveyance duly executed by Seller as shall be reasonably necessary to transfer the Purchased Assets to Purchaser in accordance with this Agreement;
- (d) a copy of the Sale Order as entered by the Bankruptcy Court;
- (e) a copy of the Permit Renewal;
- (f) the certificate contemplated by Section 8.6;
- (g) a properly executed certificate of non-foreign status prepared in accordance with Treasury Regulations Section 1.1445-2(b) from Seller; and

4.4 Deliveries by Purchaser. At or prior to the Closing, Purchaser shall deliver the following to Seller:

- (a) the Purchase Price due at Closing, as set forth in Section 4.1(a);
- (b) certified copies of the resolutions duly adopted by Purchaser's board of directors authorizing the execution, delivery and performance of this Agreement, each Transaction Document to which it is a party and each of the Contemplated Transactions;
- (c) written evidence reasonably acceptable to Seller that the Purchaser is Permit Eligible;
- (d) the Assumption Agreement, duly executed by Purchaser;
- (e) reclamation bonding commitments from qualified sureties sufficient to replace all reclamation bonds of Seller relating to the Permits associated with the mining activity to take place on the Leased Property;
- (f) the letters of credit, guaranty agreements, collateral, cash or other payment and/or documents required by Section 7.7 of this Agreement for the release of Seller's obligations, security and collateral securing the Liabilities of Seller relating to the Mining Operations;
- (g) such other instruments of assumption duly executed by Purchaser as shall be reasonably necessary for Purchaser to assume the Assumed Liabilities in accordance with this Agreement; and

(h) the certificate contemplated by Section 9.6.

**ARTICLE 5.**  
**Representations and Warranties of Seller**

Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

5.1 Organization, Standing and Corporate Power. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Prior to the commencement of the Bankruptcy Case, Seller was duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a Material Adverse Effect.

5.2 Authority Relative to this Agreement. Subject to the applicable provisions of the Bankruptcy Code, Seller has all necessary limited liability company or similar authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and, upon entry and effectiveness of the Sale Order in accordance with the terms hereof, will have all necessary corporate or similar authority to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the other Transaction Documents to which Seller is party and the consummation of the Contemplated Transactions have been duly and validly authorized by the board of directors or equivalent governing body of Seller, and no other company or similar proceedings on the part of such Seller are necessary to authorize this Agreement or the other Transaction Documents to which it is party or to consummate the Contemplated Transactions (except as otherwise required by the Bankruptcy Case). This Agreement has been duly and validly executed and delivered by Seller, and, upon its execution and delivery in accordance with the terms of this Agreement, each of the other Transaction Documents to which Seller is party will have been duly and validly executed and delivered by Seller, and assuming that this Agreement and the other Transaction Documents to which it is party constitute valid and binding agreements of Purchaser to the extent that it is a party thereto, and, subject to the entry and effectiveness of the Sale Order and the execution and delivery of such other Transaction Documents in accordance with the terms thereof, this Agreement and the other Transaction Documents constitute valid and binding agreements of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar Laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3 No Violations. Except to the extent excused by or unenforceable as a result of the filing of the Bankruptcy Case, except for the entry and effectiveness of the Sale Order, and, subject to the Permit Renewal, neither the execution and delivery of this Agreement nor the sale by Seller of any Purchased Asset or the assignment by Seller of any Assumed Liabilities pursuant to this Agreement will (with or without notice or lapse of time) conflict with or result in any breach of (a) any provision of such Seller's Certificate of Incorporation or Bylaws (or similar organizational documents) or (b) any Law applicable to Seller or its

properties or assets, except as would not reasonably be expected to result in a Material Adverse Effect.

5.4 Title to Assets; Real Property.

(a) Seller has good and valid title to all tangible personal property that is included in the Purchased Assets, except as would not reasonably be expected to result in a Material Adverse Effect.

(b) Except as would not reasonably be expected to result in a Material Adverse Effect, Seller is the Lessee to the Leased Property and maintains rights sufficient to conduct the Mining Operations as currently conducted, assuming the timely discharge of all obligations owing under or related to the Properties.

**ARTICLE 6.**  
**Representations and Warranties of Purchaser**

Purchaser represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

6.1 Organization, Standing and Corporate Power. Purchaser is a corporation or other entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Purchaser is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary.

6.2 Authority Relative to this Agreement. Purchaser has all necessary corporate or similar authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and has all necessary corporate or similar authority to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the other Transaction Documents to which Purchaser is party and the consummation of the Contemplated Transactions have been duly and validly authorized by the board of directors or equivalent governing body of Purchaser, and no other corporate or similar proceedings on the part of Purchaser are necessary to authorize this Agreement or the other Transaction Documents to which it is party or to consummate the Contemplated Transactions. This Agreement has been duly and validly executed and delivered by Purchaser, and, upon its execution and delivery in accordance with the terms of this Agreement, each of the other Transaction Documents to which Purchaser is party will have been duly and validly executed and delivered by Purchaser, and assuming that this Agreement and the other Transaction Documents to which it is party constitute valid and binding agreements of Seller to the extent that Seller is a party thereto, and, subject to the execution and delivery of such other Transaction Documents in accordance with the terms thereof, this Agreement and the other Transaction Documents to which it is a party constitute valid and binding agreements of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar Laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.3 No Violations. Neither the execution and delivery of this Agreement nor the purchase by Purchaser of any Purchased Asset or the assumption by Purchaser of any Assumed Liability pursuant to this Agreement will (with or without notice or lapse of time) conflict with or result in any breach of (a) any provision of Purchaser's Certificate of Incorporation or Bylaws (or similar organizational documents) or (b) any Law applicable to Purchaser or its properties or assets.

6.4 Permit Eligible. As of the Closing Date, Purchaser shall be Permit Eligible and is otherwise eligible pursuant to all applicable federal, state and local Laws to receive the Permits as contemplated by this Agreement.

6.5 Financing. As of the date of this Agreement and on the Closing Date, Purchaser has and will have sufficient cash in immediately available funds to pay the Purchase Price due at Closing and all of the fees, costs and expenses incurred in connection with the Contemplated Transactions by Purchaser (without giving effect to any unfunded financing, regardless of whether any such financing is committed). As of the Closing Date, Purchaser shall have adequate financial resources to pay or otherwise satisfy the Assumed Liabilities assumed by Purchaser. From and after the Closing Date, the Purchaser will have sufficient funds to pay the Purchase Price as and when due under the terms of this Agreement.

6.6 Purchased Assets "AS IS"; Certain Acknowledgements.

(a) Purchaser agrees, warrants and represents that (i) Purchaser is purchasing the Purchased Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Purchaser's own investigation of the Purchased Assets and (ii) neither Seller nor any Seller's Representative has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets or the Mining Operations, or the physical condition of the Purchased Assets. Purchaser further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Seller and Purchaser after good-faith arms-length negotiation in light of Purchaser's agreement to purchase the Purchased Assets "AS IS" and "WITH ALL FAULTS." Purchaser agrees, warrants and represents that, except as set forth in this Agreement, Purchaser has relied, and shall rely, solely upon its own investigation of all such matters, and that Purchaser assumes all risks with respect thereto. EXCEPT AS SET FORTH IN ARTICLE 5 OF THIS AGREEMENT, SELLER MAKES NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS.

(b) Purchaser acknowledges and agrees that it (i) has had an opportunity to discuss the Mining Operations with the management of Seller and has been afforded the opportunity to ask questions of and receive answers from management of Seller, (ii) has had reasonable access to the books and records of Seller, (iii) has conducted its own independent investigation of the Mining Operations, the Purchased Assets, the Assumed Liabilities and the Contemplated Transactions. In connection with the investigation by Purchaser, Purchaser has received or may receive from Seller certain projections, forward-looking statements and other

forecasts and certain business plan information. Purchaser acknowledges and agrees neither Seller nor any other Person will have or be subject to any Liability or indemnification obligation to Purchaser or any other Person resulting from the distribution to, or use by, Purchaser or any of its Affiliates or any Purchaser Representative of any information provided to Purchaser or any of its Affiliates or any Purchaser Representative by Seller or any Seller's Representative, including any information, documents, projections, forward-looking statements, forecasts or business plans or any other material made available in any "data room," any confidential information memoranda or any management presentations in expectation of or in connection with the Contemplated Transactions.

(c) Except for the representations and warranties contained in Article 5, Purchaser acknowledges that none of Seller nor any other Person on behalf of Seller makes any express or implied representation or warranty with respect to Seller, the Purchased Assets, the Mining Operations or the Assumed Liabilities, or with respect to any information provided to Purchaser or any of its Affiliates or any Purchaser Representative, and Seller hereby disclaims any other representations or warranties made by Seller or any other Person with respect to the execution and delivery of this Agreement, the purchase and sale of the Purchased Assets, the assignment and assumption of the Assumed Liabilities or the Contemplated Transactions. Purchaser has not relied on any representation, warranty or other statement by any Person on behalf of Seller other than the representations and warranties of Seller expressly contained in Article 5. Purchaser acknowledges and agrees that the representations and warranties set forth in Article 5 are made solely by Seller, and no Affiliate of Seller or any Seller's Representative or other Person shall have any responsibility or Liability related thereto.

**ARTICLE 7.**  
**Covenants of the Parties**

7.1 Conduct of Business Pending Closing. Seller shall after the date hereof, in each case taking into account the Bankruptcy Case:

(a) carry on the Mining Operations substantially in the same manner as it has prior to the date hereof except as required by Law;

(b) maintain normal maintenance of the Purchased Assets in similar order and conditions, subject to ordinary wear and tear from and after the date hereof; *provided* that there shall be no obligation to repair or replace any Purchased Asset;

(c) use its commercially reasonable efforts to maintain and preserve the Mining Operations and its operations, properties, assets, rights and interests (including, without limitation, the Purchased Assets);

(d) use commercially reasonable efforts to maintain compliance with all Permits and Laws applicable to Seller or the Purchased Assets or Mining Operations; and,

(e) use commercially reasonable efforts to obtain the Permit Renewal.

7.2 Prohibited Activities. After the date of this Agreement, Seller shall not without the prior written consent of Purchaser:

(a) enter into any Contract or commitment to make any capital expenditures relative to the Purchased Assets, except in the ordinary course of business consistent with past practice or as authorized pursuant to the Sale Order;

(b) sell, assign, lease or otherwise transfer or dispose of any of the Purchased Assets, except the sale of Coal Inventory in the ordinary course of business consistent with past practices or as authorized pursuant to the Sale Order;

(c) amend or terminate any Permit or other right of Seller relating to the Purchased Assets except in the ordinary course of business of the Seller or as required by applicable Law;

(d) permit any new Lien to be created, assumed or suffered to exist on the Purchased Assets, except (i) in connection with the existing or any replacement Debtor-in-Possession financing, as approved by the Bankruptcy Court, (ii) in connection with any financing put in place by Seller and its Affiliates as a part of its plan for the reorganization of Seller and its Affiliates and their discharge from the Bankruptcy Case and (iii) Permitted Liens;

(e) enter into any other transaction outside the ordinary course of Seller's business relating to the Purchased Assets other than as authorized pursuant to the Sale Order; or

(f) agree to do any of the foregoing.

7.3 Notification of Certain Matters. Prior to the Closing, Seller shall give prompt written notice to Purchaser of any failure of Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by Seller prior to or at the Closing. Prior to the Closing, Purchaser shall give prompt written notice to Seller of any failure of Purchaser to comply with or satisfy any covenant, condition, or agreement to be complied with or satisfied by it hereunder prior to or at the Closing.

7.4 Access to and Delivery of Information; Maintenance of Records.

(a) Between the date of this Agreement and the Closing Date, to the extent permitted by Law, Seller shall, during ordinary business hours and upon reasonable prior notice (i) give Purchaser and Purchaser's Representatives reasonable access to Seller's accountants, counsel, financial advisors and other authorized outside representatives, officers and senior management in its principal places of business, all books, records and other documents and data in the locations in which they are normally maintained, and all offices and other facilities of Seller; *provided that*, in connection with such access, Purchaser and Purchaser's Representatives shall minimize disruption to the Mining Operations, the Bankruptcy Case and the Auction; *provided further* that in connection with Purchaser's and/or Purchaser's Representatives' access of such offices and other facilities, Purchaser and/or Purchaser's Representatives shall be accompanied at all times by a representative of Seller unless Seller otherwise agrees, shall not materially interfere with the use and operation of such offices and other facilities, and shall comply with all reasonable safety and security rules and regulations for such offices and other facilities, (ii) permit Purchaser and Purchaser's Representatives to make such reasonable inspections and copies of all books, records and other documents of Seller related to the Mining Operations as Purchaser may reasonably request, and (iii) furnish Purchaser with such

reasonably available financial and operating data and other information, in each case relating to the Mining Operations, as Purchaser and Purchaser's Representatives may from time to time reasonably request. Notwithstanding anything to the contrary set forth in this Section 7.4(a), no access to, or examination of, any information or other investigation shall be permitted to the extent that it would require disclosure of information subject to attorney-client or other privilege.

(b) Between the Closing Date and the closing of the Bankruptcy Case, Purchaser and Purchaser's Representative shall have reasonable access to Seller's books and records relating to the Mining Operations in the possession of Seller to the extent that (i) such books, records and information relate to any period prior to the Closing Date and are not already in the possession of Purchaser or Purchaser's Representatives and (ii) such access is reasonably required by Purchaser in connection with the Assumed Liabilities or the Purchased Assets. Such access shall be afforded by Seller upon receipt of reasonable advance notice and during normal business hours. If Seller shall desire to dispose of any books and records constituting Excluded Assets prior to its dissolution, Seller shall (x) give Purchaser at least ten (10) days' prior written notice of such disposition and (y) give Purchaser a reasonable opportunity, at Purchaser's expense, to segregate and remove such books and records as Purchaser may select and/or to copy at Purchaser's sole cost and expense such books and records as Purchaser may select.

(c) Between the Closing Date and the closing of the Bankruptcy Case, Seller and Seller's Representatives shall have reasonable access to all of the books and records of Seller delivered to Purchaser at Closing or otherwise pursuant to this Agreement, to the extent that (i) such books, records and information relate to any period prior to the Closing Date and (ii) such access is reasonably required by Seller in connection with the Bankruptcy Case, the Excluded Liabilities, or the Excluded Assets for periods prior to the Closing. Such access shall be afforded by Purchaser upon receipt of reasonable advance notice and during normal business hours, and Purchaser shall permit Seller and Seller's Representatives, assigns and designees to make such reasonable copies of such books, records and information as they may reasonably request.

(d) All information obtained by Purchaser or Purchaser's Representatives pursuant to this Section 7.4 shall be subject to the terms of the Confidentiality Agreement.

7.5 Further Assurances. The parties hereto agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary to carry out the Contemplated Transactions, including, without limitation, to transfer, convey, assign and deliver to Purchaser and protect Purchaser's right, title and interest in any of the Purchased Assets, or to enable Purchaser to exercise and enjoy any or all of the rights and benefits of Seller with respect thereto. Nothing in this Section 7.5 shall (a) require Seller to make any expenditure or incur any obligation on its own or on behalf of Purchaser, (b) prohibit Seller from ceasing operations or winding up its affairs following the Closing, or (c) prohibit Seller from taking such actions as are necessary to conduct the Auction, as are permitted by the Bankruptcy Court or as would otherwise be permitted under Section 7.1.

7.6 Submission for Bankruptcy Court Approval.

(a) Seller shall give notice under the applicable Bankruptcy Code and/or Bankruptcy Rules of the request for the approval of the Contemplated Transactions and the hearing thereon to all Persons entitled to such notice, including all Persons that have asserted Liens in the Purchased Assets, and other appropriate notice, including such additional notice as the Bankruptcy Court shall direct or as Purchaser may reasonably request. Seller shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Purchaser prior to their filing with the Bankruptcy Court for Purchaser's prior review.

(b) If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the Contemplated Transactions shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order or other such order), subject to rights otherwise arising from this Agreement, Seller and Purchaser shall use their commercially reasonable efforts to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

(c) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the Contemplated Transactions are consummated, Seller is permitted to cause its representatives and Affiliates to initiate contact with any Person in connection with, or solicit or encourage submission of, a Qualifying Bid (as defined in the Bidding Procedures Order) to be submitted at the Auction by any Person. In addition, Seller shall, in an effort to encourage submission of Qualifying Bids at the Auction, respond to any inquiries or offers to purchase all or any part of the Purchased Assets and perform any and all other acts related thereto that are required under the Bankruptcy Code or other applicable Law, including, without limitation, supplying information relating to the business and the assets of Seller to prospective purchasers.

7.7 Substitution of Letters of Credit; Payments Received. On the Closing Date, Purchaser shall, at its sole cost and expense, (a) replace any letters of credit, guaranty agreements and/or collateral, cash or otherwise, that secure any Liabilities of Seller relating to the Mining Operations, which are described on Schedule 7.7 hereto, and (b) cause such letters of credit, guaranty agreements and/or collateral, cash or otherwise to be released and returned to Seller. In the event the performance of this Section 7.7 by Purchaser must occur after the Closing Date due to practical considerations, Purchaser shall provide Seller with cash collateral, a letter of credit or other surety for the benefit of Seller in the amount of the collateral of Seller on deposit with any third party with respect to the bonds associated with the Permits. Upon the performance of the requirements of this Section 7.7 by Purchaser such cash collateral, letter of credit or other surety delivered by Purchaser for the benefit of Seller shall be returned to Seller. In the event of a breach by Purchaser in the performance of this Section 7.7 or Article 10 of this Agreement, Seller shall be entitled to retain such cash collateral or draw upon such letter of credit or other surety. If necessary, Seller and Purchaser shall enter into a further written agreement in good faith to set forth the detailed terms and conditions for the implementation of the provisions of this Section 7.7 and Article 10 of this Agreement.

**ARTICLE 8.**  
**Conditions Precedent to Obligations of Purchaser**

The obligations of Purchaser with respect to actions to be taken on the Closing Date are subject to satisfaction or written waiver by Purchaser on or prior to the Closing Date of all of the following conditions:

8.1 Performance of Obligations. Unless waived in writing by Purchaser in its sole discretion, all of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing shall have been duly performed or complied with in all material respects; all deliveries to be made by Seller at Closing pursuant to Section 4.3 shall have been made.

8.2 No Pending Action. No injunction, ruling, award, writ or restraining order shall be in effect prohibiting any of the Contemplated Transactions.

8.3 Consents and Approvals. All Bankruptcy Court and Governmental Authority consents and approvals of this Agreement (other than those consents required under Section 10.1 hereof), the Contemplated Transactions and the Transaction Documents, in each case which are necessary for the consummation of the Contemplated Transactions, shall have been obtained and made.

8.4 Representations and Warranties. The representations and warranties of Seller set forth in Article 5 (disregarding for these purposes any exception in such representations and warranties relating to materiality or a Material Adverse Effect) shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date (except for those representations and warranties which address matters only as of an earlier date in which case such representation or warranty shall have been true and correct as of such earlier date), except for such failures to be true and correct as would not reasonably be expected to have a Material Adverse Effect.

8.5 No Material Adverse Effect. No event, proceeding, development or circumstance shall have occurred with respect to Seller which has had or will have a Material Adverse Effect.

8.6 Certificate of Seller. Purchaser shall have received a certificate from an officer of Seller to the effect that, to such officer's knowledge, the conditions set forth in this Article 8 have been satisfied.

8.7 Entry of Sale Order. An order shall have been entered by the Bankruptcy Court in the Bankruptcy Case, or by such other court of competent jurisdiction as is exercising jurisdiction over such case at the time of entry of such order, which order shall approve the Contemplated Transactions and provide for the transfer of Purchased Assets free and clear of claims and Liens other than Permitted Liens pursuant to the Bankruptcy Code and shall have been in form and content reasonably satisfactory to Purchaser (the "**Sale Order**").

8.8 Permit Renewal. The Permit Renewal shall have been issued by the Virginia Department of Mines, Minerals and Energy.

**ARTICLE 9.**  
**Conditions Precedent to Obligations of Seller**

The obligations of Seller with respect to actions to be taken on the Closing Date are subject to the satisfaction or written waiver of Seller on or prior to the Closing Date of the following conditions:

9.1 Performance of Obligations. Unless waived in writing by Seller in its sole discretion, all of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing shall have been duly performed or complied with in all material respects; all deliveries to be made by Purchaser at Closing pursuant to Section 4.4 shall have been made.

9.2 No Pending Action. No injunction, ruling, award, writ or restraining order shall be in effect prohibiting any of the Contemplated Transactions.

9.3 Consent and Approvals. All Bankruptcy Court and Governmental Authority consents and approvals of this Agreement, the Contemplated Transactions and the Transaction Documents, in each case which are necessary for the consummation of the Contemplated Transactions, shall have been obtained and made.

9.4 Permit Renewal. The Virginia Department of Mines, Minerals and Energy shall have approved and issued the Permit Renewal.

9.5 Representations and Warranties. The representations and warranties of Purchaser set forth in Article 6 shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date (except for those representations and warranties which address matters only as of an earlier date in which case such representation or warranty shall have been true and correct as of such earlier date).

9.6 Certificate of Purchaser. Seller shall have received a certificate from an officer of Purchaser to the effect that, to such officer's knowledge, the conditions set forth in this Article 9 have been satisfied.

9.7 Entry of Sale Order. The Sale Order shall have been entered by the Bankruptcy Court in the Bankruptcy Case, or by such other court of competent jurisdiction as is exercising jurisdiction over such case at the time of entry of such order.

**ARTICLE 10.**  
**Permits**

10.1 Transfer of Permits. On or prior to the Closing Date, Purchaser shall prepare, and the parties shall submit following review thereof by Seller, the appropriate permit transfer applications to the appropriate Governmental Authorities and shall thereafter take all other necessary actions to cause the Permits to be transferred to Purchaser or Purchaser's designee as quickly as possible, but in no event later than ninety (90) days after the Closing Date (the "**Final Transfer Date**"). In connection with such transfer, Purchaser or its designee shall

post its own performance and reclamation bonds to replace the bonds of Seller at the earliest time provided for in the permit transfer procedure.

10.2 Final Transfer Date. During the period between the Closing Date and the final transfer of the Permits to Purchaser, Purchaser is prohibited from conducting any Mining Operations or engaging in any activities related to the Purchased Assets requiring Permits until the Permits have been properly and fully transferred to Purchaser or Purchaser's designee; provided, however, during such time Purchaser shall be responsible for maintaining the Permits and taking any corrective actions required thereunder at Purchaser's expense. The Purchaser shall provide evidence reasonably acceptable to Seller demonstrating that the Permits have been transferred to Purchaser or Purchaser's designee as soon as possible after the Closing, but no later than the Final Transfer Date.

10.3 Post-Closing Obligations; Indemnity. Notwithstanding anything set forth in this Article 10 or otherwise contained in this Agreement, Purchaser shall be solely responsible following the Closing Date for compliance with all performance standards under the Laws of the Commonwealth of Virginia related to the Permits. Purchaser shall indemnify and defend Seller and hold it harmless from and against any and all Liabilities arising from (i) Purchaser's violation of this Article 10 and/or (ii) Purchaser's failure to assume and satisfy in full, as and when required pursuant to their terms or by Governmental Authority, the Assumed Liabilities.

**ARTICLE 11.**  
**Tax Matters**

11.1 [Reserved].

11.2 Tax Matters.

(a) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax payable in connection with the sale or transfer of the Purchased Assets and the assumption of the Assumed Liabilities and not exempted under the Sale Order or by Section 1146(a) of the Bankruptcy Code ("**Transfer Taxes**") shall be borne by Purchaser. Seller and Purchaser shall use their commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Purchased Assets from any such Transfer Taxes. Purchaser shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes to the extent permitted under applicable Tax Law. Purchaser shall provide reimbursement for any Tax described in this Section 11.2 that is paid by Seller.

(b) All real property, personal property and other ad valorem Taxes with respect to the Purchased Assets that are payable after the Closing Date shall be paid by Purchaser.

(c) Seller shall timely prepare (with the assistance of Purchaser reasonably requested by Seller) and file the federal income Tax Return and all state income Tax Returns that include the operations of the Purchased Assets through the day prior to the Closing Date and all other Tax Returns for periods ending on or before the Closing Date (and pay all Taxes shown therein). Purchaser shall timely prepare and file (with the assistance of Seller reasonably

requested by Purchaser) all other Tax Returns attributable to the operations of the Purchased Assets that are required to be filed with respect to any period ending on or after the Closing Date.

(d) Seller at its own expense shall have responsibility and authority to conduct, respond to, contest and settle all matters relating to any Tax Return, action or proceeding which may subject Seller to Taxes for which Seller would be liable under this Agreement. Purchaser agrees to timely execute upon the request of Seller, any documents or powers reasonably necessary for Seller to assume responsibility and authority to conduct, respond to, contest and settle all matters relating to any action or proceeding which may subject Seller to any Taxes for which Seller would be liable under this Agreement.

(e) Purchaser agrees to promptly, upon the request of Seller, make available to Seller all work papers and records (or copies thereof) and such other information relating to the Purchased Assets, as well as the services of any personnel, as are reasonably required by Seller to (i) prepare and file any and all Tax Returns, which Seller is required to file and/or (ii) to conduct any and all audits, actions, proceedings or other Tax determinations.

**ARTICLE 12.**  
**Termination**

12.1 Termination. This Agreement may be terminated at any time prior to the Closing by:

- (a) mutual written consent of Seller and Purchaser;
- (b) Seller or Purchaser, if:

(i) there shall be any Law, other than those relating to permit eligibility under State or federal Law, that makes consummation of the Contemplated Transactions illegal or otherwise prohibited (unless the consummation of the Contemplated Transactions in violation of such Law would not reasonably be expected to have a Material Adverse Effect); or

(ii) consummation of the Contemplated Transactions would violate any order, decree or judgment of the Bankruptcy Court or any other Governmental Authority having competent jurisdiction; *provided* that the party seeking to terminate this Agreement pursuant to this Section 12.1(b) shall have used its commercially reasonable efforts to challenge such Law, order, decree or judgment; or

(iii) the Sale Order has not been entered by the Bankruptcy Court by February 1, 2016, or the Bankruptcy Court shall enter an Order approving a Competing Bid, subject to the limitations set forth in the Bidding Procedures Order;

- (c) Seller if:

(i) any of the representations and warranties of Purchaser contained in Article 6 shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as

of a date subsequent to the date of this Agreement (as if made on and as of such subsequent date), and the condition set forth in Section 9.5 would not then be satisfied;

(ii) Purchaser shall have failed to perform or comply with any of the covenants or agreements contained in this Agreement to be performed and complied with by Purchaser and the condition set forth in Section 9.1 would not then be satisfied; or

(iii) the True Energy bidding procedures as defined in the Bidding Procedures Order are terminated for any reason;

*provided, however*, that if an inaccuracy in any of the representations and warranties of Purchaser or a failure to perform or comply with a covenant or agreement by Purchaser is curable by Purchaser within five (5) Business Days after the date of written notice from Seller to Purchaser of the occurrence of such inaccuracy or failure, then Seller may not terminate this Agreement under this Section 12.1(c) on account of such inaccuracy or failure (x) prior to delivery of such written notice to Purchaser or during the five (5) Business Day period commencing on the date of delivery of such notice or (y) following such five (5) Business Day period, if such inaccuracy or failure shall have been fully cured during such five (5) Business Day period;

(d) Purchaser if:

(i) any of the representations and warranties of Seller contained in Article 5 shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement (as if made on and as of such subsequent date), and the condition set forth in Section 8.4 would not then be satisfied; or

(ii) Seller shall have failed to perform or comply with any of the covenants or agreements contained in this Agreement to be performed and complied with by Seller and the condition set forth in Section 8.1 would not then be satisfied;

*provided, however*, that if an inaccuracy in any of the representations and warranties of Seller or a failure to perform or comply with a covenant or agreement by Seller is curable by it within five (5) Business Days after the date of written notice from Purchaser to Seller of the occurrence of such inaccuracy or failure, then Purchaser may not terminate this Agreement under this Section 12.1(d) on account of such inaccuracy or failure (x) prior to delivery of such written notice to Seller or during the five (5) Business Day period commencing on the date of delivery of such notice or (y) following such five (5) Business Day period, if such inaccuracy or failure shall have been fully cured during such five (5) Business Day period; or

(e) Purchaser or Seller, if (i) the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the Contemplated Transactions, or (ii) Seller otherwise advises Purchaser that Seller has determined that Closing the transactions contemplated by this Agreement is not in the best interests of the Seller or its creditors; provided that any termination of this Agreement pursuant to this Section 12.1(e) shall not give rise to any Liability to either of Seller or Purchaser or any right to specific performance of this Agreement.

12.2 Procedure and Effect of Termination. In the event of termination of this Agreement by either Seller or Purchaser pursuant to Section 12.1, written notice thereof shall forthwith be given by the terminating party to the other parties and this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by any of the parties; *provided, however*, that (a) no party shall be relieved of or released from any Liability arising from any breach by such party of any provision of this Agreement except as expressly provided in this Agreement and (b) this Section 12.2, Sections 7.4(d), Article 13 and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement.

12.3 Extension; Waiver. At any time prior to the Closing, Seller, on the one hand, or Purchaser, on the other hand, may, to the extent permitted by applicable Law and in the exercise of their sole discretion (a) extend the time for the performance of any of the obligations or other acts of Purchaser (in the case of an agreed extension by Seller) or Seller (in the case of an agreed extension by Purchaser), (b) waive any inaccuracies in the representations and warranties of Purchaser (in the case of a waiver by Seller) or Seller (in the case of a waiver by Purchaser) contained herein or in any document delivered pursuant hereto, (c) waive compliance with any of the agreements of Purchaser (in the case of a waiver by Seller) or Seller (in the case of a waiver by Purchaser) contained herein, or (d) waive any condition to its obligations hereunder. Any agreement on the part of Seller, on the one hand, or Purchaser, on the other hand, to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of Seller or Purchaser, as applicable.

### **ARTICLE 13.** **Miscellaneous**

13.1 Cooperation. Seller shall cooperate and use its reasonable best efforts to have the officers, directors, members and employees of Seller cooperate with Purchaser prior to and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any Tax Return filing obligations, actions, proceedings, arrangements or Disputes of any nature with respect to matters pertaining to all periods prior to the Closing Date. Purchaser shall cooperate and use its reasonable best efforts to have its officers, directors, members and employees cooperate with Seller prior to and after the Closing Date in furnishing information, evidence and other assistance in connection with any Tax Return filing obligations, actions, proceedings, arrangements or Disputes of any nature with respect to matters pertaining to obligations of Seller relating to all periods prior to the Closing Date.

13.2 Successors and Assigns. No party hereto may directly or indirectly assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto; *provided* that Purchaser may, without the prior written consent of Seller, assign its rights and obligations under this Agreement, the Transaction Documents and the right to receive the Purchased Assets (a) to lending institutions for security purposes or (b) to one or more Purchaser Designees, so long as Purchaser shall continue to remain obligated in full hereunder. Subject to the preceding sentence, each term and provision of this Agreement shall be binding upon and enforceable against and inure to the benefit of any

successors or permitted assigns of Purchaser and Seller, including, in the case of Seller, any trustee that is appointed in the Bankruptcy Case. Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

13.3 Entire Agreement. This Agreement and the Transaction Documents (including the schedules, exhibits and annexes attached hereto and the documents contemplated hereby and thereby) set forth the entire understanding of the parties relating to the subject matter hereof and thereof and supersede all agreements, arrangements and understanding relating thereto made prior to or on the date hereof; written or oral, between the parties to this Agreement; *provided, however*, that the Confidentiality Agreement among the parties hereto shall remain in full force and effect.

13.4 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts (including via facsimile or other electronic transmission), each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument.

13.5 Expenses. Except to the extent otherwise specifically provided herein, in the Bidding Procedures Order or in the Sale Order, whether or not the Contemplated Transactions are consummated, each party to this Agreement shall pay its own costs and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement, the Transaction Documents and the consummation of the Contemplated Transactions, including attorneys' fees and costs, accountants' fees and other professional fees and expenses.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be given by hand delivery, facsimile, or nationally recognized overnight courier, and shall be deemed to have been duly given (a) if delivered by hand, on the date of such delivery, (b) if delivered by facsimile, on the date of such delivery, with receipt of appropriate confirmation, or (c) if delivered by nationally recognized overnight courier, on the Business Day following dispatch to the respective persons named below:

If to Purchaser: A & G Coal Corporation  
302 S. Jefferson Street, Suite 600  
Roanoke, VA 24011  
Attention: James C. Justice, III

With a copy to: Billy R. Shelton, Esq.  
2452 Sir Barton Way, Suite 101  
Lexington, KY 40509  
Telephone: 859-294-6868  
Facsimile: 859-294-6866

If to Seller: True Energy, LLC  
Suite 400  
8351 East Walker Springs Road

Knoxville, Tennessee 37923  
Attn: Gregory L. "Bernie" Mason, President  
Phone: 865-474-7000  
Fax: 865-474-7020

With a copy to: Jones & Associates  
P.O. Box 1989  
Charleston, WV 25309  
Attention: E. Forrest Jones, Jr., Esq.  
Phone: 304-343-9466  
Fax: 304-345-2456

or to such other address as the person to who notice is to be given may have previously furnished to the other in writing in the manner set for above.

13.7 Governing Law. Except to the extent the provisions of the Bankruptcy Code apply, this Agreement, and all claims and causes of action arising out of, based upon, or related to this Agreement or the negotiation, execution or performance hereof, shall be governed by, and construed, interpreted and enforced in accordance with, the Laws of the Commonwealth of Virginia, without regard to choice or conflict of law principles that would result in the application of any Laws other than the Laws of the Commonwealth of Virginia.

13.8 Jurisdiction and Venue.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court and any appellate court therefrom, in any suit, action or proceeding arising out of or relating to this Agreement or the Transaction Documents or the Contemplated Transactions, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding shall be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such suit, action or proceeding may be entered by the Bankruptcy Court and shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it, she or he may legally and effectively do so, any objection that it, she or he may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Transaction Documents or the Contemplated Transactions in the Bankruptcy Court. Each of the parties hereto irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

13.9 Reformation and Severability. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the

parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement and the future application of such provision shall not in any way be affected or impaired thereby.

13.10 Remedies Cumulative. No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

13.11 Captions. The headings of this Agreement are inserted for convenience only, shall not constitute a part of this Agreement or be used to construe or interpret any provision hereof.

13.12 Representation by Counsel. Each party to this Agreement represents and warrants that such party has been represented by counsel of its choosing in the negotiation, drafting and execution of this Agreement. Accordingly, no provision of this Agreement shall be construed against any party on the grounds that party drafted the provision or caused it to be drafted.

13.13 Amendments; Waivers. This Agreement may be amended, modified or canceled and the terms or covenants hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later. No waiver by any party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

13.14 Schedules, Exhibits and Annexes. All schedules, exhibits and annexes to this Agreement shall be incorporated herein by reference.

13.15 Brokers and Finders. Each of Seller and Purchaser represents, as to itself and its Affiliates, that no agent, broker, investment banker, financial advisor or other firm or person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the Contemplated Transactions.

13.16 Bulk Sales or Transfer Laws. Purchaser hereby waives compliance by Seller with the provisions of the bulk sales or transfer Laws of all applicable jurisdictions. Seller agrees to cooperate with Purchaser, upon the reasonable request of Purchaser and at Purchaser's sole expense, in making any bulk sales filings that Purchaser may, in its sole discretion, decide to file.

13.17 Acknowledgement and Release. Purchaser acknowledges that Seller is the sole Person bound by, or liable with respect to, the obligations and Liabilities of Seller under this Agreement and the other Transaction Documents, and that no Affiliate of Seller or any of its

subsidiaries or any current or former officer, director, stockholder, agent, attorney, employee, representative, advisor or consultant of Seller or any such other Person shall be bound by, or liable with respect to, any aspect of this Agreement and the other Transaction Documents.

13.18 Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer upon any person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

13.19 Survival. Other than with respect to Section 6.6 hereof, none of the representations and warranties of the parties in this Agreement, in any instrument delivered pursuant to this Agreement, or in the schedules or exhibits attached hereto shall survive the Closing, and no party hereto shall, or shall be entitled to, make any claim or initiate any action against any other party with respect to any such representation or warranty from or after the Closing. Except for the indemnity provisions set out in Section 10.3 hereof, none of the covenants or agreements of the parties in this Agreement shall survive the Closing other than with respect to confidentiality, and no party hereto shall, or shall be entitled to, make any claim or initiate any action against any other party with respect to any such covenant or agreement from or after the Closing, other than those other covenants and agreements contained herein that by their terms apply, or that are to be performed in whole or in part, after the Closing, which shall survive the consummation of the Contemplated Transactions until fully performed.

*{Remainder of page intentionally left blank. Signature page follows.}*

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Purchaser as of the date first written above.

**SELLER:**

**TRUE ENERGY, LLC**

By: \_\_\_\_\_  
Name: Gregory L. "Bernie" Mason  
Title: President

**PURCHASER:**

**A & G COAL CORPORATION**

By:   
Name: James G. Justice III  
Title: EVP

**Schedule 2.1(a)**

Leased Property

- Coal Mining Lease by and between ACIN, LLC and Long Canyon Coal, LLC dated December 1, 2008 (the "ACIN Lease"); Consent Agreement and Lease Amendment by and between ACIN, LLC, Long Canyon Coal, LLC and True Energy, LLC dated September 1, 2010; email confirmation to grant of security interest dated September 2, 2010; Agreement by and between Alpha Land and Reserves, LLC and True Energy, LLC dated May 23, 2011; Extension Letter from ACIN, LLC dated December 3, 2013, extending the ACIN Lease through November 30, 2018.
- Lease Agreement by and between Anna E. Boggs and Long Canyon Coal, LLC dated November 24, 2008; Assignment, Assumption and Consent Agreement by and between Long Canyon Coal, LLC, True Energy, LLC and Anna E. Boggs dated August 31, 2010, Extension Letter dated September 25, 2013.
- Lease by and between Cheryl Marshall Lawson and Long Canyon Coal, LLC dated November 22, 2008; Assignment, Assumption and Consent Agreement by and between Long Canyon Coal, LLC, True Energy, LLC and Cheryl Marshall Lawson undated; First Amendment to Lease Agreement by and between Cheryl Marshall Lawson and True Energy, LLC dated July 14, 2011, Second Amendment To Lease dated September \_\_, 2013.
- Lease by and between Steven S. Boggs and Long Canyon Coal, LLC dated November 10, 2008; Assignment, Assumption and Acknowledgement Agreement by and between Long Canyon Coal, LLC, True Energy, LLC and Steven S. Boggs undated.
- Lease by and between Blanche Sturgill and Long Canyon Coal, LLC dated October 27, 2008; Assignment, Assumption and Acknowledgement Agreement by and between Long Canyon Coal, LLC, True Energy, LLC and Blanche Sturgill.
- Coal Lease Agreement by and between Margaret Qualls Jones and True Energy, LLC dated June 13, 2011; Memorandum of Lease Agreement by and between Margaret Qualls Jones and True Energy, LLC dated June 13, 2011.
- Lease Agreement by and between Leslie Helton, Georgia J. Helton, and Nancy Helton Hope undated; Memorandum of Lease Agreement, by and between Leslie Helton, Georgia J. Helton, and Nancy Helton Hope and True Energy, LLC dated June 14, 2011; Real Estate Affidavit for Grover (aka Gromer) Cleveland Helton, (as corrected).
- Lease Agreement by and between Monroe Collier and True Energy, LLC; Memorandum of Lease Agreement by and between Monroe Collier and True Energy, LLC

dated June 20, 2011.

- Lease Agreement by and between Elbert Ray Lawson and True Energy, LLC dated July 14, 2011.
- Lease Agreement by and between Robert Dale Helton and True Energy, LLC dated July 21, 2011.
- Lease Agreement by and between Sandra L. Cano and True Energy, LLC dated July 20, 2011 (As corrected and inherited upon the death of Sandra L. Cano).
- Surface Lease by and between Dennis R. Bolling and Brenda S. Bolling and True Energy Fuels, LLC executed December 12, 2011.
- Surface and Mineral Lease by and between Flaudine Adams, Patty and Bill Taylor, Allen and Rose Adams, Everett Adams and Peggy Adams and Margie Adams, Lessor, and Xinergy Corporation, Lessee, dated November, 2011.
- Short Form Lease by and between Xinergy Corp and Joe A. Salyer and Vicki Salyer dated May 9, 2012.
- Surface and Mineral Lease Agreement by and between True Energy Fuels, LLC and Joe A. Salyer and Vicki Salyer dated August 14, 2011.
- Surface and Mineral Lease Agreement by and between True Energy Fuels, LLC and Nathan Adams dated October 7, 2011.
- Surface and Mineral Lease by and between True Energy, LLC and Rana and Albert Kincer dated August 29, 2011.
- Surface and Mineral Lease by and between True Energy Fuels, LLC and Elizabeth Craft-Sturgill and Raymond Scott Craft executed July 10, 2012.
- Surface Lease Agreement by and between True Energy Fuels, LLC and Steve F. Mullins, Sheila E. Taylor, Karon K. Boggs, Tim R. Mullins, Bob Mullins and Linda Bowers dated December 16, 2011.
- Coal Lease Agreement by and between William N. Hendricks III, Sarah C. H. Guza and True Energy, LLC dated September 1, 2011.

**Schedule 2.1(d)**

Permits

- Virginia DMLR Permit No. 1102056 (Note: supersedes Virginia DMLR Permit No. 1102038). Permit renewal application pending.
- NPDES Permit No. 0082056 (Note: issued through and transfers with Virginia DMLR Permit No. 1102056).

**Schedule 2.1(g)**

Purchased Equipment

Equipment Make and Model Description	Serial #	Unit #
1996 Cat 777C Haul Truck	4XJ00981	H 01
1990 Cat 777B Haul Truck	4YC01245	H 03
1996 Cat 777C Haul Truck	4XJ00975	H 04
2009 Cat D10R Dozer C/Reb.	3KR75024	D 04
1993 Cat 16G Grader	93U03520	G 01

**Schedule 7.7**

Liabilities of Seller Relating to Mining Operations To Be Released or Secured by Purchaser at Closing

- Surety Bond # 1079427 in the amount of \$550,200.00 for Virginia DMLR Permit # 1102056 issued by Lexon Insurance Company ("Lexon") through SMA Surety Inc., 2307 River Road, Suite 200, Louisville, KY 40206.
- That certain underlying guaranty agreement between Lexon, True Energy, LLC, Xinergy Corp. and its Affiliates ("Xinergy & Subsidiaries") whereby Xinergy & Subsidiaries guaranty the Surety Bond issued by Lexon through SMA Surety Inc., 2307 River Road, Suite 200, Louisville, KY 40206 is provided through a Master Agreement between Xinergy Corp. and Lexon for the providing of reclamation bonds.

**Exhibit A**

Form of Assignment and Assumption Agreement.

**Exhibit B**

Form of Bill of Sale.

**EXECUTION COPY**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (this "Assignment"), dated as of January \_\_\_\_\_, 2016, is by and between **TRUE ENERGY, LLC**, a Delaware limited liability company ("Assignor") and **A & G COAL CORPORATION**, a Virginia corporation ("Assignee").

**RECITALS**

A. This Assignment is entered into in conjunction with the transactions contemplated by that certain Asset Purchase Agreement (the "Purchase Agreement"), dated the \_\_\_\_ day of January, 2016, to which Assignor and Assignee are parties. Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in the Purchase Agreement.

B. Assignor desires to sell, transfer, convey, assign and deliver to Assignee and Assignee desires to purchase, take, acquire and accept all of Assignor's right, title, and interest in and to the Purchased Assets (as defined in Article 2 of the Purchase Agreement), including but not limited to the Leased Property listed on Exhibit A, attached hereto, and the Permits, listed on Exhibit B, attached hereto, in accordance with the following terms and conditions.

NOW THREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns, transfers, and sets over unto Assignee all of its right, title, interest, duties, and obligations arising from or related to the Purchased Assets including but not limited to the Leased Property and the Permits.

2. Assumption. Assignee hereby fully and unconditionally assumes, accepts the transfer of and agrees to be fully bound by, all of Assignor's right, title, interest, duties and obligations arising from or related to the Purchased Assets, including but not limited to the Leased Property and the Permit arising after the date hereof and agrees to be bound by all of the terms and conditions of the Purchased Assets, agrees to pay, perform and discharge, all duties and obligations of Assignor arising from or related to the Purchased Assets, and does further acknowledge and agree that it is accepting the Purchased Assets in an "as is, where is" condition.

3. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

4. Conflict. This Assignment is subject to all the terms and conditions of the Purchase Agreement. No provision of this Assignment shall be deemed to enlarge, alter or amend the terms of provisions of the Purchase Agreement. Notwithstanding anything to the contrary set forth herein, if there is any conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control.

5. Indemnification by Assignor. Subject to the provisions contained in this Assignment, Assignor, its successors and assigns, shall indemnify and hold harmless Assignee, its successors and assigns, from all claims for, and liabilities arising out of, the performance or non-performance of any of the obligations in connection with the Purchased Assets for the period prior to the date of this Assignment.

6. Indemnification by Assignee. Subject to the provisions contained in this Assignment, Assignee, its successors and assigns, shall indemnify and hold harmless Assignor, its successors and assigns, from all claims for, and liabilities arising out of, the performance or non-performance of any of the obligations arising from or related to the Purchased Assets for the period from and after the date of this Assignment.

7. Further Assurances. From time to time after the date hereof, without further consideration, the Assignor shall execute and deliver such other instruments of assignment, transfer and conveyance and shall take such other actions as Assignee may reasonably request to more effectively assign, transfer and convey to Assignee all of Assignor's right, title, interest duties and obligations in, to and under the Purchased Assets and the release of Assignor therefrom.

8. Governing Law. This Assignment shall be governed by and construed according to the laws of Virginia without regard to or application of its conflict of laws rules.

9. Counterparts. This Assignment may be executed by original, electronic or facsimile signature in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, it being understood that all of the parties need not sign the same counterpart.

10. Severability. If any provision of this Assignment or its application will be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other applications of that provision, and of all other provisions and applications hereof, will not in any way be affected or impaired. If any court shall determine that any provision of this Assignment is in any way unenforceable, such provision shall be reduced to whatever extent is necessary to make such provision enforceable.

11. Entire Agreement. All prior negotiations and agreements by and among the parties hereto with respect to the subject matter hereof are superseded by this Assignment and the Purchase Agreement, and there are no representations, warranties understandings or agreements with respect to the subject matter hereof other than those expressly set forth in this Assignment and the Purchase Agreement.

12. Headings. Section headings are not to be considered part of this Assignment, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Assignment or any provision in it.

IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Assignment as of the date first set forth above.

ASSIGNOR:

TRUE ENERGY, LLC

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

ASSIGNEE:

A & G COAL CORPORATION

By:   
Its: James C. Justice III

**EXECUTION COPY**

**EXHIBIT A**

**THE LEASED PROPERTY**

- Coal Mining Lease by and between ACIN, LLC and Long Canyon Coal, LLC dated December 1, 2008 (the "ACIN Lease"); Consent Agreement and Lease Amendment by and between ACIN, LLC, Long Canyon Coal, LLC and True Energy, LLC dated September 1, 2010; email confirmation to grant of security interest dated September 2, 2010; Agreement by and between Alpha Land and Reserves, LLC and True Energy, LLC dated May 23, 2011; Extension Letter from ACIN, LLC dated December 3, 2013, extending the ACIN Lease through November 30, 2018.
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- Surface Lease Agreement by and between True Energy Fuels, LLC and Steve F. Mullins, Sheila E. Taylor, Karon K. Boggs, Tim R. Mullins, Bob Mullins and Linda Bowers dated December 16, 2011.
- Coal Lease Agreement by and between William N. Hendricks III, Sarah C. H. Guza and True Energy, LLC dated September 1, 2011.

**EXHIBIT B**

THE PERMITS

- Virginia DMLR Permit No. 1102056 (Note: supersedes Virginia DMLR Permit No. 1102038). Permit renewal application pending.
- NPDES Permit No. 0082056 (Note: issued through and transfers with Virginia DMLR Permit No. 1102056).

**EXECUTION COPY**

**BILL OF SALE**

FOR AND IN CONSIDERATION of the consideration set forth in that certain Asset Purchase Agreement (the "Purchase Agreement"), dated January \_\_, 2016, by and between **TRUE ENERGY, LLC**, a Delaware limited liability company ("Seller") and **A & G COAL CORPORATION**, a Virginia corporation ("Purchaser"), the receipt and sufficiency of which are hereby acknowledged, Seller hereby conveys and assigns to Purchaser all of Seller's right, title and interest in and to the equipment and machinery listed on the Equipment List attached hereto as Exhibit A (the "Purchased Equipment").

The Purchased Equipment is hereby sold to Purchaser on an "AS IS, WHERE IS" basis. Notwithstanding anything to the contrary contained in the Purchase Agreement, Seller makes no representation or warranty whatsoever, express or implied, except those representations and warranties contained in the Agreement. It is understood that, except to the extent that may be otherwise expressly provided in the Purchase Agreement, Purchaser is solely relying on its own due diligence and is acquiring the Purchased Equipment "AS IS, WHERE IS" and "WITH ALL FAULTS" without any implied representation, warranty or guarantee as to merchantability, fitness for a particular purpose, or otherwise, or as to the condition of the Purchased Equipment, or as to the condition, size, extent, quantity, type or value of such property, and Seller hereby expressly disclaims any and all such implied representations, warranties or guarantees.

Any capitalized term not defined herein shall have the meaning set forth in the Purchase Agreement.

**IN WITNESS WHEREOF**, Seller and Purchaser and have caused this instrument to be executed under seal and delivered as of this \_\_\_\_ day of January, 2016.

**SELLER:**

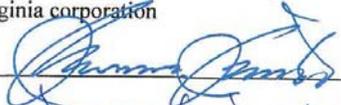
**TRUE ENERGY, LLC,**  
a Delaware limited liability company

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

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

**PURCHASER:**

**A & G COAL CORPORATION,**  
a Virginia corporation

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

Its: James C. Justice

**Exhibit A**

**Purchased Equipment List**

Equipment Make and Model Description	Serial #	Unit #
1996 Cat 777C Haul Truck	4XJ00981	H 01
1990 Cat 777B Haul Truck	4YC01245	H 03
1996 Cat 777C Haul Truck	4XJ00975	H 04
2009 Cat D10R Dozer C/Reb.	3KR75024	D 04
1993 Cat 16G Grader	93U03520	G 01

**RESOLUTION OF A & G COAL CORPORATION  
January 14, 2016**

WHEREAS, A & G Coal Corporation, a Virginia corporation ("A & G") desires to purchase from True Energy, LLC ("True Energy") certain assets and liabilities associated with True Energy's business pursuant to the terms and conditions set forth in that certain Asset Purchase Agreement dated as of January 14, 2016 (the "Purchase Agreement"), by and among the parties thereto; and,

WHEREAS, A & G has considered the terms and conditions of the Purchase Agreement and has determined that the transactions contemplated therein are in the best interests of A & G.

NOW, THEREFORE, BE IT RESOLVED, that A & G hereby authorizes and approves the contemplated transaction between A & G and True Energy as are specifically set out in the Purchase Agreement.

FURTHER RESOLVED, that James C. Justice, III, acting in his office capacity with A & G shall be and is hereby authorized and directed to take such steps and sign such documents as are required and/or called for in the Purchase Agreement.

Signed as of the day and year first above written.

A & G COAL CORPORATION

By: 

Its: James C. Justice III

WITNESS: 