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

In re:	**Chapter 11**
XINERGY LTD., *et al.*,	**Case No. 15-70444 (PMB)**
Debtors.[1]	**(Jointly Administered)**

NOTICE OF FILING OF AMENDED DISCLOSURE STATEMENT

PLEASE TAKE NOTICE that on September 16, 2015, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 407] (the "Disclosure Statement") with the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the "Court").

PLEASE TAKE FURTHER NOTICE that on October 14, 2015, the Debtors filed the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the "Amended Disclosure Statement") with the Court.

PLEASE TAKE FURTHER NOTICE that, if you would like a copy of the Amended Plan, Amended Disclosure Statement, or related documents, please contact American Legal

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Case Management Order (defined below).

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and Debtors in Possession

Claims Services, LLC at (904) 517-1442 or by writing to Xinergy Ltd. c/o American Legal Claims Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650. Copies of the Amended Plan and Amended Disclosure Statement also may be obtained at no charge at *www.americanlegalclaims.com/xinergy* or for a fee at *https://ecf.vawb.uscourts.gov*.

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit A is a copy of the Debtors' Amended Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit B is a redline copy of the Debtors' Amended Disclosure Statement, reflecting the variations as against the Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights and remedies with respect to the Amended Disclosure Statement including, but not limited to, the right to further amend, modify and/or supplement the Amended Disclosure Statement.

DATED: October 14, 2015

Respectfully submitted,

_/s/ *Tyler P. Brown*_____

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SCHEDULE 1

(Debtor Entities)

1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

EXHIBIT A

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

In re:	
	Chapter 11
XINERGY LTD., *et al.*,	**Case No. 15-70444 (PMB)**
	(Jointly Administered)
Debtors.[1]	

DISCLOSURE STATEMENT ACCOMPANYING FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION

THIS IS A SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126, 11 U.S.C. §§ 1125, 1126. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL BUT HAS NOT YET BEEN APPROVED. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

OCTOBER 14, 2015

[1] 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.

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Counsel to the Debtors
and Debtors in Possession

IMPORTANT NOTICE

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND OTHER PARTIES IN INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, OR (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL, STATE OR CANADIAN SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITY, NOR HAVE THE FOREGOING REGULATORY ENTITIES PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS WITH "ADEQUATE INFORMATION" (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN. PERSONS OR ENTITIES TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OF THE DEBTORS SHOULD NOT RELY UPON THIS DISCLOSURE STATEMENT FOR SUCH PURPOSES AND SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER

PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS.

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ARTICLE I

PURPOSE AND FUNCTION OF THE DISCLOSURE STATEMENT

This disclosure statement (this "Disclosure Statement") provides information regarding the *Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"), which the Debtors are seeking to have confirmed by the Bankruptcy Court[2] and recognized by the Canadian Court. A copy of the Plan is attached hereto as **Exhibit A**. This Plan constitutes a separate Plan proposed by each Debtor. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtors provide this Disclosure Statement to enable any creditor whose Claim is Impaired under the Plan and, therefore, entitled to vote on the Plan, to arrive at a reasonably informed decision in exercising the right to vote to accept or reject the Plan. This Disclosure Statement should be read in its entirety prior to voting on the Plan. The information contained herein is based on records maintained by the Debtors, and no representation or warranty is made as to their complete accuracy.

For the Plan to be confirmed, creditors in each class of Impaired Claims who hold at least two-thirds in amount and more than one-half in number of Claims within the class must vote in favor of the Plan. If a party does not vote, i.e. does not return a fully completed Ballot within the specific time to the correct addressee, neither the party nor the amount of its Claim or Interest is counted to determine acceptance or rejection of the Plan. If you are entitled to vote and do not, the Ballots will be tallied as though your Claims did not exist. The Court can confirm the Plan even if the requisite acceptances are not obtained so long as the Plan complies with the Bankruptcy Code and accords fair and equitable treatment to any non-accepting Class.

Parties entitled to vote are furnished a Ballot on which to record their respective acceptances or rejections of the Plan. Those completed Ballots must be returned to the Solicitation Agent by the deadline set forth on the Ballot, who will tally the votes and report the results to the Court at the Hearing on Confirmation of the Plan. There will be no separate voting process for Canadian Holders of Claims or Interests, and Canadian Holders of Claims or Interests will be subject to the voting process set out in the Order approving this Disclosure Statement, as recognized by the Canadian Court.

Each of the Debtors' boards of directors or members, as applicable, has approved the Plan and believes the Plan is in the best interests of the Debtors' Estates. As such, the Debtors recommend that all holders of Impaired Claims that are entitled to vote accept the Plan by returning their ballots so as to be actually received by the Solicitation Agent no later than **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time).**

NO REPRESENTATIONS CONCERNING THE DEBTORS, THE DEBTORS' OPERATIONS, THE VALUE OF THE DEBTORS' PROPERTY OR THE PLAN ARE AUTHORIZED UNLESS THEY ARE IN THIS DISCLOSURE STATEMENT. THIS

[2] Capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

DISCLOSURE STATEMENT IS THE ONLY STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION CONCERNING THE DEBTORS, THEIR OPERATIONS OR THE VALUE OF THEIR PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTORS OR OFFICE OF THE UNITED STATES TRUSTEE.

THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN BUT MERELY CONFIRMS THAT THE DISCLOSURE STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT REGARDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

If the Court does not confirm the Plan, the Debtors may amend the Plan or file a different Plan. If the Court does not confirm the Plan and the exclusive period within which the Debtors can obtain acceptance expires, a creditor may file a plan of reorganization. Additionally, on motion of a party in interest and after notice and a hearing, the Court may convert the Bankruptcy Case to a Chapter 7 case.

The summaries of the financial information and the documents annexed to this Disclosure Statement or otherwise incorporated herein by reference are qualified in their entirety by reference to those documents. The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained herein will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement

Defined terms used, but not defined in this Disclosure Statement, shall have the meanings ascribed to such terms in the Plan. Accordingly, please refer to the Plan for definitions of certain important terms used in this Disclosure Statement.

ARTICLE II

BUSINESS DESCRIPTIONS

2.1 General Information About the Debtors

(a) Business Operations

(1) General

Incorporated in October 2007, Xinergy Corp. acquired Xinergy Ltd. in December 2009 through a "reverse takeover." Xinergy Ltd. is a public company whose stock was traded on the Toronto Stock Exchange until it was delisted on May 12, 2015. Xinergy Ltd. is the direct or indirect parent of each of the Debtors.

Xinergy is a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian ("CAPP") regions of West Virginia and Virginia. Xinergy's operations principally include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. Xinergy also leases or owns the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, Xinergy leases or owns mineral rights to approximately 72,000 acres with proven and probable coal reserves of approximately 77 million tons and additional estimated reserves of 40 million tons.

(2) Principal Product, Markets and Distribution Methods

Xinergy currently produces and ships coal from its South Fork mid-volatile metallurgical mine and its Raven Crest thermal operations. Xinergy's primary customers for metallurgical coal -- used in a chemical process that yields coke for the manufacture of steel -- are steel producers, commodities brokers and industrial customers throughout North America, Europe and South America. Electric utilities and industrial companies in the southeastern U.S. and Europe are the principal customers for Xinergy's thermal coal.

South Fork is currently producing between 15,000 and 25,000 tons of mid-volatile metallurgical coal per month. Raven Crest currently produces between 55,000 and 65,000 tons of thermal coal per month. After being idled due to market conditions, Raven Crest restarted production in January 2014 with the completion of a $9.5 million coal preparation plant. The recent improvements to the coal processing facility at Raven Crest have allowed Xinergy to increase the marketability of its low cost, high quality thermal coal to markets in the eastern U.S. and Europe.

Most of the coal sold by Xinergy occurs through short-term contracts. Xinergy also quotes prices and sells coal on a one-day or one-shipment tonnage amount with prices directly correlated to the price per ton of coal quoted on the New York Mercantile Exchange or similar commodity exchanges, which is known as the "spot price." Coal sold pursuant to short-term contracts or at the spot price is subject to current market pricing that can be significantly more volatile than the pricing structure achieved through long-term negotiated supply agreements.

Xinergy is currently exploring opportunities for entering into longer term contracts that provide significantly more price stability.

Xinergy's operational results are highly dependent on the costs of coal production and the costs of and ability to transport coal to customers. Primary mining-related expenses are wages and benefits, repairs and maintenance, diesel fuel, blasting and related supplies, coal transportation costs, freight and handling costs, royalties and taxes incurred in selling coal. The majority of Xinergy's coal is shipped via rail on CSX-controlled railways. The remaining coal is shipped via truck.

The Debtors sell their coal for a specified per ton amount at a negotiated price pursuant to both short term contracts and contracts exceeding twelve months. Price adjustments, price reopener and other provisions in long term supply agreements may reduce the protection from short term coal price volatility traditionally provided by such contracts. Any adjustment or renegotiation leading to a significantly lower contract price or lower volumes would result in decreased revenues and lower margins, which would have a material adverse effect on the Debtors' operating cash flows. Additionally, the Debtors' customers may have the ability to delay the timing of their purchases, which could negatively impact operating cash flows. Coal supply agreements also typically contain force majeure provisions allowing temporary suspension of shipments to the customer upon the occurrence of specified events beyond the Debtors' control. In excess of 95% of the Debtors' coal is shipped via CSX rail to their customers with the remainder being shipped via truck. The Debtors incur all costs and obligations to load the coal in the rail car at which time its ownership and any further transportation costs is the responsibility of the customer. The remaining coal sales are delivered to the Debtors' customers utilizing third party contract trucking companies.

(3) Coal Reserves and Leases

In addition to its active mining operations, the Debtors own or lease rights to significant coal reserves. In October 2012, Xinergy acquired approximately 12,500 acres located in Fayette, Nicholas and Greenbrier counties, West Virginia through Debtor Sewell Mountain Coal Company ("Sewell Mountain"). The acquisition included a site regionally known as the Meadow River Complex with existing permits and infrastructure. Xinergy has received all necessary permit transfers for this mining property including the underground mine, preparation plant, rail loadout and refuse area. Sewell Mountain has estimated reserves of 32.36 million tons of mid-volatile metallurgical coal and is in the planning and development stage.

Xinergy also leases approximately 1,000 acres of surface mining operations in Wise County, Virginia, through Debtor, True Energy, LLC ("True Energy"). In response to market conditions, True Energy's mining operations were idled in 2012. This site has proven and probable reserves of 2.3 million tons of high volatile metallurgical coal with estimated total reserves of 7 million tons based on recent additional land acquisitions.

(4) Employees and Employee Benefits

Xinergy has approximately 115 employees working in full or part-time positions. Approximately six (6) employees perform executive management, sales and general

administration functions and are assigned to Xinergy's Knoxville, Tennessee corporate office, but frequently work remotely or at Xinergy's mine locations. The remaining individuals are operational employees and work at Xinergy's mine locations. All of Xinergy's coal processing and production is performed by its own employees. None of Xinergy's employees are currently unionized.

Xinergy provides healthcare and other benefits to primary insured full-time employees and beneficiaries. Xinergy is subject to the Federal Coal Mine Health and Safety Act of 1969 (the "Black Lung Act") and other workers' compensation laws in the states in which Xinergy operates. Under the Black Lung Act, Xinergy is required to provide benefits to its current and former coal miners suffering from pneumoconiosis or "black lung disease" and, in certain cases, the workers' beneficiaries. Xinergy maintains insurance sufficient to cover the cost of present and future claims. Xinergy believes that future costs associated with the Black Lung Act may increase as a result of the Patient Protection and Affordable Care Act, enacted in 2010, which provides for an automatic survivor benefit and a rebuttable presumption concerning a coal mine employee's disability in certain circumstances. Separately, Xinergy maintains cash deposits and/or bonds to secure obligations under federal and state workers' compensation laws.

(5) Transportation

The Debtors have a 150 rail car CSX loading facility at their Raven Crest facility in Boone County, West Virginia, which serves the Raven Crest surface and highwall mine and the currently idle Brier Creek underground mine. The Raven Crest facility is located approximately 30 minutes from the Kanawha River, which is a major barge transportation route, and allows the Company to access additional markets through the US gulf coast shipping ports.

The Debtors also have a recently completed 100 rail car CSX loading facility at their South Fork facility in Greenbrier County, West Virginia, which serves all the Company's South Fork mines.

(6) Marketing, Sales, Customers

The Debtors' marketing and sales efforts are led by their President and Chief Executive Officer, Gregory L. "Bernie" Mason. The Debtors utilize various third-party coal brokers to assist in sales efforts. The Debtors' sales are primarily focused on electric utilities, steel companies and industrial companies throughout North America and Europe.

The terms of coal supply agreements result from competitive bidding and extensive negotiations with customers. Consequently, the terms of these contracts vary significantly in many respects, including price adjustment features, price re-opener terms, sources of supply, treatment of environmental constraints, extension options, force majeure provisions, contract termination and assignment provisions. Quality and volumes for the coal are stipulated in these agreements, and in some instances, buyers have the option to vary annual or monthly volumes.

The Debtors typically sell their coal for a specified tonnage amount and at a negotiated price pursuant to short-term and long term contracts. The Debtors also price coal sales on a one-day or one-shipment tonnage amount. The price per ton for these types of sales typically fluctuates in direct correlation to the price per ton of coal quoted on the New York Mercantile

Exchange or similar commodity exchanges, which the Debtors refer to as the "spot price." Most contracts contain provisions to adjust the base price due to new statutes, ordinances or regulations that impact the supplying company's cost of performance of the agreement. Additionally, some contracts contain provisions that allow for the recovery of costs impacted by the modifications or changes in the interpretation or application of any existing statute by local, state or federal government authorities. Quality and volumes for the coal are stipulated in coal supply agreements, and in some limited instances, buyers have the option to vary annual or monthly volumes. Variations to the quality and volumes of coal may lead to adjustments in the contract price.

(7) Permitting

The Debtors must obtain permits from applicable state and federal regulatory authorities before they begin mining. Mining companies are continually obtaining and monitoring numerous permits that impose strict environmental and safety regulations on their operations. These provisions include requirements for coal prospecting, mine plan development, topsoil removal, storage and replacement, selective handling of overburden materials, mine pit backfilling and grading, protection of the hydrologic balance, subsidence control for underground mines, surface drainage control, mine drainage and mine discharge control and treatment and re-vegetation.

(b) Pre-Petition Capital Structure

The Senior Secured Notes are 9.25% notes due May 15, 2019 that were issued by Xinergy Corp. in the aggregate original principal amount of $200 million, which are guaranteed by the other Debtors and collateralized by substantially all of Xinergy's assets. Interest payments of $9 million are due and payable semi-annually. Approximately $72 million of the net proceeds from the issuance were used to retire existing debt and the remaining funds were used for capital expenditures, including construction of a preparation plant, purchase of mining equipment and construction of infrastructure, and for general corporate purposes. As of the Petition Date, the amount outstanding on the Second Lien Notes was approximately $195 million in principal and approximately $7.1 million in accrued and unpaid interest.

Subsequent to issuing the Senior Secured Notes, Xinergy Corp. entered into a Credit Agreement, dated as of December 21, 2012 (as amended, supplemented, modified, or amended and restated from time to time, the "First Lien Term Loans"), with Bayside Finance LLC, as lender ("Bayside"), and the other Debtors as guarantors. The First Lien Term Loans facility provided for two term loans in the amount of $10 million each with terms of four years. The first loan was drawn in December 2012 and the second loan was drawn in September 2013. The proceeds of the First Lien Term Loans were used to fund transaction costs, to provide working capital and for Xinergy's general corporate purposes. The First Lien Term Loans are secured by a first-priority lien on substantially all of the Debtors' assets. On April 1, 2015, Bayside assigned its interest in the First Lien Term Loans to funds managed on behalf of Whitebox Advisors LLC ("Whitebox") and Highbridge Capital Management, LLC ("Highbridge"). All amounts outstanding on the First Lien Term Loans were retired with the proceeds from the DIP Facility.

(c) Events Leading to Chapter 11 Bankruptcy Filings

The Debtors' bankruptcy filings were a direct result of the sharp decrease in domestic demand for thermal coal, which is, in large part, due to increasingly attractive alternative sources of energy, such as natural gas, and burdensome environmental and governmental regulations impacting end users. Simultaneously, the increasingly stringent regulatory environment in which coal companies operate has driven up the cost of mining and processing coal. Continued weakness in the market for metallurgical and thermal coal, combined with an extremely cold and snowy winter in 2014-2015 that impacted the mining and shipment of coal, continued to erode Xinergy's cash position. The confluence of these factors and Xinergy's substantial debt burden necessitated relief under chapter 11 of the Bankruptcy Code. Further details regarding the events leading up to the commencement of the Chapter 11 Cases can be found in the *Declaration of Michael R. Castle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Doc. No. 18].

(d) Estimated Reorganization Value

The Debtors have been advised by their investment banker, Seaport Global Securities, LLC ("SGS"), with respect to the estimated hypothetical reorganization value of the Reorganized Debtors. SGS estimates the range of Reorganization Value to be from approximately $90 million to $135 million, with a midpoint valuation of approximately $112.5 million (the "Reorganization Value"). Reorganization Value consists of the theoretical enterprise valuation of the Reorganized Debtors through the application of various relative and intrinsic valuation methodologies. SGS has estimated the Reorganization Value as of September 10, 2015, under the assumption that the underlying assumptions and conditions used to derive the Reorganization Value will not change materially from the date hereof through the assumed Effective Date of December 7, 2015.

The imputed reorganization equity value (the "Reorganization Equity Value") of the Reorganized Debtors, which takes into account estimated debt balances and other obligations under the Plan as of the assumed Effective Date, is the Reorganization Value less the principal amount of the Exit Facility plus excess cash and excess working capital, if any, on the Effective Date.

The foregoing estimates of the Reorganization Value of the Reorganized Debtors, and the resulting estimates of Reorganization Equity Value of the Reorganized Debtors, are based on a number of assumptions, including a successful reorganization of the Debtors' business, the implementation and realization of the Reorganized Debtors' business plans, the achievement of the forecasts reflected in management's projections, and the Plan becoming effective on the assumed Effective Date.

In preparing its estimate of the Reorganization Value of the Reorganized Debtors, SGS did, among other things, the following: (a) reviewed certain historical financial information of the Debtors for recent years and interim periods; (b) reviewed certain internal financial and operating data of the Debtors and financial projections relating to its business and prospects; (c) held conference diligence calls with certain members of the senior management of the Debtors to discuss the Debtor's operations and future prospects; (d) reviewed publicly available financial

data and considered the market values of public companies that SGS deemed generally comparable to those of the Debtors as a whole or a significant part of their operations; (e) reviewed the financial terms and conditions of recent mergers and acquisitions of companies that SGS believes to be generally comparable to those of the Debtors as a whole or a significant part of their operations; (f) considered certain economic, industry and market information relevant to the Debtors' operations; and (g) reviewed such other information and conducted such other analyses as SGS deemed appropriate.

Although SGS conducted a review and analysis of the Debtors' businesses, operating assets and liabilities and business plans, SGS assumed and relied on the accuracy and completeness of all (a) financial and other information furnished to it by the Debtors and by other firms retained by the Debtor and (b) publicly available information. SGS did not independently verify any financial projections prepared by management of the Debtors in connection with its estimates of the Reorganization Value. SGS has assumed that such projections have been prepared reasonably, in good faith and on a basis reflecting the currently available estimates and judgments of the Debtors as to the future operating and financial performance of the Debtors. Such projections assume that the Debtors will operate the businesses reflected in the financial forecast and that such businesses will perform as expected in the financial forecast. To the extent that the Debtors operate at higher or lower utilization, achieves higher or lower revenues, has variations in costs, higher or lower capital expenditures, or unexpected maintenance of the Debtors' properties and equipment during the periods contemplated in the projections and to the extent that all or a portion of the businesses perform at levels inconsistent with those expected by management in the financial forecast, such adjustments may have a material impact on the projections and the valuations as presented herein.

Hypothetical valuation estimates reflect computations of the estimated Reorganization Value and Reorganization Equity Value of the Reorganized Debtors through the application of various valuation techniques, including, among others, the following: (a) a comparable company analysis, in which SGS analyzed the enterprise values of public companies that SGS deemed generally comparable to all or parts of the operating businesses of the Debtors as a multiple of certain financial measures, including, but not limited to, earnings before interest, taxes, depreciation and amortization ("EBITDA"), reserves and revenues which were then applied to the projected EBITDA, reserves and revenues, respectively of the Reorganized Debtors; and (b) a precedent transactions analysis, in which SGS analyzed the financial terms and conditions of certain mergers and acquisitions of companies that SGS believed were generally comparable to all or parts of the operating businesses of the Debtors, and then applied certain financial performance metrics provided by such analyses to the relevant metrics of the Reorganized Debtors including multiples of EBITDA, reserves and revenues. Because of the current instability in the coal markets, the Debtors' management determined that it was not feasible to develop projections beyond 2017. As a result, SGS determined that it was not appropriate to use discounted cash flow valuation techniques.

An estimate of the Reorganization Value and Reorganization Equity Value is not entirely mathematical but, rather, involves complex considerations and judgments concerning various factors that could affect the value of an operating business. SGS has made judgments as to the relative significance of each analysis in determining the Reorganized Debtors' Reorganization

Value range. SGS did not consider any one analysis or factor to the exclusion of any other analysis or factor. SGS's hypothetical valuation must be considered as a whole, and the utilization of one methodology or portions of the analyses, without considering the analyses as a whole, could create a misleading or incomplete conclusion as to the Reorganized Debtors' Reorganization Value. With respect to the analysis of comparable companies and the analysis of selected precedent transactions, no company utilized as a comparison is identical to the Reorganized Debtors, and no precedent transaction is identical to the reorganization of the Debtors. Accordingly, an analysis of publicly traded comparable companies and comparable business combinations is not mathematical; rather, it involves complex considerations and judgments concerning the differences in financial and operating characteristics of the companies relative to the Reorganized Debtors.

The value of an operating business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in factors affecting the financial conditions and prospects of such a business. As a result, the estimate of the Reorganization Value set forth herein is not necessarily indicative of actual outcomes, which may be significantly more or less favorable than those set forth herein. Because such estimates are inherently subject to uncertainties, none of the Debtors, SGS or any other person assumes responsibility for their accuracy. Depending on the results of the Debtors' operations or changes in the financial markets, SGS's valuation estimates as of the Effective Date may differ from those disclosed herein.

THE FOREGOING VALUATION IS BASED UPON A NUMBER OF ESTIMATES AND ASSUMPTIONS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTOR OR THE REORGANIZED DEBTOR. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RANGES REFLECTED IN THE VALUATION WOULD BE REALIZED IF THE PLAN WERE TO BECOME EFFECTIVE, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN HERE.

THE ESTIMATED CALCULATION OF REORGANIZATION VALUE IS HIGHLY DEPENDENT UPON ACHIEVING THE FUTURE FINANCIAL RESULTS AS SET FORTH IN THE DEBTOR'S BUSINESS PROJECTIONS, AS WELL AS THE REALIZATION OF CERTAIN OTHER ASSUMPTIONS, NONE OF WHICH ARE GUARANTEED AND MANY OF WHICH ARE OUTSIDE OF THE DEBTOR'S CONTROL.

THE CALCULATIONS OF VALUE SET FORTH HEREIN REPRESENT ESTIMATED REORGANIZATION VALUE AND DO NOT NECESSARILY REFLECT VALUES THAT COULD BE ATTAINABLE IN PUBLIC OR PRIVATE MARKETS. THE REORGANIZATION EQUITY VALUE STATED HEREIN DOES NOT PURPORT TO BE AN ESTIMATE OF THE POST-REORGANIZATION MARKET VALUE. SUCH VALUE, IF ANY, MAY BE MATERIALLY DIFFERENT FROM THE REORGANIZATION EQUITY VALUE RANGES ASSOCIATED WITH THIS VALUATION ANALYSIS. NO RESPONSIBILITY IS TAKEN FOR CHANGES IN MARKET CONDITIONS AND NO OBLIGATION IS ASSUMED TO REVISE THIS CALCULATION OF THE REORGANIZED DEBTORS' VALUE TO REFLECT EVENTS OR CONDITIONS THAT SUBSEQUENTLY OCCUR. THE CALCULATIONS OF VALUE DO NOT CONFORM TO THE UNIFORM

STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE OF THE APPRAISAL FOUNDATION.

2.2 The Chapter 11 Cases

On April 6, 2015 (the "Petition Date"), each of the Debtors filed their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the "Court" or "Bankruptcy Court"), with such cases being jointly administered under case number 15-70444.

(a) The Canadian Proceeding

On April 7, 2015, the Bankruptcy Court entered an order authorizing Xinergy Ltd. to act as the foreign representative of the Debtors, pursuant to Bankruptcy Code section 1505. On April 23, 2015, Xinergy Ltd. obtained an order (the "Recognition Order") from the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") recognizing its chapter 11 case as a "foreign main proceeding" under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "CCAA") and a second order (the "Supplemental Recognition Order") granting additional relief. The Canadian Court has recognized, among other things, certain orders approving DIP Financing (as defined below) and a Stipulated Protective Order into entered by the Debtors and a large shareholder.

(b) Appointment of the Creditors' Committee

On May 11, 2015, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee"). The members of the Creditors' Committee are Security America, Inc., Penn Virginia Operating Co., LLC., and WPP, LLC.

(c) Payment of Certain Prepetition Obligations

On the Petition Date, the Debtors filed a number of "first day" motions designed to ensure the Debtors' ability to continue to operate with minimal disruption following the filing of the Cases. Specifically, the Debtors requested authority to pay certain pre-Petition Date obligations, primarily related to outstanding amounts owed to their employees in the ordinary course of business. In addition, the Debtors requested authority to make certain payments owed to critical vendors in order to maintain their services on ordinary terms. The Debtors also requested authority to pay certain taxes to the applicable taxing authorities and insurance premiums to the Debtors' insurance carriers. On April 7, 2015, the Bankruptcy Court conducted a hearing to consider the first day motions and entered interim orders authorizing the Debtors, among other things, (i) to make certain payments to employees, (ii) to make certain payments to critical vendors, (iii) to pay certain taxes to the applicable taxing authorities, and (iv) to pay insurance premiums to the applicable insurance carrier. On May 8, 2015, the Bankruptcy Court entered final orders authorizing the foregoing relief.

(d) DIP Financing

On April 7, 2015, the Debtors filed a motion seeking approval of debtor-in-possession financing (the "DIP Financing") to be entered into by and among Xinergy Corp. as borrower (the

"Borrower"), Xinergy Ltd. and the remaining Debtors as guarantors (collectively, the "Guarantors"), affiliates of Whitebox and Highbridge as initial lenders (the "Initial Lenders"), and WBOX 2014-4 Ltd. in its capacity as administrative agent (the "DIP Agent"), to be comprised of a multiple draw term loan facility of up to $40,000,000 to the Borrower to refinance the Prepetition Financing Facility in full (the "Refinancing") and for working capital purpose during the pendency of the Chapter 11 Cases. The DIP Facility also included an uncommitted accordion feature whereby the Borrower had the right, exercisable only one time, to incrementally increase the commitment amount by an aggregate principal amount equal to up to $10 million, subject to, among other conditions to be agreed, no default or event of default continuing at the time of such increase. On April 7, 2015, the Bankruptcy Court entered an interim order approving the DIP Financing, on May 5, 2015, the Bankruptcy Court entered a final order approving the DIP Financing, and on June 5, 2015, the Bankruptcy Court entered a modified final order approving the DIP Financing.

On August 27, 2015, the Bankruptcy Court entered a supplemental order approving of amendments to the DIP Financing, on an interim basis, to waive certain specified defaults and allow additional incremental borrowings of up to $9,000,000 under the accordion feature of the DIP Facility. The interim order approving the amendments to the DIP Financing became a final order on September 18, 2015. As of the date hereof, approximately $45,000,000 is drawn and outstanding under the DIP Facility.

(e) Lien Challenge Period

Under the Bankruptcy Court order approving the DIP Financing, the Creditors' Committee was granted a period of sixty (60) days from the Petition Date, or such later date as agreed by the parties or directed by the Bankruptcy Court, to investigate and seek to challenge the validity, enforceability, priority, extent of amount of the Senior Secured Notes and the liens securing the Debtors' obligations in respect of the Senior Secured Notes (the "Challenge Period"). After due investigation and diligence by the Creditors' Committee during the Challenge Period, as extended by agreement of the parties, the Creditors' Committee declined to commence any action or assert any claims, defenses or causes of action in respect of the Senior Secured Notes or the liens granted by the Debtors in respect thereto, or to seek derivative standing to pursue such claims and defenses, prior to the expiration of the Challenge Period.

(f) Retention of Professionals

(1) Hunton & Williams LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests otherwise in the Cases, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Hunton & Williams LLP as their counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(2) Cassels Brock & Blackwell LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests otherwise in the Canadian Proceeding, the Debtors filed with the Bankruptcy Court an

application seeking entry of an order authorizing the Debtors to retain Cassels Brock & Blackwell LLP as their Canadian counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(3) Michael Wilson PLC

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests in connection with certain disputes with American Electric Power, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Michael Wilson PLC as their special conflicts counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(4) Stubbs Alderton & Markiles LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests in certain limited corporate matters in the Cases, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Stubbs Alderton & Markiles LLP as their special corporate counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(5) Seaport Global Securities

To provide them with financial advisory and investment banking services, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain SGS as their financial advisors and investment bankers. On May 12, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(6) Zolfo Cooper Management, LLC

As described in more detail below, to provide them with management services in connection with their proposed restructuring, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Zolfo Cooper Management, LLC and designate Sherman Edmiston as Chief Restructuring Officer. On July 13, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(7) Wilson Energy Advisors, LLC

To provide them with additional operational advice and interim management services, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Wilson Energy Advisors, LLC and to designate Jeffrey A. Wilson as the Debtors' Senior Vice President – Operations. On August 27, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(g) Shareholder Attempt to Call Special Shareholder Meeting

On or about April 16, 2015, the Debtors received a letter (the "Requisition") from a shareholder of the Debtors who owns more than five percent of the Debtors' outstanding common stock demanding that the Board of Directors call a meeting of shareholders of Xinergy

Ltd. for the purpose of reconstituting the Board of Directors. The Requisition specifically sought to remove and/or replace three of the five current board members. On May 7, 2015, the Debtors responded to the Requisition indicating that the Board of Directors had reviewed and considered the Requisition, but declined to call a special shareholder meeting of Xinergy Ltd. because, among other reasons, it would seriously jeopardize the Debtors' prospects for successfully reorganizing through these Bankruptcy Cases to the detriment of all of the estates' stakeholders.

By complaint (the "Complaint") dated May 8, 2015, the Debtors commenced Adversary Proceeding No. 15-07008 (the "Adversary Proceeding") against the shareholder, seeking declaratory judgment that Xinergy Ltd. has no obligation to hold a special shareholder meeting prior to confirmation of the Plan and injunctive relief preventing the shareholder from taking further actions to call or hold a special shareholder meeting.

On May 12, 2015, the shareholder requested a shareholder list from Xinergy Ltd. and its transfer agent. On or about May 13, 2015, the shareholder called a shareholder meeting to be held on June 19, 2015. On May 14, 2015, the shareholder filed a motion in the CCAA proceeding seeking a declaration that the actions of calling the shareholder meeting, as well as seeking certain administrative relief related to the conduct of the meeting, including seeking an order requiring Xinergy Ltd. to deliver a shareholder list to the shareholder, did not violate the stay of proceedings under the Recognition Order and under the Supplemental Recognition Order entered in the CCAA proceeding.

On May 19, 2015, the Debtors filed a Motion for Preliminary Injunction prohibiting the shareholder from taking any further action to call or hold a special shareholder meeting prior to confirmation of a plan or further order of the Court.

On May 29, 2015, after a contested hearing, the Canadian Court made an order finding that the shareholder's actions were stayed pursuant to the Supplemental Recognition Order. On June 18, 2015, the Canadian Court issued detailed reasons for its order.

On June 5, 2015, the Court entered a Stipulated Order (the "Stipulated Order") staying the Adversary Proceeding until the earlier of the date an order confirming the Plan becomes a final, non-appealable order or the date that either of the parties files a statement with the Court requesting the stay to be lifted. Pursuant to the Stipulated Order, the shareholder agreed not to take any further actions to call or hold a special shareholder meeting. On June 18, 2015, the Canadian Court recognized the Stipulated Order. The Court has scheduled a status conference in the Adversary Proceeding for October 16, 2015, at 11:00 a.m.

(h) Appointment of Chief Restructuring Officer

Pursuant to section 6.26 of the DIP Credit Agreement, the Debtors were required to retain a consultant or other professional to serve as Chief Restructuring Officer (as defined in the DIP Credit Agreement), with a scope of responsibility to be mutually agreed upon by the Debtors and the Majority DIP Lenders. After consultation with the Majority DIP Lenders, on or about June 15, 2015, the Debtors agreed to retain Zolfo Cooper to provide the Chief Restructuring Officer and other consulting services for a period of ninety days subject to mutual agreement to extend the term. Zolfo Cooper designated Sherman Edmiston to serve as the Company's Chief

Restructuring Officer. The Bankruptcy Court approved the retention of Zolfo Cooper and Mr. Edmiston at a hearing held on July 7, 2015 and by an order entered July 13, 2015. Since his retention, Mr. Edmiston has, together with the Debtors' senior management and advisors, provided management services to the Debtors and he, along with Zolfo Cooper personnel, have assisted in the preparation of financial projections, projected cash flows and capital needs analyses in support of the restructuring process and the Plan. The Debtors and Zolfo Cooper agreed to an extension of the term of the services agreement with Zolfo Cooper and Mr. Edmiston through and including September 17, 2015.

(i) Claims Process and Bar Dates

On June 8, 2015, the Bankruptcy Court established the following bar dates (each, a "Bar Date") for the filing of proofs of claim against the Debtors in these Chapter 11 Cases:

- July 31, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim for (i) claims arising prior to the commencement of the Chapter 11 Cases (this Bar Date does not apply to claims or interests held by one Debtor against another Debtor nor to any other claims that are subject to one of the other specific Bar Dates set forth below); (ii) claims for the value of any goods received by the Debtors within 20 days before the commencement of these Chapter 11 Cases, which goods were sold to the Debtors in the ordinary course of the Debtors' business;

- September 23, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim by any "governmental unit" as that term is defined in Section 101(27) of the Bankruptcy Code; and

- For claims arising from the Debtors' rejection of any executory contract or unexpired lease, the Bar Date is the later of (a) July 31, 2015; and (b) thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease.

On June 19, 2015, the Debtors filed their schedules of assets and liabilities (the "Schedules") and statements of financial affairs in these Chapter 11 Cases. In the event that the Debtors amend their Schedules, the Bar Date for filing a proof of claim with respect to such claim is the later of (a) July 31, 2015; and (b) thirty (30) days after the applicable claimant affected by any such amendment is served with notice that the Debtors have amended their Schedules.

The Debtors are continuing their review and analysis of the proofs of claims filed in the Chapter 11 Cases. As of the date hereof, 254 proofs of claim have been filed against the various Debtors which, in the aggregate (inclusive of both Secured and Unsecured Claims), total $530,867,544.42. The Debtors anticipate that they have valid objections to various Claims that have been filed and thus, the ultimate total Allowed amount of such Claims may be significantly less than the asserted amounts.

(j) Restructuring Discussions

Following the commencement of the Bankruptcy Cases, the Debtors and an informal committee of holders of the Senior Secured Notes (many of which are also lenders under the DIP Credit Agreement) engaged in discussions concerning the terms of the Plan. These discussions occurred over several weeks, both informally and formally, including at meetings held in the New York offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the informal committee of holders of the Senior Secured Notes, on May 21 and August 6, 2015. In advance of those meetings, the Debtors and certain holders of the Senior Secured Notes entered into Non-Disclosure Agreements, which provided that those holders of the Senior Secured Notes would maintain the confidentiality of certain financial information provided by the Debtors for the purpose of negotiating the terms of the Plan and refrain from trading in the Debtors' securities.[3] The Non-Disclosure Agreement contained a provision requiring the Debtors to publicly disclose all confidential information provided to the holders of the Senior Secured Notes by dates certain, if the Plan had not been filed in accordance with the deadline imposed in Section 6.25 of the DIP Facility Credit Agreement, in order to permit the restricted holders of the Senior Secured Notes to recommence trading in the Debtors' securities.

The ongoing discussions between the Debtors and the informal committee of holders of the Senior Secured Notes concerning the terms of the Plan included an agreement to modify the "Milestones" set forth in Section 6.25 of the DIP Facility Credit Agreement. Those Milestones, as modified and approved by the Bankruptcy Court, currently are as follows:

(a) By no later than September 16, 2015, the Debtors shall file with the Bankruptcy Court a proposed Acceptable Reorganization Plan and a motion seeking approval of an accompanying disclosure statement;

(b) By no later than October 16, 2015, the Bankruptcy Court shall have entered an Order approving of a disclosure statement for an Acceptable Reorganization Plan;

(c) By no later than December 1, 2015, the Bankruptcy Court shall have entered an Order confirming an Acceptable Reorganization Plan; and

(d) By no later than December 7, 2015, the effective date of the Acceptable Reorganization Plan shall have occurred.

[3] Trading in the common stock of Xinergy Ltd. is prohibited during the pendency of the Bankruptcy Cases pursuant to the *Final Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates* [Doc No. 191] entered by the Bankruptcy Court on May 8, 2015.

2.3 New Capital Structure

(a) New Holdco Equity Interests

Upon Consummation of the Plan, the Reorganized Debtors' ultimate parent company, Xinergy Corp. or such other entity as the Debtors select with the consent of the Majority Consenting Noteholders, will be reorganized as New Holdco. New Holdco's equity interests shall consist of New Common Stock. New Common Stock shall be issued in accordance with the Plan to holders of Allowed Claims in Class 3 upon the Effective Date (the "Plan Securities"). The Plan Securities will be subject to dilution by any awards of New Common Stock subsequently issued under the Management Incentive Plan. The issuance of New Common Stock will be authorized without the need for any further corporate action and without any further action by the Debtors or New Holdco, as applicable.

(b) Exit Facility

The Debtors anticipate the need for exit financing on terms to be determined. The exit financing may involve the conversion of the DIP Facility pursuant to the Exit Conversion and such additional or alternative financing, the material terms of which will be set forth in the Exit Facility Term Sheet to be filed in the Plan Supplement. On or before the Effective Date, the Debtors shall execute and deliver the Exit Facility Credit Agreement evidencing such exit financing arrangements, which shall become effective and enforceable in accordance with its terms and the Plan. The Debtors anticipate that the Exit Facility may include up to an estimated maximum principal amount of $10 million in additional financing in the form of a term loan or revolving credit facility provided by one or more DIP Facility Lenders or a third-party. Confirmation of the Plan shall be deemed approval of the Exit Facility and the Exit Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Facility and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. Proceeds from the Exit Facility shall be used to pay the DIP Facility Claims, Allowed Administrative Claims, and Allowed Priority Claims, to make distributions to holders of Allowed General Unsecured Claims, to fund the Professional Fee Escrow Account, and for general working capital purposes.

2.4 Treatment of Unclassified Claims

(a) Unclassified Claims Summary

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan. The Claim recoveries for such unclassified Claims are set forth below:

Claim	Plan Treatment	Projected Plan Recovery
Administrative Claims	Paid in full in Cash	100%
DIP Facility Claims	Conversion to Exit Facility Loans or paid in full in Cash	100%
Professional Claims	Paid in Allowed amount in Cash	100%
Priority Tax Claims	Paid in full in Cash	100%

(b) Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, in consultation with the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(c) DIP Facility Claims

Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Loans in a face amount equal to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors and Majority DIP Lenders may agree, to be specified in the Exit Facility Term Sheet and to be otherwise governed by the Exit Facility Documents. Unless otherwise agreed to between the Debtors and a holder of a DIP Facility Claim, if the Debtors do

not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash.

(d) Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed and served in accordance with the Compensation Procedures approved by the Bankruptcy Court no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows, including from the Professional Fee Escrow Account, which the Reorganized Debtors will establish in trust for the Professionals and fund with Cash equal to the Professional Fee Amount on the Effective Date. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Amount no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Claims filed with the Bankruptcy Court. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. No funds in the Professional Fee Escrow Account shall be property of the Estates. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid will be turned over to New Holdco.

From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

(e) Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as reasonably practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

2.5 Classification and Treatment of Claims and Interests

(a) Summary of Classification and Treatment of Claims and Interests

The Plan establishes a comprehensive classification of Claims and Interests. The table below summarizes the classification, treatment, voting rights, and estimated recoveries,

estimated as of the date hereof, of the Claims and Interests, by Class, under the Plan. Amounts assumed in the projected Plan recovery analysis are estimates only.

Class	Claim or Interest	Voting Rights	Treatment	Estimated Allowed Claims	Projected Plan Recovery
1	Priority Non-Tax Claims	Deemed to Accept	Paid in full in Cash	$0	100%
2	Other Secured Claims	Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124.	$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	$202,114,791 ($65,500,000 secured)	27.5%–32.4%
4	General Unsecured Claims	Entitled to Vote	Lesser of Pro Rata share of $200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	$141,600,000 ($4,500,000 – $5,500,000 excluding the Senior Secured Note Deficiency Claims)	<0.2% (which may increase to 4% in certain circumstances)[4]
5	Intercompany Claims and Interests	Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	$280,394,441	0%/100%[5]
6	Interests in Xinergy Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%

[4] The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders have agreed to vote to accept the Plan and to waive any recovery on account of such Class 4 Claim if Class 4 votes in sufficient number and amount to accept the Plan. In that circumstance, the projected recovery to holders of Class 4 Claims (other than the Senior Secured Note Deficiency Claims) is approximately 4%.

[5] Intercompany Claims and Interests shall be, at the option of the Debtors (with the consent of the Majority Consenting Noteholders) (a) canceled or (b) unaltered, reinstated or otherwise treated as unimpaired. No Distribution will be made on account of Intercompany Claims and Interests under the Plan.

7	Section 510(b) Claims (if any)	Deemed to Reject	Canceled	$0	0%

(b) Description of Classes of Claims Entitled to Vote and Projected Recoveries

Class 3 claims consist of Senior Secured Note Claims against the Debtors. The Senior Secured Note Claims shall be Allowed in the aggregate principal amount of $195,000,000 plus accrued and unpaid interest of $7,114,791.67 as of the Petition Date, plus, to the extent the following are payable in accordance with the Indenture, fees and expenses (including any prepayment fees and professionals fees and expenses), penalties, premiums and other obligations incurred in connection with the Senior Secured Note Claims. The Senior Secured Note Claims are secured claims pursuant to section 506(a) of the Bankruptcy Code to the extent of the Debtors' Reorganization Value less the estimated amount of the DIP Facility Claims and the Other Secured Claims, or approximately $65,500,000, on account of which holders of Class 3 Claims are receiving 100% of New Common Stock. The remaining portion of the Senior Secured Note Claims, or $136,614,791, is unsecured Senior Secured Note Deficiency Claims, which are treated as Class 4 Claims. The projected recovery under the Plan to Holders of the Senior Secured Note Claims is based on the estimated Reorganization Equity Value of the Reorganized Debtors on the Effective Date.

Class 4 consists of any General Unsecured Claims against any Debtor, including Senior Secured Note Deficiency Claims. Each Holder of an Allowed Class 4 Claim shall receive the lesser of its Pro Rata share of $200,000 or 4% of the amount of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) on the Effective Date; provided, however, that if Holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then Holders of Senior Secured Note Deficiency Claims shall waive their right to distributions on account of such Senior Secured Note Deficiency Claims. In that circumstance, the estimated percentage recovery to other holders of Class 4 Claims is projected to increase to 4%. If Class 4 does not accept the Plan, holders of Senior Secured Note Deficiency Claims shall be entitled to share Pro Rata in the Class 4 recovery, and the estimated percentage recovery to all holders of Class 4 Claims is less than 0.2%. The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders intend to vote in favor of the Plan per their agreement with the Creditors Committee. In addition, notwithstanding anything to the contrary in Section 4.15 of the Plan, or any other provision of the Plan, the Estate and the Reorganized Debtors shall waive and release each holder of an Allowed Class 4 Claim from any Avoidance Action.

ARTICLE III

VOTING PROCEDURES AND REQUIREMENTS

3.1 Classes Entitled to Vote on the Plan

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the "Voting Classes"):

Class	Claim or Interest	Voting Rights	Status
3	Senior Secured Note Claims	Entitled to Vote	Impaired
4	General Unsecured Claims	Entitled to Vote	Impaired

If your Claim or Interest is not included in the Voting Class, you are not entitled to vote and you will not receive a Solicitation Package, including a ballot setting forth detailed voting instructions. If your Claim or Interest is included in the Voting Class, you should read your ballot and carefully follow the instructions included in the ballot. Please use only the ballot that accompanies this Disclosure Statement or the ballot that the Debtors, or the Solicitation Agent on behalf of the Debtors, otherwise provided to you.

3.2 Votes Required for Acceptance by a Class

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims that have voted.

3.3 Certain Factors to be Considered Prior to Voting

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan and include:

- unless otherwise specifically indicated, the financial information contained in the Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and the Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan.

While these factors could affect distributions available to holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of the Voting Class or necessarily require a re-solicitation of the votes of holders of Claims in the Voting Class. For a further discussion of risk factors, please refer to Article V, entitled "Certain Factors To Be Considered" of this Disclosure Statement.

3.4 Voting Procedures

Each Class entitled to Vote on the Plan will receive a Solicitation Package with instructions explaining how to vote and identifying the deadline by which votes must be received by the Solicitation Agent. There will be no separate voting process for Canadian Holders of Claims or Interests, and Canadian Holders of Claims or Interests will be subject to the voting process set out in the Disclosure Statement Order, as recognized by the Disclosure Statement Recognition Order. The Solicitation Package is attached as exhibits to the *Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* [Doc. No. 408].

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLASS OF CLAIMS AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASS FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

ARTICLE IV

OTHER KEY ASPECTS OF THE PLAN

4.1 Distributions

One of the key concepts under the Bankruptcy Code is that only claims and interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an Allowed Claim or Interest means that the Debtors agree, or if there is a dispute, the Bankruptcy Court determines, that the Claim or Interest, and the amount thereof, is in fact a valid obligation of or Interest in the Debtors. Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the relevant parties, on the Distribution Date, the Distribution Agent shall make initial distributions under the Plan on account of Allowed Claims and Interests, including those that become Allowed as of the Effective Date, subject to the Reorganized Debtors' right to object to Claims and Interests.

(a) Disputed Claims Process

Except as otherwise provided in the Plan, if a party files a Proof of Claim and (i) the Debtors, in consultation with the Majority Consenting Lenders, or the Reorganized Debtors, as applicable, file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim has been scheduled by the Debtors as being "Disputed," then such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in the Plan. Except as otherwise provided in the Plan, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.

(b) Prosecution of Objections to Claims and Interests

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 60th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests not objected to by the end of such 60-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.15 of the Plan.

(c) No Interest

Unless otherwise specifically provided for in the Plan or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

(d) Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

4.2 Restructuring Transactions

On the Effective Date, the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may enter into the following transactions and take any actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided therein. Among other Restructuring Transactions to be effectuated, the Debtors may take steps to dissolve, merge or otherwise eliminate Xinergy Ltd. from the corporate structure of the Reorganized Debtors. The actions to effect the Restructuring may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable U.S. state or Canadian law; (d) an application to the Canadian Court under applicable law; and (e) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

4.3 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption of Executory Contracts and Unexpired Leases

The Plan provides that each Executory Contract and Unexpired Lease that is not otherwise rejected shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases under the Plan may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions and assignments described in the Plan.

Except as otherwise provided in the Plan or agreed to by the Debtors, the Majority Consenting Noteholders, and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

(b) Indemnification

The Plan provides that on and as of the Effective Date, the Indemnification Provisions will be assumed and irrevocable and will survive the effectiveness of the Plan, and the Reorganized Debtors' governance documents will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Debtors' and the Reorganized Debtors' current and former directors, officers, employees, or agents to the fullest extent permitted by law and at least to the same extent as the organizational documents of each of the respective Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of the Reorganized Debtors will amend and/or restate their respective governance documents before or after the Effective Date to terminate or adversely affect any of the Reorganized Debtors' obligations to provide such indemnification rights or such directors', officers', employees', or agents' indemnification rights.

(c) Surety Bonds

On and as of the Effective Date, each Surety Bond shall be deemed assumed and each Reorganized Debtor party thereto shall pay any and all premiums and other obligations due or that may become due on or after the Effective Date. Additionally, as specified in Section 8.5 of the Plan, each obligation of a Debtor that is covered by the Surety Bonds, including, but not limited to, obligations of the Debtors to various Governmental Units for reclamation of mines, are not being released, discharged, precluded or enjoined by the Plan or the Confirmation Order and shall remain obligations of the applicable Reorganized Debtor as of the Effective Date. Nothing contained in Section 5.3 of the Plan shall constitute or be deemed a waiver of any Cause of Action that any Debtor may hold against any Entity. All Proofs of Claim on account of or in respect of any agreement covered by Section 5.3 of the Plan shall be deemed withdrawn automatically and without further notice to or action by the Bankruptcy Court. Each Reorganized Debtors shall be deemed to have assumed as of the Effective Date, and shall continue to perform under, any of its Surety Indemnity Agreements. Failure to expressly identify any Surety Indemnity Agreement in any schedule pursuant to Section 5.3 of the Plan shall not imply the rejection or failure to assume that agreement. To the extent that Restructuring Transactions create new corporate entities or change the relative corporate position of Xinergy Ltd. as parent, then each new corporate entity and/or the new corporate parent will execute a Surety Indemnity Agreement. Notwithstanding any other provision of the Plan, all letters of credit issued to the Sureties as security for a Debtor's obligations under the Surety Bonds or

Surety Indemnity Agreements shall remain in place for the benefit of the resulting Reorganized Debtors to secure against any "loss" (as defined in the applicable Surety Indemnity Agreement) incurred by the respective Surety. Notwithstanding any other provisions of the Plan, nothing in the injunction and release provisions of the Plan shall be deemed to apply to the Sureties or the Sureties' claims, nor shall these provisions be interpreted to bar, impair, prevent or otherwise limit the Sureties from exercising their rights under any of the Surety Bonds, letters of credit, Surety Indemnity Agreements, Surface Mining Control and Reclamation Act, or the common law of suretyship.

Additionally, the Debtors intend to file applications, as necessary, with the relevant state environmental regulators that issued the Debtors' mining permits to obtain approval and/or recognition of the change in control of the Reorganized Debtors as a result of the installment of the New Board and new officers (as applicable) of the Reorganized Debtors and as otherwise may be required as a result of the Restructuring Transactions.

(d) Cure of Defaults and Objections to Cure and Assumption

The Plan requires the Debtors or the Reorganized Debtors, as applicable, to pay Cures, if any, on the Effective Date or as soon as applicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be filed with the Solicitation Agent on or before the Cure Objection Deadline. Any such request that is not timely filed will be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure; *provided*, *however*, that nothing herein shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be filed with the Bankruptcy Court on or before the Cure Objection Deadline. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing for which such objection is timely filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is a dispute regarding Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

(e) Contracts and Leases Entered Into After the Petition Date

The Plan provides that contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

(f) Reservation of Rights

If there is a dispute regarding whether a contract or lease is or was executory or unexpired, under the Plan, the Debtors or the Reorganized Debtors, as applicable, expressly reserve the right to alter their treatment of any disputed contract or lease within 45 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

Except as otherwise provided in the Plan, the Confirmation Order, or in agreements previously approved by Final Order of the Court, the Debtors, or the Reorganized Debtors may, pursuant to applicable law (including section 553 of the Bankruptcy Code), offset against any Claim, including an administrative expense of the Debtors, before any Distribution is made on account of such Claim, any and all of the claims, rights and causes of action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other action or omission of the Debtors or the Reorganized Debtors, nor any provision of the Plan shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, rights and causes of action that the Debtors or the Reorganized Debtors may possess against such Holder.

4.4 Release, Injunction, and Related Provisions

(a) Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of all debt (as such term is defined in section 101 of the Bankruptcy Code) that arose before the Confirmation Date, any debts of any kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, and the rights and Interests of any Holders of Interests whether or not: (1) a Proof of Claim or Proof of Interest based on such debt or Interest is Filed; (2) a Claim or Interest based

upon such debt is Allowed pursuant to Section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and equity Interests subject to the Effective Date occurring, except as provided for under Section 1141(d)(6) of the Bankruptcy Code.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

(b) Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Reorganized Debtors, as applicable, reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto. Notwithstanding anything herein to the contrary, and as provided in Article III of the Plan, no Holder of a section 510(b) Claim shall receive any distribution on account of such section 510(b) Claim, and all section 510(b) Claims shall be extinguished.

(c) Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights,

Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceedings, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; provided, however, that the foregoing provisions of Section 8.3 of the Plan shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in Section 8.3 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that Section 8.3 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to Section 8.3 of the Plan.

(d) Consensual Third Party Releases

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in Section 8.4 of the Plan, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under Section 8.4 of the Plan), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; provided, however, that the foregoing provisions of Section 8.4 of the Plan shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in Section 8.4 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.4 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall

constitute the Bankruptcy Court's finding that Section 8.4 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in Section 8.4 of the Plan; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to Section 8.4 of the Plan.

(e) Exculpation

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding or the Restructuring; provided, however, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

(f) Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.5 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a)

commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

(g) Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

(h) Recoupment

In no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any

indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

(i) Release of Liens

Except (a) with respect to the Liens securing (i) the DIP Facility to the extent set forth in the Exit Facility Documents and (ii) Other Secured Claims (depending on the treatment of such Claims, but for the avoidance of doubt, including the Claims of the Information Officer and its counsel granted pursuant to the orders of the Canadian Court), or (b) as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

(j) Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as non-contingent, or (b) the relevant holder of a Claim has filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

4.5 Incentive Plans and Employee and Retiree Benefits

Except as otherwise provided in the Plan, on and after the Effective Date, subject to any Final Order and, without limiting any authority provided to the New Board under the Debtors' respective certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

4.6 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE V

CERTAIN FACTORS TO BE CONSIDERED

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESSES OR THE PLAN AND ITS IMPLEMENTATION.

5.1 General

The following provides a summary of various important considerations and risk factors associated with the Plan; however, it is not exhaustive. In considering whether to vote to accept or reject the Plan, holders of Claims that are entitled to vote should read and carefully consider the factors set forth below, as well as all other information set forth or otherwise referenced or incorporated by reference in this Disclosure Statement.

5.2 Risks Relating to the Plan and Other Bankruptcy Law Considerations

(a) Parties in Interest May Object to the Debtors' Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created seven Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(b) The Debtors May Not Be Able to Satisfy the Voting Requirements for Confirmation of the Plan

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors may seek, as promptly as practicable thereafter, Confirmation. If the Plan does not receive the required support from Class 3 or Class 4, the Debtors may elect, with the consent of the Majority Consenting Lenders, to amend the Plan, seek to sell their assets pursuant to section 363 of the Bankruptcy Code, or proceed with liquidation.

(c) The Debtors May Not Be Able to Obtain Agreement from the Majority Consenting Noteholders or a Third-Party on the Terms of Exit Financing

It likely will be necessary for the Debtors to execute the Exit Conversion and obtain an additional financing commitment from the DIP Facility Lenders or a third-party in the form of a term loan or revolving credit facility, or obtain another source of financing, in order for the Effective Date to occur under the Plan and for the Debtors to emerge from bankruptcy. The Debtors believe that they will be able to obtain the necessary commitments from the DIP Facility Consenting Lenders to execute the Exit Conversion and obtain additional financing from the DIP Facility Consenting Lenders or a third-party, or that they will be able to obtain replacement financing from another source. Nevertheless, there can be no assurances that the Debtors will be able to obtain such commitments from the DIP Facility Lenders and/or a third-party, or to obtain a financing commitment from another source with the consent of the Majority Consenting Noteholders in a sufficient amount to satisfy the DIP Facility Claims, pay additional bankruptcy-related expenses and provide additional working capital.

(d) The Debtors May Not Be Able to Secure Confirmation of the Plan

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) such plan is feasible; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement, the balloting procedures and voting results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

(e) Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponents' request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements and the Debtors will request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion or confirm the Plan on a nonconsensual basis.

(f) The Debtors May Not Obtain Recognition from the Canadian Court

The Debtors intend to seek entry of the Confirmation Recognition Order. The Debtors believe that such order will be granted by the Canadian Court; however, there can be no guaranty as to such outcome.

(g) The Debtors May Not Obtain Necessary Approvals from Governmental Units, Regulators and Commissions

The Debtors may need to obtain approval of certain documents, applications and agreements necessary to implement the Plan from Governmental Units, regulators and commissions in accordance with applicable laws. The Debtors believe that such approvals will be obtained; however, there can be no assurance that the Debtors will obtain such approvals.

(h) Risk of Non-Occurrence of Effective Date

Although the Debtors believe that the Effective Date would occur very shortly after the Confirmation Date, there can be no assurance as to such timing.

5.3 Risks Relating to New Common Stock

(a) The Debtors May Not Be Able To Achieve Their Projected Financial Results

The Debtors may not be able to meet their projected financial results or achieve the revenue or cash flow that the Debtors have assumed in projecting their future business prospects. If the Debtors do not achieve these projected revenue or cash flow levels, the Debtors may lack sufficient liquidity to continue operating as planned after emergence. The financial projections represent management's view based on currently known facts and hypothetical assumptions about their future operations. They do not, however, guarantee the Debtors' future financial performance.

(b) The Debtors' Exit Facility May Contain Restrictive Covenants

The Exit Facility Credit Agreement or other Exit Facility Documents may contain restrictive covenants. If the Debtors are unable to satisfy such covenants, including as a result of a failure to achieve financial projections, the Debtors may be prohibited from issuing dividends or making other distributions to holders of the New Common Stock.

(c) A Liquid Trading Market for the New Common Stock May Not Develop

There are currently no existing markets, and the Debtors make no assurance that liquid trading markets for the New Common Stock will develop. The liquidity of any market for the New Common Stock will depend, among other things, upon the number of holders of New Common Stock, the Reorganized Debtors' financial performance, and the market for similar securities, none of which can be determined or predicted. Therefore, the Debtors cannot assure that an active trading market will develop or, if a market develops, what the liquidity or pricing characteristics of that market will be.

(d) The Debtors May Be Controlled by Significant Holders

Under the Plan, certain holders of Allowed Claims will receive New Common Stock. If holders of a significant number of shares of New Common Stock were to act as a group, such holders could be in a position to influence the outcome of actions requiring shareholder approval, including, among other things, the election of directors. This concentration of ownership could also facilitate or hinder a negotiated change of control of the Reorganized Debtors and, consequently, impact the value of the New Common Stock. Furthermore, the possibility that one or more holders of a significant number of shares of the New Common Stock may sell all or a large portion of their shares of the New Common Stock in a short period of time may adversely affect the trading prices of the New Common Stock.

(e) There May Be Restrictions on the Transfer of New Common Stock by Certain Holders

Holders of New Common Stock issued pursuant to the Plan who are deemed to be "underwriters" as defined in section 1145(b) of the Bankruptcy Code, including those holders who are deemed to be "issuers" within the meaning of the Securities Act and the rules promulgated thereunder, will be unable freely to transfer or to sell their New Common Stock except pursuant to (a) "ordinary trading transactions" by a holder that is not an "issuer" within the meaning of section 1145(b), (b) an effective registration of such securities under the Securities Act and under equivalent state securities or "blue sky" laws, or (c) pursuant to the provisions of Rule 144 or Regulation S under the Securities Act or another available exemption from the registration requirements of the Securities Act. Moreover, the Reorganized Debtors may not be required to file periodic reports with the SEC and may not make publicly available the information required by Rule 144, thereby limiting the ability of holders of New Common Stock to avail themselves of Rule 144 following the applicable holding period.

In addition, the corporate governance, organizational or similar documents binding upon holders of New Common Stock may contain additional provisions, including (a) restrictions and/or prohibitions on transfers on account of tax, securities law, other regulatory circumstances or otherwise, (b) different approval rights among shareholders based on ownership, including with respect to the election of directors, (c) provisions limiting information rights for holders of New Common Stock, (d) 'drag-along' or similar provisions in respect of certain transactions and/or (e) other provisions which may limit the rights of holders of New Common Stock.

5.4 <u>Risks Relating to the Debtors' Business</u>

(a) Operating Risks

The Debtors' coal mining operations are subject to operating risks that could result in decreased coal production thereby reducing revenues. The Debtors' revenues depend on the level of coal mining production. The level of production is subject to operating conditions and events beyond the Debtors' control that could disrupt operations and affect production at particular mines for varying lengths of time. These conditions and events, among other things, include:

- the shortage of qualified, skilled labor;

- inability to acquire, maintain or renew necessary permits or mining or surface rights in a timely manner, if at all;
- failure of reserve estimates to prove correct;
- interruptions due to transportation delays;
- changes in governmental regulation of the coal industry, including the imposition of additional taxes, fees or actions to suspend or revoke the Debtors' permits or changes in the manner of enforcement of existing regulations;
- limited availability of mining and processing equipment and parts from suppliers;
- the unavailability of required equipment of the type and size needed to meet production expectations;
- mining and processing equipment failures and unexpected maintenance problems;
- unfavorable changes or variations in geologic conditions, such as the thickness of the coal deposits and the amount of rock embedded in or overlying the coal deposit and other conditions that can make underground mining difficult or impossible;
- adverse weather and natural disasters, such as heavy rains and flooding;
- increased water entering mining areas and increased or accidental mine water discharges;
- increased or unexpected reclamation costs;
- unfavorable fluctuations in commodities-based products such as diesel fuel, lubricants, explosives and steel; and
- unexpected mine safety accidents, including fires and explosions from methane.

These conditions and events may increase the Debtors' cost of mining and delay or halt production at particular mines either permanently or for varying lengths of time, which would lower or eliminate the Debtors' margins which could have an adverse effect on the Debtors' financial condition and results of operations.

The Debtors' planned exploration and development projects and acquisition activities may not result in the acquisition of significant additional coal deposits and the Debtors may not have continuing success developing additional mines. The Debtors' mining operations are conducted on mineral rights leased by it. If defects in title or boundaries are found to exist after the Debtors commence mining, their right to mine may be limited or prohibited.

In addition, in order to develop their coal deposits, the Debtors must receive various governmental permits. Before a mining permit is issued on a particular parcel, environmental

activists are eligible to file petitions to declare the land unsuitable for mining. The Debtors cannot predict whether the Debtors will continue to receive the permits necessary to expand operations.

Mineral reserves disclosed by the Debtors should not be interpreted as assurances of mine life or of the profitability of current or future operations given that there are numerous uncertainties inherent in the estimation of economical mineral reserves. Estimates of mineral reserves and net cash flows necessarily depend upon a number of variable factors and assumptions such as: future mining technology improvements; geological and mining conditions, which may not be fully identified by available exploration data or may differ from the Debtors' experience in current operations; historical production from the area compared with production from other producing areas; the assumed effects of regulation by governmental agencies; and assumptions concerning coal prices, operating costs, capital expenditures, severance and excise taxes, royalties, development costs and reclamation costs, all of which may vary considerably from actual results. For these reasons, estimates of the economical mineral reserves attributable to any particular group of properties, classifications of reserves based on risk of recovery and estimates of net cash flows expected there from prepared by different engineers or by the same engineers at different times may vary substantially.

(b) Changes in Demand for Coal Could Have an Adverse Impact on the Reorganized Debtors' Results of Operations

Any decrease in coal demand and/or prices, whether due to increased use of alternative energy sources, changes in weather patterns, decreases in overall demand or otherwise, would reduce the Debtors' revenues and likely adversely impact the Debtors' earnings and the value of the Debtors' coal reserves. Additionally, if global recessions or general economic downturns result in sustained decreases in the global demand for electricity and steel production, the Debtors' financial condition, results of operations and cash flows may be materially and adversely affected.

(c) Increased Competition Could Put Downward Pressure on Coal Prices

The coal industry is intensely competitive both within the industry and with respect to alternative fuel sources. The most important factors with which the Debtors compete are price, coal quality and characteristics, transportation costs from the mine to the customer and reliability of supply. The Debtors compete directly with other Central Appalachian coal producers, as well as producers from other basins including Northern and Southern Appalachia, the Illinois Basin, and the Western U.S., and foreign countries, including Australia, Colombia, Venezuela and Indonesia.

The Debtors also face competition from renewable energy providers, like biomass, wind and solar, and other alternative fuel sources, like natural gas and nuclear energy. Should renewable energy sources become more competitively priced, which may be more likely to occur given the federal tax incentives for alternative fuel sources that are already in place and that may be expanded in the future, or sought after as an energy substitute for fossil fuels, increased demand for such fuels may adversely impact the demand for coal. Existing fuel sources also compete directly with coal. For example, weak natural gas prices have caused certain utilities to

increase electricity generation from their natural gas-fueled plants instead of generation from their coal-fueled plants.

(d) New Regulations May Materially Adversely Affect the Debtors' Customers' Demand for Coal and the Debtors' Financial Condition, Results of Operations, and Cash Flows

Current and potential future international, federal, state, regional or local laws, regulations or court orders addressing greenhouse gas emissions and/or coal ash, or emissions of sulfur dioxide, nitrogen oxides, mercury and other hazardous air pollutants and/or particulate matter, will likely require additional controls on coal-fueled power plants and industrial boilers and may cause some users of coal to close existing facilities, reduce construction of new facilities or switch from coal to alternative fuels. These ongoing and future developments may have a material adverse impact on the global supply and demand for coal, and as a result could materially adversely affect the Debtors' financial condition, results of operations and cash flows. Even in the absence of future regulatory developments, increased awareness of, and any adverse publicity regarding, greenhouse gas and other air emissions and coal ash disposal associated with coal and coal-fueled power plants, could adversely affect the Debtors and the Debtors' customers' reputations and reduce demand for coal.

(e) The Failure to Obtain Permits and Licenses May Materially Impact the Debtors' Ability to Continue Operations at Current Levels

The Debtors' operations require licenses and permits from various governmental authorities. Certain of their coal properties are currently not permitted and there can be no assurance that the Debtors will be able to acquire, maintain or renew all necessary licenses, permits, mining rights or surface rights that may be required to carry out exploration and development of coal mining projects.

The Debtors may be unable to obtain and renew permits necessary for their operations, which would reduce production, cash flow and profitability. Mining companies must obtain numerous permits that impose strict regulations on various environmental and safety matters in connection with coal mining. These include permits issued by various federal and state agencies and regulatory bodies. The permitting rules are complex and may change over time, making the Debtors' ability to comply with the applicable requirements more difficult or even impossible, thereby precluding continuing future mining operations. Private individuals and the public have certain rights to comment upon and otherwise engage in the permitting process, including through court intervention. Accordingly, the permits the Debtors' need may not be issued, maintained or renewed, or may not be issued or renewed in a timely fashion, or may involve requirements that restrict the Debtors' ability to conduct their mining operations. An inability to conduct the Debtors' mining operations pursuant to applicable permits would reduce their production, cash flow and profitability.

(f) Mineral Reserve Estimates and Replacement of Mineral Reserves May Deviate Materially from Projections

Actual coal tonnage recovered from identified mineral reserve areas or properties, and revenues and expenditures with respect to the Debtors' mineral reserves, may vary materially from estimates. The estimates of mineral reserves may not accurately reflect the Debtors' actual mineral reserves and may need to be restated in the future. Any inaccuracy in the Debtors' estimates could result in decreased profitability from lower than expected revenues or higher than expected costs.

The Debtors' mineral reserves decline as Debtors produce coal. The Debtors may not be able to mine all of their mineral reserves as profitably at current operations. The Debtors' future success depends on conducting successful exploration and development activities or acquiring properties containing economical mineral reserves. There is no assurance that Debtors will continue to succeed in developing additional mines or will continue to receive the permits necessary to operate profitably in the future.

The Debtors face uncertainties in estimating their mineral reserves, and inaccuracies in their estimates could result in decreased profitability from lower than expected revenues or higher than expected costs or both. Forecasts of the Debtors' future performance are based on, among other things, estimates of the Debtors' mineral reserves. The Debtors base their estimates of mineral reserve information on engineering, economic and geological data assembled and analyzed by the Debtors' internal engineers, which is periodically reviewed by third-party consultants. There are numerous uncertainties inherent in estimating the quantities and qualities of, and costs to mine, mineral reserves, including many factors beyond the Debtors' control. Estimates of economical mineral reserves and net cash flows necessarily depend upon a number of variable factors and assumptions, any one of which may, if incorrect, result in an estimate that varies considerably from actual results. These factors and assumptions include, without limitation, the following:

- future mining technology improvements;
- the effects of regulation by governmental agencies;
- geologic and mining conditions, which may not be fully identified by available exploration data and may differ from the Debtors' experiences in areas they currently mine. As a result, actual coal tonnage recovered from identified reserve areas or properties, and costs associated with the Debtors' mining operations, may vary from estimates. Any inaccuracy in the Debtors' estimates related to their reserves could result in decreased profitability from lower than expected revenues or higher than expected costs; and
- future coal prices, operating costs, capital expenditures, severance and excise taxes, royalties and development and reclamation costs.

(g) Defects to Title May Impair Coal Operations

No assurances can be given that there are no title defects affecting the Debtors' coal properties or which the Debtors propose to acquire. The Debtors' coal properties may be subject to prior unregistered liens, agreements or transfers or other undetected title defects. There is no guarantee that title to the Debtors' coal properties will not be challenged or impugned or defeated by a holder of superior title or registered liens or adverse claims. If there are title defects with respect to any properties, the Debtors might be required to compensate other persons or perhaps reduce the Debtors interest in the property. Also, in any such case, the investigation and resolution of title issues would divert management's time from on-going exploration and development programs.

(h) Exploration, Development and Production Risks

There is no assurance that expenditures made on future exploration by the Debtors will result in new discoveries of coal in commercial quantities. The Debtors' long-term commercial success depends on their ability to fund, acquire, develop and commercially produce mineral reserves. No assurance can be given that the Debtors will be able to locate satisfactory properties for acquisition or participation. If such acquisitions or participations are identified, the Debtors may determine that current markets, terms of acquisition and participation or pricing conditions make such acquisitions or participations uneconomic.

(i) Acquisition Risks

The Debtors' mineral reserves will be depleted as they produce coal. The Debtors have not yet applied for the permits required or developed the mines necessary to use all of the mineral reserves and resources under their mineral rights. Furthermore, the Debtors may not be able to mine all of their future mineral reserves as profitably as they do in their current operations. The Debtors' future success depends upon the Debtors conducting successful exploration and development activities and acquiring properties containing additional economic mineral reserves. In addition, the Debtors must also generate enough capital, either through their operations or through outside financing, to mine these additional mineral reserves. The Debtors' current strategy includes increasing their mineral reserve base through acquisitions of other mineral rights, leases, or producing properties and continuing to use the Debtors' existing leased properties.

Acquisitions that the Debtors may undertake involve a number of inherent risks, any of which could cause them not to realize the anticipated benefits. The Debtors continually seek to expand their operations and mineral reserves through acquisitions. If the Debtors are unable to successfully integrate the companies, businesses or properties it acquires, the Debtors' profitability may decline and it could experience a material adverse effect on their business, financial condition, or results of operations. Acquisition transactions involve various inherent risks, including:

- uncertainties in assessing the value, strengths, and potential profitability of, and identifying the extent of all weaknesses, risks, contingent and other liabilities (including environmental or mine safety liabilities) of, acquisition candidates;

- the potential loss of key customers, management and employees of an acquired business;

- the ability to achieve identified operating and financial synergies anticipated to result from an acquisition;

- problems that could arise from the integration of the acquired business; and

- unanticipated changes in business, industry or general economic conditions that affect the assumptions underlying the Debtors' rationale for pursuing the acquisition.

Any one or more of these factors could cause the Debtors not to realize the benefits anticipated to result from an acquisition. Any acquisition opportunities the Debtors pursue could materially affect their liquidity and capital resources and may require the Debtors to incur indebtedness; seek equity capital or both. In addition, future acquisitions could result in the Debtors assuming more long-term liabilities relative to the value of the acquired assets than the Debtors have assumed in previous acquisitions.

(j) Funding Risk

The Reorganized Debtors may require substantial additional financing for acquisitions, exploration, development and production of coal in the future and to otherwise finance the growth of their business. The Debtors will have to significantly delay, curtail or cease operations if they are unable to secure such financing. The Debtors may not be able to obtain the needed funds on terms acceptable to them or at all. Further, if additional funds are raised by issuing equity securities, significant dilution to the holders of New Common Stock may occur and new investors may get rights that are preferential to holders of New Common Stock.

(k) Coal Price and Volume Volatility May Impact Profitability

The Debtors' profits are directly related to the volume and price of coal sold. Price volatility could have a significant impact on the Debtors' future revenues and profitability. Coal demand and price are determined by numerous factors beyond the Debtors' control including:

- the demand for electricity;

- the supply and demand for domestic and foreign coal;

- seasonal changes in the demand for the Debtors' coal;

- interruptions due to transportation delays;

- air emission standards for coal-fired power plants;

- regulatory, administrative and judicial decisions;

- the price and availability of alternative fuels, including the effects of technology developments;
- the effect of worldwide energy conservation efforts;
- future limitations on utilities' ability to use coal as an energy source due to the regulation and/or taxation of greenhouse gases;
- proximity to, capacity of, and cost of transportation facilities; and
- political and economic conditions and production costs in major coal producing regions.

The combined effects of any or all of these factors on coal price or volume are impossible for the Debtors to predict. If realized coal prices fall below the full cost of production of any of the Debtors' operations and remain at such level for any sustained period, the Debtors will experience losses, which may be significant, and may decide to discontinue affected operations forcing the Debtors to incur closure or care and maintenance costs, as the case may be. In addition, if the United States dollar strengthens, it could decrease coal exports from the United States which would have a material adverse effect on the Debtors.

The Debtors' results of operations are dependent upon the prices the Debtors charge for their coal as well as the Debtors' ability to improve productivity and control costs. Decreased demand would cause spot prices to decline and require the Debtors to increase productivity and lower costs in order to maintain the Debtors' margins. If the Debtors are not able to maintain their margins, the Debtors' operating results could be adversely affected. Therefore, price declines may adversely affect operating results for future periods and the Debtors ability to generate cash flows necessary to improve productivity and invest in operations.

(l) Overcapacity Risk

During the mid-1970s and early 1980s, a growing coal market and increased demand for coal attracted new investors to the coal industry, spurred the development of new mines and resulted in added production capacity throughout the industry, all of which led to increased competition and lower coal prices. Similarly, a sustained increase in future coal prices could encourage the development of expanded capacity by new or existing coal producers. Any overcapacity could reduce coal prices in the future.

(m) Coal Hedging Risk

The Debtors hedged approximately half of their coal production for the year 2012, and to a lesser extent for the year 2013 and 2014, by entering into long-term customer contracts that require the Debtors to deliver coal with established pricing. The Reorganized Debtors anticipate entering into long-term contracts in future years. If the price of coal increases, the Reorganized Debtors may be materially adversely affected by having hedged their future production pursuant to these contracts. Alternatively, should coal prices decrease below the levels stated in the

contracts, the Reorganized Debtors could be materially adversely affected should these contracts not be honored.

(n) Decreases in Coal Consumption May Negatively Impact Operations

The Debtors are exposed to swings in the demand for coal, which has an impact on the prices for coal that is sold by the Debtors. The demand for coal products and, thus, the financial condition and results of operations of companies in the coal industry, including the Debtors, are generally affected by macroeconomic fluctuations in the world economy and the domestic and international demand for energy. Any material decrease in demand for coal could have a material adverse effect on the Debtors' operations and profitability.

Reduced coal consumption by North American electric power generators has resulted in lower prices for the Debtors' coal, which could reduce revenues and adversely impact the Debtors' earnings and the value of their coal reserves. The amount of coal consumed for United States electric power generation is affected primarily by the overall demand for electricity, the location, availability, quality and price of competing fuels for power such as natural gas, nuclear, fuel oil and alternative energy sources such as hydroelectric power, technological developments, and environmental and other governmental regulations.

Weather patterns also can greatly affect electricity generation. Extreme temperatures, both hot and cold, cause increased power usage and, therefore, increased generating requirements from all sources. Mild temperatures, on the other hand, result in lower electrical demand, which allows generators to choose the lowest-cost sources of power generation when deciding which generation sources to dispatch. Accordingly, significant changes in weather patterns could reduce the demand for the Debtors' coal. Overall economic activity and the associated demands for power by industrial users can have significant effects on overall electricity demand.

(o) Increased Transportation Costs May Impact Profitability

Transportation costs represent a significant portion of the total cost of delivered coal and, as a result, play a critical role in a customer's purchasing decision. Increases in transportation costs could make the Debtors' coal less competitive as a source of energy or could make some of the Debtors' operations less competitive than other sources of coal.

Coal producers depend upon rail, barge, trucking, overland conveyor and other systems to deliver coal to the Debtors' customers. While coal customers in the United States typically arrange and pay for transportation of coal from the mine to the point of use, disruption of these transportation services because of weather-related problems, strikes, lock-outs, excessive demand for their services or other events could temporarily impair the Debtors' ability to supply coal to customers and thus could adversely affect the Debtors' revenue and results of operations.

Disruption in capacity of, or increased costs of transportation and port services could make coal a less competitive source of energy or could make the Debtors' coal less competitive than other sources of coal. The coal industry depends on rail, trucking and barge transportation to deliver shipments of coal to customers, and transportation and port costs are a significant component of the total cost of supplying coal. Disruptions of these transportation or port

services because of weather-related problems, insurgency, strikes, lock-outs, transportation delays or other events could temporarily impair the Debtors' ability to supply coal to customers and may result in lost sales. In addition, increases in transportation or port costs, including increases in the cost of fuel, or changes in other costs relative to transportation or port costs for coal produced by competitors, could adversely affect profitability. To the extent such increases are sustained, the Debtors could experience losses and may decide to discontinue certain operations forcing the Debtors to incur closure or care and maintenance costs, as the case may be.

(p) Increased Raw Material Costs May Impact Profitability

Unexpected increases in raw material costs could significantly impair the Debtors' operating profitability. The Debtors' coal mining operations use significant amounts of steel, petroleum products and other raw materials in various pieces of mining equipment, supplies and materials. If the price of steel, petroleum products or other input materials increase, the Debtors' operational expenses will increase, which could have a significant negative impact on their profitability.

(q) Disruptions in Production May Negatively Impact Operations

Other factors affecting the production and sale of coal that could result in decreases in profitability include: expiration or termination of, or sales price re-determinations or suspension of deliveries under, coal supply agreements; future litigation; the timing and amount of insurance recoveries; work stoppages or other labor difficulties; mine worker vacation schedules; mining and processing equipment failures and unexpected maintenance problems; a significant or rapid increase in the prices of commodities used in coal mining, such as steel, copper, rubber products, ammonium nitrate/fuel oil, and liquid fuels; and changes in the coal market and general economic conditions. Adverse weather conditions, such as heavy rain and flooding, equipment replacement or repair, fires, variations in thickness of the layer or seam of coal, amounts of rock and other natural materials and other geological conditions, can also have a significant impact on the Debtors' operating results.

(r) Loss of Customer Base Could Materially Impact Operations

The loss of, or significant reduction in, purchases by the Debtors' customers could adversely affect the Debtors' revenues and profitability. The Debtors derive a majority of their sales from a small number of customers. These customers may not continue to purchase coal from the Debtors. If these customers were to significantly reduce their purchases of coal from the Debtors, the Debtors' revenues and profitability could suffer materially.

Changes in purchasing patterns in the coal industry may make it difficult for the Debtors to extend their existing supply agreements or enter into new supply agreements with customers, which could adversely affect the capability and profitability of the Debtors' operations. The execution of a satisfactory coal supply agreement is frequently the basis on which the Debtors undertake the development of coal reserves required to be supplied under the agreement. When the Debtors' current agreements with customers expire or are otherwise renegotiated, the

Debtors' customers may decide to purchase fewer tons of coal than in the past or on different terms, including pricing terms less favorable to the Debtors.

(s) Risk Related to Operating in Central and Southern Appalachia

Mining coal in Central Appalachia can present special difficulties. Characteristics of the land and permitting process in Central and Southern Appalachia, where all of the Debtors' mines are located, may adversely affect the Debtors' mining operations, the Debtors' costs and the ability of the Debtors' customers to use the coal that the Debtors mine. The geological characteristics of the Debtors' coal reserves, such as depth of overburden and coal seam thickness, make them complex and costly to mine. As mines become depleted, replacement reserves may not be available when required or, if available, may not be capable of being mined at costs comparable to those characteristic of the depleting mines. In addition, as compared to mines in the Powder River Basin, permitting, licensing and other environmental and regulatory requirements are more costly and time-consuming to satisfy. These factors could materially adversely affect the Debtors' mining operations and costs, and the Debtors' customers' abilities to use the coal the Debtors mine.

5.5 Certain Tax Implications of the Chapter 11 Cases

Holders of Allowed Claims and Interests should carefully review Article VIII herein, "Certain U.S. Federal Income Tax Consequences," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Reorganized Debtors and holders of Claims and Interests.

5.6 Disclosure Statement Disclaimer

(a) Information Contained Herein Is for Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

(b) Disclosure Statement May Contain Forward-Looking Statements

Many of the statements included in this Disclosure Statement contain forward-looking statements and information relating to the Debtors. These forward-looking statements are generally identified by the use of terminology such as "may," "will," "could," "should," "potential," "continue," "expect," "intend," "plan," "estimate," "project," "forecast," "anticipate," "believe," or similar phrases or the negatives of such terms. These statements are based on the beliefs of the Debtors as well as assumptions made using information currently available to the Debtors. Such statements are subject to risks, uncertainties and assumptions, as well as other matters not yet known or not currently considered material by the Debtors. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected. Given these risks and uncertainties, Holders of Claims or Interests are cautioned not to place undue reliance on such forward-looking statements. Forward-looking statements do not guarantee future performance. Holders of Claims or Interests should recognize these statements for what they are and not rely on them as facts. None of the Debtors undertakes any obligation

to update or revise any of these forward-looking statements to reflect new events or circumstances after the date of this Disclosure Statement

(c) No Legal, Business, or Tax Advice Is Provided to You by This Disclosure Statement

THIS DISCLOSURE STATEMENT IS NOT LEGAL, BUSINESS, OR TAX ADVICE TO YOU. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim or Interest should consult his or her own legal counsel and accountant with regard to any legal, tax, and other matters concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation.

(d) No Admissions Made

The information and statements contained in this Disclosure Statement will neither (1) constitute an admission of any fact or liability by any entity (including the Debtors) nor (2) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, holders of Allowed Claims or Interests, or any other parties-in-interest.

(e) Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. Except as otherwise provided under the Plan, all Parties, including the Debtors, reserve the right to continue to investigate and object to Claims.

(f) No Waiver of Right To Object or Right To Recover Transfers and Assets

The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any claims or rights of the Debtors to object to that holder's Allowed Claim, or to bring Causes of Action or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective Estates are specifically or generally identified herein.

(g) Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

Counsel to and other advisors retained by the Debtors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

(h) The Potential Exists for Inaccuracies and the Debtors Have No Duty To Update

The Debtors make the statements contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since such date. Although the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered by the Bankruptcy Court.

(i) No Representations Outside of the Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. In deciding whether to vote to accept or reject the Plan, you should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, unless otherwise indicated herein. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the U.S. Trustee.

ARTICLE VI

CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

6.1 The Confirmation Hearing

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may hold a hearing to confirm a plan of reorganization. The Debtors will file a motion requesting that the Bankruptcy Court set a date and time for the Confirmation Hearing. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the Entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for the Confirmation Hearing, will request that the Bankruptcy Court set a date and time for parties in

interest to file Plan objections. All objections to the Plan must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy Court so that they are received on or before the deadline to file such objections as set forth therein. Should a Confirmation Order be entered, it is ancitipated that recognition of such order will be sought in the Canadian Proceeding thereafter.

6.2 Confirmation Standards

Among the requirements for Confirmation are that the Plan is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, is feasible, and is in the "best interests" of holders of Claims and Interests that are Impaired under the Plan. The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before the Bankruptcy Court may confirm a plan of reorganization. The Plan fully complies with the statutory requirements for Confirmation listed below.

- The proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.

- The Plan has been proposed in good faith and not by any means forbidden by law.

- Any payment made or to be made by the Debtors (or any other proponent of the Plan) or by a Person issuing Securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, in connection with the Plan and incident to the Chapter 11 Cases is subject to the approval of the Bankruptcy Court as reasonable.

- The Debtors (or any other proponent of the Plan) have disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director, or officer, the Reorganized Debtors, any Affiliate of the Debtors reorganized under the Plan, or any successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of Creditors and holders of Interests and with public policies.

- The proponent of the Plan has disclosed the identity of any Insider that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such Insider.

- With respect to each holder within an Impaired Class of Claims or Interests, each such holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is Unimpaired under the Plan (subject to the "cram-down" provisions discussed below).

- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.

- If a Class of Claims or Interests is Impaired under the Plan, at least one Class of Claims or Interests that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any Insider.

- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

6.3 Best Interests Test / Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Based on the Liquidation Analysis, attached hereto as **Exhibit B**, the Debtors believe that the value of any distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be no greater than the value of distributions under the Plan. As a result, the Debtors believe holders of Claims and Interests in all Impaired Classes will recover at least as much as a result of Confirmation of the Plan as they would recover through a hypothetical chapter 7 liquidation.

6.4 Funding and Feasibility of the Chapter 11 Plan

All amounts necessary for the Debtors (on the Effective Date) or the Reorganized Debtors (after the Effective Date) to make payments or distributions pursuant to the Plan shall be available to the Debtors or Reorganized Debtors, as applicable, through Cash on hand or from the proceeds of the Exit Facility. Proceeds from the Exit Facility shall be used to pay the DIP Facility Claims, Allowed Administrative Claims, Allowed Priority Claims, [and Allowed General Unsecured Claims], as applicable, to fund the Professional Fee Escrow Account, and for general working capital purposes.

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have prepared projections, which, together with the assumptions on which they are

based, are attached hereto as **Exhibit C**. Based on such projections, the Debtors believe that Confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization.

6.5 Confirmation Without Acceptance by All Impaired Classes

The Bankruptcy Court may confirm a plan of reorganization over the rejection or deemed rejection of the plan of reorganization by a class of claims or interests if the plan of reorganization "does not discriminate unfairly" and is "fair and equitable" with respect to such class.

(a) No Unfair Discrimination

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation.

(b) Fair and Equitable Test

This test applies to Classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no Class of Claims or Interests receive more than 100% of the amount of the allowed Claims or Interests in such Class. As to the dissenting Class, the test sets different standards depending on the type of Claims or Interests of the Debtor in such Class. In order to demonstrate that a plan is fair and equitable, the plan proponent must demonstrate:

- Secured Creditors: Each holder of a secured claim: (1) retains its liens on the property, to the extent of the allowed amount of its secured claim, and receives deferred cash payments having a value, as of the effective date of the chapter 11 plan, of at least the allowed amount of such claim; (2) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof); or (3) receives the "indubitable equivalent" of its allowed secured claim.

- Unsecured Creditors: Either (1) each holder of an impaired unsecured claim receives or retains under the chapter 11 plan property of a value equal to the amount of its allowed claim or (2) the holders of claims and interests that are junior to the claims of the non-accepting class will not receive any property under the chapter 11 plan.

- Equity Interests: Either (1) each holder of an impaired interest will receive or retain under the chapter 11 plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the

fixed redemption price to which such holder is entitled, or the value of the interest or (2) the holders of interests that are junior to the non-accepting class will not receive or retain any property under the chapter 11 plan.

The Debtors believe the Plan satisfies the "fair and equitable" requirement notwithstanding that a class may vote, or be deemed, to reject the Plan because there is no Class of equal priority receiving more favorable treatment than a Class that is junior to such Class or that will receive or retain any property on account of the Claims in such Class.

6.6 Alternatives to Confirmation and Consummation of the Plan

If the Plan cannot be confirmed, the Debtors may seek to (1) prepare and present to the Bankruptcy Court an alternative chapter 11 plan for confirmation, (2) effect a merger or sale transaction, including, potentially, a sale of all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, or (3) liquidate the Debtors under chapter 7 of the Bankruptcy Code. If the Debtors were to pursue a liquidation, the Chapter 11 Cases would be converted to cases under chapter 7 of the Bankruptcy Code and a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on Creditors' recoveries and the Debtors is described in the unaudited Liquidation Analysis.

ARTICLE VII

IMPORTANT SECURITIES LAW DISCLOSURE

7.1 Plan Securities

The Plan provides for the Reorganized Debtors to distribute the Plan Securities to holders of Allowed Claims in Class 3.

The Debtors believe that the Plan Securities constitute "securities," as defined in Section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and all applicable state Blue Sky Laws.

7.2 Issuance and Resale of Plan Securities Under the Plan

(a) Exemptions from Registration Requirements of the Securities Act and State Blue Sky Laws

Section 1145 of the Bankruptcy Code provides that the registration requirements of section 5 of the Securities Act (and any applicable state Blue Sky Laws) shall not apply to the offer or sale of stock, options, warrants, or other securities by a debtor if: (x) the offer or sale occurs under a plan of reorganization; (y) the recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor; and (z) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange and partly for cash and property. In reliance upon these exemptions, the offer,

issuance and distribution of the Plan Securities will not be registered under the Securities Act or any applicable state Blue Sky Laws.

Because the Plan Securities will be issued in accordance with section 1145 of the Bankruptcy Code, the Plan Securities may be resold without registration under the Securities Act or other federal securities laws, unless the holder is an "underwriter" (as discussed below) with respect to such securities, as that term is defined in section 1145 of the Bankruptcy Code. In addition, Plan Securities governed by section 1145 of the Bankruptcy Code generally may be able to be resold without registration under applicable state Blue Sky Laws pursuant to various exemptions provided by the respective Blue Sky Laws of those states; however, the availability of such exemptions cannot be known unless individual state Blue Sky Laws are examined. Recipients of the Plan Securities are advised to consult with their own legal advisors as to the availability and applicability of section 1145 of the Bankruptcy Code and any other potential exemption from registration under the Securities Act or applicable state Blue Sky Laws in any given instance and as to any applicable requirements or conditions to such availability.

(b) Resale of Plan Securities; Definition of Underwriter

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions of an entity that is not an issuer": (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (b) offers to sell securities offered or sold under a plan for the holders of such securities; (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (1) with a view to distribution of such securities and (2) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a Person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a Person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "controlling persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, 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. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "controlling Person" of such debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code may suggest that a creditor who owns ten percent (10%) or more of a class of voting securities of a reorganized debtor may be presumed to be a "controlling Person" and, therefore, an underwriter.

Under certain circumstances, holders of securities who are deemed to be "underwriters" may be entitled to resell the securities pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act. Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such person after a specified holding period if current information regarding the issuer is publicly available and certain other conditions are met, and, if such seller is an affiliate of the issuer, if volume limitations and manner of sale requirements are met. Whether any particular Person would be deemed to be an "underwriter" (including whether such Person is a "controlling Person") with respect to the Plan Securities would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any Person would be deemed an "underwriter" with respect to the Plan Securities and, in turn, whether any Person may freely resell the Plan Securities. Statutory underwriters may also be eligible to sell their securities pursuant to the resale provisions of Regulation S promulgated under the Securities Act. Regulation S would, in effect, permit the resale of securities received by "underwriters" pursuant to a plan of reorganization to certain eligible non-U.S. persons in accordance with the terms and conditions thereof. The Debtors recommend that potential recipients of Plan Securities consult their own counsel concerning their ability to freely trade such securities without registration under the federal and applicable state Blue Sky Laws.

ARTICLE VIII

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

8.1 Introduction

The following is a general discussion of the material U.S. federal income tax consequences of the Plan to the Debtors and to certain holders of Claims or Interests. The following summary does not address the U.S. federal income tax consequences to holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on title 26 of the United States Code (the "IRC"), the U.S. Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS") and other applicable authorities, all as in effect on the date of this Disclosure Statement, and all of which are subject to change or differing interpretations, possibly with retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein. This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to certain holders in light of their individual circumstances. Except as described in Section 8.4, Status as a United States Real Property Holdings Corporation, this discussion does not apply to Holders of Claims or Interests that are not U.S. persons (as defined in Section 7701(a)(3)) and does not address tax issues with respect to holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, subchapter S corporations, dealers and traders in securities, insurance companies, financial institutions, tax-

exempt organizations, small business investment companies, foreign taxpayers, persons who are related to the Debtors within the meaning of the IRC, persons using a mark-to-market method of accounting, holders of Claims or Interests who are themselves in bankruptcy, persons who received their Claims or Interests pursuant to the exercise of an employee stock option or otherwise as compensation, regulated investment companies, and those holding or who will hold Claims, Interests or New Common Stock that are part of a hedge, straddle, conversion or other integrated transaction). In the case of a Holder that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of a partner in such partnership generally will depend upon the status of the partner and the activities of the partner and the partnership. If you are a partner in a partnership, then you should consult your own tax advisor. No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. Furthermore, this summary assumes that a holder of Claims or Interests holds only Claims or Interests in a single Class and holds a Claim as a "capital asset" (within the meaning of section 1221 of the IRC). This summary also assumes, except as provided below, that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. Further, this discussion assumes that the Transaction will be completed in accordance with the Support Agreement and as further described in this document.

Further, this discussion does not address the Canadian federal or provincial income or transactional tax considerations of the Plan (if any) to Holders of Claims and Interests. Holders that may be subject to Canadian taxation should consult their own tax advisors.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

8.2 Certain U.S. Federal Income Tax Consequences of the Plan to the Debtors

(a) Cancelation of Debt and Reduction of Tax Attributes

In general, absent an exception, a debtor will realize and recognize cancelation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of cash paid, (y) the issue price of any new indebtedness of the taxpayer issued and (z) the fair market value of any new consideration.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income pursuant to section 108 of the IRC. In general, tax attributes will be reduced in the following order: (a) net operating losses ("NOLs"); (b) most tax

credits; (c) capital loss carryovers; (d) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (e) passive activity loss and credit carryovers; and (f) foreign tax credits. A debtor with COD Income may elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the IRC. In the context of a consolidated group of corporations, the tax rules provide for a complex ordering mechanism in determining how the tax attributes of one member can be reduced by the COD Income of another member.

Because the Plan provides that holders of certain Claims will receive New Common Stock, the amount of COD Income, and accordingly the amount of tax attributes required to be reduced (if any), will depend in part on the fair market value of the New Common Stock. Such value cannot be known with certainty until after the Effective Date. The Debtors expect that, subject to the limitations discussed herein, they will be required to make material reductions in their tax attributes.

(b) Limitation of NOL Carryforwards and Other Tax Attributes

The Debtors had approximately $160.8 million of NOLs as of December 31, 2014. The Debtors believe that, as a consequence of the COD Income, their NOLs will be substantially reduced. The amount of such tax attributes that will be available to the Reorganized Debtors following such reduction is based on a number of factors and is impossible to calculate at this time. Some of the factors that will impact the amount of available tax attributes include: (a) the amount of taxable income incurred by the Debtors in 2014 and 2015; (b) the fair market value of the New Common Stock; and (c) the amount of COD Income incurred by the Debtors in connection with Consummation of the Plan. Following Consummation of the Plan, the Debtors anticipate that any remaining NOLs and other tax attributes may be subject to limitation under section 382 of the IRC by reason of the transactions pursuant to the Plan.

Under section 382 of the IRC, if a corporation undergoes an "ownership change," the amount of its NOLs (collectively, "Pre-Change Losses") that may be utilized to offset future taxable income generally is subject to an annual limitation. As discussed in greater detail herein, the Debtors anticipate that the issuance of the New Common Stock pursuant to the Plan will result in an "ownership change" of the Reorganized Debtors for these purposes, and that the Debtors' use of their Pre-Change Losses will be subject to limitation unless an exception to the general rules of Section 382 of the IRC applies. This limitation is independent of, and in addition to, the reduction of tax attributes described in the preceding section resulting from the exclusion of COD Income.

(1) General Section 382 Annual Limitation

Under Code Section 382, if a corporation or a consolidated group with NOLs (a "Loss Corporation") undergoes an "ownership change," the Loss Corporation's use of its Pre-Change Losses (and certain other tax attributes) generally will be subject to an annual limitation in the post-change period. In general, an "ownership change" occurs if the percentage of the value of the Loss Corporation's stock owned by one or more direct or indirect "five percent shareholders" increases by more than fifty percentage points over the lowest percentage of the value of the stock owned by the five percent shareholders at any time during the applicable testing period (an "Ownership Change"). The testing period generally is the shorter of (i) the three-year period

preceding the testing date or (ii) the period of time since the most recent Ownership Change of the corporation.

Subject to certain rules relating to ownership changes taking place in bankruptcy proceedings, the amount of the annual limitation on a Loss Corporation's use of its pre-change NOLs (and certain other tax attributes) generally is equal to the product of the applicable long-term tax-exempt rate (2.82% for ownership changed during October 2015) and the value of the Loss Corporation's outstanding stock immediately before the Ownership Change (excluding certain capital contributions). If a Loss Corporation has a net unrealized built-in gain immediately prior to the Ownership Change, certain gains recognized during the subsequent five-year period (the "Recognition Period") may increase the annual limitation. If a Loss Corporation has a net unrealized built-in loss ("NUBIL") immediately prior to the Ownership Change, certain losses recognized during the Recognition Period also would be subject to the annual limitation and thus would reduce the amount of Pre-Change Losses that could be used by the Loss Corporation during the Recognition Period.

(2) Special Bankruptcy Exceptions

An exception to the foregoing annual limitation rules generally applies when a debtor company's existing shareholders and/or so-called "qualified creditors" of a debtor company in chapter 11 receive, in respect of their claims or interests, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). Under the 382(l)(5) Exception, a debtor's Pre-Change Losses are not limited on an annual basis but, instead, the debtor's NOLs are required to be reduced by the amount of any interest deductions claimed during any taxable year ending during the three-year period preceding the taxable year that includes the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the debtor undergoes another ownership change within two years after consummation, then the debtor's Pre-Change Losses effectively would be eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the "382(l)(6) Exception"). When the 382(l)(6) Exception applies, a debtor corporation that undergoes an ownership change generally is permitted to determine the fair market value of its stock after taking into account the increase in value resulting from any surrender or cancelation of creditors' claims in the bankruptcy. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an ownership change to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that the debtor corporation is not required to reduce its NOLs by interest deductions in the manner described above, and the debtor may undergo a change of ownership within two years without triggering the elimination of its Pre-Change Losses.

It is possible that the Debtors will not qualify for the 382(l)(5) Exception. Alternatively, the Reorganized Debtors may elect out of the 382(l)(5) Exception. In either case, the Debtors

expect that their use of the Pre-Change Losses, if any, after the Effective Date will be subject to limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception. Regardless of whether the Reorganized Debtors take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtors' use of their Pre-Change Losses, if any, after the Effective Date may be adversely affected if an "ownership change" within the meaning of Section 382 of the IRC were to occur after the Effective Date.

(3) Alternative Minimum Tax

In general, an alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, except for alternative tax NOLs generated in or deducted as carryforwards in taxable years ending in certain years, which can offset 100% of a corporation's AMTI, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. Additionally, under Section 56(g)(4)(G) of the IRC, an ownership change (as discussed above) that occurs with respect to a corporation having a net unrealized built-in loss in its assets will cause, for AMT purposes, the adjusted basis of each asset of the corporation immediately after the ownership change to be equal to its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of the corporation, as determined under Section 382(h) of the IRC, immediately before the ownership change.

8.3 Status as a United States Real Property Holding Corporation

A non-U.S. person holding the New Common Stock (a "Non-U.S. Holder") will incur U.S. federal income tax on any gain realized upon a sale or other disposition of such New Common Stock if the New Common Stock constitutes a "United States real property interest" (a "USRPI") under the Foreign Investment in Real Property Act of 1980 ("FIRPTA"). A USRPI includes stock in a corporation that was a "United States real property holding corporation" at any time during the five-year period preceding the sale or other disposition or, if shorter, the Non-U.S. Holder's holding period for its interest in the corporation. A "United States real property holding corporation" is a corporation at least 50% of whose assets consist of interests in real property. Xinergy Ltd. is, and, to the extent that the Debtors with consent of the Majority Consenting Noteholders select Xinergy Ltd. as New Holdco, expects to continue to be for the foreseeable future, a "United States real property holding corporation."

As a result, under FIRPTA, except as discussed in the next paragraph, a Non-U.S. Holder will be subject to U.S. federal income tax on any gain realized upon a sale or other disposition of its New Common Stock as if such gain were "effectively connected" with a U.S. trade or business of the Non-U.S. Holder. A Non-U.S. Holder thus will be taxed on such gain at the same graduated rates generally applicable to U.S. persons. In addition, a Non-U.S. Holder would have to file a U.S. federal income tax return reporting that gain.

If the New Common Stock becomes regularly traded on an established securities market, gain realized upon a sale or other disposition of the New Common Stock will not be treated as

gain from the sale of a USRPI, as long as the Non-U.S. Holder did not own more than 5% of the New Common Stock at any time during the five-year period preceding the sale or other disposition or, if shorter, the Non-U.S. Holder's holding period for its shares of the New Common Stock. The New Common Stock will not be regularly traded on an established securities market immediately upon Consummation of the Plan, and no assurance can be provided that the New Common Stock will become regularly traded on an established securities market. Consequently, unless and until the New Common Stock is regularly traded on an established securities market, gain recognized by a Non-U.S. Holder upon a sale or other disposition of the New Common Stock will be subject to tax under FIRPTA.

8.4 Withholding and Reporting

The Debtors will withhold all amounts required by law to be withheld from payments of interest or dividends. The Debtors will comply with all applicable reporting requirements of the IRC. In general, information reporting requirements may apply to distributions or payments made to a holder of an Allowed Claim. Additionally, backup withholding will generally apply to such payments if a holder fails to provide an accurate taxpayer identification number or otherwise fails to comply with the applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund from the IRS, provided that the required information is provided to the IRS.

In addition, from an information reporting perspective, U.S. Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

ARTICLE IX

CONCLUSION AND RECOMMENDATION

For all the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation of the Plan is preferable to all other alternatives. The Debtors urge all holders of Claims and Interests entitled to vote to accept the Plan and to evidence such acceptance by

returning their ballots so they will be received by the Solicitation Agent no later than 5:00 p.m. prevailing Eastern Time on November 24, 2015.

DATED: October 14, 2015

/s/ Tyler P. Brown

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and Debtors in Possession

SCHEDULE 1

(Debtor Entities)

1. Xinergy Ltd. (3697)
2 Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

Exhibit A

The Plan

[TO BE FILED SEPARATELY]

Exhibit B

Liquidation Analysis

XINERGY LTD, *et al*

Hypothetical Chapter 7 Liquidation Analysis

1. INTRODUCTION

Section 1129(a)(7) of the Bankruptcy Code requires that each holder of an impaired allowed claim or interest either (i) accepts the plan of reorganization, or (ii) receives or retains under the plan, as of the effective date of the plan, value that is not less than the value such holder would receive or retain if the applicable debtor were liquidated under chapter 7 of the Bankruptcy Code on the effective date. This is often referred to as the "Best Interests Test."

To demonstrate that the Plan satisfies the Best Interests Test, the Debtors present the following hypothetical liquidation analysis (the "Liquidation Analysis"), based on certain assumptions discussed herein. The purpose of the Liquidation Analysis is to estimate values that might be obtained upon disposition of assets pursuant to a hypothetical chapter 7 liquidation, as an alternative to continued operation of the business as proposed under the Plan. Accordingly, values discussed herein are different from amounts referred to in the Plan, which illustrates the value of the Debtors' business as a going concern.

The Liquidation Analysis was prepared by the Debtors' management, with the assistance of its financial, legal, and other professionals retained by the Debtors. Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement, to which this analysis is attached as Exhibit B, or in the Plan.

NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THE ESTIMATES AND ASSUMPTIONS CONTAINED HEREIN, OR A TRUSTEE'S ABILITY TO ACHIEVE FORECASTED RESULTS. IN THE EVENT THAT THESE CHAPTER 11 CASES ARE CONVERTED TO A CHAPTER 7 LIQUIDATION, ACTUAL RESULTS COULD VARY MATERIALLY FROM THE ESTIMATES AND PROJECTIONS SET FORTH IN THIS LIQUIDATION ANALYSIS. NOTHING CONTAINED IN THIS LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION OR ADMISSION OF THE DEBTORS. THE ESTIMATED AMOUNT OF ALLOWED CLAIMS SET FORTH IN THIS LIQUIDATION ANALYSIS SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING, WITHOUT LIMITATION, ANY DETERMINATION OF THE VALUE OF ANY DISTRIBUTION TO BE MADE ON ACCOUNT OF ALLOWED CLAIMS UNDER THE PLAN. THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THESE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH IN THE LIQUIDATION ANALYSIS.

2. GENERAL ASSUMPTIONS

- The Liquidation Analysis assumes a hypothetical conversion of the Debtors' Chapter 11 Cases to a chapter 7 liquidation on September 30, 2015 (the "Liquidation Date"). Subject to certain pro forma adjustments as set forth herein, the balance sheets of each of the Debtors as of July 31, 2015 are used as reasonable proxies for their respective hypothetical balance sheets as of the Liquidation Date.

- Substantially all of the Debtors' assets serve as collateral for the DIP Facility Lenders. The DIP Facility Order provides for a "carve-out" from the collateral securing the DIP Facility in an amount of $50,000 to pay the fees and expenses of a chapter 7 trustee to wind-down the Debtors' estates. This Liquidation Analysis assumes that the chapter 7 trustee would conduct a wind-down of operations and liquidate substantially all of the Debtors' assets over a period of 90 days (the "Liquidation Period"), during which time all of the Debtors' major assets would be sold and the cash proceeds, net of liquidation-related costs, would be distributed to satisfy claims.

- The Liquidation Analysis assumes an idling of operations following a conversion to chapter 7 because of a lack of liquidity necessary to continue operations. Therefore, the Debtors' assets would not be sold as going concern businesses.

- Estimated liquidation values were based on numerous information sources. These include appraisals and reviews of certain assets by third parties, financial and legal analysis of certain assets, coal industry transaction data, coal market intelligence from previous and existing customers, historical performance of the company, and the business judgment and experience of the Debtors management and their professionals.

- Unless otherwise stated, the book values used in the Liquidation Analysis are the unaudited net book values of the Debtors as of July 31, 2015. These book values, in combination with pro forma adjustments, are assumed to be representative of the Debtors' assets as of the hypothetical Liquidation Date.

- The book values have not been subject to any review, compilation or audit by an independent accounting firm.

	Book Value, Net	Estimated Recovery Rates		Estimated Recovery Values	
		Low	High	Low	High
Liquidation Proceeds					
Cash and Equivalents	1,551,624	100%	100%	1,551,624	1,551,624
Restricted Cash (Cash Collateral Deposits)	4,502,615	0%	0%	0	0
Accounts Receivable	2,113,565	90%	90%	1,902,208	1,902,208
Prepaid and Other Assets	631,829	71%	71%	450,000	450,000
Recoupable Royalties	2,025,791	44%	89%	890,000	1,800,000
Coal Inventory	5,510,999	100%	100%	3,510,999	5,510,999
Mineral Properties & Mine Development [(1)]	38,162,611	76%	81%	29,140,000	31,080,000
Plant & Improvements	32,202,743	12%	18%	3,770,000	5,790,000
Mining Equipment	6,386,200	48%	48%	3,070,000	3,070,000
Land & Improvements	9,309,537	0%	0%	0	0
Autos & Trucks	30,708	0%	50%	0	15,354
Other Equipment	33,850	0%	50%	0	16,925
Deferred financing Costs	4,663,465	0%	0%	0	0
Other Non-Current Assets	140,170	0%	0%	0	0
Total Assets / Gross Proceeds	**107,265,708**	**41%**	**48%**	**44,284,831**	**51,187,110**
Less Liquidation Costs					
Trustee Fees				1,070,000	1,490,000
Professional Fees				500,000	500,000
Wind-down Costs				690,000	370,000
Total Liquidation Costs				**2,260,000**	**2,360,000**
Net Liquidation Proceeds				**42,024,831**	**48,827,110**
Recovery					
Debtor-in-Possession Financing	45,000,000	93%	100%	42,024,831	45,000,000
Other Secured Claims	38,953	0%	100%	0	38,953
Senior Secured 9.25% Notes due 2019 plus Interest	202,114,792	0%	2%	0	3,788,157

(1) includes value of above-market coal supply agreement

3. NOTES TO THE LIQUIDATION ANALYSIS

1. *Cash and Cash Equivalents*

- Management projects that the Debtors' projected cash balance of the Liquidation Date in a liquidation scenario would be approximately $1.55 million.
- Cash and cash equivalents consist of all cash and liquid investments, if applicable, with maturities of three months or less in bank accounts.

2. *Restricted Cash*

- Restricted cash is composed of cash collateral for reclamation liabilities.
- Restricted cash is estimated to generate no proceeds in a liquidation scenario.

3. *Accounts Receivable*

- The analysis of accounts receivable assumes that a chapter 7 trustee would retain certain existing staff to handle an aggressive collection effort for outstanding trade accounts receivable for the entities undergoing liquidation.
- Collectible accounts receivable are assumed to include all third-party trade accounts receivable, as well as miscellaneous accounts receivable. As trade receivables account for over 98% of the total book balance, the assumed recovery rates for trade receivables were applied to the total.
- With the exception of one contracted customer representing a small percentage of total tons sold, the Debtors' trade receivables reflect spot market sales. As such, the Debtors generally do not have a contracted position such that customers can claim breach of contract. Given the short sales time frame, visibility and recovery should be high. However, a 10% loss is assumed for conservatism.

4. *Recoupable Royalties*

- South Fork's and True Energy's royalties are fully recoupable as long as mining activity resumes within 5 years, although True Energy has approximately two years remaining as mining activity ceased approximately three years ago; Raven Crest's and Brier Creek's are fully recoupable as long as mining activity resumes within 2 years
- This analysis assumes acquisition of those properties with the intention of mining, therefore it assumes a range of recovery, from full value less legal expense, to a discount of the full value less legal expense, reflecting a discount on the properties with the shorter time frame of recoupability.

5. *Coal Inventory*

- The Debtors' coal inventories are composed of raw and clean coal located at various mining complexes, preparation plants, and trans-loading facilities. This analysis adjusts raw coal inventories as of the Liquidation Date for cleaning and processing costs that would be incurred if liquidated. The raw coal inventories would then be saleable at the same values as processed coal, less incremental processing costs.
- Revenues from the liquidation of coal inventory would be reduced by the payment of extraction taxes and royalties. These additional costs have been netted from the gross liquidation proceeds.

6. *Other Current Assets*

- Other current assets predominantly includes prepaid interest.
- Prepaid insurance is believed to be refundable if the liquidation occurs prior to the full year of pre-payment having lapsed. XRG's payment date occurs on July 1, which means in this analysis, the prepaid portion would be approximately $450,000 on the assumed liquidation date.
- The other current assets are estimated to generate no proceeds in a liquidation scenario.

7. *Mineral Properties and Mine Development*

- The mineral interests and related mine development costs were analyzed by mining complex, as a buyer interested would likely do the same.
- There are no Mineral Interest or Mine Development Costs at the Corporate entities.
- The four primary complexes as generally referred to, and their legal entities, are as follows
    - South Fork, comprised of South Fork Coal Company, LLC
    - Raven Crest & Brier Creek, comprised of Raven Crest Mining, LLC, Shenendoah Energy, LLC, Brier Creek Coal Company, LLC, and Bull Creek Processing Company, LLC
    - True Energy, comprised of True Energy, LLC, Xinergy of Virginia, Inc., and High MAF, LLC
    - Sewell Mountain, comprised of White Water Resources and Sewell Mountain Coal
- Methodologies used to evaluate these assets includes the Income Approach and the Market Approach.
    - The Income Approach uses the mining property cash flows that a prospective buyer might potentially estimate over a five-year horizon, along with a terminal value for the period after the five-year horizon, and discounts those cash flows back to the assumed Liquidation Date.
    - Market Approach compares and correlates the properties in question to similar properties which have been sold. These are selected and adjusted based on numerous criteria, including coal quality, region, mining cost on the property, and general market environment. These figures were then discounted to reflect the rapid pace at which a

chapter 7 trustee would be selling the assets.

8. *Property, Plant, and Equipment*

- Property, plant, and equipment ("PP&E") includes asset and accumulated depreciation accounts for fixed assets, including:
  - Land & Improvements, which includes leased and owned coal interests ("Reserves"), as well as surface land;
  - Plant & Improvements, which includes mine infrastructure, buildings, and land, leasehold, and building improvements;
  - Mining Equipment, which primarily consists of mining and support equipment
  - Autos & Trucks, which includes as well as vehicles, and Other Equipment
- The estimated proceeds from the liquidation sale of these assets are based on management's estimate based on the condition of the fixed assets, book value and/or indications of potential interest from third parties.

9. *Deferred Financing Costs and Other Non-Current Assets*

- Deferred financing costs and other non-current assets are estimated to generate no proceeds in a liquidation scenario because such assets are not marketability and/or would have no value to a third-party purchaser.

10. *Other Sources of Proceeds*

- The Debtors have one above-market contract for specialty metallurgical production. The contract has 18 months remaining from the assumed Liquidation Date.
- The liquidation value assumes no value on the low end of the range, as the Mineral Properties value uses an income method, which reflects the contracted tonnage.
- On the higher end of the range, the contract is assumed to be additive to a buyer because the Mineral Properties value uses a reserves market value only. The contract is valued by calculating the spread between the contracted price and current spot price for the remaining tons *at the customer's current run-rate*, which has been less than the contracted tons, less a 50% discount to reflect the rapid pace at which a chapter 7 trustee would be selling the assets.

11. *Liquidation Costs*

- Chapter 7 trustee fees are based on historical experience in other chapter 7 cases and are assumed to range from 2.5% to 3% of the asset proceeds, excluding cash and equivalents.
- Professional fees include the accrued and unpaid costs and fees of professionals retained by the Debtors and the Committee upon the Liquidation Date and the estimated costs of professionals retained by a chapter 7 trustee.

- Wind-down costs include general and administrative expenses, costs to close mines, safeguard and ensure access to equipment and other assets, and retain certain key employees during the Liquidation Period.

12. Secured Claims

- The Debtors' Secured Claims are comprised of approximately $45,000,000 in outstanding DIP Facility Claims, approximately $202,114,791 in Senior Secured Note Claims and $38,952 in Other Secured Claims. The Net Available Liquidation Proceeds are insufficient to satisfy all of the Debtors' Secured Claims.

- Because the Net Available Liquidation Proceeds would be insufficient to satisfy all of the Debtors' Secured Claims in a Chapter 7 liquidation, no proceeds would be available in that situation to allow the Debtors to make any distribution to holders of administrative priority claims, tax and non-tax priority claims, unsecured claims, or equity interests.

Exhibit C

Financial Projections

Financial Projections

These financial projections (the "***Financial Projections***") present, to the best of the Debtors' knowledge and belief, the Debtors' expectations for the projection period. The assumptions to the Financial Projections disclosed herein are those that the Debtors believe are significant to the Financial Projections. Because events and circumstances frequently do not occur as expected, there will be differences between the projected and actual results. These differences may be material to the Financial Projections herein.

I. Projection Assumptions

The Debtors, with the assistance of its advisors, prepared the Financial Projections for the five-month stub period ending December 31, 2015 and the two years ending December 31 of 2016 and 2017, respectively (the "***Projection Period***"). The Financial Projections are based on a number of assumptions, and while the Debtors have prepared the Financial Projections in good faith and believe the assumptions to be reasonable, it is important to note that the Debtors can provide no assurance that such assumptions will ultimately be realized. The Financial Projections should be read in conjunction with the assumptions and qualifications contained herein, the risk factors described in Article V of the Disclosure Statement and the historical financial statements filed by the Debtors as Monthly Operating Reports. Section III herein summarizes the underlying key assumptions upon which the Financial Projections are based.

The Financial Projections take into account the Debtors' contemplated operations initiatives and existing conditions in the coal industry. In addition, the Financial Projections are based on the assumption that the Plan will be confirmed as stated in the Disclosure Statement and the Plan will become effective on or about December 1, 2015 (the "***Effective Date***").

II. Accounting Policies

The Financial Projections have been prepared by the Debtors' management and reviewed by its advisors. The Financial Projections were not prepared to comply with the Guidelines for Prospective Financial Statements published by the American Institute of Certified Public Accountants or the rules and regulations of the SEC or the Ontario Securities Commission and by their nature are not financial statements prepared in accordance with accounting principles generally accepted in the United States of America or the International Financial Reporting Standards issued by the International Accounting Standards Board.

The Financial Projections do not reflect the impact of fresh start reporting in accordance with the Financial Accounting Standards Board, Accounting Standards Codification, Section 852 "Reorganizations." The impact of fresh start reporting, when reflected at the Effective Date, is expected to have a material impact on the Reorganized Debtors' consolidated balance sheets and prospective results of operations.

The Financial Projections contain certain statements that are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to a number of assumptions, risks and uncertainties, many of which are beyond the control of the Debtors and the Reorganized Debtors, including the confirmation of the Plan on

the presumed Effective Date, the continuing availability of sufficient borrowing capacity or other financing to fund operations, achieving operating efficiencies, cost and availability of raw materials and energy, terms and conditions of new credit facilities (if any), maintaining good employee relations, existing and future governmental regulations and actions of governmental bodies, general economic conditions in the markets in which the Debtors operate, industry specific risk factors (including as detailed in Article V of the Disclosure Statement) and other market and competitive conditions. Holders of Claims and Interests are cautioned that the forward-looking statements speak as of the date made and are not guarantees of future performance. Actual results or developments may differ materially from the expectations expressed or implied in the forward-looking statements, and the Debtors undertake no obligation to update any such statements.

THE DEBTORS' INDEPENDENT ACCOUNTANTS HAVE NEITHER EXAMINED NOR COMPILED THE ACCOMPANYING FINANCIAL PROJECTIONS AND ACCORDINGLY DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE FINANCIAL PROJECTIONS, DO NOT ASSUME RESPONSIBILITY FOR THE FINANCIAL PROJECTIONS AND DISCLAIM ANY ASSOCIATION WITH THE FINANCIAL PROJECTIONS.

III. Key Assumptions

1) Debtors' Projected Consolidated Revenues and Expenses

   a) Total Revenue – Projected revenues are the aggregation of revenues from the production and sale of thermal and metallurgical coal, and are based upon the Company's estimates of its current contracted sales, projected uncommitted tons sold and forecasted pricing at each of its mining complexes. The Company projects coal revenue to increase due to increasing sales and increasing coal prices as shown in Other Operating Data.

   b) Total Expenses (excluding Depreciation, Depletion and Amortization):

      i) Operating Expenses – The Company's production costs consist primarily of labor, materials, fuel, contract services, royalties, sales related taxes, leases and other expenses.

      ii) Other Income – The Company receives transportation rebates for certain types of coal sales.

      iii) General and Administrative Expenses ("G & A") – G & A expenses include all expenses related to corporate management functions. The Company's G & A expenses have decreased due to reduction in headcount, salary and benefits.

iv) Professional Fees Restructuring – Includes the Company's best estimate of professional fees, DIP facility fees and other costs related to the Company's reorganization.

2) Debtors' Projected Working Capital

a) Current Assets:

i) Cash and Cash Equivalents – The cash balances are projected based on the annual cash inflows and outflows utilizing an actual July 2015 starting balance and includes restricted cash of $4.5 million. Pro forma emergence cash is projected to be $1 million.

ii) Accounts Receivable – Receivables are calculated based on 30 average days receivable.

iii) Inventory – Materials, supplies and coal inventory are valued at the lower of average cost or market and are projected based on the forecasted timing of production and sales at individual mining complexes.

iv) Prepaid and Other Current Assets – Consists of prepaid expenses and deposits and is kept flat throughout the Projection Period.

b) Current Liabilities:

i) Accounts Payable – Accounts payables are projected based on 30 days payable.

ii) Accrued Expenses – Includes sales related taxes, royalties and employee related accruals and is kept flat through the projection period.

3) Debtors' Projected Investing Activities

a) Investing Activities – Capital expenditures are comprised primarily of continued investment in mine development, mining equipment and maintenance capital expenditure.

REVENUES AND EXPENSES $000s	2015 Total	2016 1Q	2Q	3Q	4Q	Total	2017 Total
Total Revenue	$ 44,800	$16,613	$16,613	$16,613	$16,613	$ 66,450	$ 76,800
Operating Expense	46,564	14,316	14,010	14,013	14,015	56,353	60,083
G & A	4,193	959	959	959	959	3,836	3,836
Other Income	379	131	131	131	131	525	525
Professional Fees Restructuring	10,453	-	-	-	-	-	-
EBITDA	**$ (16,032)**	**$ 1,469**	**$ 1,775**	**$ 1,772**	**$ 1,770**	**$ 6,786**	**$ 13,407**

OTHER OPERATING DATA	2015 Total	2016 1Q	2Q	3Q	4Q	Total	2017 Total
Met Tons Sold	167,457	84,000	84,000	84,000	84,000	336,000	372,000
Thermal Tons Sold	676,325	180,000	180,000	180,000	180,000	720,000	720,000
Total Tons Sold	**843,782**	**264,000**	**264,000**	**264,000**	**264,000**	**1,056,000**	**1,092,000**
Average Met Price / Ton	$ 86.23	$ 95.98	$ 95.98	$ 95.98	$ 95.98	$ 95.98	$ 109.68
Average Thermal Price / Ton	$ 44.89	$ 47.50	$ 47.50	$ 47.50	$ 47.50	$ 47.50	$ 50.00
Average Total Price / Ton	**$ 53.09**	**$ 62.93**	**$ 62.93**	**$ 62.93**	**$ 62.93**	**$ 62.93**	**$ 70.33**
CapEx	$ (6,002)	$ (1,800)	$ (500)	$ (500)	$ (500)	$ (3,300)	$ (3,000)

WORKING CAPITAL $000s	Emergence Nov-15	Year End 2015	Year End 2016	Year End 2017
Assets				
Cash and Cash Equivalents[1]	$ 5,503	$ 5,503	$ 5,503	$ 9,071
Accounts Receivable	3,150	3,150	5,538	6,312
Inventory	2,959	3,449	2,532	2,618
Prepaid and Other Current Assets	632	632	632	632
Total Current Assets	**$ 12,244**	**$ 12,733**	**$ 14,204**	**$ 18,634**
Liabilities				
Accounts Payable	$ 2,042	$ 2,999	$ 4,178	$ 4,549
Accrued Expenses	2,776	2,776	2,776	2,776
Total Current Liabilities	**$ 4,819**	**$ 5,776**	**$ 6,954**	**$ 7,325**
Net Working Capital	**$ 7,425**	**$ 6,958**	**$ 7,250**	**$ 11,309**

[1] Includes restricted cash of $4.5 million.

INVESTING ACTIVITIES

$000s	2015	2016	2017
Purchase of Property Plant and Equipment	$ (4,881)	$ (3,300)	$ (3,000)
Development Assets	(1,121)	-	-
Contract Termination	1,440	-	-
Net cash provided by (used in) investing activities	**$ (4,562)**	**$ (3,300)**	**$ (3,000)**

EXHIBIT B

(Redline)

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

In re:	
XINERGY LTD., *et al.*,	**Chapter 11**
	Case No. 15-70444 (PMB)
	(Jointly Administered)
Debtors.[1]	

DISCLOSURE STATEMENT ACCOMPANYING
FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY XINERGY LTD.
AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION

THIS IS A SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126, 11 U.S.C. §§ 1125, 1126. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL BUT HAS NOT YET BEEN APPROVED. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

~~SEPTEMBER 16~~OCTOBER 14, 2015

[1] 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.

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IMPORTANT NOTICE

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND OTHER PARTIES IN INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, OR (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL, STATE OR CANADIAN SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITY, NOR HAVE THE FOREGOING REGULATORY ENTITIES PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS WITH "ADEQUATE INFORMATION" (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN. PERSONS OR ENTITIES TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OF THE DEBTORS SHOULD NOT RELY UPON THIS DISCLOSURE STATEMENT FOR SUCH PURPOSES AND SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS.

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ARTICLE I

PURPOSE AND FUNCTION OF THE DISCLOSURE STATEMENT

This disclosure statement (this "Disclosure Statement") provides information regarding the *Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"), which the Debtors are seeking to have confirmed by the Bankruptcy Court~~.~~[2] **and recognized by the Canadian Court.** A copy of the Plan is attached hereto as **Exhibit A**. This Plan constitutes a separate Plan proposed by each Debtor. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtors provide this Disclosure Statement to enable any creditor whose Claim is Impaired under the Plan and, therefore, entitled to vote on the Plan, to arrive at a reasonably informed decision in exercising the right to vote to accept or reject the Plan. This Disclosure Statement should be read in its entirety prior to voting on the Plan. The information contained herein is based on records maintained by the Debtors, and no representation or warranty is made as to their complete accuracy.

For the Plan to be confirmed, creditors in each class of Impaired Claims who hold at least two-thirds in amount and more than one-half in number of Claims within the class must vote in favor of the Plan. If a party does not vote, i.e. does not return a fully completed Ballot within the specific time to the correct addressee, neither the party nor the amount of its Claim or Interest is counted to determine acceptance or rejection of the Plan. If you are entitled to vote and do not, the Ballots will be tallied as though your Claims did not exist. The Court can confirm the Plan even if the requisite acceptances are not obtained so long as the Plan complies with the Bankruptcy Code and accords fair and equitable treatment to any non-accepting Class.

Parties entitled to vote are furnished a Ballot on which to record their respective acceptances or rejections of the Plan. Those completed Ballots must be returned to the Solicitation Agent by the deadline set forth on the Ballot, who will tally the votes and report the results to the Court at the Hearing on Confirmation of the Plan. **There will be no separate voting process for Canadian Holders of Claims or Interests, and Canadian Holders of Claims or Interests will be subject to the voting process set out in the Order approving this Disclosure Statement, as recognized by the Canadian Court.**

Each of the Debtors' boards of directors or members, as applicable, has approved the Plan and believes the Plan is in the best interests of the Debtors' Estates. As such, the Debtors recommend that all holders of Impaired Claims that are entitled to vote accept the Plan by returning their ballots so as to be actually received by the Solicitation Agent no later than **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time).**

[2] Capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

NO REPRESENTATIONS CONCERNING THE DEBTORS, THE DEBTORS' OPERATIONS, THE VALUE OF THE DEBTORS' PROPERTY OR THE PLAN ARE AUTHORIZED UNLESS THEY ARE IN THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION CONCERNING THE DEBTORS, THEIR OPERATIONS OR THE VALUE OF THEIR PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTORS OR OFFICE OF THE UNITED STATES TRUSTEE.

THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN BUT MERELY CONFIRMS THAT THE DISCLOSURE STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT REGARDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

If the Court does not confirm the Plan, the Debtors may amend the Plan or file a different Plan. If the Court does not confirm the Plan and the exclusive period within which the Debtors can obtain acceptance expires, a creditor may file a plan of reorganization. Additionally, on motion of a party in interest and after notice and a hearing, the Court may convert the Bankruptcy Case to a Chapter 7 case.

The summaries of the financial information and the documents annexed to this Disclosure Statement or otherwise incorporated herein by reference are qualified in their entirety by reference to those documents. The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained herein will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement

Defined terms used, but not defined in this Disclosure Statement, shall have the meanings ascribed to such terms in the Plan. Accordingly, please refer to the Plan for definitions of certain important terms used in this Disclosure Statement.

ARTICLE II

BUSINESS DESCRIPTIONS

2.1 General Information About the Debtors

(a) Business Operations

(1) General

Incorporated in October 2007, Xinergy Corp. acquired Xinergy Ltd. in December 2009 through a "reverse takeover." Xinergy Ltd. is a public company whose stock was traded on the Toronto Stock Exchange until it was delisted on May 12, 2015. Xinergy Ltd. is the direct or indirect parent of each of the Debtors.

Xinergy is a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian ("CAPP") regions of West Virginia and Virginia. Xinergy's operations principally include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. Xinergy also leases or owns the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, Xinergy leases or owns mineral rights to approximately 72,000 acres with proven and probable coal reserves of approximately 77 million tons and additional estimated reserves of 40 million tons.

(2) Principal Product, Markets and Distribution Methods

Xinergy currently produces and ships coal from its South Fork mid-volatile metallurgical mine and its Raven Crest thermal operations. Xinergy's primary customers for metallurgical coal -- used in a chemical process that yields coke for the manufacture of steel -- are steel producers, commodities brokers and industrial customers throughout North America, Europe and South America. Electric utilities and industrial companies in the southeastern U.S. and Europe are the principal customers for Xinergy's thermal coal.

South Fork is currently producing between 15,000 and 25,000 tons of mid-volatile metallurgical coal per month. Raven Crest currently produces between 55,000 and 65,000 tons of thermal coal per month. After being idled due to market conditions, Raven Crest restarted production in January 2014 with the completion of a $9.5 million coal preparation plant. The recent improvements to the coal processing facility at Raven Crest have allowed Xinergy to increase the marketability of its low cost, high quality thermal coal to markets in the eastern U.S. and Europe.

Most of the coal sold by Xinergy occurs through short-term contracts. Xinergy also quotes prices and sells coal on a one-day or one-shipment tonnage amount with prices directly correlated to the price per ton of coal quoted on the New York Mercantile Exchange or similar commodity exchanges, which is known as the "spot price." Coal sold pursuant to short-term contracts or at the spot price is subject to current market pricing that can be

significantly more volatile than the pricing structure achieved through long-term negotiated supply agreements. Xinergy is currently exploring opportunities for entering into longer term contracts that provide significantly more price stability.

Xinergy's operational results are highly dependent on the costs of coal production and the costs of and ability to transport coal to customers. Primary mining-related expenses are wages and benefits, repairs and maintenance, diesel fuel, blasting and related supplies, coal transportation costs, freight and handling costs, royalties and taxes incurred in selling coal. The majority of Xinergy's coal is shipped via rail on CSX-controlled railways. The remaining coal is shipped via truck.

The Debtors sell their coal for a specified per ton amount at a negotiated price pursuant to both short term contracts and contracts exceeding twelve months. Price adjustments, price reopener and other provisions in long term supply agreements may reduce the protection from short term coal price volatility traditionally provided by such contracts. Any adjustment or renegotiation leading to a significantly lower contract price or lower volumes would result in decreased revenues and lower margins, which would have a material adverse effect on the Debtors' operating cash flows. Additionally, the Debtors' customers may have the ability to delay the timing of their purchases, which could negatively impact operating cash flows. Coal supply agreements also typically contain force majeure provisions allowing temporary suspension of shipments to the customer upon the occurrence of specified events beyond the Debtors' control. In excess of 95% of the Debtors' coal is shipped via CSX rail to their customers with the remainder being shipped via truck. The Debtors incur all costs and obligations to load the coal in the rail car at which time its ownership and any further transportation costs is the responsibility of the customer. The remaining coal sales are delivered to the Debtors' customers utilizing third party contract trucking companies.

(3) Coal Reserves and Leases

In addition to its active mining operations, the Debtors own or lease rights to significant coal reserves. In October 2012, Xinergy acquired approximately 12,500 acres located in Fayette, Nicholas and Greenbrier counties, West Virginia through Debtor Sewell Mountain Coal Company ("Sewell Mountain"). The acquisition included a site regionally known as the Meadow River Complex with existing permits and infrastructure. Xinergy has received all necessary permit transfers for this mining property including the underground mine, preparation plant, rail loadout and refuse area. Sewell Mountain has estimated reserves of 32.36 million tons of mid-volatile metallurgical coal and is in the planning and development stage.

Xinergy also leases approximately 1,000 acres of surface mining operations in Wise County, Virginia, through Debtor, True Energy, LLC ("True Energy"). In response to market conditions, True Energy's mining operations were idled in 2012. This site has proven and probable reserves of 2.3 million tons of high volatile metallurgical coal with estimated total reserves of 7 million tons based on recent additional land acquisitions.

(4) Employees and Employee Benefits

Xinergy has approximately 115 employees working in full or part-time positions. Approximately six (6) employees perform executive management, sales and general administration functions and are assigned to Xinergy's Knoxville, Tennessee corporate office, but frequently work remotely or at Xinergy's mine locations. The remaining individuals are operational employees and work at Xinergy's mine locations. All of Xinergy's coal processing and production is performed by its own employees. None of Xinergy's employees are currently unionized.

Xinergy provides healthcare and other benefits to primary insured full-time employees and beneficiaries. Xinergy is subject to the Federal Coal Mine Health and Safety Act of 1969 (the "Black Lung Act") and other workers' compensation laws in the states in which Xinergy operates. Under the Black Lung Act, Xinergy is required to provide benefits to its current and former coal miners suffering from pneumoconiosis or "black lung disease" and, in certain cases, the workers' beneficiaries. Xinergy maintains insurance sufficient to cover the cost of present and future claims. Xinergy believes that future costs associated with the Black Lung Act may increase as a result of the Patient Protection and Affordable Care Act, enacted in 2010, which provides for an automatic survivor benefit and a rebuttable presumption concerning a coal mine employee's disability in certain circumstances. Separately, Xinergy maintains cash deposits and/or bonds to secure obligations under federal and state workers' compensation laws.

(5) Transportation

The Debtors have a 150 rail car CSX loading facility at their Raven Crest facility in Boone County, West Virginia, which serves the Raven Crest surface and highwall mine and the currently idle Brier Creek underground mine. The Raven Crest facility is located approximately 30 minutes from the Kanawha River, which is a major barge transportation route, and allows the Company to access additional markets through the US gulf coast shipping ports.

The Debtors also have a recently completed 100 rail car CSX loading facility at their South Fork facility in Greenbrier County, West Virginia, which serves all the Company's South Fork mines.

(6) Marketing, Sales, Customers

The Debtors' marketing and sales efforts are led by their President and Chief Executive Officer, Gregory L. "Bernie" Mason. The Debtors utilize various third-party coal brokers to assist in sales efforts. The Debtors' sales are primarily focused on electric utilities, steel companies and industrial companies throughout North America and Europe.

The terms of coal supply agreements result from competitive bidding and extensive negotiations with customers. Consequently, the terms of these contracts vary significantly in many respects, including price adjustment features, price re-opener terms, sources of supply, treatment of environmental constraints, extension options, force majeure provisions, contract

termination and assignment provisions. Quality and volumes for the coal are stipulated in these agreements, and in some instances, buyers have the option to vary annual or monthly volumes.

The Debtors typically sell their coal for a specified tonnage amount and at a negotiated price pursuant to short-term and long term contracts. The Debtors also price coal sales on a one-day or one-shipment tonnage amount. The price per ton for these types of sales typically fluctuates in direct correlation to the price per ton of coal quoted on the New York Mercantile Exchange or similar commodity exchanges, which the Debtors refer to as the "spot price." Most contracts contain provisions to adjust the base price due to new statutes, ordinances or regulations that impact the supplying company's cost of performance of the agreement. Additionally, some contracts contain provisions that allow for the recovery of costs impacted by the modifications or changes in the interpretation or application of any existing statute by local, state or federal government authorities. Quality and volumes for the coal are stipulated in coal supply agreements, and in some limited instances, buyers have the option to vary annual or monthly volumes. Variations to the quality and volumes of coal may lead to adjustments in the contract price.

(7) Permitting

The Debtors must obtain permits from applicable state and federal regulatory authorities before they begin mining. Mining companies are continually obtaining and monitoring numerous permits that impose strict environmental and safety regulations on their operations. These provisions include requirements for coal prospecting, mine plan development, topsoil removal, storage and replacement, selective handling of overburden materials, mine pit backfilling and grading, protection of the hydrologic balance, subsidence control for underground mines, surface drainage control, mine drainage and mine discharge control and treatment and re-vegetation.

(b) Pre-Petition Capital Structure

The Senior Secured Notes are 9.25% notes due May 15, 2019 that were issued by Xinergy Corp. in the aggregate original principal amount of $200 million, which are guaranteed by the other Debtors and collateralized by substantially all of Xinergy's assets. Interest payments of $9 million are due and payable semi-annually. Approximately $72 million of the net proceeds from the issuance were used to retire existing debt and the remaining funds were used for capital expenditures, including construction of a preparation plant, purchase of mining equipment and construction of infrastructure, and for general corporate purposes. As of the Petition Date, the amount outstanding on the Second Lien Notes was approximately $195 million in principal and approximately $7.1 million in accrued and unpaid interest.

Subsequent to issuing the Senior Secured Notes, Xinergy Corp. entered into a Credit Agreement, dated as of December 21, 2012 (as amended, supplemented, modified, or amended and restated from time to time, the "First Lien Term Loans"), with Bayside Finance LLC, as lender ("Bayside"), and the other Debtors as guarantors. The First Lien Term Loans facility provided for two term loans in the amount of $10 million each with terms of four years. The first loan was drawn in December 2012 and the second loan was drawn in September 2013. The proceeds of the First Lien Term Loans were used to fund transaction costs, to provide

working capital and for Xinergy's general corporate purposes. The First Lien Term Loans are secured by a first-priority lien on substantially all of the Debtors' assets. On April 1, 2015, Bayside assigned its interest in the First Lien Term Loans to funds managed on behalf of Whitebox Advisors LLC ("Whitebox") and Highbridge Capital Management, LLC ("Highbridge"). All amounts outstanding on the First Lien Term Loans were retired with the proceeds from the DIP Facility.

(c) Events Leading to Chapter 11 Bankruptcy Filings

The Debtors' bankruptcy filings were a direct result of the sharp decrease in domestic demand for thermal coal, which is, in large part, due to increasingly attractive alternative sources of energy, such as natural gas, and burdensome environmental and governmental regulations impacting end users. Simultaneously, the increasingly stringent regulatory environment in which coal companies operate has driven up the cost of mining and processing coal. Continued weakness in the market for metallurgical and thermal coal, combined with an extremely cold and snowy winter in 2014-2015 that impacted the mining and shipment of coal, continued to erode Xinergy's cash position. The confluence of these factors and Xinergy's substantial debt burden necessitated relief under chapter 11 of the Bankruptcy Code. Further details regarding the events leading up to the commencement of the Chapter 11 Cases can be found in the *Declaration of Michael R. Castle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Doc. No. 18].

(d) Estimated Reorganization Value

The Debtors have been advised by their investment banker, Seaport Global Securities, LLC ("SGS"), with respect to the estimated hypothetical reorganization value of the Reorganized Debtors. SGS estimates the range of Reorganization Value to be from approximately $90 million to $135 million, with a midpoint valuation of approximately $112.5 million (the "Reorganization Value"). Reorganization Value consists of the theoretical enterprise valuation of the Reorganized Debtors through the application of various relative and intrinsic valuation methodologies. SGS has estimated the Reorganization Value as of September 10, 2015, under the assumption that the underlying assumptions and conditions used to derive the Reorganization Value will not change materially from the date hereof through the assumed Effective Date of December 7, 2015.

The imputed reorganization equity value (the "Reorganization Equity Value") of the Reorganized Debtors, which takes into account estimated debt balances and other obligations under the Plan as of the assumed Effective Date, is the Reorganization Value less the principal amount of the Exit Facility plus excess cash and excess working capital, if any, on the Effective Date.

The foregoing estimates of the Reorganization Value of the Reorganized Debtors, and the resulting estimates of Reorganization Equity Value of the Reorganized Debtors, are based on a number of assumptions, including a successful reorganization of the Debtors' business, the implementation and realization of the Reorganized Debtors' business plans, the achievement of

the forecasts reflected in management's projections, and the Plan becoming effective on the assumed Effective Date.

In preparing its estimate of the Reorganization Value of the Reorganized Debtors, SGS did, among other things, the following: (a) reviewed certain historical financial information of the Debtors for recent years and interim periods; (b) reviewed certain internal financial and operating data of the Debtors and financial projections relating to its business and prospects; (c) held conference diligence calls with certain members of the senior management of the Debtors to discuss the Debtor's operations and future prospects; (d) reviewed publicly available financial data and considered the market values of public companies that SGS deemed generally comparable to those of the Debtors as a whole or a significant part of their operations; (e) reviewed the financial terms and conditions of recent mergers and acquisitions of companies that SGS believes to be generally comparable to those of the Debtors as a whole or a significant part of their operations; (f) considered certain economic, industry and market information relevant to the Debtors' operations; and (g) reviewed such other information and conducted such other analyses as SGS deemed appropriate.

Although SGS conducted a review and analysis of the Debtors' businesses, operating assets and liabilities and business plans, SGS assumed and relied on the accuracy and completeness of all (a) financial and other information furnished to it by the Debtors and by other firms retained by the Debtor and (b) publicly available information. SGS did not independently verify any financial projections prepared by management of the Debtors in connection with its estimates of the Reorganization Value. SGS has assumed that such projections have been prepared reasonably, in good faith and on a basis reflecting the currently available estimates and judgments of the Debtors as to the future operating and financial performance of the Debtors. Such projections assume that the Debtors will operate the businesses reflected in the financial forecast and that such businesses will perform as expected in the financial forecast. To the extent that the Debtors operate at higher or lower utilization, achieves higher or lower revenues, has variations in costs, higher or lower capital expenditures, or unexpected maintenance of the Debtors' properties and equipment during the periods contemplated in the projections and to the extent that all or a portion of the businesses perform at levels inconsistent with those expected by management in the financial forecast, such adjustments may have a material impact on the projections and the valuations as presented herein.

Hypothetical valuation estimates reflect computations of the estimated Reorganization Value and Reorganization Equity Value of the Reorganized Debtors through the application of various valuation techniques, including, among others, the following: (a) a comparable company analysis, in which SGS analyzed the enterprise values of public companies that SGS deemed generally comparable to all or parts of the operating businesses of the Debtors as a multiple of certain financial measures, including, but not limited to, earnings before interest, taxes, depreciation and amortization ("EBITDA"), reserves and revenues which were then applied to the projected EBITDA, reserves and revenues, respectively of the Reorganized Debtors; and (b) a precedent transactions analysis, in which SGS analyzed the financial terms and conditions of certain mergers and acquisitions of companies that SGS believed were generally comparable to all or parts of the operating businesses of the Debtors, and then applied certain financial

performance metrics provided by such analyses to the relevant metrics of the Reorganized Debtors including multiples of EBITDA, reserves and revenues. Because of the current instability in the coal markets, the Debtors' management determined that it was not feasible to develop projections beyond 2017. As a result, SGS determined that it was not appropriate to use discounted cash flow valuation techniques.

An estimate of the Reorganization Value and Reorganization Equity Value is not entirely mathematical but, rather, involves complex considerations and judgments concerning various factors that could affect the value of an operating business. SGS has made judgments as to the relative significance of each analysis in determining the Reorganized Debtors' Reorganization Value range. SGS did not consider any one analysis or factor to the exclusion of any other analysis or factor. SGS's hypothetical valuation must be considered as a whole, and the utilization of one methodology or portions of the analyses, without considering the analyses as a whole, could create a misleading or incomplete conclusion as to the Reorganized Debtors' Reorganization Value. With respect to the analysis of comparable companies and the analysis of selected precedent transactions, no company utilized as a comparison is identical to the Reorganized Debtors, and no precedent transaction is identical to the reorganization of the Debtors. Accordingly, an analysis of publicly traded comparable companies and comparable business combinations is not mathematical; rather, it involves complex considerations and judgments concerning the differences in financial and operating characteristics of the companies relative to the Reorganized Debtors.

The value of an operating business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in factors affecting the financial conditions and prospects of such a business. As a result, the estimate of the Reorganization Value set forth herein is not necessarily indicative of actual outcomes, which may be significantly more or less favorable than those set forth herein. Because such estimates are inherently subject to uncertainties, none of the Debtors, SGS or any other person assumes responsibility for their accuracy. Depending on the results of the Debtors' operations or changes in the financial markets, SGS's valuation estimates as of the Effective Date may differ from those disclosed herein.

THE FOREGOING VALUATION IS BASED UPON A NUMBER OF ESTIMATES AND ASSUMPTIONS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTOR OR THE REORGANIZED DEBTOR. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RANGES REFLECTED IN THE VALUATION WOULD BE REALIZED IF THE PLAN WERE TO BECOME EFFECTIVE, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN HERE.

THE ESTIMATED CALCULATION OF REORGANIZATION VALUE IS HIGHLY DEPENDENT UPON ACHIEVING THE FUTURE FINANCIAL RESULTS AS SET FORTH IN THE DEBTOR'S BUSINESS PROJECTIONS, AS WELL AS THE REALIZATION OF CERTAIN OTHER ASSUMPTIONS, NONE OF WHICH ARE GUARANTEED AND MANY OF WHICH ARE OUTSIDE OF THE DEBTOR'S CONTROL.

THE CALCULATIONS OF VALUE SET FORTH HEREIN REPRESENT ESTIMATED REORGANIZATION VALUE AND DO NOT NECESSARILY REFLECT VALUES THAT COULD BE ATTAINABLE IN PUBLIC OR PRIVATE MARKETS. THE REORGANIZATION EQUITY VALUE STATED HEREIN DOES NOT PURPORT TO BE AN ESTIMATE OF THE POST-REORGANIZATION MARKET VALUE. SUCH VALUE, IF ANY, MAY BE MATERIALLY DIFFERENT FROM THE REORGANIZATION EQUITY VALUE RANGES ASSOCIATED WITH THIS VALUATION ANALYSIS. NO RESPONSIBILITY IS TAKEN FOR CHANGES IN MARKET CONDITIONS AND NO OBLIGATION IS ASSUMED TO REVISE THIS CALCULATION OF THE REORGANIZED DEBTORS' VALUE TO REFLECT EVENTS OR CONDITIONS THAT SUBSEQUENTLY OCCUR. THE CALCULATIONS OF VALUE DO NOT CONFORM TO THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE OF THE APPRAISAL FOUNDATION.

2.2 The Chapter 11 Cases

On April 6, 2015 (the "Petition Date"), each of the Debtors filed their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the "Court" or "Bankruptcy Court"), with such cases being jointly administered under case number 15-70444.

(a) The Canadian Proceeding

On April 7, 2015, the Bankruptcy Court entered an order authorizing Xinergy Ltd. to act as the foreign representative of the Debtors, pursuant to Bankruptcy Code section 1505. On April 23, 2015, Xinergy Ltd. obtained an order **(the "Recognition Order")** from the Ontario Superior Court of Justice **(Commercial List)** (the "Canadian Court") recognizing its chapter 11 case as a "foreign main proceeding" under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "CCAA") **and a second order (the "Supplemental Recognition Order") granting additional relief**. The Canadian Court has recognized, among other things, ~~the order~~**certain orders** approving DIP Financing (as defined below) and a Stipulated Protective Order into entered by the Debtors and a large shareholder.~~.~~

(b) Appointment of the Creditors' Committee

On May 11, 2015, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee"). The members of the Creditors' Committee are Security America, Inc.~~ and~~**,** Penn Virginia Operating Co., LLC.**, and WPP, LLC.**

(c) Payment of Certain Prepetition Obligations

On the Petition Date, the Debtors filed a number of "first day" motions designed to ensure the Debtors' ability to continue to operate with minimal disruption following the filing of the Cases. Specifically, the Debtors requested authority to pay certain pre-Petition Date obligations, primarily related to outstanding amounts owed to their employees in the ordinary course of business. In addition, the Debtors requested authority to make certain payments

owed to critical vendors in order to maintain their services on ordinary terms. The Debtors also requested authority to pay certain taxes to the applicable taxing authorities and insurance premiums to the Debtors' insurance carriers. On April 7, 2015, the Bankruptcy Court conducted a hearing to consider the first day motions and entered interim orders authorizing the Debtors, among other things, (i) to make certain payments to employees, (ii) to make certain payments to critical vendors, (iii) to pay certain taxes to the applicable taxing authorities, and (iv) to pay insurance premiums to the applicable insurance carrier. On May 8, 2015, the Bankruptcy Court entered final orders authorizing the foregoing relief.

(d) DIP Financing

On April 7, 2015, the Debtors filed a motion seeking approval of debtor-in-possession financing (the "DIP Financing") to be entered into by and among Xinergy Corp. as borrower (the "Borrower"), Xinergy Ltd. and the remaining Debtors as guarantors (collectively, the "Guarantors"), affiliates of Whitebox and Highbridge as initial lenders (the "Initial Lenders"), and WBOX 2014-4 Ltd. in its capacity as administrative agent (the "DIP Agent"), to be comprised of a multiple draw term loan facility of up to $40,000,000 to the Borrower to refinance the Prepetition Financing Facility in full (the "Refinancing") and for working capital purpose during the pendency of the Chapter 11 Cases. The DIP Facility also included an uncommitted accordion feature whereby the Borrower had the right, exercisable only one time, to incrementally increase the commitment amount by an aggregate principal amount equal to up to $10 million, subject to, among other conditions to be agreed, no default or event of default continuing at the time of such increase. On April 7, 2015, the Bankruptcy Court entered an interim order approving the DIP Financing, on May 5, 2015, the Bankruptcy Court entered a final order approving the DIP Financing, and on June 5, 2015, the Bankruptcy Court entered a modified final order approving the DIP Financing.

On August 27, 2015, the Bankruptcy Court entered a supplemental order approving of amendments to the DIP Financing, on an interim basis, to waive certain specified defaults and allow additional incremental borrowings of up to $9,000,000 under the accordion feature of the DIP Facility. ~~**A final hearing on the incremental financing is scheduled for**~~**The interim order approving the amendments to the DIP Financing became a final order on** September ~~**24**~~**18**, 2015~~ **at 2 p.m**~~. As of the date hereof, approximately $45,000,000 is drawn and outstanding under the DIP Facility.

(e) Lien Challenge Period

Under the Bankruptcy Court order approving the DIP Financing, the Creditors' Committee was granted a period of sixty (60) days from the Petition Date, or such later date as agreed by the parties or directed by the Bankruptcy Court, to investigate and seek to challenge the validity, enforceability, priority, extent of amount of the Senior Secured Notes and the liens securing the Debtors' obligations in respect of the Senior Secured Notes (the "Challenge Period"). After due investigation and diligence by the Creditors' Committee during the Challenge Period, as extended by agreement of the parties, the Creditors' Committee declined to commence any action or assert any claims, defenses or causes of action in respect of the Senior Secured Notes or the liens granted by the Debtors in respect thereto, or to seek

derivative standing to pursue such claims and defenses, prior to the expiration of the Challenge Period.

(f) Retention of Professionals

(1) Hunton & Williams LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests otherwise in the Cases, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Hunton & Williams LLP as their counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(2) Cassels Brock & Blackwell LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests otherwise in the Canadian Proceeding, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Cassels Brock & Blackwell LLP as their Canadian counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(3) Michael Wilson PLC

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests in connection with certain disputes with American Electric Power, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Michael Wilson PLC as their special conflicts counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(4) Stubbs Alderton & Markiles LLP

To assist them in carrying out their duties as debtors-in-possession, and to represent their interests in certain limited corporate matters in the Cases, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Stubbs Alderton & Markiles LLP as their special corporate counsel. On May 8, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(5) Seaport Global Securities

To provide them with financial advisory and investment banking services, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain SGS as their financial advisors and investment bankers. On May 12, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(6) Zolfo Cooper Management, LLC

As described in more detail below, to provide them with management services in connection with their proposed restructuring, the Debtors filed with the Bankruptcy Court an

application seeking entry of an order authorizing the Debtors to retain Zolfo Cooper Management, LLC and designate Sherman Edmiston as Chief Restructuring Officer. On July 13, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(7) Wilson Energy Advisors, LLC

To provide them with additional operational advice and interim management services, the Debtors filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtors to retain Wilson Energy Advisors, LLC and to designate Jeffrey A. Wilson as the Debtors' Senior Vice President – Operations. On August 27, 2015, the Bankruptcy Court entered an order approving the application on a final basis.

(g) Shareholder Attempt to Call Special Shareholder Meeting

On or about April 16, 2015, the Debtors received a letter (the "Requisition") from a shareholder of the Debtors who owns more than five percent of the Debtors' outstanding common stock demanding that the Board of Directors call a meeting of shareholders of Xinergy Ltd. for the purpose of reconstituting the Board of Directors. The Requisition specifically sought to remove and/or replace three of the five current board members. On May 7, 2015, the Debtors responded to the Requisition indicating that the Board of Directors had reviewed and considered the Requisition, but declined to call a special shareholder meeting of Xinergy Ltd. because, among other reasons, it would seriously jeopardize the Debtors' prospects for successfully reorganizing through these Bankruptcy Cases to the detriment of all of the estates' stakeholders.

By complaint (the "Complaint") dated May 8, 2015, the Debtors commenced Adversary Proceeding No. 15-07008 (the "Adversary Proceeding") against the shareholder, seeking declaratory judgment that Xinergy Ltd. has no obligation to hold a special shareholder meeting prior to confirmation of the Plan and injunctive relief preventing the shareholder from taking further actions to call or hold a special shareholder meeting.

On May 12, 2015, the shareholder requested a shareholder list from Xinergy **Ltd.** and its transfer agent. On or about May 13, 2015, the shareholder called a shareholder meeting to be held on June 19, 2015. On May 14, 2015, the shareholder filed a motion in the CCAA proceeding seeking a declaration that the actions of calling the shareholder meeting, as well as seeking certain administrative relief related to the conduct of the meeting, including seeking an order requiring Xinergy **Ltd.** to deliver a shareholder list to the shareholder, did not violate the stay of proceedings under the Recognition Order and under the Supplemental **Recognition** Order entered in the CCAA proceeding.

On May 19, 2015, the Debtors filed a Motion for Preliminary Injunction prohibiting the shareholder from taking any further action to call or hold a special shareholder meeting prior to confirmation of a plan or further order of the Court.

On May 29, 2015, after a contested hearing, the Canadian Court made an order finding that the shareholder's actions were stayed pursuant to the Supplemental

Recognition Order. On June 18, 2015, the Canadian Court issued detailed reasons for its order.

On June 5, 2015, the Court entered a Stipulated Order (the "Stipulated Order") staying the Adversary Proceeding until the earlier of the date an order confirming the Plan becomes a final, non-appealable order or the date that either of the parties files a statement with the Court requesting the stay to be lifted. Pursuant to the Stipulated Order, the shareholder agreed not to take any further actions to call or hold a special shareholder meeting. **On June 18, 2015, the Canadian Court recognized the Stipulated Order.** The Court has scheduled a status conference in the Adversary Proceeding for October ~~6~~**16**, 2015, at 11:00 a.m.

(h) Appointment of Chief Restructuring Officer

Pursuant to section 6.26 of the DIP Credit Agreement, the Debtors were required to retain a consultant or other professional to serve as Chief Restructuring Officer (as defined in the DIP Credit Agreement), with a scope of responsibility to be mutually agreed upon by the Debtors and the Majority DIP Lenders. After consultation with the Majority DIP Lenders, on or about June 15, 2015, the Debtors agreed to retain Zolfo Cooper to provide the Chief Restructuring Officer and other consulting services **for a period of ninety days subject to mutual agreement to extend the term**. Zolfo Cooper ~~has~~ designated Sherman Edmiston to serve as the Company's Chief Restructuring Officer. The Bankruptcy Court approved the retention of Zolfo Cooper and Mr. Edmiston at a hearing held on July 7, 2015 and by an order entered July 13, 2015. Since his retention, Mr. Edmiston has, together with the Debtors' senior management and advisors, provided management services to the Debtors and he, along with Zolfo Cooper personnel, have assisted in the preparation of financial projections, projected cash flows and capital needs analyses in support of the restructuring process and the Plan. **The Debtors and Zolfo Cooper agreed to an extension of the term of the services agreement with Zolfo Cooper and Mr. Edmiston through and including September 17, 2015.**

(i) Claims Process and Bar Dates

On June 8, 2015, the Bankruptcy Court established the following bar dates (each, a "Bar Date") for the filing of proofs of claim against the Debtors in these Chapter 11 Cases:

- July 31, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim for (i) claims arising prior to the commencement of the Chapter 11 Cases (this Bar Date does not apply to claims or interests held by one Debtor against another Debtor nor to any other claims that are subject to one of the other specific Bar Dates set forth below); (ii) claims for the value of any goods received by the Debtors within 20 days before the commencement of these Chapter 11 Cases, which goods were sold to the Debtors in the ordinary course of the Debtors' business;

- September 23, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim by any "governmental unit" as that term is defined in Section 101(27) of the Bankruptcy Code; and

- For claims arising from the Debtors' rejection of any executory contract or unexpired lease, the Bar Date is the later of (a) July 31, 2015; and (b) thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease.

On June 19, 2015, the Debtors filed their schedules of assets and liabilities (the "Schedules") and statements of financial affairs in these Chapter 11 Cases. In the event that the Debtors amend their Schedules, the Bar Date for filing a proof of claim with respect to such claim is the later of (a) July 31, 2015; and (b) thirty (30) days after the applicable claimant affected by any such amendment is served with notice that the Debtors have amended their Schedules.

The Debtors are continuing their review and analysis of the proofs of claims filed in the Chapter 11 Cases. As of the date hereof, 254 proofs of claim have been filed against the various Debtors which, in the aggregate (inclusive of both Secured and Unsecured Claims), total $530,867,544.42. The Debtors anticipate that they have valid objections to various Claims that have been filed and thus, the ultimate total Allowed amount of such Claims may be significantly less than the asserted amounts.

(j) Restructuring Discussions

Following the commencement of the Bankruptcy Cases, the Debtors and an informal committee of holders of the Senior Secured Notes (many of which are also lenders under the DIP Credit Agreement) engaged in discussions concerning the terms of the Plan. These discussions occurred over several weeks, both informally and formally, including at meetings held in the New York offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the informal committee of holders of the Senior Secured Notes, on May 21 and August 6, 2015. In advance of those meetings, the Debtors and certain holders of the Senior Secured Notes entered into Non-Disclosure Agreements, which provided that those holders of the Senior Secured Notes would maintain the confidentiality of certain financial information provided by the Debtors for the purpose of negotiating the terms of the Plan and refrain from trading in the Debtors' securities.[3] The Non-Disclosure Agreement contained a provision requiring the Debtors to publicly disclose all confidential information provided to the holders of the Senior Secured Notes by dates certain, if the Plan had not been filed in accordance with the deadline imposed in Section 6.25 of the DIP Facility Credit Agreement, in order to permit the restricted holders of the Senior Secured Notes to recommence trading in the Debtors' securities.

[3] Trading in the common stock of Xinergy Ltd. is prohibited during the pendency of the Bankruptcy Cases pursuant to the *Final Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates* [Doc No. 191] entered by the Bankruptcy Court on May 8, 2015.

The ongoing discussions between the Debtors and the informal committee of holders of the Senior Secured Notes concerning the terms of the Plan included an agreement to modify the "Milestones" set forth in Section 6.25 of the DIP Facility Credit Agreement. Those Milestones, as modified and approved by the Bankruptcy Court, currently are as follows:

(a) By no later than September 16, 2015, the Debtors shall file with the Bankruptcy Court a proposed Acceptable Reorganization Plan and a motion seeking approval of an accompanying disclosure statement;

(b) By no later than October 16, 2015, the Bankruptcy Court shall have entered an Order approving of a disclosure statement for an Acceptable Reorganization Plan;

(c) By no later than December 1, 2015, the Bankruptcy Court shall have entered an Order confirming an Acceptable Reorganization Plan; and

(d) By no later than December 7, 2015, the effective date of the Acceptable Reorganization Plan shall have occurred.

SUMMARY OF THE CHAPTER 11 PLAN

2.3 New Capital Structure

(a) New Holdco Equity Interests

Upon Consummation of the Plan, the Reorganized Debtors' ultimate parent company, Xinergy Corp. **or such other entity as the Debtors select with the consent of the Majority Consenting Noteholders**, will be reorganized as New Holdco. ~~**On the Effective Date, the Debtors will cancel all existing Equity Securities in Xinergy Ltd.**~~ New Holdco's equity interests shall consist of New Common Stock. ~~**The Debtors will issue**~~ New Common Stock **shall be issued** in accordance with the Plan to~~**: (a)**~~ **holders of** Allowed Claims in Class ~~**4**~~**3** upon the Effective Date ~~**and (b) holders of any equity-based awards that may have been**~~**(the "Plan Securities"). The Plan Securities will be subject to dilution by any awards of New Common Stock subsequently** issued under the Management Incentive Plan. The issuance of New Common Stock will be authorized without the need for any further corporate action and without any further action by the Debtors or New Holdco, as applicable.

(b) Exit Facility

The Debtors anticipate the need for exit financing on terms to be determined. The exit financing may involve the conversion of the DIP Facility pursuant to the Exit Conversion **and such additional** or alternative ~~**exit**~~ financing~~**arrangement. If the Debtors exercise**~~**, the material terms of which will be set forth in** the Exit ~~**Conversion or enter into an alternative exit financing arrangement with the Consenting DIP**~~ Facility ~~**Lenders, on**~~**Term Sheet to be filed in the Plan Supplement. On or before** the Effective Date, the Debtors shall execute and deliver the Exit Facility ~~**Loan**~~**Credit** Agreement **evidencing such exit financing arrangements**, which shall become effective and enforceable in accordance with its

terms and the Plan. **The Debtors anticipate that the Exit Facility may include up to an estimated maximum principal amount of $10 million in additional financing in the form of a term loan or revolving credit facility provided by one or more DIP Facility Lenders or a third-party.** Confirmation of the Plan shall ~~include~~**be deemed** approval of the Exit Facility and the Exit Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Facility~~,~~ and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. Proceeds from the Exit Facility shall be used to pay the DIP Facility Claims, Allowed Administrative Claims, **and** Allowed Priority Claims, ~~[and~~**to make distributions to holders of** Allowed General Unsecured Claims~~], as applicable~~, to fund the Professional Fee Escrow Account, and for general working capital purposes.

2.4 Treatment of Unclassified Claims

(a) Unclassified Claims Summary

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan. The Claim recoveries for such unclassified Claims are set forth below:

Claim	Plan Treatment	Projected Plan Recovery
Administrative Claims	Paid in full in Cash	100%
DIP Facility Claims	Conversion to Exit Facility Loans or paid in full in Cash	100%
Professional Claims	Paid in Allowed amount in Cash	100%
Priority Tax Claims	Paid in full in Cash	100%

(b) Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, in consultation with the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its

Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(c) DIP Facility Claims

Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Loans in a face amount equal to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors and Majority DIP Lenders may agree, to be specified in the Exit Facility Term Sheet and to be otherwise governed by the Exit Facility Documents. Unless otherwise agreed to between the Debtors and a holder of a DIP Facility Claim, if the Debtors do not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash.

(d) Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed and served in accordance with the Compensation Procedures approved by the Bankruptcy Court no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows, including from the Professional Fee Escrow Account, which the Reorganized Debtors will establish in trust for the Professionals and fund with Cash equal to the Professional Fee Amount on the Effective Date. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Amount no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Claims filed with the Bankruptcy Court. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. No funds in the Professional Fee Escrow Account shall be property of the Estates. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid will be turned over to New Holdco.

From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

(e) Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as reasonably practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

2.5 Classification and Treatment of Claims and Interests

(a) Summary of Classification and Treatment of Claims and Interests

The Plan establishes a comprehensive classification of Claims and Interests. The table below summarizes the classification, treatment, voting rights, and estimated recoveries, estimated as of the date hereof, of the Claims and Interests, by Class, under the Plan. Amounts assumed in the projected Plan recovery analysis are estimates only.

Class	Claim or Interest	Voting Rights	Treatment	Estimated Allowed Claims	Projected Plan Recovery
1	Priority Non-Tax Claims	~~Presumed~~Deemed to Accept	Paid in full in Cash	$0	100%
2	Other Secured Claims	~~Presumed~~Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124.	$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	$202,114,791 ($65,500,000 secured)	~~TBD~~27.5%–32.4%

4	General Unsecured Claims	~~[~~Entitled to Vote~~]~~	~~TBD~~[4]Lesser of Pro Rata share of $200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	$141,600,000 ($4,500,000 – $5,500,000 excluding the Senior Secured Note Deficiency Claims)	~~TBD~~<0.2% (which may increase to 4% in certain circumstances)[4]
5	Intercompany Claims and Interests	~~Presumed~~Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	$280,394,441	0%/100%[5]
6	Interests in Xinergy Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%
7	Section 510(b) Claims (if any)	Deemed to Reject	Canceled	$0	0%

(b) Description of Classes of Claims Entitled to Vote and Projected Recoveries

Class 3 claims consist of Senior Secured Note Claims against the Debtors. The Senior Secured Note Claims shall be Allowed in the aggregate principal amount of $195,000,000 plus accrued and unpaid interest of $7,114,791.67 as of the Petition Date, plus, to the extent the following are payable in accordance with the Indenture, fees and expenses (including any prepayment fees and professionals fees and expenses), penalties, premiums and other obligations incurred in connection with the Senior Secured Note Claims. The Senior Secured Note Claims are secured claims pursuant to section 506(a) of the Bankruptcy Code to the extent of the Debtors' Reorganization Value less the

~~[4] Holders of Allowed Class 4 Claims are not entitled to any Distribution under the priority scheme of the Bankruptcy Code because the Debtors do not have assets of sufficient value to pay in full the claims of classes that are senior to Class 4, nor are there any unencumbered assets. The Debtors thus do not attribute any value to General Unsecured Claims on an absolute priority basis. Nonetheless, the treatment of General Unsecured Claims is to be determined. Therefore, the entitlement of that class to vote is reserved.~~

[4] The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders have agreed to vote to accept the Plan and to waive any recovery on account of such Class 4 Claim if Class 4 votes in sufficient number and amount to accept the Plan. In that circumstance, the projected recovery to holders of Class 4 Claims (other than the Senior Secured Note Deficiency Claims) is approximately 4%.

[5] Intercompany Claims and Interests shall be, at the option of the Debtors (with the consent of the Majority Consenting Noteholders) (a) canceled or (b) unaltered, reinstated or otherwise treated as unimpaired. No Distribution will be made on account of Intercompany Claims and Interests under the Plan.

estimated amount of the DIP Facility Claims and the Other Secured Claims, or approximately $65,500,000, on account of which holders of Class 3 Claims are receiving 100% of New Common Stock. The remaining portion of the Senior Secured Note Claims, or $136,614,791, is unsecured Senior Secured Note Deficiency Claims, which are treated as Class 4 Claims. The projected recovery under the Plan to Holders of the Senior Secured Note Claims is based on the estimated Reorganization Equity Value of the Reorganized Debtors on the Effective Date.

Class 4 consists of any General Unsecured Claims against any Debtor, including Senior Secured Note Deficiency Claims. Each Holder of an Allowed Class 4 Claim shall receive the lesser of its Pro Rata share of $200,000 or 4% of the amount of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) on the Effective Date; provided, however, that if Holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then Holders of Senior Secured Note Deficiency Claims shall waive their right to distributions on account of such Senior Secured Note Deficiency Claims. In that circumstance, the estimated percentage recovery to other holders of Class 4 Claims is projected to increase to 4%. If Class 4 does not accept the Plan, holders of Senior Secured Note Deficiency Claims shall be entitled to share Pro Rata in the Class 4 recovery, and the estimated percentage recovery to all holders of Class 4 Claims is less than 0.2%. The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders intend to vote in favor of the Plan per their agreement with the Creditors Committee. In addition, notwithstanding anything to the contrary in Section 4.15 of the Plan, or any other provision of the Plan, the Estate and the Reorganized Debtors shall waive and release each holder of an Allowed Class 4 Claim from any Avoidance Action.

ARTICLE III

VOTING PROCEDURES AND REQUIREMENTS

3.1 Classes Entitled to Vote on the Plan

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the "Voting Classes"):

Class	Claim or Interest	Voting Rights	Status
3	Senior Secured Note Claims	Entitled to Vote	Impaired
~~[~~4	General Unsecured Claims	Entitled to Vote	Impaired~~]~~

If your Claim or Interest is not included in the Voting Class, you are not entitled to vote and you will not receive a Solicitation Package, including a ballot setting forth detailed voting instructions. If your Claim or Interest is included in the Voting Class, you should read your ballot and carefully follow the instructions included in the ballot. Please use only the

ballot that accompanies this Disclosure Statement or the ballot that the Debtors, or the Solicitation Agent on behalf of the Debtors, otherwise provided to you.

3.2 Votes Required for Acceptance by a Class

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims that have voted.

3.3 Certain Factors to be Considered Prior to Voting

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan and include:

- unless otherwise specifically indicated, the financial information contained in the Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and the Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan.

While these factors could affect distributions available to holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of the Voting Class or necessarily require a re-solicitation of the votes of holders of Claims in the Voting Class. For a further discussion of risk factors, please refer to Article V, entitled "Certain Factors To Be Considered" of this Disclosure Statement.

3.4 Voting Procedures

Each Class entitled to Vote on the Plan will receive a Solicitation Package with instructions explaining how to vote and identifying the deadline by which votes must be received by the Solicitation Agent. **There will be no separate voting process for Canadian Holders of Claims or Interests, and Canadian Holders of Claims or Interests will be subject to the voting process set out in the Disclosure Statement Order, as recognized by the Disclosure Statement Recognition Order.** The Solicitation Package is attached as exhibits to the *Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III)*

Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief [Doc. No. ~~—~~**408**].

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLASS OF CLAIMS AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASS FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

ARTICLE IV

OTHER KEY ASPECTS OF THE PLAN

4.1 Distributions

One of the key concepts under the Bankruptcy Code is that only claims and interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an Allowed Claim or Interest means that the Debtors agree, or if there is a dispute, the Bankruptcy Court determines, that the Claim or Interest, and the amount thereof, is in fact a valid obligation of or Interest in the Debtors. Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the relevant parties, on the Distribution Date, the Distribution Agent shall make initial distributions under the Plan on account of Allowed Claims and Interests, including those that become Allowed as of the Effective Date, subject to the Reorganized Debtors' right to object to Claims and Interests.

(a) Disputed Claims Process

Except as otherwise provided in the Plan, if a party files a Proof of Claim and **(i)** the Debtors, in consultation with the Majority Consenting Lenders, or the Reorganized Debtors, as applicable, ~~**do not determine, without the need for notice to or action, order or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed,**~~**file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim has been scheduled by the Debtors as being "Disputed," then** such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in the Plan. Except as otherwise provided in the Plan, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.

(b) Prosecution of Objections to Claims and Interests

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 60th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests not objected to by the end of such 60-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.15 of the Plan.

(c) No Interest

Unless otherwise specifically provided for in the Plan or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

(d) Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned

sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

4.2 Restructuring Transactions

On the Effective Date, the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may enter into the following transactions and take any actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided therein. **Among other Restructuring Transactions to be effectuated, the Debtors may take steps to dissolve, merge or otherwise eliminate Xinergy Ltd. from the corporate structure of the Reorganized Debtors.** The actions to effect the Restructuring may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable U.S. state or Canadian law; ~~and~~ (d) **an application to the Canadian Court under applicable law; and (e)** all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

4.3 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption of Executory Contracts and Unexpired Leases

The Plan provides that each Executory Contract and Unexpired Lease that is not otherwise rejected shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases under the Plan may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions and assignments described in the Plan.

Except as otherwise provided in the Plan or agreed to by the Debtors, the Majority Consenting Noteholders, and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or

Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

(b) Indemnification

The Plan provides that on and as of the Effective Date, the Indemnification Provisions will be assumed and irrevocable and will survive the effectiveness of the Plan, and the Reorganized Debtors' governance documents will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Debtors' and the Reorganized Debtors' current and former directors, officers, employees, or agents to the fullest extent permitted by law and at least to the same extent as the organizational documents of each of the respective Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of the Reorganized Debtors will amend and/or restate their respective governance documents before or after the Effective Date to terminate or adversely affect any of the Reorganized Debtors' obligations to provide such indemnification rights or such directors', officers', employees', or agents' indemnification rights.

(c) Surety Bonds

On and as of the Effective Date, each Surety Bond shall be deemed assumed and each Reorganized Debtor party thereto shall pay any and all premiums and other obligations due or that may become due on or after the Effective Date. Additionally, as specified in Section 8.5 of the Plan, each obligation of a Debtor that is covered by the Surety Bonds, including, but not limited to, obligations of the Debtors to various Governmental Units for reclamation of mines, are not being released, discharged, precluded or enjoined by the Plan or the Confirmation Order and shall remain obligations of the applicable Reorganized Debtor as of the Effective Date. Nothing contained in Section 5.3 of the Plan shall constitute or be deemed a waiver of any Cause of Action that any Debtor may hold against any Entity. All Proofs of Claim on account of or in respect of any agreement covered by Section 5.3 of the Plan shall be deemed withdrawn automatically and without further notice to or action by the Bankruptcy Court. Each Reorganized Debtors shall be deemed to have assumed as of the Effective Date, and shall continue to perform under, any of its Surety Indemnity Agreements. Failure to expressly identify any Surety Indemnity Agreement in any schedule pursuant to Section 5.3 of the Plan shall not imply the rejection or failure to assume that agreement. To the extent that Restructuring Transactions create new corporate entities or change the relative corporate position of Xinergy Ltd. as parent, then each new corporate entity and/or the new corporate parent will execute a Surety Indemnity Agreement. Notwithstanding any other provision of the Plan, all letters of credit issued to the Sureties as security for a Debtor's obligations under the Surety Bonds or Surety Indemnity Agreements shall remain in place for the benefit of the resulting Reorganized Debtors to secure against any "loss" (as defined in the applicable Surety Indemnity Agreement) incurred by the respective Surety. Notwithstanding any other provisions of the Plan, nothing in the injunction and release provisions of the Plan shall be deemed to apply to the Sureties or the Sureties' claims, nor shall these provisions be interpreted to bar, impair, prevent or otherwise limit the Sureties from exercising their rights under any of the Surety Bonds, letters of credit, Surety Indemnity Agreements, Surface Mining Control and Reclamation Act, or the common law of suretyship.

Additionally, the Debtors intend to file applications, as necessary, with the relevant state environmental regulators that issued the Debtors' mining permits to obtain approval and/or recognition of the change in control of the Reorganized Debtors as a result of the installment of the New Board and new officers (as applicable) of the Reorganized Debtors and as otherwise may be required as a result of the Restructuring Transactions.

(d) ~~(c)~~ Cure of Defaults and Objections to Cure and Assumption

The Plan requires the Debtors or the Reorganized Debtors, as applicable, to pay Cures, if any, on the Effective Date or as soon as applicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be filed with the Solicitation Agent on or before the Cure Objection Deadline. Any such request that is not timely filed will be

disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure; *provided, however*, that nothing herein shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be filed with the Bankruptcy Court on or before the Cure Objection Deadline. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing for which such objection is timely filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is a dispute regarding Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

(e) ~~(d)~~ Contracts and Leases Entered Into After the Petition Date

The Plan provides that contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

(f) ~~(e)~~ Reservation of Rights

If there is a dispute regarding whether a contract or lease is or was executory or unexpired, under the Plan, the Debtors or the Reorganized Debtors, as applicable, expressly reserve the right to alter their treatment of any disputed contract or lease within 45 days

following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

Except as otherwise provided in the Plan, the Confirmation Order, or in agreements previously approved by Final Order of the Court, the Debtors, or the Reorganized Debtors may, pursuant to applicable law (including section 553 of the Bankruptcy Code), offset against any Claim, including an administrative expense of the Debtors, before any Distribution is made on account of such Claim, any and all of the claims, rights and causes of action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other action or omission of the Debtors or the Reorganized Debtors, nor any provision of the Plan shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, rights and causes of action that the Debtors or the Reorganized Debtors may possess against such Holder.

4.4 Release, Injunction, and Related Provisions

(a) Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of all debt (as such term is defined in section 101 of the Bankruptcy Code) that arose before the Confirmation Date, any debts of any kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, and the rights and Interests of any Holders of Interests whether or not: (1) a Proof of Claim or Proof of Interest based on such debt or Interest is Filed; (2) a Claim or Interest based upon such debt is Allowed pursuant to Section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and equity Interests subject to the Effective Date occurring, except as provided for under Section 1141(d)(6) of the Bankruptcy Code.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

(b) Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Reorganized Debtors, as applicable, reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto. Notwithstanding anything herein to the contrary, and as provided in Article III of the Plan, no Holder of a section 510(b) Claim shall receive any distribution on account of such section 510(b) Claim, and all section 510(b) Claims shall be extinguished.

(c) Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceedings, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the

Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; provided, however, that the foregoing provisions of Section 8.3 of the Plan shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in Section 8.3 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that Section 8.3 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to Section 8.3 of the Plan.

(d) Consensual Third Party Releases

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that ~~(i) do not vote or vote to reject the Plan and (ii)~~ elect to opt-out of the Releases set forth in Section 8.4 of the Plan, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under Section 8.4 of the Plan), and covenant with each Released Party

not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; provided, however, that the foregoing provisions of Section 8.4 of the Plan shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in Section 8.4 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.4 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that Section 8.4 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in Section 8.4 of the Plan; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to Section 8.4 of the Plan.

(e) Exculpation

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to

formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding or the Restructuring; provided, however, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

(f) Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.5 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff

on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

(g) Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

(h) Recoupment

In no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

(i) Release of Liens

Except (a) with respect to the Liens securing (i) the DIP Facility to the extent set forth in the Exit Facility Documents and (ii) Other Secured Claims (depending on the treatment of such Claims**, but for the avoidance of doubt, including the Claims of the Information Officer and its counsel granted pursuant to the orders of the Canadian Court**), or (b) as

otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

(j) Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as non-contingent, or (b) the relevant holder of a Claim has filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

4.5 Incentive Plans and Employee and Retiree Benefits

Except as otherwise provided in the Plan, on and after the Effective Date, subject to any Final Order and, without limiting any authority provided to the New Board under the Debtors' respective certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

4.6 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action

shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE V

CERTAIN FACTORS TO BE CONSIDERED

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESSES OR THE PLAN AND ITS IMPLEMENTATION.

5.1 General

The following provides a summary of various important considerations and risk factors associated with the Plan; however, it is not exhaustive. In considering whether to vote to accept or reject the Plan, holders of Claims that are entitled to vote should read and carefully consider the factors set forth below, as well as all other information set forth or otherwise referenced or incorporated by reference in this Disclosure Statement.

5.2 Risks Relating to the Plan and Other Bankruptcy Law Considerations

(a) Parties in Interest May Object to the Debtors' Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created seven Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(b) The Debtors May Not Be Able to Satisfy the Voting Requirements for Confirmation of the Plan

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors may seek, as promptly as practicable thereafter, Confirmation. If the Plan does not receive the required support from Class 3 ~~[~~or Class 4~~]~~, the Debtors may elect, with the consent of the Majority Consenting Lenders, to amend the Plan, seek to sell their assets pursuant to section 363 of the Bankruptcy Code, or proceed with liquidation.

(c) The Debtors May Not Be Able to Obtain Agreement from the Majority Consenting Noteholders or a Third-Party on the Terms of Exit Financing

It likely will be necessary for the Debtors to execute the Exit Conversion **and obtain an additional financing commitment from the DIP Facility Lenders or a third-party in the form of a term loan or revolving credit facility,** or obtain another source of financing**,** in order for the Effective Date to occur under the Plan and for the Debtors to emerge from bankruptcy. The Debtors believe that they will be able to obtain the necessary commitments from the DIP Facility ~~Consent~~**Consenting** Lenders to execute the Exit Conversion ~~or~~**and obtain additional financing from the DIP Facility Consenting Lenders or a third-party, or** that they will be able to obtain replacement financing from another source. Nevertheless, there can be no assurances that the Debtors will be able to obtain such commitments from the DIP Facility ~~Consenting~~ Lenders **and/or a third-party**, or to obtain a financing commitment from another source with the consent of the Majority Consenting Noteholders in a sufficient amount to satisfy the DIP Facility Claims**, pay additional bankruptcy-related expenses and provide additional working capital**.

(d) The Debtors May Not Be Able to Secure Confirmation of the Plan

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) such plan is feasible; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the

value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement, the balloting procedures and voting results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

(e) Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponents' request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements and the Debtors will request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion or confirm the Plan on a nonconsensual basis.

(f) The Debtors May Not Obtain Recognition from the Canadian Court

The Debtors intend to seek entry of the Confirmation Recognition Order. The Debtors believe that such order will be granted by the Canadian Court; however, there can be no guaranty as to such outcome.

(g) The Debtors May Not Obtain Necessary Approvals from Governmental Units, Regulators and Commissions

The Debtors may need to obtain approval of certain documents, applications and agreements necessary to implement the Plan from Governmental Units, regulators and commissions in accordance with applicable laws. The Debtors believe that such approvals will be obtained; however, there can be no assurance that the Debtors will obtain such approvals.

(h) ~~(f)~~ Risk of Non-Occurrence of Effective Date

Although the Debtors believe that the Effective Date would occur very shortly after the Confirmation Date, there can be no assurance as to such timing.

5.3 Risks Relating to New Common Stock

(a) The Debtors May Not Be Able To Achieve Their Projected Financial Results

The Debtors may not be able to meet their projected financial results or achieve the revenue or cash flow that the Debtors have assumed in projecting their future business prospects. If the Debtors do not achieve these projected revenue or cash flow levels, the Debtors may lack sufficient liquidity to continue operating as planned after emergence. The financial projections represent management's view based on currently known facts and hypothetical assumptions about their future operations. They do not, however, guarantee the Debtors' future financial performance.

(b) The Debtors' Exit Facility May Contain Restrictive Covenants

The Exit Facility Credit Agreement or other Exit Facility Documents may contain restrictive covenants. If the Debtors are unable to satisfy such covenants, including as a result of a failure to achieve financial projections, the Debtors may be prohibited from issuing dividends or making other distributions to holders of the New Common Stock.

(c) A Liquid Trading Market for the New Common Stock May Not Develop

There are currently no existing markets, and the Debtors make no assurance that liquid trading markets for the New Common Stock will develop. The liquidity of any market for the New Common Stock will depend, among other things, upon the number of holders of New Common Stock, the Reorganized Debtors' financial performance, and the market for similar securities, none of which can be determined or predicted. Therefore, the Debtors cannot assure that an active trading market will develop or, if a market develops, what the liquidity or pricing characteristics of that market will be.

(d) The Debtors May Be Controlled by Significant Holders

Under the Plan, certain holders of Allowed Claims will receive New Common Stock. If holders of a significant number of shares of New Common Stock were to act as a group, such

holders could be in a position to influence the outcome of actions requiring shareholder approval, including, among other things, the election of directors. This concentration of ownership could also facilitate or hinder a negotiated change of control of the Reorganized Debtors and, consequently, impact the value of the New Common Stock. Furthermore, the possibility that one or more holders of a significant number of shares of the New Common Stock may sell all or a large portion of their shares of the New Common Stock in a short period of time may adversely affect the trading prices of the New Common Stock.

(e) There May Be Restrictions on the Transfer of New Common Stock by Certain Holders

Holders of New Common Stock issued pursuant to the Plan who are deemed to be "underwriters" as defined in section 1145(b) of the Bankruptcy Code, including those holders who are deemed to be "issuers" within the meaning of the Securities Act and the rules promulgated thereunder, will be unable freely to transfer or to sell their New Common Stock except pursuant to (a) "ordinary trading transactions" by a holder that is not an "issuer" within the meaning of section 1145(b), (b) an effective registration of such securities under the Securities Act and under equivalent state securities or "blue sky" laws, or (c) pursuant to the provisions of Rule 144 or Regulation S under the Securities Act or another available exemption from the registration requirements of the Securities Act. Moreover, the Reorganized Debtors may not be required to file periodic reports with the SEC and may not make publicly available the information required by Rule 144, thereby limiting the ability of holders of New Common Stock to avail themselves of Rule 144 following the applicable holding period.

In addition, the corporate governance, organizational or similar documents binding upon holders of New Common Stock may contain additional provisions, including (a) restrictions and/or prohibitions on transfers on account of tax, securities law, other regulatory circumstances or otherwise, (b) different approval rights among shareholders based on ownership, including with respect to the election of directors, (c) provisions limiting information rights for holders of New Common Stock, (d) 'drag-along' or similar provisions in respect of certain transactions and/or (e) other provisions which may limit the rights of holders of New Common Stock.

5.4 Risks Relating to the Debtors' Business

(a) Operating Risks

The Debtors' coal mining operations are subject to operating risks that could result in decreased coal production thereby reducing revenues. The Debtors' revenues depend on the level of coal mining production. The level of production is subject to operating conditions and events beyond the Debtors' control that could disrupt operations and affect production at particular mines for varying lengths of time. These conditions and events, among other things, include:

- the shortage of qualified, skilled labor;

- inability to acquire, maintain or renew necessary permits or mining or surface rights in a timely manner, if at all;
- failure of reserve estimates to prove correct;
- interruptions due to transportation delays;
- changes in governmental regulation of the coal industry, including the imposition of additional taxes, fees or actions to suspend or revoke the Debtors' permits or changes in the manner of enforcement of existing regulations;
- limited availability of mining and processing equipment and parts from suppliers;
- the unavailability of required equipment of the type and size needed to meet production expectations;
- mining and processing equipment failures and unexpected maintenance problems;
- unfavorable changes or variations in geologic conditions, such as the thickness of the coal deposits and the amount of rock embedded in or overlying the coal deposit and other conditions that can make underground mining difficult or impossible;
- adverse weather and natural disasters, such as heavy rains and flooding;
- increased water entering mining areas and increased or accidental mine water discharges;
- increased or unexpected reclamation costs;
- unfavorable fluctuations in commodities-based products such as diesel fuel, lubricants, explosives and steel; and
- unexpected mine safety accidents, including fires and explosions from methane.

These conditions and events may increase the Debtors' cost of mining and delay or halt production at particular mines either permanently or for varying lengths of time, which would lower or eliminate the Debtors' margins which could have an adverse effect on the Debtors' financial condition and results of operations.

The Debtors' planned exploration and development projects and acquisition activities may not result in the acquisition of significant additional coal deposits and the Debtors may not have continuing success developing additional mines. The Debtors' mining operations are conducted on mineral rights leased by it. If defects in title or boundaries are found to exist after the Debtors commence mining, their right to mine may be limited or prohibited.

In addition, in order to develop their coal deposits, the Debtors must receive various governmental permits. Before a mining permit is issued on a particular parcel, environmental

activists are eligible to file petitions to declare the land unsuitable for mining. The Debtors cannot predict whether the Debtors will continue to receive the permits necessary to expand operations.

Mineral reserves disclosed by the Debtors should not be interpreted as assurances of mine life or of the profitability of current or future operations given that there are numerous uncertainties inherent in the estimation of economical mineral reserves. Estimates of mineral reserves and net cash flows necessarily depend upon a number of variable factors and assumptions such as: future mining technology improvements; geological and mining conditions, which may not be fully identified by available exploration data or may differ from the Debtors' experience in current operations; historical production from the area compared with production from other producing areas; the assumed effects of regulation by governmental agencies; and assumptions concerning coal prices, operating costs, capital expenditures, severance and excise taxes, royalties, development costs and reclamation costs, all of which may vary considerably from actual results. For these reasons, estimates of the economical mineral reserves attributable to any particular group of properties, classifications of reserves based on risk of recovery and estimates of net cash flows expected there from prepared by different engineers or by the same engineers at different times may vary substantially.

(b) Changes in Demand for Coal Could Have an Adverse Impact on the Reorganized Debtors' Results of Operations

Any decrease in coal demand and/or prices, whether due to increased use of alternative energy sources, changes in weather patterns, decreases in overall demand or otherwise, would reduce the Debtors' revenues and likely adversely impact the Debtors' earnings and the value of the Debtors' coal reserves. Additionally, if global recessions or general economic downturns result in sustained decreases in the global demand for electricity and steel production, the Debtors' financial condition, results of operations and cash flows may be materially and adversely affected.

(c) Increased Competition Could Put Downward Pressure on Coal Prices

The coal industry is intensely competitive both within the industry and with respect to alternative fuel sources. The most important factors with which the Debtors compete are price, coal quality and characteristics, transportation costs from the mine to the customer and reliability of supply. The Debtors compete directly with other Central Appalachian coal producers, as well as producers from other basins including Northern and Southern Appalachia, the Illinois Basin, and the Western U.S., and foreign countries, including Australia, Colombia, Venezuela and Indonesia.

The Debtors also face competition from renewable energy providers, like biomass, wind and solar, and other alternative fuel sources, like natural gas and nuclear energy. Should renewable energy sources become more competitively priced, which may be more likely to occur given the federal tax incentives for alternative fuel sources that are already in place and that may be expanded in the future, or sought after as an energy substitute for fossil fuels, increased demand for such fuels may adversely impact the demand for coal. Existing fuel sources also compete directly with coal. For example, weak natural gas prices have caused

certain utilities to increase electricity generation from their natural gas-fueled plants instead of generation from their coal-fueled plants.

(d) New Regulations May Materially Adversely Affect the Debtors' Customers' Demand for Coal and the Debtors' Financial Condition, Results of Operations, and Cash Flows

Current and potential future international, federal, state, regional or local laws, regulations or court orders addressing greenhouse gas emissions and/or coal ash, or emissions of sulfur dioxide, nitrogen oxides, mercury and other hazardous air pollutants and/or particulate matter, will likely require additional controls on coal-fueled power plants and industrial boilers and may cause some users of coal to close existing facilities, reduce construction of new facilities or switch from coal to alternative fuels. These ongoing and future developments may have a material adverse impact on the global supply and demand for coal, and as a result could materially adversely affect the Debtors' financial condition, results of operations and cash flows. Even in the absence of future regulatory developments, increased awareness of, and any adverse publicity regarding, greenhouse gas and other air emissions and coal ash disposal associated with coal and coal-fueled power plants, could adversely affect the Debtors and the Debtors' customers' reputations and reduce demand for coal.

(e) The Failure to Obtain Permits and Licenses May Materially Impact the Debtors' Ability to Continue Operations at Current Levels

The Debtors' operations require licenses and permits from various governmental authorities. Certain of their coal properties are currently not permitted and there can be no assurance that the Debtors will be able to acquire, maintain or renew all necessary licenses, permits, mining rights or surface rights that may be required to carry out exploration and development of coal mining projects.

The Debtors may be unable to obtain and renew permits necessary for their operations, which would reduce production, cash flow and profitability. Mining companies must obtain numerous permits that impose strict regulations on various environmental and safety matters in connection with coal mining. These include permits issued by various federal and state agencies and regulatory bodies. The permitting rules are complex and may change over time, making the Debtors' ability to comply with the applicable requirements more difficult or even impossible, thereby precluding continuing future mining operations. Private individuals and the public have certain rights to comment upon and otherwise engage in the permitting process, including through court intervention. Accordingly, the permits the Debtors' need may not be issued, maintained or renewed, or may not be issued or renewed in a timely fashion, or may involve requirements that restrict the Debtors' ability to conduct their mining operations. An inability to conduct the Debtors' mining operations pursuant to applicable permits would reduce their production, cash flow and profitability.

(f) Mineral Reserve Estimates and Replacement of Mineral Reserves May Deviate Materially from Projections

Actual coal tonnage recovered from identified mineral reserve areas or properties, and revenues and expenditures with respect to the Debtors' mineral reserves, may vary materially from estimates. The estimates of mineral reserves may not accurately reflect the Debtors' actual mineral reserves and may need to be restated in the future. Any inaccuracy in the Debtors' estimates could result in decreased profitability from lower than expected revenues or higher than expected costs.

The Debtors' mineral reserves decline as Debtors produce coal. The Debtors may not be able to mine all of their mineral reserves as profitably at current operations. The Debtors' future success depends on conducting successful exploration and development activities or acquiring properties containing economical mineral reserves. There is no assurance that Debtors will continue to succeed in developing additional mines or will continue to receive the permits necessary to operate profitably in the future.

The Debtors face uncertainties in estimating their mineral reserves, and inaccuracies in their estimates could result in decreased profitability from lower than expected revenues or higher than expected costs or both. Forecasts of the Debtors' future performance are based on, among other things, estimates of the Debtors' mineral reserves. The Debtors base their estimates of mineral reserve information on engineering, economic and geological data assembled and analyzed by the Debtors' internal engineers, which is periodically reviewed by third-party consultants. There are numerous uncertainties inherent in estimating the quantities and qualities of, and costs to mine, mineral reserves, including many factors beyond the Debtors' control. Estimates of economical mineral reserves and net cash flows necessarily depend upon a number of variable factors and assumptions, any one of which may, if incorrect, result in an estimate that varies considerably from actual results. These factors and assumptions include, without limitation, the following:

- future mining technology improvements;
- the effects of regulation by governmental agencies;
- geologic and mining conditions, which may not be fully identified by available exploration data and may differ from the Debtors' experiences in areas they currently mine. As a result, actual coal tonnage recovered from identified reserve areas or properties, and costs associated with the Debtors' mining operations, may vary from estimates. Any inaccuracy in the Debtors' estimates related to their reserves could result in decreased profitability from lower than expected revenues or higher than expected costs; and
- future coal prices, operating costs, capital expenditures, severance and excise taxes, royalties and development and reclamation costs.

(g) Defects to Title May Impair Coal Operations

No assurances can be given that there are no title defects affecting the Debtors' coal properties or which the Debtors propose to acquire. The Debtors' coal properties may be subject to prior unregistered liens, agreements or transfers or other undetected title defects. There is no guarantee that title to the Debtors' coal properties will not be challenged or impugned or defeated by a holder of superior title or registered liens or adverse claims. If there are title defects with respect to any properties, the Debtors might be required to compensate other persons or perhaps reduce the Debtors interest in the property. Also, in any such case, the investigation and resolution of title issues would divert management's time from on-going exploration and development programs.

(h) Exploration, Development and Production Risks

There is no assurance that expenditures made on future exploration by the Debtors will result in new discoveries of coal in commercial quantities. The Debtors' long-term commercial success depends on their ability to fund, acquire, develop and commercially produce mineral reserves. No assurance can be given that the Debtors will be able to locate satisfactory properties for acquisition or participation. If such acquisitions or participations are identified, the Debtors may determine that current markets, terms of acquisition and participation or pricing conditions make such acquisitions or participations uneconomic.

(i) Acquisition Risks

The Debtors' mineral reserves will be depleted as they produce coal. The Debtors have not yet applied for the permits required or developed the mines necessary to use all of the mineral reserves and resources under their mineral rights. Furthermore, the Debtors may not be able to mine all of their future mineral reserves as profitably as they do in their current operations. The Debtors' future success depends upon the Debtors conducting successful exploration and development activities and acquiring properties containing additional economic mineral reserves. In addition, the Debtors must also generate enough capital, either through their operations or through outside financing, to mine these additional mineral reserves. The Debtors' current strategy includes increasing their mineral reserve base through acquisitions of other mineral rights, leases, or producing properties and continuing to use the Debtors' existing leased properties.

Acquisitions that the Debtors may undertake involve a number of inherent risks, any of which could cause them not to realize the anticipated benefits. The Debtors continually seek to expand their operations and mineral reserves through acquisitions. If the Debtors are unable to successfully integrate the companies, businesses or properties it acquires, the Debtors' profitability may decline and it could experience a material adverse effect on their business, financial condition, or results of operations. Acquisition transactions involve various inherent risks, including:

- uncertainties in assessing the value, strengths, and potential profitability of, and identifying the extent of all weaknesses, risks, contingent and other liabilities (including environmental or mine safety liabilities) of, acquisition candidates;

- the potential loss of key customers, management and employees of an acquired business;

- the ability to achieve identified operating and financial synergies anticipated to result from an acquisition;

- problems that could arise from the integration of the acquired business; and

- unanticipated changes in business, industry or general economic conditions that affect the assumptions underlying the Debtors' rationale for pursuing the acquisition.

Any one or more of these factors could cause the Debtors not to realize the benefits anticipated to result from an acquisition. Any acquisition opportunities the Debtors pursue could materially affect their liquidity and capital resources and may require the Debtors to incur indebtedness; seek equity capital or both. In addition, future acquisitions could result in the Debtors assuming more long-term liabilities relative to the value of the acquired assets than the Debtors have assumed in previous acquisitions.

(j) Funding Risk

The Reorganized Debtors may require substantial additional financing for acquisitions, exploration, development and production of coal in the future and to otherwise finance the growth of their business. The Debtors will have to significantly delay, curtail or cease operations if they are unable to secure such financing. The Debtors may not be able to obtain the needed funds on terms acceptable to them or at all. Further, if additional funds are raised by issuing equity securities, significant dilution to the holders of New Common Stock may occur and new investors may get rights that are preferential to holders of New Common Stock.

(k) Coal Price and Volume Volatility May Impact Profitability

The Debtors' profits are directly related to the volume and price of coal sold. Price volatility could have a significant impact on the Debtors' future revenues and profitability. Coal demand and price are determined by numerous factors beyond the Debtors' control including:

- the demand for electricity;

- the supply and demand for domestic and foreign coal;

- seasonal changes in the demand for the Debtors' coal;

- interruptions due to transportation delays;

- air emission standards for coal-fired power plants;
- regulatory, administrative and judicial decisions;
- the price and availability of alternative fuels, including the effects of technology developments;
- the effect of worldwide energy conservation efforts;
- future limitations on utilities' ability to use coal as an energy source due to the regulation and/or taxation of greenhouse gases;
- proximity to, capacity of, and cost of transportation facilities; and
- political and economic conditions and production costs in major coal producing regions.

The combined effects of any or all of these factors on coal price or volume are impossible for the Debtors to predict. If realized coal prices fall below the full cost of production of any of the Debtors' operations and remain at such level for any sustained period, the Debtors will experience losses, which may be significant, and may decide to discontinue affected operations forcing the Debtors to incur closure or care and maintenance costs, as the case may be. In addition, if the United States dollar strengthens, it could decrease coal exports from the United States which would have a material adverse effect on the Debtors.

The Debtors' results of operations are dependent upon the prices the Debtors charge for their coal as well as the Debtors' ability to improve productivity and control costs. Decreased demand would cause spot prices to decline and require the Debtors to increase productivity and lower costs in order to maintain the Debtors' margins. If the Debtors are not able to maintain their margins, the Debtors' operating results could be adversely affected. Therefore, price declines may adversely affect operating results for future periods and the Debtors ability to generate cash flows necessary to improve productivity and invest in operations.

(l) Overcapacity Risk

During the mid-1970s and early 1980s, a growing coal market and increased demand for coal attracted new investors to the coal industry, spurred the development of new mines and resulted in added production capacity throughout the industry, all of which led to increased competition and lower coal prices. Similarly, a sustained increase in future coal prices could encourage the development of expanded capacity by new or existing coal producers. Any overcapacity could reduce coal prices in the future.

(m) Coal Hedging Risk

The Debtors hedged approximately half of their coal production for the year 2012, and to a lesser extent for the year 2013 and 2014, by entering into long-term customer contracts that require the Debtors to deliver coal with established pricing. The Reorganized Debtors

anticipate entering into long-term contracts in future years. If the price of coal increases, the Reorganized Debtors may be materially adversely affected by having hedged their future production pursuant to these contracts. Alternatively, should coal prices decrease below the levels stated in the contracts, the Reorganized Debtors could be materially adversely affected should these contracts not be honored.

(n) Decreases in Coal Consumption May Negatively Impact Operations

The Debtors are exposed to swings in the demand for coal, which has an impact on the prices for coal that is sold by the Debtors. The demand for coal products and, thus, the financial condition and results of operations of companies in the coal industry, including the Debtors, are generally affected by macroeconomic fluctuations in the world economy and the domestic and international demand for energy. Any material decrease in demand for coal could have a material adverse effect on the Debtors' operations and profitability.

Reduced coal consumption by North American electric power generators has resulted in lower prices for the Debtors' coal, which could reduce revenues and adversely impact the Debtors' earnings and the value of their coal reserves. The amount of coal consumed for United States electric power generation is affected primarily by the overall demand for electricity, the location, availability, quality and price of competing fuels for power such as natural gas, nuclear, fuel oil and alternative energy sources such as hydroelectric power, technological developments, and environmental and other governmental regulations.

Weather patterns also can greatly affect electricity generation. Extreme temperatures, both hot and cold, cause increased power usage and, therefore, increased generating requirements from all sources. Mild temperatures, on the other hand, result in lower electrical demand, which allows generators to choose the lowest-cost sources of power generation when deciding which generation sources to dispatch. Accordingly, significant changes in weather patterns could reduce the demand for the Debtors' coal. Overall economic activity and the associated demands for power by industrial users can have significant effects on overall electricity demand.

(o) Increased Transportation Costs May Impact Profitability

Transportation costs represent a significant portion of the total cost of delivered coal and, as a result, play a critical role in a customer's purchasing decision. Increases in transportation costs could make the Debtors' coal less competitive as a source of energy or could make some of the Debtors' operations less competitive than other sources of coal.

Coal producers depend upon rail, barge, trucking, overland conveyor and other systems to deliver coal to the Debtors' customers. While coal customers in the United States typically arrange and pay for transportation of coal from the mine to the point of use, disruption of these transportation services because of weather-related problems, strikes, lock-outs, excessive demand for their services or other events could temporarily impair the Debtors' ability to supply coal to customers and thus could adversely affect the Debtors' revenue and results of operations.

Disruption in capacity of, or increased costs of transportation and port services could make coal a less competitive source of energy or could make the Debtors' coal less competitive than other sources of coal. The coal industry depends on rail, trucking and barge transportation to deliver shipments of coal to customers, and transportation and port costs are a significant component of the total cost of supplying coal. Disruptions of these transportation or port services because of weather-related problems, insurgency, strikes, lock-outs, transportation delays or other events could temporarily impair the Debtors' ability to supply coal to customers and may result in lost sales. In addition, increases in transportation or port costs, including increases in the cost of fuel, or changes in other costs relative to transportation or port costs for coal produced by competitors, could adversely affect profitability. To the extent such increases are sustained, the Debtors could experience losses and may decide to discontinue certain operations forcing the Debtors to incur closure or care and maintenance costs, as the case may be.

(p) Increased Raw Material Costs May Impact Profitability

Unexpected increases in raw material costs could significantly impair the Debtors' operating profitability. The Debtors' coal mining operations use significant amounts of steel, petroleum products and other raw materials in various pieces of mining equipment, supplies and materials. If the price of steel, petroleum products or other input materials increase, the Debtors' operational expenses will increase, which could have a significant negative impact on their profitability.

(q) Disruptions in Production May Negatively Impact Operations

Other factors affecting the production and sale of coal that could result in decreases in profitability include: expiration or termination of, or sales price re-determinations or suspension of deliveries under, coal supply agreements; future litigation; the timing and amount of insurance recoveries; work stoppages or other labor difficulties; mine worker vacation schedules; mining and processing equipment failures and unexpected maintenance problems; a significant or rapid increase in the prices of commodities used in coal mining, such as steel, copper, rubber products, ammonium nitrate/fuel oil, and liquid fuels; and changes in the coal market and general economic conditions. Adverse weather conditions, such as heavy rain and flooding, equipment replacement or repair, fires, variations in thickness of the layer or seam of coal, amounts of rock and other natural materials and other geological conditions, can also have a significant impact on the Debtors' operating results.

(r) Loss of Customer Base Could Materially Impact Operations

The loss of, or significant reduction in, purchases by the Debtors' customers could adversely affect the Debtors' revenues and profitability. The Debtors derive a majority of their sales from a small number of customers. These customers may not continue to purchase coal from the Debtors. If these customers were to significantly reduce their purchases of coal from the Debtors, the Debtors' revenues and profitability could suffer materially.

Changes in purchasing patterns in the coal industry may make it difficult for the Debtors to extend their existing supply agreements or enter into new supply agreements with

customers, which could adversely affect the capability and profitability of the Debtors' operations. The execution of a satisfactory coal supply agreement is frequently the basis on which the Debtors undertake the development of coal reserves required to be supplied under the agreement. When the Debtors' current agreements with customers expire or are otherwise renegotiated, the Debtors' customers may decide to purchase fewer tons of coal than in the past or on different terms, including pricing terms less favorable to the Debtors.

(s) Risk Related to Operating in Central and Southern Appalachia

Mining coal in Central Appalachia can present special difficulties. Characteristics of the land and permitting process in Central and Southern Appalachia, where all of the Debtors' mines are located, may adversely affect the Debtors' mining operations, the Debtors' costs and the ability of the Debtors' customers to use the coal that the Debtors mine. The geological characteristics of the Debtors' coal reserves, such as depth of overburden and coal seam thickness, make them complex and costly to mine. As mines become depleted, replacement reserves may not be available when required or, if available, may not be capable of being mined at costs comparable to those characteristic of the depleting mines. In addition, as compared to mines in the Powder River Basin, permitting, licensing and other environmental and regulatory requirements are more costly and time-consuming to satisfy. These factors could materially adversely affect the Debtors' mining operations and costs, and the Debtors' customers' abilities to use the coal the Debtors mine.

5.5 Certain Tax Implications of the Chapter 11 Cases

Holders of Allowed Claims and Interests should carefully review Article VIII herein, "Certain U.S. Federal Income Tax Consequences," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Reorganized Debtors and holders of Claims and Interests.

5.6 Disclosure Statement Disclaimer

(a) Information Contained Herein Is for Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

(b) Disclosure Statement May Contain Forward-Looking Statements

Many of the statements included in this Disclosure Statement contain forward-looking statements and information relating to the Debtors. These forward-looking statements are generally identified by the use of terminology such as "may," "will," "could," "should," "potential," "continue," "expect," "intend," "plan," "estimate," "project," "forecast," "anticipate," "believe," or similar phrases or the negatives of such terms. These statements are based on the beliefs of the Debtors as well as assumptions made using information currently available to the Debtors. Such statements are subject to risks, uncertainties and assumptions, as well as other matters not yet known or not currently considered material by the Debtors. Should one or more of these risks or uncertainties materialize, or should underlying

assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected. Given these risks and uncertainties, Holders of Claims or Interests are cautioned not to place undue reliance on such forward-looking statements. Forward-looking statements do not guarantee future performance. Holders of Claims or Interests should recognize these statements for what they are and not rely on them as facts. None of the Debtors undertakes any obligation to update or revise any of these forward-looking statements to reflect new events or circumstances after the date of this Disclosure Statement

(c) No Legal, Business, or Tax Advice Is Provided to You by This Disclosure Statement

THIS DISCLOSURE STATEMENT IS NOT LEGAL, BUSINESS, OR TAX ADVICE TO YOU. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim or Interest should consult his or her own legal counsel and accountant with regard to any legal, tax, and other matters concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation.

(d) No Admissions Made

The information and statements contained in this Disclosure Statement will neither (1) constitute an admission of any fact or liability by any entity (including the Debtors) nor (2) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, holders of Allowed Claims or Interests, or any other parties-in-interest.

(e) Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. Except as otherwise provided under the Plan, all Parties, including the Debtors, reserve the right to continue to investigate and object to Claims.

(f) No Waiver of Right To Object or Right To Recover Transfers and Assets

The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any claims or rights of the Debtors to object to that holder's Allowed Claim, or to bring Causes of Action or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective Estates are specifically or generally identified herein.

(g) Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

Counsel to and other advisors retained by the Debtors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtors have performed certain limited

due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

(h) The Potential Exists for Inaccuracies and the Debtors Have No Duty To Update

The Debtors make the statements contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since such date. Although the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered by the Bankruptcy Court.

(i) No Representations Outside of the Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. In deciding whether to vote to accept or reject the Plan, you should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, unless otherwise indicated herein. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the U.S. Trustee.

ARTICLE VI

CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

6.1 The Confirmation Hearing

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may hold a hearing to confirm a plan of reorganization. The Debtors will file a motion requesting that the Bankruptcy Court set a date and time for the Confirmation Hearing. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the Entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if

necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for the Confirmation Hearing, will request that the Bankruptcy Court set a date and time for parties in interest to file Plan objections. All objections to the Plan must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy Court so that they are received on or before the deadline to file such objections as set forth therein. **Should a Confirmation Order be entered, it is ancitipated that recognition of such order will be sought in the Canadian Proceeding thereafter.**

6.2 Confirmation Standards

Among the requirements for Confirmation are that the Plan is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, is feasible, and is in the "best interests" of holders of Claims and Interests that are Impaired under the Plan. The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before the Bankruptcy Court may confirm a plan of reorganization. The Plan fully complies with the statutory requirements for Confirmation listed below.

- The proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Debtors (or any other proponent of the Plan) or by a Person issuing Securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, in connection with the Plan and incident to the Chapter 11 Cases is subject to the approval of the Bankruptcy Court as reasonable.
- The Debtors (or any other proponent of the Plan) have disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director, or officer, the Reorganized Debtors, any Affiliate of the Debtors reorganized under the Plan, or any successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of Creditors and holders of Interests and with public policies.

- The proponent of the Plan has disclosed the identity of any Insider that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such Insider.

- With respect to each holder within an Impaired Class of Claims or Interests, each such holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is Unimpaired under the Plan (subject to the "cram-down" provisions discussed below).

- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.

- If a Class of Claims or Interests is Impaired under the Plan, at least one Class of Claims or Interests that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any Insider.

- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

6.3 Best Interests Test / Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Based on the Liquidation Analysis, attached hereto as **Exhibit B**, the Debtors believe that the value of any distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be no greater than the value of distributions under the Plan. As a result, the Debtors believe holders of Claims and Interests in all Impaired Classes will recover at least as much as a result of Confirmation of the Plan as they would recover through a hypothetical chapter 7 liquidation.

6.4 Funding and Feasibility of the Chapter 11 Plan

All amounts necessary for the Debtors (on the Effective Date) or the Reorganized Debtors (after the Effective Date) to make payments or distributions pursuant to the Plan shall be available to the Debtors or Reorganized Debtors, as applicable, through Cash on hand or from the proceeds of the Exit Facility. Proceeds from the Exit Facility shall be used to pay the DIP Facility Claims, Allowed Administrative Claims, Allowed Priority Claims, [and Allowed General Unsecured Claims], as applicable, to fund the Professional Fee Escrow Account, and for general working capital purposes.

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have prepared projections, which, together with the assumptions on which they are based, are attached hereto as **Exhibit C**. Based on such projections, the Debtors believe that Confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization.

6.5 Confirmation Without Acceptance by All Impaired Classes

The Bankruptcy Court may confirm a plan of reorganization over the rejection or deemed rejection of the plan of reorganization by a class of claims or interests if the plan of reorganization "does not discriminate unfairly" and is "fair and equitable" with respect to such class.

(a) No Unfair Discrimination

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation.

(b) Fair and Equitable Test

This test applies to Classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no Class of Claims or Interests receive more than 100% of the amount of the allowed Claims or Interests in such Class. As to the dissenting Class, the test sets different standards depending on the type of Claims or Interests of the Debtor in such Class. In order to demonstrate that a plan is fair and equitable, the plan proponent must demonstrate:

- Secured Creditors: Each holder of a secured claim: (1) retains its liens on the property, to the extent of the allowed amount of its secured claim, and receives deferred cash payments having a value, as of the effective date of the chapter 11 plan, of at least the allowed amount of

such claim; (2) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof); or (3) receives the "indubitable equivalent" of its allowed secured claim.

- Unsecured Creditors: Either (1) each holder of an impaired unsecured claim receives or retains under the chapter 11 plan property of a value equal to the amount of its allowed claim or (2) the holders of claims and interests that are junior to the claims of the non-accepting class will not receive any property under the chapter 11 plan.

- Equity Interests: Either (1) each holder of an impaired interest will receive or retain under the chapter 11 plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest or (2) the holders of interests that are junior to the non-accepting class will not receive or retain any property under the chapter 11 plan.

The Debtors believe the Plan satisfies the "fair and equitable" requirement notwithstanding that a class may vote, or be deemed, to reject the Plan because there is no Class of equal priority receiving more favorable treatment than a Class that is junior to such Class or that will receive or retain any property on account of the Claims in such Class.

6.6 Alternatives to Confirmation and Consummation of the Plan

If the Plan cannot be confirmed, the Debtors may seek to (1) prepare and present to the Bankruptcy Court an alternative chapter 11 plan for confirmation, (2) effect a merger or sale transaction, including, potentially, a sale of all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, or (3) liquidate the Debtors under chapter 7 of the Bankruptcy Code. If the Debtors were to pursue a liquidation, the Chapter 11 Cases would be converted to cases under chapter 7 of the Bankruptcy Code and a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on Creditors' recoveries and the Debtors is described in the unaudited Liquidation Analysis.

ARTICLE VII

IMPORTANT SECURITIES LAW DISCLOSURE

7.1 Plan Securities

The Plan provides for the Reorganized Debtors to distribute ~~New Common Stock~~**the Plan Securities** to holders of Allowed Claims in Class 3 ~~(the "Plan Securities")~~.

The Debtors believe that the Plan Securities constitute "securities," as defined in Section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and all applicable state Blue Sky Laws.

7.2 Issuance and Resale of Plan Securities Under the Plan

(a) Exemptions from Registration Requirements of the Securities Act and State Blue Sky Laws

Section 1145 of the Bankruptcy Code provides that the registration requirements of section 5 of the Securities Act (and any applicable state Blue Sky Laws) shall not apply to the offer or sale of stock, options, warrants, or other securities by a debtor if: (x) the offer or sale occurs under a plan of reorganization; (y) the recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor; and (z) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange and partly for cash and property. In reliance upon these exemptions, the offer, issuance and distribution of the ~~New Common Stock~~Plan Securities will not be registered under the Securities Act or any applicable state Blue Sky Laws.

Because the ~~New Common Stock~~Plan Securities will be issued in accordance with section 1145 of the Bankruptcy Code, the ~~New Common Stock~~Plan Securities may be resold without registration under the Securities Act or other federal securities laws, unless the holder is an "underwriter" (as discussed below) with respect to such securities, as that term is defined in section 1145 of the Bankruptcy Code. In addition, ~~New Common Stock~~Plan Securities governed by section 1145 of the Bankruptcy Code generally may be able to be resold without registration under applicable state Blue Sky Laws pursuant to various exemptions provided by the respective Blue Sky Laws of those states; however, the availability of such exemptions cannot be known unless individual state Blue Sky Laws are examined. Recipients of the ~~New Common Stock~~Plan Securities are advised to consult with their own legal advisors as to the availability and applicability of section 1145 of the Bankruptcy Code and any other potential exemption from registration under the Securities Act or applicable state Blue Sky Laws in any given instance and as to any applicable requirements or conditions to such availability.

(b) Resale of ~~New Common Stock~~Plan Securities; Definition of Underwriter

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions of an entity that is not an issuer": (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (b) offers to sell securities offered or sold under a plan for the holders of such securities; (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (1) with a view to distribution of such securities and (2) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In

addition, a Person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a Person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "controlling persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, 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. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "controlling Person" of such debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. In addition, the legislative history of section 1145 of the Bankruptcy Code may suggest that a creditor who owns ten percent (10%) or more of a class of voting securities of a reorganized debtor may be presumed to be a "controlling Person" and, therefore, an underwriter.

Under certain circumstances, holders of ~~New Common Stock~~**securities** who are deemed to be "underwriters" may be entitled to resell ~~their New Common Stock~~**the securities** pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act. Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such person after a specified holding period if current information regarding the issuer is publicly available and certain other conditions are met, and, if such seller is an affiliate of the issuer, if volume limitations and manner of sale requirements are met. Whether any particular Person would be deemed to be an "underwriter" (including whether such Person is a "controlling Person") with respect to the ~~New Common Stock~~**Plan Securities** would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any Person would be deemed an "underwriter" with respect to the ~~New Common Stock~~**Plan Securities** and, in turn, whether any Person may freely resell ~~New Common Stock~~**the Plan Securities**. Statutory underwriters may also be eligible to sell their securities pursuant to the resale provisions of Regulation S promulgated under the Securities Act. Regulation S would, in effect, permit the resale of securities received by "underwriters" pursuant to a plan of reorganization to certain eligible non-U.S. persons in accordance with the terms and conditions thereof. The Debtors recommend that potential recipients of ~~New Common Stock~~**Plan Securities** consult their own counsel concerning their ability to freely trade such securities without registration under the federal and applicable state Blue Sky Laws.

ARTICLE VIII

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

8.1 Introduction

The following is a general discussion of the material U.S. federal income tax consequences of the Plan to the Debtors and to certain holders of Claims or Interests. The following summary does not address the U.S. federal income tax consequences to holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on title 26 of the United States Code (the "IRC"), the U.S. Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS") and other applicable authorities, all as in effect on the date of this Disclosure Statement, and all of which are subject to change or differing interpretations, possibly with retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein. This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to certain holders in light of their individual circumstances. ~~This~~**Except as described in Section 8.4, Status as a United States Real Property Holdings Corporation, this** discussion does not apply to Holders of Claims or Interests that are not U.S. persons **(as defined in Section 7701(a)(3))** and does not address tax issues with respect to holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, subchapter S corporations, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, foreign taxpayers, persons who are related to the Debtors within the meaning of the IRC, persons using a mark-to-market method of accounting, holders of Claims or Interests who are themselves in bankruptcy, persons who received their Claims or Interests pursuant to the exercise of an employee stock option or otherwise as compensation, regulated investment companies, and those holding or who will hold Claims, Interests or New Common Stock that are part of a hedge, straddle, conversion or other integrated transaction). In the case of a Holder that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of a partner in such partnership generally will depend upon the status of the partner and the activities of the partner and the partnership. If you are a partner in a partnership, then you should consult your own tax advisor. No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. Furthermore, this summary assumes that a holder of Claims or Interests holds only Claims or Interests in a single Class and holds a Claim as a "capital asset" (within the meaning of section 1221 of the IRC). This summary also assumes, except as provided below, that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. Further, this

discussion assumes that the Transaction will be completed in accordance with the Support Agreement and as further described in this document.

Further, this discussion does not address the Canadian federal or provincial income or transactional tax considerations of the Plan (if any) to Holders of Claims and Interests. Holders that may be subject to Canadian taxation should consult their own tax advisors.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR ~~OWN~~ TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

8.2 Certain U.S. Federal Income Tax Consequences of the Plan to the Debtors

(a) Cancelation of Debt and Reduction of Tax Attributes

In general, absent an exception, a debtor will realize and recognize cancelation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of cash paid, (y) the issue price of any new indebtedness of the taxpayer issued and (z) the fair market value of any new consideration.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income pursuant to section 108 of the IRC. In general, tax attributes will be reduced in the following order: (a) net operating losses ("NOLs"); (b) most tax credits; (c) capital loss carryovers; (d) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (e) passive activity loss and credit carryovers; and (f) foreign tax credits. A debtor with COD Income may elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the IRC. In the context of a consolidated group of corporations, the tax rules provide for a complex ordering mechanism in determining how the tax attributes of one member can be reduced by the COD Income of another member.

Because the Plan provides that holders of certain Claims will receive New Common Stock, the amount of COD Income, and accordingly the amount of tax attributes required to be reduced (if any), will depend in part on the fair market value of the New Common Stock. ~~These values~~**Such value** cannot be known with certainty until after the Effective Date. The

Debtors expect that, subject to the limitations discussed herein, they will be required to make material reductions in their tax attributes.

(b) Limitation of NOL Carryforwards and Other Tax Attributes

The Debtors had approximately $~~$129.6~~160.8 million of NOLs as of December 31, 2014. The Debtors believe that, as a consequence of the COD Income, their NOLs ~~may be eliminated and that tax basis in their assets may be~~will be substantially reduced. The amount of such tax attributes that will be available to the Reorganized Debtors following such reduction is based on a number of factors and is impossible to calculate at this time. Some of the factors that will impact the amount of available tax attributes include: (a) the amount of taxable income incurred by the Debtors in 2014 and 2015; (b) the fair market value of the New Common Stock; and (c) the amount of COD Income incurred by the Debtors in connection with Consummation of the Plan. Following Consummation of the Plan, the Debtors anticipate that any remaining NOLs and other tax attributes may be subject to limitation under section 382 of the IRC by reason of the transactions pursuant to the Plan.

Under section 382 of the IRC, if a corporation undergoes an "ownership change," the amount of its NOLs (collectively, "Pre-Change Losses") that may be utilized to offset future taxable income generally is subject to an annual limitation. As discussed in greater detail herein, the Debtors anticipate that the issuance of the New Common Stock pursuant to the Plan will result in an "ownership change" of the Reorganized Debtors for these purposes, and that the Debtors' use of their Pre-Change Losses will be subject to limitation unless an exception to the general rules of Section 382 of the IRC applies. This limitation is independent of, and in addition to, the reduction of tax attributes described in the preceding section resulting from the exclusion of COD Income.

(1) General Section 382 Annual Limitation

Under Code Section 382, if a corporation or a consolidated group with NOLs (a "Loss Corporation") undergoes an "ownership change," the Loss Corporation's use of its ~~prechange NOLs~~Pre-Change Losses (and certain other tax attributes) generally will be subject to an annual limitation in the post-change period. In general, an "ownership change" occurs if the percentage of the value of the Loss Corporation's stock owned by one or more direct or indirect "five percent shareholders" increases by more than fifty percentage points over the lowest percentage of the value of the stock owned by the five percent shareholders at any time during the applicable testing period (an "Ownership Change"). The testing period generally is the shorter of (i) the three-year period preceding the testing date or (ii) the period of time since the most recent Ownership Change of the corporation.

Subject to certain ~~bankruptcy~~ rules relating to ownership changes taking place in bankruptcy proceedings, the amount of the annual limitation on a Loss Corporation's use of its pre-change NOLs (and certain other tax attributes) generally is equal to the product of the applicable long-term tax-exempt rate (~~generally, the highest rate published by the IRS for the month in which the Ownership Change occurs and the immediately preceding two months~~2.82% for ownership changed during October 2015) and the value of the Loss Corporation's outstanding stock immediately before the Ownership Change (excluding certain

capital contributions). If a Loss Corporation has a net unrealized built-in gain immediately prior to the Ownership Change, certain gains recognized during the subsequent five-year period (the "Recognition Period") may increase the annual limitation. If a Loss Corporation has a net unrealized built-in loss ("NUBIL") immediately prior to the Ownership Change, certain losses recognized during the Recognition Period also would be subject to the annual limitation and thus would reduce the amount of ~~pre-change NOLs~~**Pre-Change Losses** that could be used by the Loss Corporation during the Recognition Period.

(2) Special Bankruptcy Exceptions

An exception to the foregoing annual limitation rules generally applies when a debtor company's existing shareholders and/or so-called "qualified creditors" of a debtor company in chapter 11 receive, in respect of their claims or interests, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). Under the 382(l)(5) Exception, a debtor's ~~pre-Ownership Change losses~~**Pre-Change Losses** are not limited on an annual basis but, instead, the debtor's NOLs are required to be reduced by the amount of any interest deductions ~~attributable to "qualified creditors"~~ claimed during any taxable year ending during the three-year period preceding the taxable year that includes the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the debtor undergoes another ownership change within two years after consummation, then the debtor's ~~pre-Ownership Change losses~~**Pre-Change Losses** effectively would be eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the "382(l)(6) Exception"). When the 382(l)(6) Exception applies, a debtor corporation that undergoes an ownership change generally is permitted to determine the fair market value of its stock after taking into account the increase in value resulting from any surrender or cancelation of creditors' claims in the bankruptcy. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an ownership change to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that the debtor corporation is not required to reduce its NOLs by interest deductions in the manner described above, and the debtor may undergo a change of ownership within two years without triggering the elimination of its ~~pre-Ownership Change losses~~**Pre-Change Losses**.

It is possible that the Debtors will not qualify for the 382(l)(5) Exception. Alternatively, the Reorganized Debtors may elect out of the 382(l)(5) Exception. In either case, the Debtors expect that their use of the ~~pre-Ownership Change losses~~**Pre-Change Losses**, if any, after the Effective Date will be subject to limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception. Regardless of whether the Reorganized Debtors take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtors' use of their ~~pre-Ownership Change losses~~**Pre-Change Losses**, if any,

after the Effective Date may be adversely affected if an "ownership change" within the meaning of Section 382 of the IRC were to occur after the Effective Date.

(3) Alternative Minimum Tax

In general, an alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, except for alternative tax NOLs generated in or deducted as carryforwards in taxable years ending in certain years, which can offset 100% of a corporation's AMTI, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. Additionally, under Section 56(g)(4)(G) of the IRC, an ownership change (as discussed above) that occurs with respect to a corporation having a net unrealized built-in loss in its assets will cause, for AMT purposes, the adjusted basis of each asset of the corporation immediately after the ownership change to be equal to its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of the corporation, as determined under Section 382(h) of the IRC, immediately before the ownership change.

8.3 Status as a United States Real Property Holding Corporation

A non-U.S. person holding the New Common Stock (a "Non-U.S. Holder") will incur U.S. federal income tax on any gain realized upon a sale or other disposition of such New Common Stock if the New Common Stock constitutes a "United States real property interest" (a "USRPI") under the Foreign Investment in Real Property Act of 1980 ("FIRPTA"). A USRPI includes stock in a corporation that was a "United States real property holding corporation" at any time during the five-year period preceding the sale or other disposition or, if shorter, the Non-U.S. Holder's holding period for its interest in the corporation. A "United States real property holding corporation" is a corporation at least 50% of whose assets consist of interests in real property. Xinergy Ltd. is, and, to the extent that the Debtors with consent of the Majority Consenting Noteholders select Xinergy Ltd. as New Holdco, expects to continue to be for the foreseeable future, a "United States real property holding corporation."

As a result, under FIRPTA, except as discussed in the next paragraph, a Non-U.S. Holder will be subject to U.S. federal income tax on any gain realized upon a sale or other disposition of its New Common Stock as if such gain were "effectively connected" with a U.S. trade or business of the Non-U.S. Holder. A Non-U.S. Holder thus will be taxed on such gain at the same graduated rates generally applicable to U.S. persons. In addition, a Non-U.S. Holder would have to file a U.S. federal income tax return reporting that gain.

If the New Common Stock becomes regularly traded on an established securities market, gain realized upon a sale or other disposition of the New Common Stock will not be treated as gain from the sale of a USRPI, as long as the Non-U.S. Holder did not own more than 5% of the New Common Stock at any time during the five-year period

preceding the sale or other disposition or, if shorter, the Non-U.S. Holder's holding period for its shares of the New Common Stock. The New Common Stock will not be regularly traded on an established securities market immediately upon Consummation of the Plan, and no assurance can be provided that the New Common Stock will become regularly traded on an established securities market. Consequently, unless and until the New Common Stock is regularly traded on an established securities market, gain recognized by a Non-U.S. Holder upon a sale or other disposition of the New Common Stock will be subject to tax under FIRPTA.

8.4 ~~8.3~~ Withholding and Reporting

The Debtors will withhold all amounts required by law to be withheld from payments of interest or dividends. The Debtors will comply with all applicable reporting requirements of the IRC. In general, information reporting requirements may apply to distributions or payments made to a holder of an Allowed Claim. Additionally, backup withholding will generally apply to such payments if a holder fails to provide an accurate taxpayer identification number or otherwise fails to comply with the applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund from the IRS, provided that the required information is provided to the IRS.

In addition, from an information reporting perspective, U.S. Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS OR INTERESTS ~~SHOULD~~ARE URGED TO CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

ARTICLE IX

CONCLUSION AND RECOMMENDATION

For all the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation of the Plan is preferable to all other alternatives. The Debtors urge all holders of Claims and Interests entitled to vote to accept the Plan and to evidence such acceptance by

returning their ballots so they will be received by the Solicitation Agent no later than 5:00 p.m. prevailing Eastern Time on November 24, 2015.

DATED: ~~September 16~~**October 14**, 2015

/s/ Tyler P. Brown

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and Debtors in Possession

SCHEDULE 1

(Debtor Entities)

1. Xinergy Ltd. (3697)
2 Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. Big Run Mining, Inc. (1585)
11. Xinergy of Virginia, Inc. (8046)
12. South Fork Coal Company, LLC (3113)
13. Sewell Mountain Coal Co., LLC (9737)
14. Whitewater Contracting, LLC (7740)
15. Whitewater Resources, LLC (9929)
16. Shenandoah Energy, LLC (6770)
17. High MAF, LLC (5418)
18. Wise Loading Services, LLC (7154)
19. Strata Fuels, LLC (1559)
20. True Energy, LLC (2894)
21. Raven Crest Mining, LLC (0122)
22. Brier Creek Coal Company, LLC (9999)
23. Bull Creek Processing Company, LLC (0894)
24. Raven Crest Minerals, LLC (7746)
25. Raven Crest Leasing, LLC (7844)
26. Raven Crest Contracting, LLC (7796)

Exhibit A

The Plan

[TO BE FILED SEPARATELY]

Exhibit B

Liquidation Analysis

Exhibit C

Financial Projections

Summary report: **Litéra® Change-Pro TDC 7.5.0.127 Document comparison done on 10/14/2015 8:23:36 PM**	
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Intelligent Table Comparison: Active	
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Embedded Excel	0
Format changes	0
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