Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

MOTION RECORD
(RETURNABLE JUNE 18, 2015)

June 11, 2015

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INDEX

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

INDEX

TAB 1

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

NOTICE OF MOTION
(Recognition Order)
(Returnable June 18, 2015)

The applicant will make a Motion to a Judge presiding over the Commercial List on Thursday, June 18, 2015 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

1. An order substantially in the form of the draft order attached hereto at Tab A, *inter alia*:

   (a) Abridging the time for service and validating the service of this Notice of Motion and Motion Record, such that this motion is properly returnable on June 18, 2015;

   (b) Pursuant to section 49 of the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. 36, as amended (the "**CCAA**"), recognizing and giving full force and effect in all provinces and territories of Canada, to the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") made in respect of the case (the "**Chapter 11 Case**") commenced by Xinergy Ltd. (" **Xinergy**" or the "**Applicant**") in

the US Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"):

(i) *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Modified DIP Order**");

(ii) *Stipulated Order Staying Adversary Proceeding* (the "**Nix Stipulated Order**"); and

(iii) *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief* (the "**Claims Order**");

(c) Adjourning the Motion of Jon Nix, dated May 14, 2015 as amended on May 27, 2015 (the "**Amended Nix Motion**") to the extent not already heard, on the terms described in the proposed Order; and

(d) Approving the second report to Court of Deloitte Restructuring Inc. in its capacity as Information Officer in respect of this proceeding (the "**Second Report**") and the activities of the Information Officer as set out in the Second Report.

2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Corporate Overview

3. Xinergy, a public Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States;

4. Xinergy and the 25 U.S. subsidiaries (collectively, the "**Chapter 11 Debtors**") are a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia;

Background on Proceedings

5. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the United States (the "**Chapter 11 Cases**");

6. On April 7, 2015, Xinergy obtained an order from the US Bankruptcy Court authorizing it to act as the foreign representative of the Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings;

7. In order to ensure the protection of Xinergy's Canadian assets and potential tax attributes related to the transfers to Xinergy's common shares, and to ensure that this Court and the Canadian stakeholders are kept properly informed of Xinergy's Chapter 11 Case, pursuant to its appointment as foreign representative, Xinergy sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a "foreign main proceeding" under the CCAA;

8. On April 23, 2015, this Court also granted a Supplemental Recognition Order, which, among other things, appointed Deloitte Restructuring Inc. as Information Officer, recognized the order of the US Bankruptcy Court appointing Xinergy as the foreign representative, and

recognized certain interim orders of the US Bankruptcy Court, which have now been superseded by final orders;

9. On May 21, 2015, this Court granted an order (the "**May 21 Order**") recognizing the final forms of certain of the orders that had previously been recognized pursuant to the Supplemental Recognition Order. One of the orders recognized in the May 21 Order was the *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Final DIP Order**");

Foreign Orders

Modified Final DIP Order

10. At the time that the US Bankruptcy Court granted the Final DIP Order, no official committee of unsecured creditors (the "**Committee**") had been appointed;

11. A Committee has since been appointed and entered into negotiations with the Chapter 11 Debtors and the lenders under their post-petition credit facility;

12. The negotiations resulted in the Modified DIP Order, which was entered by the US Bankruptcy Court on June 5, 2015 and which Xinergy now seeks to have recognized by this Court;

Nix Stipulated Order

13. Xinergy is also seeking recognition of the Nix Stipulated Order, which stays an adversary proceeding in the US and a motion for a preliminary injunction, each of which relates to conduct of certain parties in Canada. The Nix Stipulated Order relates to a dispute between Jon Nix and

Xinergy related to the calling of a special meeting of shareholders of Xinergy which was also the subject matter of the Amended Nix Motion;

14. A partial hearing on the Amended Nix Motion was heard by Justice Wilton-Siegel on May 28, 2015 who held that the stay of proceedings created by the Supplemental Order applied to the calling of the special meeting of shareholders. Following that decision and negotiations between Nix and Xinergy, the Nix Stipulated Order was agreed upon and entered by the US Bankruptcy Court on June 5, 2015;

15. The Nix Stipulated Order provides that the parties will seek an appropriate adjournment of the remainder of the Amended Nix Motion, which is currently pending before this Court. Paragraph 3 of the proposed Order attached to this Notice of Motion includes a proposed stay of the Amended Nix Motion until (a) a determination by the US Bankruptcy Court on the Preliminary Injunction Motion and (b) twenty-one (21) days after the date the earliest Statement (as defined in the Nix Stipulated Order) is filed. Upon occurrence of the earlier of (a) and (b), either Xinergy or Nix may schedule a 9:30 appointment with this Court to establish a schedule for the remaining relief set out in the Amended Nix Motion;

Claims Order

16. On May 29, 2015, the Chapter 11 Debtors filed the *Debtors' Motion for an Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief)* (the "**Claims Motion**"). The Claims Motion seeks to establish a deadline for filing proofs of claim (the "**Bar Date**") and certain related relief including procedures for notice of the Bar Date. The Claims Order was granted by the US Bankruptcy Court on June 8, 2015;

17. Although Xinergy has only four known pre-filing creditors in Canada (including its Canadian counsel and one of its directors), recognition of the Claims Motion is appropriate to ensure that the deadline for filing proofs of claim is enforceable against all creditors in Canada so that the Chapter 11 Debtors can have an accurate understanding of the claims against their estates as they develop their plans of restructuring;

18. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Affidavit of Michael R. Castle sworn June 11, 2015 and the exhibits referred to therein;

2. The Second Report; and

3. Such further and other evidence as the lawyers may advise and this Court may permit.

June 11, 2015

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TAB A

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 18TH
	)	
JUSTICE	)	DAY OF JUNE, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

RECOGNITION ORDER

THIS MOTION, made by Xinergy Ltd. (the "**Debtor**") in its capacity as the foreign representative for itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form attached as Schedule A to the Notice of Motion of the Debtor dated June 11, 2015 (the "**Notice of Motion**"), among other things, recognizing certain orders granted by the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") in the case commenced by the Debtor under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael R. Castle sworn June 11, 2015 (the "**Castle Affidavit**"), and the second report of the Deloitte Restructuring Inc. (the "**Information Officer**"), dated June ●, 2015 (the "**Second Report**"), each filed,

AND UPON HEARING the submissions of counsel for the Debtor, counsel for the Information Officer, counsel for an informal group of holders of Xinergy Corp.'s 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (collectively, the "**DIP Lenders**"), counsel for Jon Nix ("**Nix**") and no one else appearing although duly served as appears from the affidavit of service of ● sworn on June ●, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the US Bankruptcy Court made in the chapter 11 case of the Debtor are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364;*

(b) *Stipulated Order Staying Adversary Proceeding* (the "**Nix Stipulated Order**")*;* and

(c) *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief;*

each attached hereto as Schedules "A"-"C", respectively, provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever in Canada.

3. THIS COURT ORDERS that relief remaining unheard as set out in the Motion of Jon Nix dated May 14, 2015, as amended May 27, 2015 (the "**Amended Nix Motion**"), is adjourned until (a) a determination by the US Bankruptcy Court on the Preliminary Injunction Motion (as defined in the Nix Stipulated Order) or (b) twenty-one (21) days after the date the earliest Statement (as defined in the Nix Stipulated Order) is filed. Upon occurrence of the earlier of (a) and (b), either the Debtor or Nix may schedule a 9:30 appointment with this Court to establish a schedule for the issues remaining to be heard set out in the Amended Nix Motion.

INFORMATION OFFICER'S REPORT

4. THIS COURT ORDERS that the Second Report of the Information Officer and the activities of the Information Officer as described therein be and hereby are approved.

GENERAL

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and its counsel and agents in carrying out the terms of this Order.

_____

(Signature of Judge)

SCHEDULE “A”

SCHEDULE “B”

SCHEDULE “C”

Court File No. CV-15-10936-00CL

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

RECOGNITION ORDER

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APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AFFIDAVIT OF MICHAEL R. CASTLE
(SWORN JUNE 11, 2015)

I, Michael R. Castle, of the City of Knoxville in the state of Tennessee, MAKE OATH AND SAY that:

1. I am the Chief Financial Officer of Xinergy Ltd. (the "**Applicant**" or "**Xinergy**"). As such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and verily believe it to be true.

2. This Affidavit is filed in support of the Applicant's motion for an order, *inter alia*, recognizing in Canada and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "**CCAA**"), certain orders of the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") made in respect of the case (the "**Chapter 11 Case**") commenced by Xinergy in the US Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (the "**Bankruptcy Code**").

Corporate Overview

3. Xinergy, a public Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States.

4. Xinergy and the 25 US subsidiaries (collectively, the "**Chapter 11 Debtors**") are a US producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia. The Chapter 11 Debtors' principal operations include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia.

5. All management, operations, employees and substantially all of the assets of Xinergy are located in the United States.

6. Xinergy's common shares were listed on the Toronto Stock Exchange until they were delisted on May 12, 2015.

Background on Proceedings

7. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the United States (the "**Chapter 11 Cases**").

8. On April 7, 2015, Xinergy obtained an order from the US Bankruptcy Court authorizing it to act as the foreign representative of the Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings.

9. In order to ensure the protection of Xinergy's Canadian assets and potential tax attributes related to the transfers to Xinergy's common shares, and to ensure that this Court and the

Canadian stakeholders are kept properly informed of Xinergy's Chapter 11 Case, pursuant to its appointment as foreign representative, Xinergy sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a "foreign main proceeding" under the CCAA. A copy of the Initial Recognition Order of April 23, 2015 is attached hereto as **Exhibit "A"**. A copy of the reasons of Justice Newbould of April 24, 2015 is attached as **Exhibit "B"**.

10. On April 23, 2015, this Court also granted an order (the "**Supplemental Order**"), which, among other things, appointed Deloitte Restructuring Inc. as Information Officer, recognized the order of the US Bankruptcy Court appointing Xinergy as the foreign representative, and recognized certain interim orders of the US Bankruptcy Court, which have now been superseded by final orders. A copy of the Supplemental Order (without schedules) of April 23, 2015 is attached to this my affidavit at **Exhibit "C"**.

11. On May 21, 2015, this Court granted an order (the "**May 21 Order**") recognizing the final forms of certain of the orders that had previously been recognized pursuant to the Supplemental Order. A copy of the May 21 Order is attached (without schedules) to this my affidavit at **Exhibit "D"**. One of the orders recognized in the May 21 Order was the *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Final DIP Order**").

Foreign Orders

Modified Final DIP Order

12. One of the orders that the Applicant seeks to have recognized is the *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361,*

362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 (the "**Modified Final DIP Order**"). A copy of the Modified Final DIP Order is attached to this my affidavit at **Exhibit "E"**.

13. When the Final DIP Order was granted by the US Bankruptcy Court on May 5, 2015, no official committee of unsecured creditors had been appointed and, in fact, the Office of the United States Trustee had advised the US Bankruptcy Court that it did not expect to appoint a committee of unsecured creditors.

14. Subsequently, on May 11, 2015, the Office of the United States Trustee filed a notice appointing an official committee of unsecured creditors (the "**Committee**").

15. Following appointment of the Committee, the Debtors, the Committee and the lenders under the post-filing credit agreement (the "**DIP Lenders**") engaged in discussions regarding amendments to the Final DIP Order and agreed to a revised proposed form of order that was filed with the US Bankruptcy Court on June 4, 2015.

16. On June 5, 2015 the US Bankruptcy Court entered the Modified Final DIP Order. The Modified Final DIP Order is substantially similar to the Final DIP Order except that:

(a) the challenge period in paragraph 25(b) of the Modified Final DIP Order has been modified to address the appointment of the Committee and allow the Committee the opportunity to file an adversary proceeding or contested matter seeking to challenge the validity, enforceability, priority, extent, or amount of the Prepetition Obligations (as defined in the Modified Final DIP Order) or otherwise asserting or prosecuting any Claims and Defenses (as defined in the Modified Final DIP Order) until the later of (a) sixty (60) days from the date of its formation or (b) in the event

the Committee files a motion on or before July 10, 2015, seeking derivative standing (the "**Standing Motion**") to pursue any Claims and Defenses, within 3 days of the entry of the order granting the Standing Motion, if the Bankruptcy Court grants the Standing Motion. In the event that the US Bankruptcy Court denies the Standing Motion, the Committee will have ten (10) days from the entry of the Order denying the Standing Motion to file an adversary proceeding or contested matter challenging the Prepetition Obligations unless the Committee: (i) files a motion with the Bankruptcy Court to extend the challenge period within such 10-day period; (ii) obtains an Order of the US Bankruptcy Court extending the challenge period; and (iii) files a Notice of Appeal as contemplated by Rule 8002 of the Federal Rules of Bankruptcy Procedure;

(b) the carve-out for the investigation described in paragraph 26 of the Modified Final DIP Order with respect to liens granted pursuant to the Prepetition Documents (as defined in the Modified Final DIP Order) during the challenge period has been increased from $25,000 to $50,000;

(c) the Committee will be provided with copies of any supplemental budgets prepared by the Chapter 11 Debtors pursuant to the obligations set forth in the Modified Final DIP Order; and

(d) certain clarifying language was added regarding the Chapter 11 Debtors' adequate protection obligations in respect of Houlihan Lokey Capital, Inc., the financial advisor to the Prepetition Lenders and the Prepetition Secured Noteholders (each as defined in the Modified Final DIP Order).

The document filed with the US Bankruptcy Court showing the material changes to the Final DIP Order is attached to this my affidavit at **Exhibit "F"**.

17. The Modified Final DIP Order is the product of negotiations among the Chapter 11 Debtors, the DIP Lenders and the Committee, as the representative of unsecured creditors of the Chapter 11 Debtors (including Xinergy). Recognition of this Modified Final DIP Order is in the best interests of Xinergy because it allows the restructuring of the corporate group to continue uninterrupted.

Nix Stipulated Order

18. The Applicant is also seeking recognition of a stipulated order granted on June 5, 2015 staying an adversary proceeding in the US and a motion for a preliminary injunction, each of which relates to conduct of certain parties in Canada (the "**Nix Stipulated Order**"). A copy of the Nix Stipulated Order is attached to this my affidavit at **Exhibit "G"**.

19. On April 16, 2015, counsel for a significant shareholder, founder and former Chairman of the Board and Chief Executive Officer, Jon Nix ("**Nix**") delivered a letter and requisition for a shareholder meeting (the "**Requested Special Meeting**") to the Board of Directors at Xinergy's registered office (which is the office of its Canadian solicitors). The Board of Directors declined to call the Requested Special Meeting.

20. On May 8, 2015, the Chapter 11 Debtors filed a complaint with the US Bankruptcy Court, seeking, among other things, (i) a declaration that the automatic stay in the Chapter 11 Proceedings prohibits Nix from calling or holding the Requested Special Meeting; (ii) a declaration that Xinergy is not required to call the Requested Special Meeting and, if the Requested Special Meeting is held by Nix, it shall have no force and effect; and (iii) an injunction enjoining Nix from taking any further action to call or hold the Requested Special Meeting until a reorganization plan is confirmed or upon further court order (the "**Adversary Proceeding**").

21. Notwithstanding the complaint, Nix took steps to call a meeting under the *Business Corporations Act* (Ontario) and, on May 14, 2015 served a motion seeking, among other things, a declaration from this Court that such actions did not violate the stay granted in the CCAA (the "**Nix Motion**".)

22. On May 19, 2015, Xinergy filed a motion with the US Bankruptcy Court seeking a preliminary injunction enjoining Nix from taking any further action to call or hold the Requested Special Meeting (the "**Preliminary Injunction Motion**"), which was scheduled to be heard by the U.S. Court on June 9, 2015.

23. At a 9:30 scheduling hearing with Justice Wilton-Siegel, the Canadian Court determined that certain issues raised by the Nix Motion would be determined on May 28, 2015 (the "**Initial Questions**") with the remaining matter raised on the Nix Motion (the "**Remaining Matters**") to be addressed separately.

24. On May 27, 2015, Nix served an amended notice of motion seeking additional related relief (as amended, the "**Amended Nix Motion**"). After argument on May 28, 2015, on May 29, 2015, Justice Wilton-Siegel released a brief endorsement (with further reasons to follow), finding that Nix's actions to call a shareholder meeting violated the stay of proceedings established by the Supplemental Order, which was the primary Initial Question to be determined. Justice Wilton-Siegel's reasons are attached to this my affidavit at **Exhibit "H"**.

25. Following Justice Wilton-Siegel's endorsement, the parties conferred and determined that the best use of estate resources was to work constructively towards a plan of reorganization. In light of the ongoing litigation in the US Bankruptcy Court and this Court, the parties determined that a stipulated order, granted by the US Bankruptcy Court, was necessary to preserve the rights of the parties during such negotiations.

26. The Nix Stipulated Order provides that both the Preliminary Injunction Motion and the Adversary Proceeding will be stayed during the plan negotiations. Both the Chapter 11 Debtors and Nix maintain the rights to file a statement (the "**Statement**") with the US Bankruptcy Court advising that the negotiations have reached a material impasse and that the applicable party wishes the stay to be lifted. The Nix Stipulated Order provides a timeline for the resumption of litigation upon the filing of such Statement.

27. In the Nix Stipulated Order, Nix agrees not to renew any steps to call the Requested Special Meeting during the pendency of the stay imposed by the Nix Stipulated Order. The Nix Stipulated Order also provides that in the event any other shareholder seeks to call or hold a special shareholders meeting, the Chapter 11 Debtors may take any steps necessary to enforce the stay granted in these proceedings.

28. With respect to the Amended Nix Motion, the Nix Stipulated Order provides that the parties will seek an appropriate adjournment of the Remaining Matters in the Amended Nix Motion from this Court. Paragraph 3 of the proposed Order attached to the Notice of Motion includes a proposed stay of the Amended Nix Motion until (a) a determination by the US Bankruptcy Court on the Preliminary Injunction Motion and (b) twenty-one (21) days after the date the earliest Statement is filed. Upon occurrence of the earlier of (a) and (b), either Xinergy or Nix may schedule a 9:30 appointment with this Court to establish a schedule for the Remaining Matters in the Amended Nix Motion.

29. Recognition of the Nix Stipulated Order is necessary to allow Xinergy and the other Chapter 11 Debtors to focus on developing a plan of restructuring and to provide certainty regarding the Amended Nix Motion.

Claims Order

30. On May 29, 2015, the Chapter 11 Debtors filed the *Debtors' Motion for an Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief)* (the "**Claims Motion**"). The Claims Motion seeks to establish a deadline for filing proofs of claim (the "**Bar Date**") and certain related relief including procedures for notice of the Bar Date. A copy of the motion material filed in respect of the Claims Motion is attached to this my affidavit at **Exhibit "I"**. The *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief*, was granted by the US Bankruptcy Court on June 8, 2015 without a hearing. A copy of the order as entered is attached to this my affidavit at **Exhibit "J"**.

31. Counsel to Xinergy provided a copy of the motion material to the Information Officer who requested that Xinergy publish a notice of the Bar Date in *The Globe and Mail, National Edition* or another national Canadian newspaper to ensure that any unknown Canadian creditors receive notice. The Chapter 11 Debtors agreed to modify the proposed order and paragraph 25 of the order as granted by the US Bankruptcy Court provides for such publication.

32. Although Xinergy has only four known pre-filing creditors in Canada (including its Canadian counsel and one of its directors), recognition of the Claims Motion is appropriate to ensure that the deadline for filing proofs of claim is enforceable against all creditors in Canada so that the Chapter 11 Debtors can have an accurate understanding of the claims against their estates as they develop their plans of restructuring.

33. I make this affidavit in support of the motion of Xinergy returnable June 18, 2015 and for no other or improper purpose.

SWORN/AFFIRMED BEFORE
me at the City of Knoxville
in the State of Tennessee
this 11th day of June, 2015.

Kathy Southerland
Notary Public

Michael R. Castle
Name: Michael R. Castle

TAB A

Exhibit "A" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 23RD
JUSTICE NEWBOULD	)	DAY OF APRIL, 2015
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Xinergy Ltd. in its capacity as the foreign representative (the "**Foreign Representative**" or the "**Debtor**") of itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Michael R. Castle sworn April15, 2015 (the "**Castle Affidavit**"), the preliminary report of Deloitte Restructuring Inc., in its capacity as proposed information officer (the "**Proposed Information Officer**") dated April 21, 2015, each filed, and upon being provided with copies of the documents required by s.46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for an informal group of holders of the Debtor's 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (collectively, the "**DIP Lenders**"), counsel for Jon Nix, and no one else appearing although duly served as appears from the affidavits of service of Monique Sassi, sworn on April 15, 2015 and April 21, 2015, the affidavits of service of Margaret Wong, sworn on April 16, 2015, April 20, 2015 and April 21, 2015, and the affidavit of service of Natalie E. Levine, sworn on April 20, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA in respect of the proceedings under chapter 11 of title 11 of the United States Code pending before the United States Bankruptcy Court for the Western District of Virginia (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. THIS COURT DECLARES that the centre of its main interests for the Debtor is the United States, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS

4. THIS COURT ORDERS that until otherwise ordered by this Court:

(a) all proceedings taken or that might be taken against the Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

(b) further proceedings in any action, suit or proceeding against the Debtor are restrained; and

(c) the commencement of any action, suit or proceeding against the Debtor is prohibited.

NO SALE OF PROPERTY

5. THIS COURT ORDERS that, except with leave of this Court, the Debtor is prohibited from selling or otherwise disposing of:

(a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

(b) any of its other property in Canada.

GENERAL

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and its counsel and agents in carrying out the terms of this Order.

7. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 a.m. on the date of this Order.

8. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtor and its counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 24 2015

Court File No. CV-15-10936-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

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Lawyers for Xinergy Ltd.

TAB B

Exhibit "B" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

A Notary for the State of Tennessee

KATHY SOUTHERLAND
STATE OF TENNESSEE
NOTARY PUBLIC
CAMPBELL COUNTY

CITATION: Re Xinergy Ltd., 2015 ONSC 2692
COURT FILE NO.: CV-15-10936-00CL
DATE: 20150424

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO **XINERGY LTD.** APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED	)	*Jane Dietrich and Natalie Levine*, for the Applicant *Aubrey E. Kauffman,* for Whitebox Advisors LLC, Highbridge Capital Management LLC and other DIP Lenders *Sean Sweig*, for Deloitte Restructuring Inc., the proposed Information Officer *James H. Grout*, for Jon Nix, a shareholder of the Applicant **HEARD:** April 23, 2015

NEWBOULD J.

[1] On April 6, 2015, Xinergy Ltd. ("Xinergy"), an Ontario corporation, commenced a voluntary reorganization proceeding in the United States Bankruptcy Court for the Western District of Virginia (the "U.S. Court") under chapter 11 of the United States Bankruptcy Code. On the same date, 25 of Xinergy's U.S. subsidiaries also filed voluntary petitions under chapter 11 of the Bankruptcy Code with the U.S. Court.

[2] On April 6 and 7, 2015 the chapter 11 Debtors filed 17 First Day Motions with the U.S. Court and on April 7 and 8, 2015, the U.S. Court entered the orders requested.

[3] Xinergy has now brought an application before this Court pursuant to Part IV of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended for an order recognizing the U.S. proceedings as foreign main proceedings and for orders recognizing some of the first day orders made by the U.S. Court. At the conclusion of the hearing I granted the orders requested for short reasons to follow. These are my reasons.

Business of the applicant

[4] Xinergy is a publicly traded company on the TSX under the ticker symbol XRG. As at September 30, 2014, the date of Xinergy's most recent public filing, there were approximately 58.3 million voting common shares issued and outstanding, and 7.5 million common non-voting shares issued and outstanding, totalling approximately 65.8 million common shares.

[5] The Chapter 11 Debtors are a U.S.-based producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia. The Chapter 11 Debtors' principal operations include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, the Chapter 11 Debtors lease or own 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.

[6] The Chapter 11 Debtors currently produce and ship coal from the South Fork mid-volatile metallurgical mine and the Raven Crest thermal operations. The Chapter 11 Debtors' 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 United States and Europe are the principal customers for the Chapter 11 Debtors' thermal coal.

[7] Recently, U.S. demand for thermal coal has fallen sharply in large part due to (i) increasingly attractive alternative sources of energy, such as natural gas, and (ii) 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 that impacted the mining and shipment of coal, has continued to erode Xinergy's cash position. Prior to approval by the U.S. Court of the post-petition DIP financing, Xinergy lacked the liquidity needed to maintain operations in the near term and to sustain its current capital structure. The confluence of these factors and Xinergy's substantial debt burden has taken Xinergy to the point of unsustainability absent the relief provided by the Chapter 11 proceeding.

[8] Xinergy has issued US$200 million in 9.25% Senior Secured Notes (the "Second Lien Notes"), of which approximately US$195 million (principal amount) is outstanding. As of the April 6, 2015, Xinergy was also obligated under two term loans totalling US$20 million in principal amount (the "First Lien Loans").

Requests for relief

[9] Xinergy seeks recognition of four of the orders granted by the U.S. Court. The U.S. Court orders are:

(a) Order Authorizing Xinergy Ltd. to Act as a Foreign Representative (the "Foreign Representative Order");

(b) Interim Order (I) Authorizing Debtors (a) to Obtain Post-petition Financing and (b) to Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling Final Hearing (the " Interim DIP Order");

(c) Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates (the "Interim Trading Order"); and

(d) Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code (the "Interim Cash Management Order")

Recognition of foreign main proceeding

[10] Subsection 46(1) of the CCAA provides that a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which he or she is a foreign representative.

[11] A "foreign representative" for the purpose of subsection 46(1) of the CCAA is defined by subsection 45(1) of the CCAA, which provides:

> "Foreign Representative" means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to
>
> (a) monitor the debtor company's business and financial affairs or the purpose of reorganization; or
>
> (b) act as a representative in respect of the foreign proceeding.

[12] In the Chapter 11 proceedings, the Chapter 11 Debtors sought the appointment of Xinergy as the foreign representative of the Chapter 11 Debtors, within the meaning of subsection 45(1) of the CCAA. The Foreign Representative Order was granted by the U.S. Court on April 7, 2015.

[13] Subsection 47(1) of the CCAA provides that the Court shall grant an order recognizing the foreign proceeding if (i) the proceeding is a foreign proceeding; and (ii) the applicant is a foreign representative in respect of that proceeding. There is no question but that the Chapter 11 proceedings are foreign proceedings and should be recognized under the CCAA.

[14] Subsection 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding." I am satisfied that the Chapter 11 proceedings are foreign main proceedings.

[15] Subsection 45(2) of the CCAA provides that in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests, or COMI. The registered office of Xinergy is in Toronto at its counsel's office. In considering whether the registered office presumption has been rebutted a court should consider the following factors in determining COMI (i) the location is readily ascertainable by creditors (ii) the location is one in which the debtor's principal assets and operations are found and (iii) the location is where the management of the debtor takes place. See *Lightsquared LLP, Re* (2012), 92 C.B.R. (5th) 321; *MtGox Co. (Re)* (2014), 20 C.B.R. (6th) 307.

[16] Although Xinergy's registered office is in Ontario, it has no operations in Canada. Additionally, Xinergy has no employees in Canada and no offices in Canada other than its registered office. The Chapter 11 Debtors operate on an integrated basis, with corporate and other major decision-making occurring from the consolidated offices in Knoxville, Tennessee. In particular:

(a) Corporate and other major decision-making occurs from the consolidated offices in Knoxville, Tennessee, although administrative employees frequently work remotely or from the Chapter 11 Debtors' mines in the United States;

(b) All of the senior executives of the Chapter 11 Debtors, including Xinergy, are residents of the United States;

(c) In order to fulfil the Canadian residency requirements of Ontario corporations, Xinergy has two Canadian directors;

(d) The majority of the management of the Chapter 11 Debtors, including Xinergy, is shared;

(e) Employee administration, human resource functions, marketing and communications decisions are made, and related actions taken, on behalf of all of the Chapter 11 Debtors, including Xinergy, in the United States;

(f) The Chapter 11 Debtors, including Xinergy, share a cash management system that is largely funded by the U.S. Subsidiaries, overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States;

(g) Other functions shared between the Chapter 11 Debtors, including Xinergy, are managed from the United States including: pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions;

(h) While Xinergy maintains a bank account with The Toronto Dominion Bank in Ontario, the Chapter 11 Debtors use this account to make Canadian denominated deposits and to pay for Canadian services. When additional funds are required, a transfer is made from the U.S. operating account at Xinergy Corp. Xinergy is dependent on the U.S. subsidiaries for substantially all of its funding requirements; and

(i) Other functions shared between the Chapter 11 Debtors, including Xinergy, are managed from the United States including: pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions.

[17] As the Chapter 11 proceedings are foreign main proceedings, an order is to go under subsection 48(1) of the CCAA staying all proceedings against Xinergy.

Interim DIP Order

[18] The Interim DIP Facility Order, inter alia:

(a) authorizes Xinergy Corp. to obtain post-petition financing pursuant to the DIP Facility up to an aggregate principal amount of $40 million;

(b) authorizes Xinergy and the other Chapter 11 Debtors to unconditionally guarantee all obligations arising under the DIP Facility;

(c) authorizes the Chapter 11 Debtors to use proceeds of the DIP Facility to pay in full the First Lien Loans (the holders of the First Lien Notes are the DIP lenders) ; and

(d) grants first priority super priority claims in connection with the DIP Facility.

[19] The authorization by the U.S. Court to use the proceeds of the DIP Facility to pay out the First Lien Loans, called a "rollup" provision, is not something that can be ordered in a CCAA proceeding as subsection 11.2(1) of the CCAA provides that DIP security may not secure an obligation that existed prior to an Initial Order. However, the issue is whether our Court should recognize the U.S. Court order authorizing that DIP facility under the principles of comity recognized in section 44 of Part IV of the CCAA.

[20] Such a provision has been recognized in *Hartford Computer Hardware Inc., Re* (2012), 94 C.B.R. (5th) 20 by Morawetz J. (as he then was) under section 49 of the CCAA which permits an order to be made if the Court is satisfied that it is necessary to protect the debtor's property or is in the interests of its creditors.

[21] It was obviously seen by the U.S. Court to be in the interests of Xinergy and the other Chapter 11 Debtors to make DIP order that it did. One question to consider is whether there would be any material adverse interest to any Canadian interests in recognizing the "rollup" features of the DIP facility. If there were such material adverse interest, it would put in play a consideration of that adverse interest vis-à-vis the principles of comity that speak to the recognition of an order made in a foreign main proceeding.

[22] In this case, there are four unsecured creditors of Xinergy in Canada being (i) a director owed approximately $1,674, (ii) TMX Equity Transfer Services owed approximately $4,000, (iii) TMX owed $16,492, and (iv) the solicitors for Xinergy (who consent to the rollup DIP facility). The bank account in Canada had approximately $48,415 in it on April 6, 2015. The Canadian unsecured creditors, however, had no economic interest in that bank account as it was secured to the holders of the First Lien Notes. The DIP facility has not changed that. Deloitte, the proposed Information Officer, is of the view that there will be no material prejudice to the Canadian creditors if the Interim Dip Facility order is recognized in these proceedings, and I accept that view.

[23] I am satisfied that the Interim DIP Facility Order should be recognized.

Other orders

[24] The interim trading order made by the U.S. Court ordered on an interim basis certain restrictions on the trading of Xinergy stock. In light of the rules under the Internal Revenue Code in the United States, transfers of the stock may, through no fault of the Chapter 11 Debtors, deprive the Chapter 11 Debtors of important tax benefits. The Interim Trading order was made to protect against this potential harm to debtors in chapter 11 proceedings. It is appropriate to recognize it in this CCAA proceeding.

[25] The relief granted by the U.S. Court in the Interim Cash Management Order will permit Xinergy and the other Chapter 11 Debtors to continue to operate in ordinary course, thereby preserving value for creditors. It is appropriate to recognize it in this CCAA proceeding.

[26] Xinergy has requested an order appointing Deloitte as Information Officer and granting a super-priority charge up to a maximum of $100,000 for its fees and those of its counsel. It is appropriate to make such an order. The DIP lenders consent to the charge. The appointment of Deloitte will help facilitate these proceedings and the dissemination of information concerning the Chapter 11 proceeding. The Information Officer will: (i) act as a resource to the foreign

representative in the performance of its duties; (ii) act as an officer to the Court, reporting to the Court on the proceedings, as required by the Court; and (iii) provide stakeholders of Xinergy with material information on the Chapter 11 proceeding. See *Lear Canada, Re* (2009), 55 C.B.R. (5th) 57 at para. 23 per Pepall J. (as she then was).

[27] For these reasons, I signed the orders as requested at the conclusion of the hearing.

Newbould J.

Released: April 24, 2015

CITATION: Re Xinergy Ltd., 2015 ONSC 2692
COURT FILE NO.: CV-15-10936-00CL
DATE: 20150424

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO **XINERGY LTD.**

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

REASONS FOR JUDGMENT

Newbould J.

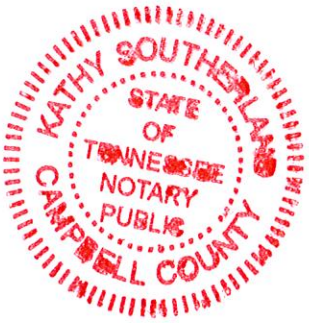
Released: April 24, 2015

TAB C

Exhibit "C" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 23RD
	)	
JUSTICE NEWBOULD	)	DAY OF APRIL, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Xinergy Ltd. in its capacity as the foreign representative (the "**Foreign Representative**" or the "**Debtor**") of itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Michael R. Castle sworn April 15, 2015 (the "**Castle Affidavit**") the preliminary report of Deloitte Restructuring Inc., in its capacity as proposed information officer dated April 21, 2015, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed information officer, counsel for an informal group of holders of the Debtor's 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (the "**DIP Lenders**"), counsel for Jon Nix and no one else appearing

although duly served as appears from the affidavits of service of Monique Sassi, sworn on April 15, 2015 and April 21, 2015, the affidavits of service of Margaret Wong, sworn on April 16, 2015, April 20, 2015 and April 21, 2015, and the affidavit of service of Natalie E. Levine, sworn on April 20, 2015, and on reading the consent in the preliminary report of Deloitte Restructuring Inc. to act as the information officer:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated April 23, 2015 (the "**Recognition Order**").

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the Western District of Virginia made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

(a) *Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. §1505,* attached as Schedule A to this Order;

(b) *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §*

363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c), (the "**U.S. DIP Order**") attached as Schedule B to this Order;

(c) *Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates,* attached as Schedule C to this Order; and

(d) *Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code,* attached as Schedule D to this Order.

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. THIS COURT ORDERS that Deloitte Restructuring Inc. (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

6. THIS COURT ORDERS that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtor or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court or the written consent of the Debtor and the Information Officer, and any and all Proceedings currently under way against or in respect of the Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the Debtor and the Information Officer.

NO EXERCISE OF RIGHTS OR REMEDIES

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtor, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court or with the written consent of the Debtor and the Information Officer, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower the Debtor to carry on any business in Canada which the Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; or (iv) prevent the DIP Lenders from making any personal property lien registrations in Canada.

NO INTERFERENCE WITH RIGHTS

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor and affecting the Business in Canada, except with leave of this Court.

ADDITIONAL PROTECTIONS

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor, and that the Debtor shall be entitled to the continued use in Canada of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. THIS COURT ORDERS that the Information Officer:

(a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

(b) shall report to this Court at least once every six months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;

(c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;

(d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtor, to the extent that is necessary to perform its duties arising under this Order; and

(e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Debtor shall (i) advise the Information Officer of all material steps taken by the Debtor in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that as soon as practicable from the date of this Order, the Information Officer shall cause to be published a notice substantially in the form attached to this Order as Schedule E, once a week for two consecutive weeks, in The Globe and Mail, National Edition.

17. THIS COURT ORDERS that the Information Officer may provide any creditor of the Debtor with information provided by the Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtor is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, and the Debtor may agree.

18. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtor their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.

The Debtor is hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a monthly basis or such other time interval as may be agreed by the Information Officer and the Debtor and, in addition, the Debtor is hereby authorized, *nunc pro tunc*, to pay to the Information Officer and counsel to the Information Officer, retainers in the amounts of $50,000 and $25,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

19. THIS COURT ORDERS that if requested by this Court, the Debtor or any other interested person, the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

20. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of $100,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 22 and 24 hereof.

INTERIM FINANCING

21. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364 (c)(2), 364(c)(3), 364(d)(1) and 364(e); and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§361, 362, 363 and 364; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)*, with respect to the Property in Canada, shall have the priority set out in paragraphs 22 and 24 hereof, and further provided that the DIP Lender's Charge shall not be enforced except in accordance with the terms of the U.S. DIP Order and on notice to the Information Officer.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

22. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First–Administration Charge (to the maximum amount of $100,000; and

Second–DIP Lender's Charge.

23. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

24. THIS COURT ORDERS that (i) Administration Charge shall constitute a charge on the Property in Canada and such Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, and (ii) the DIP Lenders' Charge shall have the priority set out in paragraph 10 of the U.S. DIP Order; *provided, however,* that to the extent of any conflict between the U.S. DIP Order and this Order, with respect to the priorities of the Charges, this Order shall govern.

25. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, unless the Debtor also obtains the prior written consent of the Information Officer and the DIP Lender or, with respect to the DIP Lender's Charge only, as otherwise provided for in the U.S. DIP Order.

26. THIS COURT ORDERS that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal

or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Debtor to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

27. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtor's interest in such real property leases.

SERVICE AND NOTICE

28. THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol at http://www.insolvencies.deloitte.ca/en-ca/Pages/Search-Insolvencies.aspx under the name Xinergy Ltd.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtor and the Information Officer are at liberty to serve

or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

30. THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of the Debtor, the Business or the Property.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor, and the Information Officer and their respective agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that each of the Debtor, and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtor, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

35. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO

APR 23 2015

Court File No. CV-15-10936-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

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Lawyers for Xinergy Ltd.

TAB D

Exhibit "D" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee

Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Mr.	)	THURSDAY, THE 21ST
JUSTICE Wilton-Siegel	)	DAY OF MAY, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

RECOGNITION ORDER

THIS MOTION, made by Xinergy Ltd. (the "**Debtor**") in its capacity as the foreign representative for itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form attached as Schedule A to the Notice of Motion of the Debtor dated May 13, 2015 (the "**Notice of Motion**"), recognizing certain orders granted by the US Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") in the case commenced by the Foreign Representative under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael R. Castle sworn May 13, 2015 (the "**Castle Affidavit**"), the preliminary report (the "**Preliminary Report**") of Deloitte Restructuring Inc. (the "**Information Officer**") in its capacity as proposed information officer dated April 21, 2015, the first report of the Information Officer (the "**First Report**"), dated May 19, 2015, each filed,

AND UPON HEARING the submissions of counsel for the Debtor, counsel for the Information Officer, ~~counsel for an informal group of holders of the Debtor's 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (collectively, the "**DIP Lenders**")~~, counsel for Jon Nix, and no one else appearing although duly served as appears from the affidavit of service of Margaret Wong, sworn on May 13, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the US Bankruptcy Court made in the chapter 11 case of the Debtor are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364*;

(b) *Final Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status For Intercompany Claims; and (III) Waiving the Requirements Of Section 345(b) Of the Bankruptcy Code;*

(c) *Final Trading Order Establishing Notification Procedures and Approving Restrictions On Certain Transfers Of Equity Interests In the Debtors' Estates*

each attached hereto as Schedules "A"-"C", respectively, provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Foreign

Representative's current and future assets, undertakings and properties of every nature and kind whatsoever in Canada.

INFORMATION OFFICER'S REPORT

3. THIS COURT ORDERS that the Preliminary Report and the activities of the Information Officer as described therein be and hereby are approved.

4. THIS COURT ORDERS that the First Report and the activities of the Information Officer as described therein be and hereby are approved.

GENERAL

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and its counsel and agents in carrying out the terms of this Order.

Cv. Hon - MN.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
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MAY 21 2015

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Court File No. CV-15-10936-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

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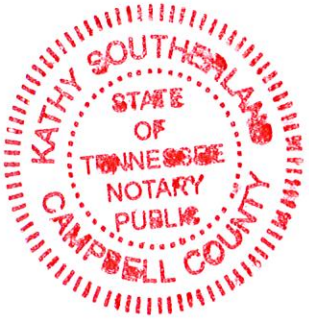
Lawyers for Xinergy Ltd.

TAB E

Exhibit "E" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



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

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

MODIFIED FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364

Upon the motion (the "Motion"), dated April 6, 2015 (the "Petition Date"), of the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases" or "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), seeking, among other things:

(I) authorization for Debtor Xinergy Corp. (the "Borrower") to obtain postpetition financing consisting of a senior secured non-amortizing new money term loan credit facility up to an aggregate principal amount of $40,000,000 (the "DIP Facility" and together with all agreements, documents, guarantees, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter

[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.

amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "DIP Documents") by and among the Borrower, guarantors party thereto and other credit parties signatories thereto, WBOX 2014-4 Ltd., as administrative agent (in such capacity, the "DIP Agent"), for and on behalf of itself and the other lenders thereto from time to time (initially, the "Initial DIP Lenders" and, following the post-closing assignments described herein, the "DIP Lenders");

(II) authorization for Xinergy Ltd., an Ontario corporation that is the parent of the Borrower (the "Parent"), and any and all of the Borrower's and Parent's current, direct or indirect subsidiaries (other than the Borrower) (collectively with the Parent, the "Guarantors") to unconditionally guarantee on a joint and several basis all obligations arising under the DIP Facility;

(III) authorization for the Debtors to execute and deliver the DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(IV) authorization for the Debtors to immediately use proceeds of the DIP Facility upon entry of the interim order entered on April 7, 2015 [Docket No. 43] (the "Interim Order") to (a) pay in full the Prepetition Term Loan Debt (as defined below), including any interest, fees, expenses and other charges accrued through the date of payment, and, upon such payment, receive the simultaneous release and termination of the liens, claims and encumbrances of the Prepetition Lenders (as defined below) in accordance with the Interim Order (the "Refinancing"), and (b) provide working capital to the Debtors and pay fees and expenses in connection with the Cases;

(V) authorization for the Debtors to (i) use the Cash Collateral (as defined below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, in each case in accordance with the relative priorities set forth more fully below, but subject in all respects to the Carve-Out (as defined below), and (ii) provide adequate protection on the terms set forth in the Interim Order and this Final Order to the Prepetition Lenders (as defined below) until the consummation of the Refinancing and expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, and Prepetition Secured Noteholders (as defined below) whose liens and security interests are being primed by the DIP Facility;

(VI) authorization for the DIP Agent, as applicable, to terminate the applicable DIP Documents upon the occurrence and continuance of an Event of Default (as defined therein);

(VII) authorization to grant first priority superpriority claims to the DIP Lenders and first priority liens in favor of the DIP Agent (for the benefit of the DIP Lenders) on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof (but excluding a lien on Avoidance Actions (as defined below), but including, upon entry of this order granting the relief requested in the Motion on a final basis (the "Final Order" or the "Order"), any Avoidance Proceeds (as defined below)), subject to the Carve-Out (as defined below) and the terms of this Order;

(VIII) subject to and only effective upon the entry of this Final Order granting such relief, the waiver by the Debtors of any right to surcharge against the DIP Collateral

or Prepetition Collateral (as each are defined below) pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(IX) modification of the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Documents and this Final Order; and

(X) a waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including under Bankruptcy Rule 6004); and

The interim hearing on the Motion having been held by this Court on April 7, 2015 (the "Interim Hearing"), pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and this Court having entered the Interim Order that, among other things: (a) authorized the Borrower, on an interim basis, to borrow from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed $7.5 million plus the amount necessary to consummate the Refinancing to (w) fund the operational and working capital needs of the Debtors, (x) pay the fees, costs and expenses incurred by the Debtors in connection with these Cases, (y) consummate the Refinancing and execute any documents related thereto and (z) pay the fees, costs and expenses incurred in connection with the foregoing, (b) authorized the Debtors' use of Cash Collateral pursuant to the terms of the Interim Order, and (c) granted the liens, superpriority claims and adequate protection described therein. This Court scheduled, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the final hearing (the "Final Hearing") to consider entry of this Final Order on May 5, 2015 at 10:00 a.m. (EST).

The Final Hearing having been held by this Court on May 5, 2015, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and upon the record made by the Debtors at the

Interim Hearing and at the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Jurisdiction. This Court has core jurisdiction over these Cases, this Motion, and the parties and property affected hereby under 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Notice. The notice given by the Debtors of the Motion, the Interim Hearing and the Final Hearing was, in the Debtors' belief, the best available under the circumstances and included service upon (a) the United States Trustee for the Western District of Virginia; (b) counsel to the agent for the Debtors' Prepetition Lenders; (c) counsel to the Debtors' postpetition lenders; (d) counsel to the Prepetition Indenture Trustee (as defined below); (e) counsel to the ad hoc group of the Debtors' Prepetition Secured Noteholders (as defined below); (f) counsel to Wells Fargo Bank, National Association as collateral trustee; (g) the United States Securities and Exchange Commission; (h) the Canadian Revenue Agency; (i) the Ontario Securities Commission; (j) the Internal Revenue Service; (k) the Office of the United States Attorney for the Western District of Virginia; (l) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; and (m) all other known parties asserting a lien against the Debtors' assets. Such notice constitutes due and sufficient notice under the circumstances and complies with Bankruptcy Rules 4001(b) and (c) and applicable local rules. No further notice of the relief sought at the Final Hearing is necessary or required.

3. Creditors' Committee Formation. No statutory committee of unsecured creditors has yet been appointed in the Chapter 11 Cases (the "Creditors Committee").

4. Debtors' Stipulations. Without prejudice to the rights of any other party-in-interest (but subject to the limitations thereon contained in paragraph 25 below) the Debtors admit, stipulate and agree that:

(a) The Prepetition Credit Agreement.

(i) Xinergy, as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto (the "Prepetition Lenders") are parties to that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement", and together with all agreements, documents, certificates and instruments, including, without limitation the Prepetition Collateral Trust Agreement (as defined below) delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, collectively, the "Prepetition Term Loan Documents"), pursuant to which the Prepetition Lenders made term loans available to the Prepetition Borrower (the "Prepetition Loans").

(ii) As of the Petition Date, the outstanding aggregate principal amount due under the Prepetition Credit Agreement was $20,000,000 (together with all other outstanding Obligations, as defined in the Prepetition Credit Agreement, including prepetition and postpetition interest, fees, expenses and other charges, the "Prepetition Term Loan Debt").

(iii) To secure the Prepetition Term Loan Debt, the Debtors entered into various security agreements and other collateral documents, pursuant to which they granted to the Prepetition Lenders, valid, binding, perfected, first-priority liens and security interests (the "Prepetition Term Loan Liens") in substantially all of their assets, including, among other things, as the following terms are defined in the Prepetition Term Loan Documents: (a) Accounts;

(b) Chattel Paper; (c) Documents; (d) Fixtures; (e) General Intangibles (or "intangible" under any applicable Canadian PPSL); (f) Goods (including, without limitation, Inventory, Equipment and As-Extracted Collateral); (g) Instruments; (h) Insurance; (i) Intellectual Property; (j) Investment Related Property (including, without limitation, Deposit Accounts); (k) Letter-of-Credit Rights; (l) Money; (m) Receivables and Receivables Records; (n) Commercial Tort Claims; (o) to the extent not otherwise included in the foregoing, all coal and other minerals severed or extracted from the ground (including all severed or extracted coal purchased, acquired or obtained from other Persons), and all Accounts, General Intangibles and Products and Proceeds thereof or related thereto, regardless of whether any such coal or other minerals are in raw form or processed for sale and regardless of whether or not the Company or any Grantor had an interest in the coal or other minerals before extraction or severance; (p) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and (q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (collectively, the "Prepetition Term Loan Collateral").

(b) The Prepetition Secured Notes.

(i) Pursuant to that certain indenture, dated as of May 6, 2011 (as heretofore supplemented from time to time, the "Prepetition Indenture") by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee (in such capacities, the "Prepetition Indenture Trustee"), Xinergy Corp. issued 9.25% senior secured notes due 2019 (the "Prepetition Secured Notes", and holders thereof, the "Prepetition Secured Noteholders", and together with the Prepetition Lenders and the Prepetition Indenture Trustee, collectively, the "Prepetition Secured Parties").

(ii) As of the Petition Date, the outstanding aggregate principal amount of Prepetition Secured Notes issued under the Prepetition Indenture was $195,000,000 (together with all other outstanding Obligations, as defined in the Indenture, including interest, fees, expenses and other charges, the "Prepetition Secured Notes Debt", and together with the Prepetition Term Loan Debt, collectively, the "Prepetition Debt").

(iii) To secure the Prepetition Secured Notes Debt, the Debtors and Prepetition Indenture Trustee entered into that collateral trust agreement, dated as of May 6, 2011 (the "Prepetition Collateral Trust Agreement," and together with the Indenture and all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "Prepetition Secured Notes Documents," and together with the Prepetition Term Loan Documents, the "Prepetition Documents"), pursuant to which the Debtors granted to the Prepetition Indenture Trustee, for the benefit of itself and the Prepetition Secured Noteholders, valid, binding, perfected, second-priority liens and security interests (the "Prepetition Notes Liens," and together with the Prepetition Term Loan Liens, the "Prepetition Liens") in all property and assets of the issuer and guarantors under the Indenture, except for Excluded Assets (as defined in the Prepetition Secured Notes Documents), subject and subordinate to the Prepetition Term Loan Collateral (the "Prepetition Notes Collateral," and together with Prepetition Term Loan Collateral, the "Prepetition Collateral").

(c) The Prepetition Liens are valid, binding, enforceable, non-avoidable and perfected liens and the Prepetition Debt constitutes the legal, valid, binding, enforceable and non-avoidable obligations of the applicable borrowers and guarantors, enforceable against

them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Liens or Prepetition Debt is subject to any challenge or defense, including avoidance, reduction, offset, attachment, disallowance, disgorgement, recharacterization, surcharge, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(d) the Prepetition Debt and the Prepetition Collateral are not and shall not be subject to any attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim, setoff, offset, recharacterization, avoidance or other claim (as "claim" is defined by section 101(5) of the Bankruptcy Code), impairment, disallowance, counterclaim, subordination (whether equitable, contractual, or otherwise, except for any lien subordination under the Prepetition Collateral Trust Agreement contemplated herein), cause of action or any other challenge of any nature under the Bankruptcy Code (including, without limitation, under chapter 5 of the Bankruptcy Code), under applicable nonbankruptcy law or otherwise (including, without limitation, any applicable state Uniform Fraudulent Transfer Act or Uniform Fraudulent Conveyance Act);

(e) subject to the reservation of rights set forth in paragraph 25 below, including without limitation the preservation of the Creditors' Committee's right to seek derivative standing to assert Claims and Defenses (defined in paragraph 25 below) on behalf of the Debtors' estates before the expiration of the Challenge Period in accordance with the provisions of paragraph 25(b) below, the Debtors and their estates hereby absolutely and unconditionally forever waive, discharge and release each of the Prepetition Lenders, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners,

managers, current and former equity holders, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "Prepetition Secured Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the Prepetition Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable Prepetition Debt, the Prepetition Liens, Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Lenders, Prepetition Indenture Trustee or the Prepetition Secured Noteholders, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Final Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable Prepetition Debt or any payments made on account of the applicable Prepetition Debt, or the validity, enforceability, priority or non-avoidability of the applicable Prepetition Liens or the Prepetition Collateral securing the applicable Prepetition Debt.

(f) effective upon entry of this Order, the Debtors and their estates hereby absolutely and unconditionally forever waived, discharged and released each of the DIP Agent and the DIP Lenders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners, managers, current and former equity holders, agents,

attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "DIP Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the DIP Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable DIP Obligations, DIP Liens, DIP Collateral or the debtor-creditor relationship among any of the DIP Agent or DIP Lenders, on the one hand, and any of the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable DIP Obligations or any payments made on account of the applicable DIP Obligations, or the validity, enforceability, priority or non-avoidability of the applicable DIP Liens securing the applicable DIP Obligations; provided that, nothing in the Interim Order or herein shall relieve the DIP Party Releasees from fulfilling their obligations or commitments under the DIP Facility or operate as a release related thereto.

5. Cash Collateral. For purposes of this Final Order, the term "Cash Collateral," including, without limitation, all cash proceeds of Prepetition Collateral, shall have the meaning ascribed to it in section 363(a) of the Bankruptcy Code.

6. Use of Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents, this Final Order, the Prepetition Collateral Trust Agreement and in accordance with the Budget (as defined below), to use the Cash Collateral, during the period from the Petition Date through termination of the DIP Obligations pursuant to the DIP Documents, solely for working capital and general corporate purposes. The Debtors' right to use the Cash Collateral shall terminate automatically on the earlier of: (i) the Maturity Date, as defined in the DIP Documents; and (ii) the occurrence of an Event of Default under any DIP Documents, pursuant to which the DIP Agent provides the Debtors, with a copy to the Debtors' counsel, five (5) days' prior written notice (which shall run concurrently with any notice provided under the applicable DIP Documents).

7. Findings Regarding the Financing and Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have a need to obtain the full amount of the financing provided under the DIP Facility and to use the Cash Collateral to, among other things, permit the orderly continuation of their businesses, preserve their going concern value, maintain business relationships with vendors, suppliers and customers, satisfy payroll obligations, make capital expenditures, pay for certain costs and expenses related to the Debtors' Chapter 11 Cases, and satisfy the Debtors' other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity made available through the DIP Facility and the use of Cash Collateral and other financial accommodations under the DIP Facility and hereunder is vital to the preservation and maintenance of the Debtors' going concern value and to the Debtors' successful reorganization.

(c) The Debtors are unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agent and the DIP Lenders are willing to provide the DIP Facility, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Order, as applicable, and provided that the DIP Liens, the Superpriority Claims and other protections granted by this Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility approved by this Order. The DIP Agent and the DIP Lenders have acted in good faith in agreeing to provide the DIP Facility approved by this Order and to be further evidenced by the DIP Documents and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The DIP Facility as set forth herein is vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the DIP Facility is not obtained. Consummation of the DIP Facility pursuant to the terms of this Order therefore is in the best interests of the Debtors' estates.

(f) The DIP Documents and the DIP Facility contemplated thereunder, each as authorized hereunder, have been negotiated in good faith and at arm's length among the

Debtors, the DIP Agent and the DIP Lenders, and the terms of the DIP Facility are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents, including the Obligations (as defined in the DIP Documents, collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(g) The majority of the Prepetition Secured Noteholders have consented to the Debtors' entry into the DIP Facility on the terms described herein and therein, including the priming of their Prepetition Notes Liens by the DIP Liens in exchange for adequate protection of their interest in the Prepetition Collateral as set forth in this Order and to the Refinancing.

(h) This Court concludes that entry of this Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their assets.

(i) Based upon the record before the Bankruptcy Court, the terms of the use of Cash Collateral and the adequate protection granted in this Final Order have been negotiated at arms' length and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors and are consistent with the Debtors' fiduciary duties.

8. Authorization of the Financing and the DIP Documents.

(a) The Borrower is hereby authorized to borrow the full amount of money pursuant to the DIP Facility, and the guarantors under the DIP Facility are hereby authorized to guarantee such borrowings and the Borrower's obligations with respect to such borrowings, up to an aggregate principal amount of $40,000,000 (plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents) under the DIP Facility, in accordance with the terms of this Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to consummate the Refinancing, to provide working capital for the Debtors and to pay interest, fees and expenses (including, the DIP Agent's and DIP Lenders' professional fees and expenses whether incurred pre- or post-petition) in accordance with this Order and the DIP Documents. Of the $40,000,000 specified above (a) $27,500,000 was made available to the Borrower upon entry of the Interim Order and (b) the remaining $12,500,000 will be made available to the Borrower as a delayed draw term loan after the entry of this Final Order, with the actual principal amount available to be borrowed at any time being subject to conditions set forth in the DIP Documents and this Final Order.

(b) The Debtors were, pursuant to the Interim Order, and are hereby authorized and directed to execute, issue, deliver, enter into and adopt, as the case may be, the DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the Budget (as defined herein).

(c) In furtherance of the foregoing and without further approval of this Court, each Debtor was, pursuant to the Interim Order, and is hereby authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees referred to in this Final Order and in the DIP Documents including, without limitation, the reasonable fees and out-of-pocket expenses of the professionals of the DIP Agent and the DIP Lenders (whether incurred pre-or post-petition).

(d) The Debtors are further hereby authorized to execute, deliver and perform one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in such form as the Debtors and the DIP Agent may agree, and no further approval of the Bankruptcy Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (and any reasonable fees paid in connection therewith) that do not (A) shorten the maturity or the scheduled termination date thereunder, or (B) increase the commitments or the rate of interest (other than invoking the default rate upon an Event of Default) payable thereunder.

(e) The Debtors are further hereby authorized and directed to (i) make the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of any fees and other amounts due, including any reimbursement of indemnified obligations referred to in the DIP Documents (and in any separate letter agreements between such applicable parties and the Debtors in connection with the DIP Facility) and reasonable costs and expenses as may be due from time to time, including, without limitation, the reasonable fees and expenses of the professionals retained as provided for in the DIP Documents (whether incurred pre-or post-

petition), without the need to file retention motions or fee applications; (ii) perform all other acts required under or in connection with the DIP Documents, including the granting and perfection of the DIP Liens and the Superpriority Claims as permitted herein and therein; and (iii) cause the execution and delivery of and performance under the DIP Facility's guarantees.

(f) Upon execution and delivery of the DIP Documents, pursuant to the provisions of the Interim Order, the DIP Documents constituted, and by the provisions of this Final Order, shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms, the Interim Order (as applicable) and this Final Order. No obligation, payment, transfer or grant of a security or other interest under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.

(g) The Debtors' borrowings from the DIP Lenders under the DIP Facility and this Order will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and only in express accordance with and to the extent set forth in the Budget (as defined below), solely (a) to consummate the Refinancing which occurred immediately following entry of the Interim Order, whereupon the Prepetition Term Loan Liens were released and terminated except that (i) unless otherwise ordered by the Court, if any Prepetition Term Loan Debt is subsequently reinstated after the payment thereof because such payment (or any portion thereof) is required to be returned or repaid to the Debtors or the DIP Lenders then such Prepetition Term Loan Liens shall be reinstated (unless such Prepetition Term Loan Liens shall have been avoided) and (ii) such reinstated Prepetition Term Loan Liens shall be junior

and subordinate in all respects to the DIP Lenders' liens on and security interests in the DIP Collateral (as defined below) (including, without limitation, the DIP Liens (as defined below)) granted under this Final Order and/or the DIP Documents (such junior liens and security interests of the Prepetition Lenders are hereinafter referred to as the "Contingent Liens", and any such reinstated Prepetition Term Loan Debt described in clause (i) of this sentence is hereinafter referred to as the "Contingent Prepetition Debt"); and (b) for working capital and other general corporate purposes and payment of fees and expenses in connection with the Cases. The Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent and the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Term Loan Liens.

(h) In the event that the Prepetition Lenders (in their capacities as such) are ordered by the Bankruptcy Court to disgorge, refund or in any manner repay to the Debtors or their estates any amounts (the "Disgorged Amounts") leading to Contingent Prepetition Debt, the Disgorged Amounts, unless otherwise ordered by the Bankruptcy Court, shall be placed in a segregated interest bearing account in which the Prepetition Lenders shall have the first lien upon, pending a further final, non-appealable order of a court of competent jurisdiction regarding the distribution of such Disgorged Amounts (either returning the Disgorged Amounts to the Prepetition Lenders, distributing such amounts to the Debtors or otherwise); provided that, to the extent the Disgorged Amounts are returned to the Prepetition Lenders, they shall receive such amounts plus any interest accrued at the non-default rate set forth in the Prepetition Term Loan Documents.

(i) (i) The proceeds from the DIP Loans shall not be loaned or advanced to, or invested in (in each case, directly or indirectly), any entity that is not a Debtor, (ii) the proceeds from the DIP Facility loaned or advanced to, or invested in, any non-Borrower Debtor shall be evidenced by an intercompany note, in form and substance reasonably satisfactory to the DIP Agent, for the full amount of the proceeds so loaned, advanced or invested, (iii) such intercompany note shall be pledged to the DIP Agent for the benefit of the DIP Lenders, to secure the applicable DIP Obligations (as defined herein), and (iv) all intercompany liens of the Debtors, if any, will be contractually subordinated to the liens securing the DIP Facility on terms satisfactory to the DIP Agent.

(j) In no event shall the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable.

(k) Following the date of the Interim Order and prior to the entry of this Final Order, the Initial DIP Lenders, through secondary market assignments, provided certain qualified holders of the Prepetition Secured Notes (including the Initial DIP Lenders and each member of the ad hoc group of Prepetition Secured Noteholders) with an opportunity to participate in the DIP Facility on a pro rata basis based on any such holder's holdings of Prepetition Secured Notes as of the Petition Date. For the avoidance of doubt, (i) any portion of the DIP Facility that was not assigned pursuant to the foregoing was allocated on a pro rata basis among the DIP Lenders, and (ii) any assignee pursuant to the assignment process described herein was provided its pro rata share of commitment fees.

9. Superpriority Claims.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority senior administrative expense claims against the Debtors with priority over any and all administrative expense claims, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the "Superpriority Claims"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to the payment of the Carve-Out (as defined below) to the extent specifically provided for herein. Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Agent to be applied or further distributed by the DIP Agent on account of the applicable DIP Obligations in such order as is specified in this Order and the applicable DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the "Carve-Out" means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) and 31 U.S.C. § 3717 (as to the U.S. Trustee, in such amount as agreed to by the U.S. Trustee or Order of the Court); (ii) all reasonable fees and expenses incurred by a trustee appointed under section

701 of the Bankruptcy Code in an amount not to exceed $50,000; (iii) to the extent allowed at any time, but subject in all respects to the Budget (as defined in below) and the terms of this Order, all accrued and unpaid fees, disbursements, costs and expenses ("Professional Fees") (other than any monthly fee, restructuring fee, sale fee or other success fee of any investment bankers or financial advisors of the Debtors), incurred by professionals or professional firms retained by the Debtors and the Creditors' Committee, if any, whose retention has been approved by the Court during these Cases pursuant to sections 327 and 1103 of the Bankruptcy Code (collectively, "Professional Persons"), at any time before or on the first business day following delivery by any DIP Agent of a Carve Out Trigger Notice (as defined below), to the extent such Professional Fees are allowed by the Bankruptcy Court whether prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by any DIP Agent of the Carve Out Trigger Notice, to the extent allowed by the Bankruptcy Court, all unpaid fees, disbursements, costs and expenses incurred by Professional Persons, in an aggregate amount not to exceed $500,000 (the amount set forth in this clause (iv) being the "Carve-Out Cap"). For purposes of the foregoing, the term "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Agent to the Debtors and their lead counsel, the U.S. Trustee, counsel to the Prepetition Lenders, counsel to the Prepetition Indenture Trustee, counsel to the Prepetition Secured Noteholders and lead counsel to the Creditors' Committee, if any, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the applicable DIP Documents, expressly stating that the Carve-Out Cap is invoked and the Event of Default that is alleged to have occurred and be continuing. For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all DIP Obligations and liens securing the DIP Obligations. Nothing

herein shall be construed to impair the ability of any party to object to the allowance by the Court of any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii) and (iv) above.

(c) The DIP Agent and DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with these Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Order or otherwise shall be construed (i) to obligate the DIP Agent or the DIP Lenders in any way to pay compensation to or to reimburse expenses of any Professional Persons, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if actual allowed Professional Fees are higher in fact than reflected in the Budget (as defined below); or (iii) as consent to the allowance of any professional fees or expenses of any Professional Persons. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code and applicable law. The DIP Agent's and DIP Lenders' liens and claims shall, however, be subject to the Carve-Out as set forth in this Final Order.

10. DIP Liens.

As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral, the security interests and liens identified below are hereby granted to the DIP Agent for its own benefit and the respective benefit of the DIP Lenders (all property

identified in clauses (a), (b), (c), (d) and (e) below, together with all other property to which the DIP Agent is granted a lien under the applicable DIP Documents (other than as expressly excluded pursuant to this Order), being collectively referred to as the "DIP Collateral"), subject to (a) the terms of the DIP Facility and (b) payment of the Carve-Out as provided herein (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the "DIP Liens"). Notwithstanding the foregoing, any DIP Agent may take any action (and is, to the extent necessary in connection therewith, hereby granted relief from the automatic stay), to evidence, confirm, validate or perfect, or to ensure the contemplated priority of, such liens, and the Debtors shall execute and deliver to the DIP Agent and the DIP Lenders all such financing statements, notices and other documents as the DIP Agent or any DIP Lender may reasonably request in connection therewith and shall deliver account control agreements or other documentation in respect of and evidencing perfection of all collection and deposit accounts to the extent required by the DIP Documents.

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior (but subject to the priorities set forth in the DIP Documents) security interest in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (or to valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code) (collectively, "Unencumbered Property"), including without limitation, all inventory, accounts, accounts receivable, general intangibles (or "intangibles" under any applicable Canadian PPSL), chattel paper, contracts, owned real estate, real and

personal property leaseholds, property, plants, fixtures, machinery, equipment, as-extracted collateral, all coal and other minerals as extracted from the ground, vehicles, vessels, deposit accounts, commercial tort claims, documents, equity interests, books and records, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, letter of credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property and stock of subsidiaries of the Debtors.

(b) Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Agent, for the benefit of the DIP Lenders, shall have a valid, binding, continuing, enforceable, fully-perfected first-priority senior priming lien on, and security interest upon all pre- and post-petition property of the Debtors and any other obligors or credit parties under the DIP Facility, including, without limitation, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise), including Cash Collateral, and any investment of such cash and cash collateral, inventory, accounts receivable, letter of credit rights and other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, vehicles, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring of profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens (i) presently securing the Prepetition Debt and (ii) that will secure the Contingent Prepetition Debt in accordance with this Final Order. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties

(including, without limitation, the Contingent Liens and the Adequate Protection Liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interest of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date. The DIP Collateral shall be deemed to include, among the other assets purported to be collateral as described herein, all collateral securing All-Asset Priority Obligations; the DIP Facility, DIP Obligations and DIP Liens shall be deemed to have all the rights and benefits of All-Asset Priority Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement), in each case, to the extent the proceeds of the DIP Facility refinanced the Prepetition Term Loans.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest (subject to the priorities set forth in the DIP Documents) in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates (other than property described in clauses (a), (b), or (d) of this paragraph 10, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (in each case, other than the Prepetition Liens, the Contingent Liens and the Adequate Protection Liens), which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the DIP Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors.

(e) Notwithstanding the foregoing clauses (a), (b), (c) and (d), the DIP Collateral under this Final Order shall exclude the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions"), but shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds").

ADEQUATE PROTECTION OF PREPETITON LENDERS

11. Adequate Protection of Prepetition Lenders. Until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, the Prepetition Secured Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Lenders' interest in the Prepetition Term Loan Collateral, the Prepetition Term Loan Debt and the Contingent Debt, including, without limitation, any such diminution resulting from

the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Prepetition Term Loan Collateral, the priming of the Prepetition Lenders' security interests and liens in the Prepetition Term Loan Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and the Interim Order and this Final Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Lenders are hereby granted the following (collectively, the "Prepetition Lenders Adequate Protection Obligations"):

(a) Adequate Protection Liens. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution and the amount of any Contingent Debt, (a) a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including any Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens and any liens on the DIP Collateral to which such DIP Liens are junior and (ii) the Carve-Out (such liens, the "Prepetition Lenders Adequate Protection Liens") and (b) the Contingent Liens to secure any Contingent Prepetition Debt. Without limiting the generality of the foregoing, (A) the Contingent Liens and the Prepetition Adequate Protection Liens granted to the Prepetition Lenders hereunder shall be junior and subordinate in all respects to the DIP Liens and the Carve-Out; (B) the Contingent Prepetition Debt shall be junior and subordinate in right of payment to all DIP Obligations and the Carve-Out; (C) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents and this Final Order, the Prepetition Lenders shall have no right to seek or exercise any

enforcement rights or remedies in connection with the Contingent Prepetition Debt, the Contingent Liens or the Prepetition Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Prepetition Credit Agreement); (D) the Prepetition Lenders shall be deemed to have consented to any sale or disposition of DIP Collateral permitted under the DIP Facility or approved, arranged for or by the DIP Agent or the requisite DIP Lenders, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such DIP Collateral (where the DIP Agent also releases any DIP Liens as necessary); (E) the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense (for which the Prepetition Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of any Prepetition Lenders' liens on or security interests in any portion of the DIP Collateral subject to any sale or disposition permitted under the DIP Facility or approved or arranged for by the DIP Agent or any of the DIP Lenders (where the DIP Agent also releases any DIP Liens as necessary); and (F) upon this Final Order becoming a final and nonappealable order and the expiration of the Challenge Period (as defined below) with no challenge having been brought, or if such a challenge is brought, upon the entry of a final judgment and the payment to the Prepetition Lenders of all amounts owed by the Debtors under the Prepetition Term Loan Documents, the Interim Order and this Final Order, the Contingent Liens and the Prepetition Adequate Protection Liens shall terminate and be released (automatically and without further action of the parties), and the Prepetition Lenders shall execute and deliver such agreements to evidence and effectuate such termination and release as the Debtors or the DIP Agent may request, and the Debtors and the DIP Agent

shall be authorized to file on behalf of the Prepetition Lenders such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction.

(b) Section 507(b) Claim. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order, subject only to the Superpriority Claims and the Carve-Out, a superpriority claim (the "Prepetition Lenders Adequate Protection Claim"), as provided for in sections 503(b) and 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims and any other claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided, however, that the Prepetition Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under sections 503(b) and 507(b) of the Bankruptcy Code granted hereunder or under the Prepetition Term Loan Documents unless and until the DIP Obligations have indefeasibly been paid in full in cash in accordance with the DIP Documents; and provided further, that the Prepetition Lenders hereby irrevocably waive the section 503(b) claim granted to them by the Interim Order and this Final Order upon the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

(c) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make adequate protection payments as follows: (i) payment of interest on a monthly basis at the default rate as set forth in the

Prepetition Credit Agreement (only to the extent of any amounts outstanding), (ii) immediate, non-refundable cash payment of all accrued and unpaid fees and disbursements owing to the Prepetition Lenders under the Prepetition Documents and incurred prior to the Petition Date, (iii) until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, current cash payments of all reasonable out-of-pocket costs, fees and expenses payable to the Prepetition Lenders under the Prepetition Documents as may hereafter be incurred in accordance with the Prepetition Documents, (iv) all reasonable fees, costs, expenses and disbursements (whether incurred pre-or post-petition) of one primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP, and, commencing March 6, 2015, all reasonable fees, costs, expenses, disbursements and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., to the Prepetition Lenders, in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Lenders, promptly upon receipt of invoices therefor without the need to file retention motions or fee applications, and (v) continued maintenance and insurance of the Prepetition Term Loan Collateral and the DIP Collateral as required under the Prepetition Term Loan Documents and the DIP Documents (collectively, the "Prepetition Lenders Adequate Protection Payments").

ADEQUATE PROTECTION OF PREPETITON SECURED NOTEHOLDERS

12. Adequate Protection of Prepetition Secured Noteholders. The Prepetition Secured Noteholders are entitled, pursuant to sections 361, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Notes Collateral,

including any Cash Collateral, for and equal in amount to any aggregate diminution in the value of the Prepetition Secured Noteholders' interests in the Prepetition Notes Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and the Prepetition Notes Collateral, the priming of the Prepetition Secured Noteholders' security interests and liens in the Prepetition Notes Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Final Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders are hereby granted the following (collectively, the "Prepetition Noteholders Adequate Protection Obligations", and together with the Prepetition Lenders Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Prepetition Secured Noteholder Adequate Protection Liens. The Prepetition Indenture Trustee, on behalf of itself and for the benefit of the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, (iii) the Prepetition Liens, and (iv) the Prepetition Lenders Adequate Protection Liens (the "Prepetition Noteholders Adequate Protection Liens", and together with the Prepetition Lenders Adequate Protection Liens, the "Adequate Protection Liens"). The Prepetition Indenture Trustee and the Prepetition Secured Noteholders were, pursuant to the Interim Order,

and are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the Prepetition Secured Noteholders Adequate Protection Liens. Whether or not the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of the Interim Order.

(b) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make non-refundable adequate protection payments which shall include (a) ongoing payments, when due or as soon as practicable thereafter, of all reasonable and documented fees, costs, expenses and disbursements, including (i) after entry of this Final Order, $450,000 in fees and expenses payable to the ad hoc group of Prepetition Secured Noteholders' primary prepetition counsel, (ii) the ad hoc group's postpetition primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP (whether incurred pre- or post-petition), and, commencing March 6, 2015, all reasonable and documented fees, costs, expenses, disbursements and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Secured Noteholders, each in its capacity as advisor, to the Prepetition Secured Noteholders, and in each case, incurred in connection with the Debtors, the Chapter 11 Cases

or the transactions contemplated hereby and (iii) fees and expenses (including attorneys' fees) of the Prepetition Indenture Trustee incurred (whether pre- or post-petition) in connection with the Debtors, the Chapter 11 Cases or the transactions contemplated hereby to the extent payable under the Prepetition Indenture; and (b) continued maintenance and insurance of the Prepetition Notes Collateral and the DIP Collateral as required under the Prepetition Documents and the DIP Documents (collectively, the "Prepetition Noteholders Adequate Protection Payments", and together with the Prepetition Lenders Adequate Protection Payments, the "Adequate Protection Payments").

(c) Prepetition Secured Noteholders' Section 507(b) Claim. The Prepetition Indenture Trustee, on behalf of itself and the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order, subject to the Carve-Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims held by the DIP Agent and the DIP Lenders and the Prepetition Lenders Adequate Protection Claim, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided that, unless otherwise expressly agreed to in writing by the DIP Agent, the Prepetition Lenders (until expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders), the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims granted under the Interim Order or hereunder or under the Prepetition Documents unless and until the DIP Obligations and Prepetition Term Loan Debt have indefeasibly been paid in cash

in full in accordance with the DIP Documents and this Final Order (the "Prepetition Noteholders Adequate Protection Claim", and together with the Prepetition Lenders Adequate Protection Claim, the "Adequate Protection Claims").

13. Sufficiency of Adequate Protection.

(a) Under the circumstances and given that the Adequate Protection Liens, the Adequate Protection Claims and the Adequate Protection Payments (collectively, the "Adequate Protection Obligations") are consistent with the Bankruptcy Code, the Bankruptcy Court finds that such adequate protection is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Except as expressly provided herein, nothing contained in this Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party, the DIP Agent or any DIP Lenders.

(b) Notwithstanding anything in paragraphs 11 and 12 to the contrary, following delivery of a Carve-Out Trigger Notice and prior to the payment to the Prepetition Secured Parties on account of any adequate protection or otherwise, the DIP Obligations shall have been paid in full.

(c) The Adequate Protection Obligations (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the "equities of the case" exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or pari passu with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be valid and enforceable

against any trustee, any other estate representative or litigation trust appointed in these Cases or any successor cases, and/or upon the dismissal of any of these Cases.

14. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any successor cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to the Debtors and the Debtors' estates, and such financing is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth the DIP Documents.

15. Refinancing of the Prepetition Term Loan Debt. Following the entry of the Interim Order and as part of the initial borrowing under the DIP Facility, the Debtors used a portion of the proceeds from the DIP Facility, which portion was designated as "All-Asset Priority Lien Debt" (as such term is defined in the Prepetition Collateral Trust Agreement), in accordance with the DIP Documents and the Interim Order to consummate the Refinancing, upon which, the existing liens on the Prepetition Term Loan Collateral were released and terminated (which shall be deemed to have occurred upon the expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders). After the Refinancing, the Debtors and the DIP Agent were, pursuant to the Interim Order, and are hereby authorized to execute and file any termination statements, releases or other documents

necessary to effectuate and/or evidence the release and termination of the Prepetition Lenders' liens on or security interests in any portion of the Prepetition Term Loan Collateral, and the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent, the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Liens. Notwithstanding anything to the contrary in the Interim Order, this Final Order or in any other order of this Court, the Prepetition Term Loan Debt, including, without limitation, All-Asset Priority Lien Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement) shall not be deemed discharged or the Refinancing deemed consummated until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

16. Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents.

17. Protection of DIP Lenders' Rights.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified (and any stay of such vacation or modification under Bankruptcy Rule 4001(a)(3) is waived) without further order of the Bankruptcy Court to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in

the DIP Documents and this Final Order without further order of or application or motion to the Bankruptcy Court, provided that, such rights and remedies that are exercisable only upon the occurrence of an Event of Default (as defined in the DIP Documents and as set forth in this Final Order), but subject in all respects to the Carve-Out Cap, shall require the DIP Agent to give five (5) days' prior written notice (which five days' notice period (the "Default Notice Period") shall run concurrently with any notice provided under the DIP Documents) to the U.S. Trustee, the Debtors, the Prepetition Lenders, the Prepetition Indenture Trustee, the Prepetition Secured Noteholders, and the Creditors' Committee, if any, of such DIP Agent's intent to exercise such rights and remedies; provided that, the Debtors shall not have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Documents; and provided further that during the Default Notice Period, the Debtors shall have no authority to borrow under the DIP Facility unless the DIP Agent otherwise consents, and the DIP Agent may terminate the DIP Facility and declare the DIP Obligations to be immediately due and payable, and the Debtors' authority to use Cash Collateral shall be as set forth in the Budget and limited solely to payment of expenses critical to preservation of the Debtors' estates and the payment of the fees, costs and expenses to administer these Chapter 11 Cases, as agreed by the DIP Agent in its sole discretion. The Debtors and the Prepetition Secured Parties shall waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Agent and the DIP Lenders set forth in this Final Order and in the DIP Documents.

(b) The DIP Agent's or any DIP Lender's delay or failure to exercise rights and remedies under the applicable DIP Documents or this Final Order shall not constitute a waiver of such DIP Agent's or such DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

(c) Except as otherwise expressly set forth in this Final Order, the Debtors irrevocably waive any right, without the prior written consent of the DIP Agent, (a) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral, whether senior, equal or subordinate to the DIP Agent's liens and security interests; (b) to use, or seek to use, Cash Collateral or (c) to modify or affect any of the rights of the DIP Agent or the DIP Lenders under this Final Order or the DIP Documents by any plan of reorganization proposed or confirmed in these Chapter 11 Cases or subsequent order entered in these Chapter 11 Cases.

18. Approved Budget.

(a) For purposes of this Order, the term "Budget" means the following: (a) the budget, attached to the Interim Order as Exhibit A, the "Initial Budget," which is an initial 13-week budget delivered by the Debtors to the DIP Agent prior to the Petition Date and commencing with the week during which the Petition Date occurs, containing line items of sufficient detail to reflect the Debtors' consolidated projected receipts and disbursements for such 13-week period, including, without limitation, the anticipated weekly uses of the DIP Facility and cash collateral for such period, and which shall provide, among other things, for the payment of the fees and expenses, including professional fees relating to the DIP Facility (whether incurred pre-or post-petition), ordinary course expenses, fees and expenses related to

the Cases, and working capital and other general corporate needs, which Initial Budget was in form and substance acceptable and approved by the DIP Agent and Majority Lenders (as defined in the DIP Facility), in their sole discretion (as such Initial Budget shall be amended, supplemented and/or extended in the manner set forth in this Final Order, the "Budget"); and (b) on or before 5:00 p.m. prevailing Eastern Time on the first Business Day (as defined in the DIP Facility) of each month following the Petition Date, commencing with May 1, 2015, the Debtors shall furnish to the DIP Agent and counsel to the Creditors' Committee a monthly supplement to the Initial Budget (or the previously supplemented Budget, as the case may be), covering a 13-week period that commences with the week such supplement is delivered, together with a variance analysis from the Budget (or the previously supplemented Budget, as the case may be). Such monthly supplements to the Budget shall become the Budget upon the earlier of (a) written acknowledgement from the DIP Agent that the proposed supplement is substantially in the form of the Initial Budget (or the previously supplemented Budget, as the case may be) and is otherwise in form and substance acceptable to and is approved by the DIP Agent and Majority Lenders (provided that any proposed changes in the proposed supplement to any of the Budget figures already covered by the Initial Budget (or the previously supplemented Budget, as the case may be) must be satisfactory to the DIP Agent in its sole discretion) or (b) within 10 Business Days after receipt of such proposed supplement by the DIP Agent, provided that the DIP Agent has not provided a written objection to the proposed supplement; the Initial Budget (or the previously supplemented Budget, as the case may be) shall remain the Budget if the DIP Agent objects to the proposed supplement and until such time as the DIP Agent provides written acknowledgement that a revised version of the proposed supplement is otherwise in form and substance acceptable to and is approved by the

DIP Agent. Notwithstanding anything herein or in the DIP Documents to the contrary, unless specifically authorized hereunder or in writing by the DIP Agent or as may be provided in the Budget, no cash collateral may be paid or transferred to any non-Debtor subsidiary or affiliate of the Debtors.

(b) Notwithstanding anything in the DIP Documents to the contrary, the Debtors shall also deliver to the DIP Agent (i) no later than 5:00 p.m. (ET) on Wednesday of each calendar week following the immediately preceding week, commencing on April 15, 2015, an updated variance report (the "Variance Report") on a weekly basis setting forth (1) actual cash receipts and disbursements for the prior week and (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a weekly and cumulative basis, and an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent, (ii) no later than 5:00 p.m. (ET) on the first Business Day (as defined in the DIP Facility) of each calendar month, an updated Budget and (iii) no later than the date that the Variance Report for the last week of each month is required to be delivered to the DIP Agent, (x) a variance report on a monthly basis setting forth (1) actual cash receipts and disbursements for the applicable month, (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a monthly basis, and (3) an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent (the "Budget Variance Report") and (y) a report detailing fees and expenses for professional services incurred by the Debtors during the preceding calendar month. As of the last day of each calendar month commencing with the calendar month ending April 30, 2015, (a) aggregate disbursements of the Debtors (other than professional fees) made as set forth in

the Budget Variance Report for such month shall not be greater than 120% of the aggregate amount specified in the corresponding applicable Budget; and (b) aggregate revenues of the Debtors received as set forth in the Budget Variance Report for such month shall be not less than 80% of the aggregate amount specified in the corresponding applicable Budget.

19. Limitation on Charging Expenses Against Collateral. Except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent and the DIP Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders. In no event shall the DIP Agent or the DIP Lenders be subject to (i) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Collateral.

20. Payment of Fees and Expenses.

(a) No payments (including professional fees and expenses) with respect to the DIP Obligations or the Adequate Protection Obligations shall be subject to Bankruptcy Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any such payments shall be required to file any interim or final fee applications with the Bankruptcy Court or otherwise seek the Bankruptcy Court's approval of any such payments; provided, however, such invoices shall be submitted to the Debtors, the

U.S. Trustee, and the Creditors' Committee (if any) at least 10 days prior to the payment thereof.

(b) Seaport Global Securities LLC ("SGS"), the Debtors' financial advisors and investment bankers, stipulates that no DIP Financing Fee (as defined in that certain engagement letter, dated as of December 7, 2014, with the Debtors (the "Engagement Letter")) shall be payable to SGS, under Section 4(c) of the Engagement Letter or otherwise, as a result of the Debtors' entry into the DIP Documents and the funding provided thereunder (including any incremental funding contemplated thereunder) in accordance with the Interim Order and this Final Order.

21. Credit Bid. The DIP Agent and the DIP Lenders, shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization. The Prepetition Lenders and the Prepetition Secured Noteholders (subject to the terms of the Prepetition Documents) shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization, unless the Bankruptcy Court, for cause, orders otherwise.

22. Perfection of DIP Liens.

(a) The DIP Agent and the DIP Lenders were, pursuant to the Interim Order, and are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as its true and lawful attorney, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over deposit accounts and securities accounts or any other asset, in each case, to validate and perfect the

liens and security interests granted to them in the DIP Documents, the Interim Order and this Final Order. Whether or not the DIP Agent on behalf of the DIP Lenders, each in its discretion, chooses to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over deposit accounts and securities accounts or any other assets, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the reasonable request of the DIP Agent, without any further consent of any party, the DIP Agent, the Debtors, each DIP Lender and the Prepetition Secured Parties are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further perfect the DIP Liens.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording. For the avoidance of doubt, the automatic stay provisions of section 362(a) of the Bankruptcy Code shall be modified (and any stay of such modification under Bankruptcy Rule 4001(a)(3) is waived) to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and in the immediately preceding subparagraph (a).

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds

thereof, or other Collateral related thereto, was, under the Interim Order, and is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Final Order.

23. Preservation of Rights Granted Under the Order.

(a) Except as expressly provided herein or in the DIP Documents, no claim or lien having a priority senior to or pari passu with those granted by the Interim Order, this Final Order and the DIP Documents to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be granted or allowed while any portion of the DIP Obligations or the Adequate Protection Obligations (with respect to the Prepetition Term Loan Debt, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) remain outstanding, and the DIP Liens and the Adequate Protection Liens (with respect to the Prepetition Term Loan Liens, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall not (i) be subject to or junior to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (ii)

subordinate to or made pari passu with any other lien or security interest, whether under sections 363 or 364 of the Bankruptcy Code or otherwise.

(b) In addition to the Events of Default set forth in the DIP Documents, unless all DIP Obligations and all Adequate Protection Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Documents and terminate the right of the Debtors to use Cash Collateral hereunder if any of the Debtors seek, or if there is entered, unless the DIP Agent has otherwise consented: (i) any modification or extension of this Final Order without the prior written consent of the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, (ii) an order converting or dismissing these Chapter 11 Cases; (iii) an order appointing a Chapter 11 trustee in these Chapter 11 Cases or any other representative or other similar appointment, (iv) an order appointing an examiner with enlarged powers in these Chapter 11 Cases, (v) an order providing for a change of venue with respect to these Chapter 11 Cases and such order shall not have been reversed or vacated within ten (10) days; (vi) an order approving a plan of reorganization or the sale of all or substantially all of the DIP Collateral (except to the extent permitted under the DIP Documents) or the Prepetition Collateral (except to the extent permitted under the Prepetition Documents) shall have been entered which does not provide for the repayment in full in cash of all DIP Obligations (other than any contingent obligations not yet due and payable) and all Contingent Obligations and Adequate Protection Obligations (with respect to the Prepetition Lenders Contingent Obligations and Adequate Protection Obligations, until the expiration of the Challenge Period

with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) upon the consummation thereof. If an order dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims, 507(b) claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims granted pursuant to this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims, liens and security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest, including the priorities set forth herein and in the DIP Documents) until all DIP Obligations and all Adequate Protection Obligations (with respect to the Prepetition Lenders Adequate Protection Obligations, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall have been paid and satisfied in full and (y) the Bankruptcy Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in

clause (x) above; provided that the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Debt or under the Prepetition Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full in accordance with the DIP Documents.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity, priority or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations or the Adequate Protection Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, the DIP Obligations or the Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code (including, without limitation, with respect to any payments received in connection with the Refinancing), this Final Order and pursuant to the DIP Documents.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the 507(b) claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of these Chapter 11 Cases to a case under Chapter 7, dismissing these Chapter 11 Cases, approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents, or except to the extent that a release of such liens is authorized under the Prepetition Collateral Trust Agreement) or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in these Chapter 11 Cases (except an Acceptable Reorganization Plan (as defined in the DIP Facility)) and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases, or in any superseding Chapter 7 cases under the Bankruptcy Code, and the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments, the other administrative expense claims granted pursuant to this Final Order and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted under the DIP Documents and this Final Order shall continue in full force and effect and shall be binding on any Chapter 7 trustee, Chapter 11 trustee, any litigation trust

representative, other or similar party hereinafter appointed or elected for the Debtors' estates until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash as set forth herein and in the DIP Documents.

24. Exculpation. Nothing in this Final Order, the Interim Order, the DIP Documents, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. In addition, (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Debtors; *provided that*, (i) the foregoing shall not apply to any act or omission by the DIP Agent or the DIP Lenders that constitutes gross negligence or willful misconduct by the DIP Agent or the DIP Lenders as finally determined by a court of competent jurisdiction.

25. Effect of Stipulations On Third Parties.

(a) The stipulations and admissions contained in this Final Order, including, without limitation, in paragraph 4 of this Final Order, shall be binding upon each Debtor and their subsidiaries and any of their respective successors and assigns (including, without limitation, any Chapter 7 or Chapter 11 trustee appointed or elected for a Debtor), and each person or entity party to the DIP Documents in accordance with their respective terms and the terms of this Final Order, in all circumstances.

(b) The stipulations and admissions contained in this Final Order, including without limitation, in paragraph 4 of this Final Order, shall be binding on a permanent basis upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including the Creditors' Committee, if any) and any other person or entity acting on behalf of the Debtors' estates, unless (a) such committee or any other party-in-interest, in each case, with requisite standing granted by the Bankruptcy Court, has timely and properly filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in paragraph 26) by no later than the date that is the later of (i) in the case of any such adversary proceeding or contested matter filed by a party-in-interest with requisite standing other than the Creditors' Committee, 60 days after the Petition Date, (ii) in the case of any such adversary proceeding or contested matter filed by the Creditors' Committee, July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee), (iii) in the case of the Creditors' Committee having filed a motion on or before July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee) seeking derivative standing to pursue Claims and Defenses (defined herein), the latter of (a) 3 days after the entry of a final order granting such standing or (b) ten (10) days from entry of an order by the Bankruptcy Court denying standing, unless (X) the Creditors' Committee seeks to extend the such period with the Bankruptcy Court during the 10-day period from entry of an order by the Bankruptcy Court denying standing, (Y) the Bankruptcy Court grants such relief extending the expiration date for such period and (Z) the Creditors' Committee files its Notice of Appeal as contemplated by Rule 8002 of the Federal Rules of Bankruptcy Procedure, (iv) any such later date agreed to in writing by the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, and (v) such longer period as the Bankruptcy Court orders for cause shown prior to

the expiration of such period (the "Challenge Period"), (1) challenging the validity, enforceability, priority, extent, or amount of the obligations under the Prepetition Documents (the "Prepetition Obligations") or the liens, subject to valuation under section 506 of the Bankruptcy Code, on the Prepetition Collateral securing the Prepetition Obligations or (2) otherwise asserting or prosecuting any avoidance actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition Obligations or the Prepetition Collateral, and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, (i) as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date and (ii) any challenge or claim shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be forever deemed waived, released and barred. If no such adversary proceeding or contested matter is timely and properly filed in respect of the Prepetition Obligations, (x) the Prepetition Term Loan Debt to the extent not heretofore repaid and the other Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, subordination, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 cases, (y) the liens on the Prepetition Collateral securing the Prepetition Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4, not subject to defense, counterclaim, recharacterization,

subordination or avoidance and (z) the Prepetition Obligations, the Prepetition Secured Parties, and the liens on the Prepetition Collateral granted to secure the Prepetition Obligations, as the case may be, shall not be subject to any other or further challenge by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party-in-interest, and such committees and parties-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Chapter 7 or 11 trustee appointed or elected for any of the Debtors) with respect thereto. If any such adversary proceeding or contested matter is timely and properly filed, the stipulations and admissions contained in paragraph 4 of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this subparagraph) on any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. In the event that there is a timely successful challenge, pursuant and subject to the limitations contained in this paragraph 25, to the validity, enforceability, extent, perfection or priority of the Prepetition Term Loan Debt, the Bankruptcy Court shall have the power to unwind or otherwise modify, after notice and hearing, the Refinancing or a portion thereof (which might include payment of the Disgorged Amount or re-allocation of interest, fees, principal or other incremental consideration paid in respect of the Prepetition Term Loan Debt or the avoidance of liens and/or guarantees with respect to the Debtors), as the Bankruptcy Court shall determine. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any

cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Prepetition Documents or the Prepetition Obligations or any liens granted by any Debtor to secure any of the foregoing.

26. Limitation on Use of Financing Proceeds and Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, no party may use borrowings under the DIP Facility, Prepetition Collateral, cash collateral, DIP Collateral, the Carve-Out, the Carve-Out Cap or any portion or proceeds of the foregoing in connection with (a) objecting to, contesting or raising any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Prepetition Documents, or the liens or claims granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Documents, (b) asserting any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Prepetition Lenders or the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) preventing, hindering or otherwise delaying the DIP Agent's or the DIP Lenders' assertion, enforcement or realization on the Collateral once an Event of Default has occurred and is continuing in accordance with the DIP Documents, the Interim Order and this Final Order, provided that the Debtors may contest or dispute whether an Event of Default has occurred as provided for in paragraph 17(a) of this Final Order, (d) seeking to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Parties hereunder or under the DIP Documents or the Prepetition Documents, in each of the foregoing cases, without such parties' prior written consent, (e) paying any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Documents and the Budget, (f) using or seeking to use cash collateral except to the extent

permitted under the DIP Documents and not otherwise prohibited hereunder, (g) selling or otherwise disposing of the Collateral except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders, or (h) using or seeking to use any insurance proceeds related to the Collateral, except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders. Notwithstanding the foregoing, advisors to the Creditors' Committee, if any, may investigate claims and issues with respect to the liens granted pursuant to the Prepetition Documents during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed $50,000.

27. Priorities Among Prepetition Secured Parties. Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Prepetition Secured Parties (including, without limitation, the relative priorities and rights of the Prepetition Secured Parties with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Prepetition Documents, including, without limitation, the Prepetition Collateral Trust Agreement.

28. Payments Held in Trust. Except as expressly permitted in this Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible satisfaction of all DIP Obligations under the DIP Documents, and termination of the Commitment Amount (as defined in the DIP Documents) in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Agent and DIP Lenders and shall immediately turn over such

proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents, the Interim Order and this Final Order.

29. Proofs of Claim. None of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties will be required to file proofs of claim in any of Chapter 11 Cases or any successor case. Any order entered by the Bankruptcy Court in connection with the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any successor case shall not apply to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

30. Right of Access and Information. Without limiting the rights of access and information afforded the DIP Agent and DIP Lenders under the DIP Documents or the Prepetition Secured Parties under the Prepetition Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent and the Prepetition Lenders reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and the Prepetition Documents, as the case may be, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, restructuring advisers, investment bankers and consultants to cooperate, consult with, and provide to the DIP Agent, the Prepetition Lenders and the Prepetition Indenture Trustee (and so long as an Event of Default has occurred and is continuing, each Prepetition Secured Party and DIP Lender) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors.

31. Retention of Jurisdiction. This Court has and will retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Documents or this Final Order.

32. Order Governs. In the event of any inconsistency between the provisions of this Final Order and the DIP Documents, the provisions of this Final Order shall govern. Additionally, to the extent that there may be an inconsistency between the terms of this Final Order and the Order Establishing Certain Notice, Case Management and Administrative Procedures, the terms of this Final Order shall govern. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order.

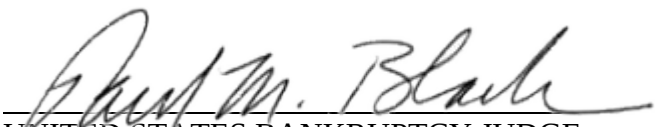
33. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases on a permanent basis, including without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors, or similar responsible person or similar designee or litigation trust hereinafter appointed or elected for the estates of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties and their respective successors and assigns, including after conversion or dismissal of any of the Chapter 11 Cases; provided that, except to the extent expressly set forth in this Final Order, the DIP Agent, the DIP Lenders, and the

Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereunder appointed for the estates of the Debtors.

34. Limitation on Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

35. Effectiveness. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Order.

Dated: June 5, 2015
Roanoke, Virginia



UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel to the Debtors and Debtors in Possession

SEEN AND AGREED:

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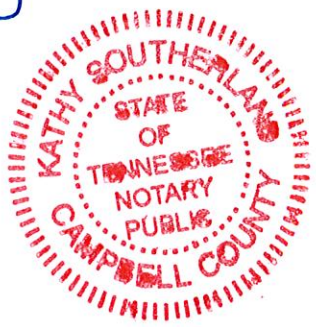
United States Trustee

TAB F

Exhibit "F" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



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Proposed Counsel to the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Roanoke Division)

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

NOTICE OF FILING OF PROPOSED MODIFIED FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364

[1] The Debtors in these administratively consolidated cases are Xinergy Ltd., Xinergy Corp., Xinergy Finance (US), Inc., Pinnacle Insurance Group LLC, Xinergy of West Virginia, Inc., Xinergy Straight Creek, Inc., Xinergy Sales, Inc., Xinergy Land, Inc., Middle Fork Mining, Inc., Big Run Mining, Inc., Xinergy of Virginia, Inc., South Fork Coal Company, LLC, Sewell Mountain Coal Co., LLC, Whitewater Contracting, LLC, Whitewater Resources, Inc., Shenandoah Energy, LLC, High MAF, LLC, Wise Loading Services, LLC, Strata Fuels, LLC, True Energy, LLC, Raven Crest Mining, LLC, Brier Creek Coal Company, LLC, Bull Creek Processing Company, LLC, Raven Crest Minerals, LLC, Raven Crest Leasing, LLC, Raven Crest Contracting, LLC.

PLEASE TAKE NOTICE that in connection with the motion of the Official Committee of Unsecured Creditors (the "Committee") for entry of an order modifying the *Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364* (Docket No. 156) (the "Final DIP Order") to incorporate certain provisions negotiated among the Committee, the DIP Lenders and the Debtors, annexed hereto is the form of the proposed modified Final DIP Order.

Dated: June 4, 2015

Respectfully submitted,

WHITEFORD TAYLOR & PRESTON LLP

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Proposed Counsel to the Official Committee of Unsecured Creditors of Xinergy Ltd., et al.

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2015, I caused a copy of the foregoing *Notice* to be served electronically via e-mail on all necessary parties in accordance with the Notice, Case Management and Administrative Procedures approved by this Court on May 8, 2015 (Docket No. 179).

/s/ Michael E. Hastings
Counsel

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

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

FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364

Upon the motion (the "Motion"), dated April 6, 2015 (the "Petition Date"), of the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases" or "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), seeking, among other things:

(I) authorization for Debtor Xinergy Corp. (the "Borrower") to obtain postpetition financing consisting of a senior secured non-amortizing new money term loan credit facility up to an aggregate principal amount of $40,000,000 (the "DIP Facility" and together with all agreements, documents, guarantees, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter

[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.

amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "DIP Documents") by and among the Borrower, guarantors party thereto and other credit parties signatories thereto, WBOX 2014-4 Ltd., as administrative agent (in such capacity, the "DIP Agent"), for and on behalf of itself and the other lenders thereto from time to time (initially, the "Initial DIP Lenders" and, following the post-closing assignments described herein, the "DIP Lenders");

(II) authorization for Xinergy Ltd., an Ontario corporation that is the parent of the Borrower (the "Parent"), and any and all of the Borrower's and Parent's current, direct or indirect subsidiaries (other than the Borrower) (collectively with the Parent, the "Guarantors") to unconditionally guarantee on a joint and several basis all obligations arising under the DIP Facility;

(III) authorization for the Debtors to execute and deliver the DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(IV) authorization for the Debtors to immediately use proceeds of the DIP Facility upon entry of the interim order entered on April 7, 2015 [Docket No. 43] (the "Interim Order") to (a) pay in full the Prepetition Term Loan Debt (as defined below), including any interest, fees, expenses and other charges accrued through the date of payment, and, upon such payment, receive the simultaneous release and termination of the liens, claims and encumbrances of the Prepetition Lenders (as defined below) in accordance with the Interim Order (the "Refinancing"), and (b) provide working capital to the Debtors and pay fees and expenses in connection with the Cases;

(V) authorization for the Debtors to (i) use the Cash Collateral (as defined below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, in each case in accordance with the relative priorities set forth more fully below, but subject in all respects to the Carve-Out (as defined below), and (ii) provide adequate protection on the terms set forth in the Interim Order and this Final Order to the Prepetition Lenders (as defined below) until the consummation of the Refinancing and expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, and Prepetition Secured Noteholders (as defined below) whose liens and security interests are being primed by the DIP Facility;

(VI) authorization for the DIP Agent, as applicable, to terminate the applicable DIP Documents upon the occurrence and continuance of an Event of Default (as defined therein);

(VII) authorization to grant first priority superpriority claims to the DIP Lenders and first priority liens in favor of the DIP Agent (for the benefit of the DIP Lenders) on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof (but excluding a lien on Avoidance Actions (as defined below), but including, upon entry of this order granting the relief requested in the Motion on a final basis (the "Final Order" or the "Order"), any Avoidance Proceeds (as defined below)), subject to the Carve-Out (as defined below) and the terms of this Order;

(VIII) subject to and only effective upon the entry of this Final Order granting such relief, the waiver by the Debtors of any right to surcharge against the DIP Collateral

or Prepetition Collateral (as each are defined below) pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(IX) modification of the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Documents and this Final Order; and

(X) a waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including under Bankruptcy Rule 6004); and

The interim hearing on the Motion having been held by this Court on April 7, 2015 (the "Interim Hearing"), pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and this Court having entered the Interim Order that, among other things: (a) authorized the Borrower, on an interim basis, to borrow from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed $7.5 million plus the amount necessary to consummate the Refinancing to (w) fund the operational and working capital needs of the Debtors, (x) pay the fees, costs and expenses incurred by the Debtors in connection with these Cases, (y) consummate the Refinancing and execute any documents related thereto and (z) pay the fees, costs and expenses incurred in connection with the foregoing, (b) authorized the Debtors' use of Cash Collateral pursuant to the terms of the Interim Order, and (c) granted the liens, superpriority claims and adequate protection described therein. This Court scheduled, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the final hearing (the "Final Hearing") to consider entry of this Final Order on May 5, 2015 at 10:00 a.m. (EST).

The Final Hearing having been held by this Court on May 5, 2015, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and upon the record made by the Debtors at the

Interim Hearing and at the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. Jurisdiction. This Court has core jurisdiction over these Cases, this Motion, and the parties and property affected hereby under 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Notice. The notice given by the Debtors of the Motion, the Interim Hearing and the Final Hearing was, in the Debtors' belief, the best available under the circumstances and included service upon (a) the United States Trustee for the Western District of Virginia; (b) counsel to the agent for the Debtors' Prepetition Lenders; (c) counsel to the Debtors' postpetition lenders; (d) counsel to the Prepetition Indenture Trustee (as defined below); (e) counsel to the ad hoc group of the Debtors' Prepetition Secured Noteholders (as defined below); (f) counsel to Wells Fargo Bank, National Association as collateral trustee; (g) the United States Securities and Exchange Commission; (h) the Canadian Revenue Agency; (i) the Ontario Securities Commission; (j) the Internal Revenue Service; (k) the Office of the United States Attorney for the Western District of Virginia; (l) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; and (m) all other known parties asserting a lien against the Debtors' assets. Such notice constitutes due and sufficient notice under the circumstances and complies with Bankruptcy Rules 4001(b) and (c) and applicable local rules. No further notice of the relief sought at the Final Hearing is necessary or required.

3. Creditors' Committee Formation. No statutory committee of unsecured creditors has yet been appointed in the Chapter 11 Cases (the "Creditors Committee").

4. Debtors' Stipulations. Without prejudice to the rights of any other party-in-interest (but subject to the limitations thereon contained in paragraph 25 below) the Debtors admit, stipulate and agree that:

(a) The Prepetition Credit Agreement.

(i) Xinergy, as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto (the "Prepetition Lenders") are parties to that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement", and together with all agreements, documents, certificates and instruments, including, without limitation the Prepetition Collateral Trust Agreement (as defined below) delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, collectively, the "Prepetition Term Loan Documents"), pursuant to which the Prepetition Lenders made term loans available to the Prepetition Borrower (the "Prepetition Loans").

(ii) As of the Petition Date, the outstanding aggregate principal amount due under the Prepetition Credit Agreement was $20,000,000 (together with all other outstanding Obligations, as defined in the Prepetition Credit Agreement, including prepetition and postpetition interest, fees, expenses and other charges, the "Prepetition Term Loan Debt").

(iii) To secure the Prepetition Term Loan Debt, the Debtors entered into various security agreements and other collateral documents, pursuant to which they granted to the Prepetition Lenders, valid, binding, perfected, first-priority liens and security interests (the "Prepetition Term Loan Liens") in substantially all of their assets, including, among other things, as the following terms are defined in the Prepetition Term Loan Documents: (a) Accounts;

(b) Chattel Paper; (c) Documents; (d) Fixtures; (e) General Intangibles (or "intangible" under any applicable Canadian PPSL); (f) Goods (including, without limitation, Inventory, Equipment and As-Extracted Collateral); (g) Instruments; (h) Insurance; (i) Intellectual Property; (j) Investment Related Property (including, without limitation, Deposit Accounts); (k) Letter-of-Credit Rights; (l) Money; (m) Receivables and Receivables Records; (n) Commercial Tort Claims; (o) to the extent not otherwise included in the foregoing, all coal and other minerals severed or extracted from the ground (including all severed or extracted coal purchased, acquired or obtained from other Persons), and all Accounts, General Intangibles and Products and Proceeds thereof or related thereto, regardless of whether any such coal or other minerals are in raw form or processed for sale and regardless of whether or not the Company or any Grantor had an interest in the coal or other minerals before extraction or severance; (p) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and (q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (collectively, the "Prepetition Term Loan Collateral").

(b) The Prepetition Secured Notes.

(i) Pursuant to that certain indenture, dated as of May 6, 2011 (as heretofore supplemented from time to time, the "Prepetition Indenture") by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee (in such capacities, the "Prepetition Indenture Trustee"), Xinergy Corp. issued 9.25% senior secured notes due 2019 (the "Prepetition Secured Notes", and holders thereof, the "Prepetition Secured Noteholders", and together with the Prepetition Lenders and the Prepetition Indenture Trustee, collectively, the "Prepetition Secured Parties").

(ii) As of the Petition Date, the outstanding aggregate principal amount of Prepetition Secured Notes issued under the Prepetition Indenture was $195,000,000 (together with all other outstanding Obligations, as defined in the Indenture, including interest, fees, expenses and other charges, the "Prepetition Secured Notes Debt", and together with the Prepetition Term Loan Debt, collectively, the "Prepetition Debt").

(iii) To secure the Prepetition Secured Notes Debt, the Debtors and Prepetition Indenture Trustee entered into that collateral trust agreement, dated as of May 6, 2011 (the "Prepetition Collateral Trust Agreement," and together with the Indenture and all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "Prepetition Secured Notes Documents," and together with the Prepetition Term Loan Documents, the "Prepetition Documents"), pursuant to which the Debtors granted to the Prepetition Indenture Trustee, for the benefit of itself and the Prepetition Secured Noteholders, valid, binding, perfected, second-priority liens and security interests (the "Prepetition Notes Liens," and together with the Prepetition Term Loan Liens, the "Prepetition Liens") in all property and assets of the issuer and guarantors under the Indenture, except for Excluded Assets (as defined in the Prepetition Secured Notes Documents), subject and subordinate to the Prepetition Term Loan Collateral (the "Prepetition Notes Collateral," and together with Prepetition Term Loan Collateral, the "Prepetition Collateral").

(c) The Prepetition Liens are valid, binding, enforceable, non-avoidable and perfected liens and the Prepetition Debt constitutes the legal, valid, binding, enforceable and non-avoidable obligations of the applicable borrowers and guarantors, enforceable against

them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Liens or Prepetition Debt is subject to any challenge or defense, including avoidance, reduction, offset, attachment, disallowance, disgorgement, recharacterization, surcharge, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(d) the Prepetition Debt and the Prepetition Collateral are not and shall not be subject to any attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim, setoff, offset, recharacterization, avoidance or other claim (as "claim" is defined by section 101(5) of the Bankruptcy Code), impairment, disallowance, counterclaim, subordination (whether equitable, contractual, or otherwise, except for any lien subordination under the Prepetition Collateral Trust Agreement contemplated herein), cause of action or any other challenge of any nature under the Bankruptcy Code (including, without limitation, under chapter 5 of the Bankruptcy Code), under applicable nonbankruptcy law or otherwise (including, without limitation, any applicable state Uniform Fraudulent Transfer Act or Uniform Fraudulent Conveyance Act);

(e) subject to the reservation of rights set forth in paragraph 25 below, including without limitation the preservation of the Creditors' Committee's right to seek derivative standing to assert Claims and Defenses (defined in paragraph 25 below) on behalf of the Debtors' estates before the expiration of the Challenge Period in accordance with the provisions of paragraph 25(b) below, the Debtors and their estates hereby absolutely and unconditionally forever waive, discharge and release each of the Prepetition Lenders, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners,

managers, current and former equity holders, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "Prepetition Secured Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the Prepetition Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable Prepetition Debt, the Prepetition Liens, Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Lenders, Prepetition Indenture Trustee or the Prepetition Secured Noteholders, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Final Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable Prepetition Debt or any payments made on account of the applicable Prepetition Debt, or the validity, enforceability, priority or non-avoidability of the applicable Prepetition Liens or the Prepetition Collateral securing the applicable Prepetition Debt.

(f) effective upon entry of this Order, the Debtors and their estates hereby absolutely and unconditionally forever waived, discharged and released each of the DIP Agent and the DIP Lenders and each of their respective present and former predecessors, successors, assigns, affiliates, members, partners, managers, current and former equity holders, agents,

attorneys, financial advisors, consultants, officers, directors, employees and other representatives thereof (all of the foregoing, solely in their respective capacities as such, collectively, the "DIP Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, actions, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, demands, debts, accounts, contracts, liabilities, setoff, recoupment or other offset rights against any and all of the DIP Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the applicable DIP Obligations, DIP Liens, DIP Collateral or the debtor-creditor relationship among any of the DIP Agent or DIP Lenders, on the one hand, and any of the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Order, including, without limitation, (i) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law or municipal law and (ii) any right or basis to challenge or object to the amount, validity or enforceability of the applicable DIP Obligations or any payments made on account of the applicable DIP Obligations, or the validity, enforceability, priority or non-avoidability of the applicable DIP Liens securing the applicable DIP Obligations; provided that, nothing in the Interim Order or herein shall relieve the DIP Party Releasees from fulfilling their obligations or commitments under the DIP Facility or operate as a release related thereto.

5. Cash Collateral. For purposes of this Final Order, the term "Cash Collateral," including, without limitation, all cash proceeds of Prepetition Collateral, shall have the meaning ascribed to it in section 363(a) of the Bankruptcy Code.

6. Use of Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents, this Final Order, the Prepetition Collateral Trust Agreement and in accordance with the Budget (as defined below), to use the Cash Collateral, during the period from the Petition Date through termination of the DIP Obligations pursuant to the DIP Documents, solely for working capital and general corporate purposes. The Debtors' right to use the Cash Collateral shall terminate automatically on the earlier of: (i) the Maturity Date, as defined in the DIP Documents; and (ii) the occurrence of an Event of Default under any DIP Documents, pursuant to which the DIP Agent provides the Debtors, with a copy to the Debtors' counsel, five (5) days' prior written notice (which shall run concurrently with any notice provided under the applicable DIP Documents).

7. Findings Regarding the Financing and Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have a need to obtain the full amount of the financing provided under the DIP Facility and to use the Cash Collateral to, among other things, permit the orderly continuation of their businesses, preserve their going concern value, maintain business relationships with vendors, suppliers and customers, satisfy payroll obligations, make capital expenditures, pay for certain costs and expenses related to the Debtors' Chapter 11 Cases, and satisfy the Debtors' other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity made available through the DIP Facility and the use of Cash Collateral and other financial accommodations under the DIP Facility and hereunder is vital to the preservation and maintenance of the Debtors' going concern value and to the Debtors' successful reorganization.

(c) The Debtors are unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agent and the DIP Lenders are willing to provide the DIP Facility, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Order, as applicable, and provided that the DIP Liens, the Superpriority Claims and other protections granted by this Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility approved by this Order. The DIP Agent and the DIP Lenders have acted in good faith in agreeing to provide the DIP Facility approved by this Order and to be further evidenced by the DIP Documents and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The DIP Facility as set forth herein is vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the DIP Facility is not obtained. Consummation of the DIP Facility pursuant to the terms of this Order therefore is in the best interests of the Debtors' estates.

(f) The DIP Documents and the DIP Facility contemplated thereunder, each as authorized hereunder, have been negotiated in good faith and at arm's length among the

Debtors, the DIP Agent and the DIP Lenders, and the terms of the DIP Facility are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents, including the Obligations (as defined in the DIP Documents, collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(g) The majority of the Prepetition Secured Noteholders have consented to the Debtors' entry into the DIP Facility on the terms described herein and therein, including the priming of their Prepetition Notes Liens by the DIP Liens in exchange for adequate protection of their interest in the Prepetition Collateral as set forth in this Order and to the Refinancing.

(h) This Court concludes that entry of this Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their assets.

(i) Based upon the record before the Bankruptcy Court, the terms of the use of Cash Collateral and the adequate protection granted in this Final Order have been negotiated at arms' length and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors and are consistent with the Debtors' fiduciary duties.

8. Authorization of the Financing and the DIP Documents.

(a) The Borrower is hereby authorized to borrow the full amount of money pursuant to the DIP Facility, and the guarantors under the DIP Facility are hereby authorized to guarantee such borrowings and the Borrower's obligations with respect to such borrowings, up to an aggregate principal amount of $40,000,000 (plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents) under the DIP Facility, in accordance with the terms of this Order and the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents, including, without limitation, to consummate the Refinancing, to provide working capital for the Debtors and to pay interest, fees and expenses (including, the DIP Agent's and DIP Lenders' professional fees and expenses whether incurred pre- or post-petition) in accordance with this Order and the DIP Documents. Of the $40,000,000 specified above (a) $27,500,000 was made available to the Borrower upon entry of the Interim Order and (b) the remaining $12,500,000 will be made available to the Borrower as a delayed draw term loan after the entry of this Final Order, with the actual principal amount available to be borrowed at any time being subject to conditions set forth in the DIP Documents and this Final Order.

(b) The Debtors were, pursuant to the Interim Order, and are hereby authorized and directed to execute, issue, deliver, enter into and adopt, as the case may be, the DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the Budget (as defined herein).

(c) In furtherance of the foregoing and without further approval of this Court, each Debtor was, pursuant to the Interim Order, and is hereby authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees referred to in this Final Order and in the DIP Documents including, without limitation, the reasonable fees and out-of-pocket expenses of the professionals of the DIP Agent and the DIP Lenders (whether incurred pre-or post-petition).

(d) The Debtors are further hereby authorized to execute, deliver and perform one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in such form as the Debtors and the DIP Agent may agree, and no further approval of the Bankruptcy Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (and any reasonable fees paid in connection therewith) that do not (A) shorten the maturity or the scheduled termination date thereunder, or (B) increase the commitments or the rate of interest (other than invoking the default rate upon an Event of Default) payable thereunder.

(e) The Debtors are further hereby authorized and directed to (i) make the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of any fees and other amounts due, including any reimbursement of indemnified obligations referred to in the DIP Documents (and in any separate letter agreements between such applicable parties and the Debtors in connection with the DIP Facility) and reasonable costs and expenses as may be due from time to time, including, without limitation, the reasonable fees and expenses of the professionals retained as provided for in the DIP Documents (whether incurred pre-or post-

petition), without the need to file retention motions or fee applications; (ii) perform all other acts required under or in connection with the DIP Documents, including the granting and perfection of the DIP Liens and the Superpriority Claims as permitted herein and therein; and (iii) cause the execution and delivery of and performance under the DIP Facility's guarantees.

(f) Upon execution and delivery of the DIP Documents, pursuant to the provisions of the Interim Order, the DIP Documents constituted, and by the provisions of this Final Order, shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms, the Interim Order (as applicable) and this Final Order. No obligation, payment, transfer or grant of a security or other interest under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.

(g) The Debtors' borrowings from the DIP Lenders under the DIP Facility and this Order will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and only in express accordance with and to the extent set forth in the Budget (as defined below), solely (a) to consummate the Refinancing which occurred immediately following entry of the Interim Order, whereupon the Prepetition Term Loan Liens were released and terminated except that (i) unless otherwise ordered by the Court, if any Prepetition Term Loan Debt is subsequently reinstated after the payment thereof because such payment (or any portion thereof) is required to be returned or repaid to the Debtors or the DIP Lenders then such Prepetition Term Loan Liens shall be reinstated (unless such Prepetition Term Loan Liens shall have been avoided) and (ii) such reinstated Prepetition Term Loan Liens shall be junior

and subordinate in all respects to the DIP Lenders' liens on and security interests in the DIP Collateral (as defined below) (including, without limitation, the DIP Liens (as defined below)) granted under this Final Order and/or the DIP Documents (such junior liens and security interests of the Prepetition Lenders are hereinafter referred to as the "Contingent Liens", and any such reinstated Prepetition Term Loan Debt described in clause (i) of this sentence is hereinafter referred to as the "Contingent Prepetition Debt"); and (b) for working capital and other general corporate purposes and payment of fees and expenses in connection with the Cases. The Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent and the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Term Loan Liens.

(h) In the event that the Prepetition Lenders (in their capacities as such) are ordered by the Bankruptcy Court to disgorge, refund or in any manner repay to the Debtors or their estates any amounts (the "Disgorged Amounts") leading to Contingent Prepetition Debt, the Disgorged Amounts, unless otherwise ordered by the Bankruptcy Court, shall be placed in a segregated interest bearing account in which the Prepetition Lenders shall have the first lien upon, pending a further final, non-appealable order of a court of competent jurisdiction regarding the distribution of such Disgorged Amounts (either returning the Disgorged Amounts to the Prepetition Lenders, distributing such amounts to the Debtors or otherwise); provided that, to the extent the Disgorged Amounts are returned to the Prepetition Lenders, they shall receive such amounts plus any interest accrued at the non-default rate set forth in the Prepetition Term Loan Documents.

(i) (i) The proceeds from the DIP Loans shall not be loaned or advanced to, or invested in (in each case, directly or indirectly), any entity that is not a Debtor, (ii) the proceeds from the DIP Facility loaned or advanced to, or invested in, any non-Borrower Debtor shall be evidenced by an intercompany note, in form and substance reasonably satisfactory to the DIP Agent, for the full amount of the proceeds so loaned, advanced or invested, (iii) such intercompany note shall be pledged to the DIP Agent for the benefit of the DIP Lenders, to secure the applicable DIP Obligations (as defined herein), and (iv) all intercompany liens of the Debtors, if any, will be contractually subordinated to the liens securing the DIP Facility on terms satisfactory to the DIP Agent.

(j) In no event shall the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable.

(k) Following the date of the Interim Order and prior to the entry of this Final Order, the Initial DIP Lenders, through secondary market assignments, provided certain qualified holders of the Prepetition Secured Notes (including the Initial DIP Lenders and each member of the ad hoc group of Prepetition Secured Noteholders) with an opportunity to participate in the DIP Facility on a pro rata basis based on any such holder's holdings of Prepetition Secured Notes as of the Petition Date. For the avoidance of doubt, (i) any portion of the DIP Facility that was not assigned pursuant to the foregoing was allocated on a pro rata basis among the DIP Lenders, and (ii) any assignee pursuant to the assignment process described herein was provided its pro rata share of commitment fees.

9. Superpriority Claims.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority senior administrative expense claims against the Debtors with priority over any and all administrative expense claims, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the "Superpriority Claims"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to the payment of the Carve-Out (as defined below) to the extent specifically provided for herein. Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Agent to be applied or further distributed by the DIP Agent on account of the applicable DIP Obligations in such order as is specified in this Order and the applicable DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the "Carve-Out" means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) and 31 U.S.C. § 3717 (as to the U.S. Trustee, in such amount as agreed to by the U.S. Trustee or Order of the Court); (ii) all reasonable fees and expenses incurred by a trustee appointed under section

701 of the Bankruptcy Code in an amount not to exceed $50,000; (iii) to the extent allowed at any time, but subject in all respects to the Budget (as defined in below) and the terms of this Order, all accrued and unpaid fees, disbursements, costs and expenses ("Professional Fees") (other than any monthly fee, restructuring fee, sale fee or other success fee of any investment bankers or financial advisors of the Debtors), incurred by professionals or professional firms retained by the Debtors and the Creditors' Committee, if any, whose retention has been approved by the Court during these Cases pursuant to sections 327 and 1103 of the Bankruptcy Code (collectively, "Professional Persons"), at any time before or on the first business day following delivery by any DIP Agent of a Carve Out Trigger Notice (as defined below), to the extent such Professional Fees are allowed by the Bankruptcy Court whether prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by any DIP Agent of the Carve Out Trigger Notice, to the extent allowed by the Bankruptcy Court, all unpaid fees, disbursements, costs and expenses incurred by Professional Persons, in an aggregate amount not to exceed $500,000 (the amount set forth in this clause (iv) being the "Carve-Out Cap"). For purposes of the foregoing, the term "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Agent to the Debtors and their lead counsel, the U.S. Trustee, counsel to the Prepetition Lenders, counsel to the Prepetition Indenture Trustee, counsel to the Prepetition Secured Noteholders and lead counsel to the Creditors' Committee, if any, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the applicable DIP Documents, expressly stating that the Carve-Out Cap is invoked and the Event of Default that is alleged to have occurred and be continuing. For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all DIP Obligations and liens securing the DIP Obligations. Nothing

herein shall be construed to impair the ability of any party to object to the allowance by the Court of any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii) and (iv) above.

(c) The DIP Agent and DIP Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with these Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Order or otherwise shall be construed (i) to obligate the DIP Agent or the DIP Lenders in any way to pay compensation to or to reimburse expenses of any Professional Persons, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if actual allowed Professional Fees are higher in fact than reflected in the Budget (as defined below); or (iii) as consent to the allowance of any professional fees or expenses of any Professional Persons. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code and applicable law. The DIP Agent's and DIP Lenders' liens and claims shall, however, be subject to the Carve-Out as set forth in this Final Order.

10. DIP Liens.

As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral, the security interests and liens identified below are hereby granted to the DIP Agent for its own benefit and the respective benefit of the DIP Lenders (all property

identified in clauses (a), (b), (c), (d) and (e) below, together with all other property to which the DIP Agent is granted a lien under the applicable DIP Documents (other than as expressly excluded pursuant to this Order), being collectively referred to as the "DIP Collateral"), subject to (a) the terms of the DIP Facility and (b) payment of the Carve-Out as provided herein (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the "DIP Liens"). Notwithstanding the foregoing, any DIP Agent may take any action (and is, to the extent necessary in connection therewith, hereby granted relief from the automatic stay), to evidence, confirm, validate or perfect, or to ensure the contemplated priority of, such liens, and the Debtors shall execute and deliver to the DIP Agent and the DIP Lenders all such financing statements, notices and other documents as the DIP Agent or any DIP Lender may reasonably request in connection therewith and shall deliver account control agreements or other documentation in respect of and evidencing perfection of all collection and deposit accounts to the extent required by the DIP Documents.

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior (but subject to the priorities set forth in the DIP Documents) security interest in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (or to valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code) (collectively, "Unencumbered Property"), including without limitation, all inventory, accounts, accounts receivable, general intangibles (or "intangibles" under any applicable Canadian PPSL), chattel paper, contracts, owned real estate, real and

personal property leaseholds, property, plants, fixtures, machinery, equipment, as-extracted collateral, all coal and other minerals as extracted from the ground, vehicles, vessels, deposit accounts, commercial tort claims, documents, equity interests, books and records, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, letter of credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property and stock of subsidiaries of the Debtors.

(b) Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Agent, for the benefit of the DIP Lenders, shall have a valid, binding, continuing, enforceable, fully-perfected first-priority senior priming lien on, and security interest upon all pre- and post-petition property of the Debtors and any other obligors or credit parties under the DIP Facility, including, without limitation, cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise), including Cash Collateral, and any investment of such cash and cash collateral, inventory, accounts receivable, letter of credit rights and other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, vehicles, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries and the proceeds, product, offspring of profits of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens (i) presently securing the Prepetition Debt and (ii) that will secure the Contingent Prepetition Debt in accordance with this Final Order. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties

(including, without limitation, the Contingent Liens and the Adequate Protection Liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interest of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date. The DIP Collateral shall be deemed to include, among the other assets purported to be collateral as described herein, all collateral securing All-Asset Priority Obligations; the DIP Facility, DIP Obligations and DIP Liens shall be deemed to have all the rights and benefits of All-Asset Priority Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement), in each case, to the extent the proceeds of the DIP Facility refinanced the Prepetition Term Loans.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest (subject to the priorities set forth in the DIP Documents) in and lien upon all pre- and postpetition tangible and intangible property of the Debtors and the Debtors' estates (other than property described in clauses (a), (b), or (d) of this paragraph 10, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (in each case, other than the Prepetition Liens, the Contingent Liens and the Adequate Protection Liens), which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the DIP Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors.

(e) Notwithstanding the foregoing clauses (a), (b), (c) and (d), the DIP Collateral under this Final Order shall exclude the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions"), but shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds").

ADEQUATE PROTECTION OF PREPETITON LENDERS

11. Adequate Protection of Prepetition Lenders. Until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, the Prepetition Secured Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Lenders' interest in the Prepetition Term Loan Collateral, the Prepetition Term Loan Debt and the Contingent Debt, including, without limitation, any such diminution resulting from

the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Prepetition Term Loan Collateral, the priming of the Prepetition Lenders' security interests and liens in the Prepetition Term Loan Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and the Interim Order and this Final Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Lenders are hereby granted the following (collectively, the "Prepetition Lenders Adequate Protection Obligations"):

(a) Adequate Protection Liens. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution and the amount of any Contingent Debt, (a) a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including any Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens and any liens on the DIP Collateral to which such DIP Liens are junior and (ii) the Carve-Out (such liens, the "Prepetition Lenders Adequate Protection Liens") and (b) the Contingent Liens to secure any Contingent Prepetition Debt. Without limiting the generality of the foregoing, (A) the Contingent Liens and the Prepetition Adequate Protection Liens granted to the Prepetition Lenders hereunder shall be junior and subordinate in all respects to the DIP Liens and the Carve-Out; (B) the Contingent Prepetition Debt shall be junior and subordinate in right of payment to all DIP Obligations and the Carve-Out; (C) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents and this Final Order, the Prepetition Lenders shall have no right to seek or exercise any

enforcement rights or remedies in connection with the Contingent Prepetition Debt, the Contingent Liens or the Prepetition Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Prepetition Credit Agreement); (D) the Prepetition Lenders shall be deemed to have consented to any sale or disposition of DIP Collateral permitted under the DIP Facility or approved, arranged for or by the DIP Agent or the requisite DIP Lenders, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such DIP Collateral (where the DIP Agent also releases any DIP Liens as necessary); (E) the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense (for which the Prepetition Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of any Prepetition Lenders' liens on or security interests in any portion of the DIP Collateral subject to any sale or disposition permitted under the DIP Facility or approved or arranged for by the DIP Agent or any of the DIP Lenders (where the DIP Agent also releases any DIP Liens as necessary); and (F) upon this Final Order becoming a final and nonappealable order and the expiration of the Challenge Period (as defined below) with no challenge having been brought, or if such a challenge is brought, upon the entry of a final judgment and the payment to the Prepetition Lenders of all amounts owed by the Debtors under the Prepetition Term Loan Documents, the Interim Order and this Final Order, the Contingent Liens and the Prepetition Adequate Protection Liens shall terminate and be released (automatically and without further action of the parties), and the Prepetition Lenders shall execute and deliver such agreements to evidence and effectuate such termination and release as the Debtors or the DIP Agent may request, and the Debtors and the DIP Agent

shall be authorized to file on behalf of the Prepetition Lenders such UCC termination statements or such other filings as may be applicable to the extent such authorization is required under the Uniform Commercial Code of the applicable jurisdiction.

(b) Section 507(b) Claim. The Prepetition Lenders have been granted under the Interim Order and are hereby granted under this Final Order, subject only to the Superpriority Claims and the Carve-Out, a superpriority claim (the "Prepetition Lenders Adequate Protection Claim"), as provided for in sections 503(b) and 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims and any other claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided, however, that the Prepetition Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under sections 503(b) and 507(b) of the Bankruptcy Code granted hereunder or under the Prepetition Term Loan Documents unless and until the DIP Obligations have indefeasibly been paid in full in cash in accordance with the DIP Documents; and provided further, that the Prepetition Lenders hereby irrevocably waive the section 503(b) claim granted to them by the Interim Order and this Final Order upon the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

(c) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make adequate protection payments as follows: (i) payment of interest on a monthly basis at the default rate as set forth in the

Prepetition Credit Agreement (only to the extent of any amounts outstanding), (ii) immediate, non-refundable cash payment of all accrued and unpaid fees and disbursements owing to the Prepetition Lenders under the Prepetition Documents and incurred prior to the Petition Date, (iii) until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders, current cash payments of all reasonable out-of-pocket costs, fees and expenses payable to the Prepetition Lenders under the Prepetition Documents as may hereafter be incurred in accordance with the Prepetition Documents, (iv) all reasonable fees, costs, expenses and disbursements (whether incurred pre-or post-petition) of one primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP, and, commencing March 6, 2015, all reasonable fees, costs, expenses ~~and~~, disbursements and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., to the Prepetition Lenders, in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Lenders, promptly upon receipt of invoices therefor without the need to file retention motions or fee applications, and (v) continued maintenance and insurance of the Prepetition Term Loan Collateral and the DIP Collateral as required under the Prepetition Term Loan Documents and the DIP Documents (collectively, the "Prepetition Lenders Adequate Protection Payments").

ADEQUATE PROTECTION OF PREPETITON SECURED NOTEHOLDERS

12. Adequate Protection of Prepetition Secured Noteholders. The Prepetition Secured Noteholders are entitled, pursuant to sections 361, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Notes Collateral,

including any Cash Collateral, for and equal in amount to any aggregate diminution in the value of the Prepetition Secured Noteholders' interests in the Prepetition Notes Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and the Prepetition Notes Collateral, the priming of the Prepetition Secured Noteholders' security interests and liens in the Prepetition Notes Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Final Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Prepetition Indenture Trustee and the Prepetition Secured Noteholders are hereby granted the following (collectively, the "Prepetition Noteholders Adequate Protection Obligations", and together with the Prepetition Lenders Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Prepetition Secured Noteholder Adequate Protection Liens. The Prepetition Indenture Trustee, on behalf of itself and for the benefit of the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of such diminution, a replacement security interest in and lien upon all the DIP Collateral (excluding Avoidance Actions, but including Avoidance Proceeds), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, (iii) the Prepetition Liens, and (iv) the Prepetition Lenders Adequate Protection Liens (the "Prepetition Noteholders Adequate Protection Liens", and together with the Prepetition Lenders Adequate Protection Liens, the "Adequate Protection Liens"). The Prepetition Indenture Trustee and the Prepetition Secured Noteholders were, pursuant to the Interim Order,

and are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the Prepetition Secured Noteholders Adequate Protection Liens. Whether or not the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of the Interim Order.

(b) Fees and Expenses. The Debtors are authorized and directed under sections 361, 363 and 364 of the Bankruptcy Code to make non-refundable adequate protection payments which shall include (a) ongoing payments, when due or as soon as practicable thereafter, of all reasonable and documented fees, costs, expenses and disbursements, including (i) after entry of this Final Order, $450,000 in fees and expenses payable to the ad hoc group of Prepetition Secured Noteholders' primary prepetition counsel, (ii) the ad hoc group's postpetition primary counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, local counsel, including, without limitation, in Virginia, Kutak Rock LLP, and Canada, Fasken Martineau Dumoulin LLP (whether incurred pre- or post-petition), and, commencing March 6, 2015, all reasonable and documented fees, costs, expenses ~~and~~, disbursements ~~of~~and indemnification obligations of one financial advisor, Houlihan Lokey Capital, Inc., in accordance with the terms set forth in Houlihan Lokey Capital, Inc.'s engagement letter as agreed to by the Prepetition Secured Noteholders, each in its capacity as advisor, to the Prepetition Secured Noteholders, and in each case, incurred in connection with the Debtors, the Chapter 11 Cases

or the transactions contemplated hereby and (iii) fees and expenses (including attorneys' fees) of the Prepetition Indenture Trustee incurred (whether pre- or post-petition) in connection with the Debtors, the Chapter 11 Cases or the transactions contemplated hereby to the extent payable under the Prepetition Indenture; and (b) continued maintenance and insurance of the Prepetition Notes Collateral and the DIP Collateral as required under the Prepetition Documents and the DIP Documents (collectively, the "Prepetition Noteholders Adequate Protection Payments", and together with the Prepetition Lenders Adequate Protection Payments, the "Adequate Protection Payments").

(c) Prepetition Secured Noteholders' Section 507(b) Claim. The Prepetition Indenture Trustee, on behalf of itself and the Prepetition Secured Noteholders, has been granted under the Interim Order and is hereby granted under this Final Order, subject to the Carve-Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the Superpriority Claims held by the DIP Agent and the DIP Lenders and the Prepetition Lenders Adequate Protection Claim, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds); provided that, unless otherwise expressly agreed to in writing by the DIP Agent, the Prepetition Lenders (until expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders), the Prepetition Indenture Trustee and the Prepetition Secured Noteholders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims granted under the Interim Order or hereunder or under the Prepetition Documents unless and until the DIP Obligations and Prepetition Term Loan Debt have indefeasibly been paid in cash

in full in accordance with the DIP Documents and this Final Order (the "Prepetition Noteholders Adequate Protection Claim", and together with the Prepetition Lenders Adequate Protection Claim, the "Adequate Protection Claims").

13. Sufficiency of Adequate Protection.

(a) Under the circumstances and given that the Adequate Protection Liens, the Adequate Protection Claims and the Adequate Protection Payments (collectively, the "Adequate Protection Obligations") are consistent with the Bankruptcy Code, the Bankruptcy Court finds that such adequate protection is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Except as expressly provided herein, nothing contained in this Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party, the DIP Agent or any DIP Lenders.

(b) Notwithstanding anything in paragraphs 11 and 12 to the contrary, following delivery of a Carve-Out Trigger Notice and prior to the payment to the Prepetition Secured Parties on account of any adequate protection or otherwise, the DIP Obligations shall have been paid in full.

(c) The Adequate Protection Obligations (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the "equities of the case" exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or pari passu with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be valid and enforceable

against any trustee, any other estate representative or litigation trust appointed in these Cases or any successor cases, and/or upon the dismissal of any of these Cases.

14. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any successor cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to the Debtors and the Debtors' estates, and such financing is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth the DIP Documents.

15. Refinancing of the Prepetition Term Loan Debt. Following the entry of the Interim Order and as part of the initial borrowing under the DIP Facility, the Debtors used a portion of the proceeds from the DIP Facility, which portion was designated as "All-Asset Priority Lien Debt" (as such term is defined in the Prepetition Collateral Trust Agreement), in accordance with the DIP Documents and the Interim Order to consummate the Refinancing, upon which, the existing liens on the Prepetition Term Loan Collateral were released and terminated (which shall be deemed to have occurred upon the expiration of the Challenge Period (as defined below) with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders). After the Refinancing, the Debtors and the DIP Agent were, pursuant to the Interim Order, and are hereby authorized to execute and file any termination statements, releases or other documents

necessary to effectuate and/or evidence the release and termination of the Prepetition Lenders' liens on or security interests in any portion of the Prepetition Term Loan Collateral, and the Prepetition Lenders shall deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent, the DIP Lenders or other documents, in each case as reasonably requested by the Debtors or the DIP Agent in order to effectuate and/or evidence the release and termination of the Prepetition Liens. Notwithstanding anything to the contrary in the Interim Order, this Final Order or in any other order of this Court, the Prepetition Term Loan Debt, including, without limitation, All-Asset Priority Lien Debt, All-Asset Priority Obligations and All-Asset Priority Liens (as such terms are defined in the Prepetition Collateral Trust Agreement) shall not be deemed discharged or the Refinancing deemed consummated until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders.

16. Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents.

17. Protection of DIP Lenders' Rights.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified (and any stay of such vacation or modification under Bankruptcy Rule 4001(a)(3) is waived) without further order of the Bankruptcy Court to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in

the DIP Documents and this Final Order without further order of or application or motion to the Bankruptcy Court, provided that, such rights and remedies that are exercisable only upon the occurrence of an Event of Default (as defined in the DIP Documents and as set forth in this Final Order), but subject in all respects to the Carve-Out Cap, shall require the DIP Agent to give five (5) days' prior written notice (which five days' notice period (the "Default Notice Period") shall run concurrently with any notice provided under the DIP Documents) to the U.S. Trustee, the Debtors, the Prepetition Lenders, the Prepetition Indenture Trustee, the Prepetition Secured Noteholders, and the Creditors' Committee, if any, of such DIP Agent's intent to exercise such rights and remedies; provided that, the Debtors shall not have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Documents; and provided further that during the Default Notice Period, the Debtors shall have no authority to borrow under the DIP Facility unless the DIP Agent otherwise consents, and the DIP Agent may terminate the DIP Facility and declare the DIP Obligations to be immediately due and payable, and the Debtors' authority to use Cash Collateral shall be as set forth in the Budget and limited solely to payment of expenses critical to preservation of the Debtors' estates and the payment of the fees, costs and expenses to administer these Chapter 11 Cases, as agreed by the DIP Agent in its sole discretion. The Debtors and the Prepetition Secured Parties shall waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Agent and the DIP Lenders set forth in this Final Order and in the DIP Documents.

(b) The DIP Agent's or any DIP Lender's delay or failure to exercise rights and remedies under the applicable DIP Documents or this Final Order shall not constitute a waiver of such DIP Agent's or such DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

(c) Except as otherwise expressly set forth in this Final Order, the Debtors irrevocably waive any right, without the prior written consent of the DIP Agent, (a) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral, whether senior, equal or subordinate to the DIP Agent's liens and security interests; (b) to use, or seek to use, Cash Collateral or (c) to modify or affect any of the rights of the DIP Agent or the DIP Lenders under this Final Order or the DIP Documents by any plan of reorganization proposed or confirmed in these Chapter 11 Cases or subsequent order entered in these Chapter 11 Cases.

18. Approved Budget.

(a) For purposes of this Order, the term "Budget" means the following: (a) the budget, attached to the Interim Order as Exhibit A, the "Initial Budget," which is an initial 13-week budget delivered by the Debtors to the DIP Agent prior to the Petition Date and commencing with the week during which the Petition Date occurs, containing line items of sufficient detail to reflect the Debtors' consolidated projected receipts and disbursements for such 13-week period, including, without limitation, the anticipated weekly uses of the DIP Facility and cash collateral for such period, and which shall provide, among other things, for the payment of the fees and expenses, including professional fees relating to the DIP Facility (whether incurred pre-or post-petition), ordinary course expenses, fees and expenses related to

the Cases, and working capital and other general corporate needs, which Initial Budget was in form and substance acceptable and approved by the DIP Agent and Majority Lenders (as defined in the DIP Facility), in their sole discretion (as such Initial Budget shall be amended, supplemented and/or extended in the manner set forth in this Final Order, the "Budget"); and (b) on or before 5:00 p.m. prevailing Eastern Time on the first Business Day (as defined in the DIP Facility) of each month following the Petition Date, commencing with May 1, 2015, the Debtors shall furnish to the DIP Agent and counsel to the Creditors' Committee a monthly supplement to the Initial Budget (or the previously supplemented Budget, as the case may be), covering a 13-week period that commences with the week such supplement is delivered, together with a variance analysis from the Budget (or the previously supplemented Budget, as the case may be). Such monthly supplements to the Budget shall become the Budget upon the earlier of (a) written acknowledgement from the DIP Agent that the proposed supplement is substantially in the form of the Initial Budget (or the previously supplemented Budget, as the case may be) and is otherwise in form and substance acceptable to and is approved by the DIP Agent and Majority Lenders (provided that any proposed changes in the proposed supplement to any of the Budget figures already covered by the Initial Budget (or the previously supplemented Budget, as the case may be) must be satisfactory to the DIP Agent in its sole discretion) or (b) within 10 Business Days after receipt of such proposed supplement by the DIP Agent, provided that the DIP Agent has not provided a written objection to the proposed supplement; the Initial Budget (or the previously supplemented Budget, as the case may be) shall remain the Budget if the DIP Agent objects to the proposed supplement and until such time as the DIP Agent provides written acknowledgement that a revised version of the proposed supplement is otherwise in form and substance acceptable to and is approved by the

DIP Agent. Notwithstanding anything herein or in the DIP Documents to the contrary, unless specifically authorized hereunder or in writing by the DIP Agent or as may be provided in the Budget, no cash collateral may be paid or transferred to any non-Debtor subsidiary or affiliate of the Debtors.

(b) Notwithstanding anything in the DIP Documents to the contrary, the Debtors shall also deliver to the DIP Agent (i) no later than 5:00 p.m. (ET) on Wednesday of each calendar week following the immediately preceding week, commencing on April 15, 2015, an updated variance report (the "Variance Report") on a weekly basis setting forth (1) actual cash receipts and disbursements for the prior week and (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a weekly and cumulative basis, and an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent, (ii) no later than 5:00 p.m. (ET) on the first Business Day (as defined in the DIP Facility) of each calendar month, an updated Budget and (iii) no later than the date that the Variance Report for the last week of each month is required to be delivered to the DIP Agent, (x) a variance report on a monthly basis setting forth (1) actual cash receipts and disbursements for the applicable month, (2) all variances, on an individual line item basis and an aggregate basis, as compared to the previously delivered Budget on a monthly basis, and (3) an explanation, in reasonable detail, for any material variance, certified by a Senior Officer (as defined in the DIP Facility) of Parent (the "Budget Variance Report") and (y) a report detailing fees and expenses for professional services incurred by the Debtors during the preceding calendar month. As of the last day of each calendar month commencing with the calendar month ending April 30, 2015, (a) aggregate disbursements of the Debtors (other than professional fees) made as set forth in

the Budget Variance Report for such month shall not be greater than 120% of the aggregate amount specified in the corresponding applicable Budget; and (b) aggregate revenues of the Debtors received as set forth in the Budget Variance Report for such month shall be not less than 80% of the aggregate amount specified in the corresponding applicable Budget.

19. Limitation on Charging Expenses Against Collateral. Except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent and the DIP Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders. In no event shall the DIP Agent or the DIP Lenders be subject to (i) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Collateral.

20. Payment of Fees and Expenses.

(a) No payments (including professional fees and expenses) with respect to the DIP Obligations or the Adequate Protection Obligations shall be subject to Bankruptcy Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any such payments shall be required to file any interim or final fee applications with the Bankruptcy Court or otherwise seek the Bankruptcy Court's approval of any such payments; provided, however, such invoices shall be submitted to the Debtors, the

U.S. Trustee, and the Creditors' Committee (if any) at least 10 days prior to the payment thereof.

(b) Seaport Global Securities LLC ("SGS"), the Debtors' financial advisors and investment bankers, stipulates that no DIP Financing Fee (as defined in that certain engagement letter, dated as of December 7, 2014, with the Debtors (the "Engagement Letter")) shall be payable to SGS, under Section 4(c) of the Engagement Letter or otherwise, as a result of the Debtors' entry into the DIP Documents and the funding provided thereunder (including any incremental funding contemplated thereunder) in accordance with the Interim Order and this Final Order.

21. Credit Bid. The DIP Agent and the DIP Lenders, shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization. The Prepetition Lenders and the Prepetition Secured Noteholders (subject to the terms of the Prepetition Documents) shall have the right to credit bid a portion of or all of their respective claims in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a plan of reorganization, unless the Bankruptcy Court, for cause, orders otherwise.

22. Perfection of DIP Liens.

(a) The DIP Agent and the DIP Lenders were, pursuant to the Interim Order, and are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as its true and lawful attorney, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over deposit accounts and securities accounts or any other asset, in each case, to validate and perfect the

liens and security interests granted to them in the DIP Documents, the Interim Order and this Final Order. Whether or not the DIP Agent on behalf of the DIP Lenders, each in its discretion, chooses to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over deposit accounts and securities accounts or any other assets, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the reasonable request of the DIP Agent, without any further consent of any party, the DIP Agent, the Debtors, each DIP Lender and the Prepetition Secured Parties are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further perfect the DIP Liens.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording. For the avoidance of doubt, the automatic stay provisions of section 362(a) of the Bankruptcy Code shall be modified (and any stay of such modification under Bankruptcy Rule 4001(a)(3) is waived) to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and in the immediately preceding subparagraph (a).

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds

thereof, or other Collateral related thereto, was, under the Interim Order, and is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Final Order.

23. Preservation of Rights Granted Under the Order.

(a) Except as expressly provided herein or in the DIP Documents, no claim or lien having a priority senior to or pari passu with those granted by the Interim Order, this Final Order and the DIP Documents to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be granted or allowed while any portion of the DIP Obligations or the Adequate Protection Obligations (with respect to the Prepetition Term Loan Debt, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) remain outstanding, and the DIP Liens and the Adequate Protection Liens (with respect to the Prepetition Term Loan Liens, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall not (i) be subject to or junior to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (ii)

subordinate to or made pari passu with any other lien or security interest, whether under sections 363 or 364 of the Bankruptcy Code or otherwise.

(b) In addition to the Events of Default set forth in the DIP Documents, unless all DIP Obligations and all Adequate Protection Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Documents and terminate the right of the Debtors to use Cash Collateral hereunder if any of the Debtors seek, or if there is entered, unless the DIP Agent has otherwise consented: (i) any modification or extension of this Final Order without the prior written consent of the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, the Prepetition Lenders, the Prepetition Indenture Trustee, and the Prepetition Secured Noteholders, (ii) an order converting or dismissing these Chapter 11 Cases; (iii) an order appointing a Chapter 11 trustee in these Chapter 11 Cases or any other representative or other similar appointment, (iv) an order appointing an examiner with enlarged powers in these Chapter 11 Cases, (v) an order providing for a change of venue with respect to these Chapter 11 Cases and such order shall not have been reversed or vacated within ten (10) days; (vi) an order approving a plan of reorganization or the sale of all or substantially all of the DIP Collateral (except to the extent permitted under the DIP Documents) or the Prepetition Collateral (except to the extent permitted under the Prepetition Documents) shall have been entered which does not provide for the repayment in full in cash of all DIP Obligations (other than any contingent obligations not yet due and payable) and all Contingent Obligations and Adequate Protection Obligations (with respect to the Prepetition Lenders Contingent Obligations and Adequate Protection Obligations, until the expiration of the Challenge Period

with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) upon the consummation thereof. If an order dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims, 507(b) claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims granted pursuant to this Final Order shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Claims and Adequate Protection Payments, the 507(b) claims, and the other administrative expense claims, liens and security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest, including the priorities set forth herein and in the DIP Documents) until all DIP Obligations and all Adequate Protection Obligations (with respect to the Prepetition Lenders Adequate Protection Obligations, until the expiration of the Challenge Period with no challenge having been brought or, if such a challenge is brought, upon the entry of a final judgment resolving such challenge in favor of the Prepetition Lenders) shall have been paid and satisfied in full and (y) the Bankruptcy Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in

clause (x) above; provided that the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Debt or under the Prepetition Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full in accordance with the DIP Documents.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, of the effective date of such reversal, modification, vacation or stay or (ii) the validity, priority or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations or the Adequate Protection Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, the DIP Obligations or the Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Lenders or the Prepetition Indenture Trustee of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code (including, without limitation, with respect to any payments received in connection with the Refinancing), this Final Order and pursuant to the DIP Documents.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the 507(b) claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of these Chapter 11 Cases to a case under Chapter 7, dismissing these Chapter 11 Cases, approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents, or except to the extent that a release of such liens is authorized under the Prepetition Collateral Trust Agreement) or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in these Chapter 11 Cases (except an Acceptable Reorganization Plan (as defined in the DIP Facility)) and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases, or in any superseding Chapter 7 cases under the Bankruptcy Code, and the DIP Obligations and the Adequate Protection Obligations, including the DIP Liens, the Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Claims, the Adequate Protection Payments, the other administrative expense claims granted pursuant to this Final Order and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted under the DIP Documents and this Final Order shall continue in full force and effect and shall be binding on any Chapter 7 trustee, Chapter 11 trustee, any litigation trust

representative, other or similar party hereinafter appointed or elected for the Debtors' estates until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash as set forth herein and in the DIP Documents.

24. Exculpation. Nothing in this Final Order, the Interim Order, the DIP Documents, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. In addition, (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Debtors; *provided that*, (i) the foregoing shall not apply to any act or omission by the DIP Agent or the DIP Lenders that constitutes gross negligence or willful misconduct by the DIP Agent or the DIP Lenders as finally determined by a court of competent jurisdiction.

25. Effect of Stipulations On Third Parties.

(a) The stipulations and admissions contained in this Final Order, including, without limitation, in paragraph 4 of this Final Order, shall be binding upon each Debtor and their subsidiaries and any of their respective successors and assigns (including, without limitation, any Chapter 7 or Chapter 11 trustee appointed or elected for a Debtor), and each person or entity party to the DIP Documents in accordance with their respective terms and the terms of this Final Order, in all circumstances.

(b) The stipulations and admissions contained in this Final Order, including without limitation, in paragraph 4 of this Final Order, shall be binding on a permanent basis upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including the Creditors' Committee, if any) and any other person or entity acting on behalf of the Debtors' estates, unless (a) such committee or any other party-in-interest, in each case, with requisite standing granted by the Bankruptcy Court, has timely and properly filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in paragraph 26) by no later than the date that is the later of (i) in the case of any such adversary proceeding or contested matter filed by a party-in-interest with requisite standing other than the Creditors' Committee, 60 days after the Petition Date, (ii) in the case of any such adversary proceeding or contested matter filed by the Creditors' Committee, July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee), (iii) in the case of the Creditors' Committee having filed a motion on or before July 10, 2015 (the date that is 60 days after the appointment of the Creditors' Committee) seeking derivative standing to pursue Claims and Defenses (defined herein), the latter of (a) 3 days after the entry of a final order granting such standing or (b) ten (10) days from entry of an order by the Bankruptcy Court denying standing, unless (X) the Creditors' Committee seeks to extend the such period with the Bankruptcy Court during the 10-day period from entry of an order by the Bankruptcy Court denying standing, (Y) the Bankruptcy Court grants such relief extending the expiration date for such period and (Z) the Creditors' Committee files its Notice of Appeal as contemplated by Rule 8002 of the Federal Rules of Bankruptcy Procedure, (iv) any such later date agreed to in writing by the Prepetition Lenders or the Prepetition Indenture Trustee, as applicable, and (~~iii~~v) such longer period as the Bankruptcy Court orders for cause shown prior to

the expiration of such period (the "Challenge Period"), (1) challenging the validity, enforceability, priority, extent, or amount of the obligations under the Prepetition Documents (the "Prepetition Obligations") or the liens, subject to valuation under section 506 of the Bankruptcy Code, on the Prepetition Collateral securing the Prepetition Obligations or (2) otherwise asserting or prosecuting any avoidance actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition Obligations or the Prepetition Collateral, and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, (i) as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date and (ii) any challenge or claim shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be forever deemed waived, released and barred. If no such adversary proceeding or contested matter is timely and properly filed in respect of the Prepetition Obligations, (x) the Prepetition Term Loan Debt to the extent not heretofore repaid and the other Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, subordination, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 cases, (y) the liens on the Prepetition Collateral securing the Prepetition Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4, not subject to defense, counterclaim, recharacterization,

subordination or avoidance and (z) the Prepetition Obligations, the Prepetition Secured Parties, and the liens on the Prepetition Collateral granted to secure the Prepetition Obligations, as the case may be, shall not be subject to any other or further challenge by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party-in-interest, and such committees and parties-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Chapter 7 or 11 trustee appointed or elected for any of the Debtors) with respect thereto. If any such adversary proceeding or contested matter is timely and properly filed, the stipulations and admissions contained in paragraph 4 of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this subparagraph) on any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. In the event that there is a timely successful challenge, pursuant and subject to the limitations contained in this paragraph 25, to the validity, enforceability, extent, perfection or priority of the Prepetition Term Loan Debt, the Bankruptcy Court shall have the power to unwind or otherwise modify, after notice and hearing, the Refinancing or a portion thereof (which might include payment of the Disgorged Amount or re-allocation of interest, fees, principal or other incremental consideration paid in respect of the Prepetition Term Loan Debt or the avoidance of liens and/or guarantees with respect to the Debtors), as the Bankruptcy Court shall determine. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any

cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Prepetition Documents or the Prepetition Obligations or any liens granted by any Debtor to secure any of the foregoing.

26. Limitation on Use of Financing Proceeds and Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, no party may use borrowings under the DIP Facility, Prepetition Collateral, cash collateral, DIP Collateral, the Carve-Out, the Carve-Out Cap or any portion or proceeds of the foregoing in connection with (a) objecting to, contesting or raising any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Prepetition Documents, or the liens or claims granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Documents, (b) asserting any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Prepetition Lenders or the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) preventing, hindering or otherwise delaying the DIP Agent's or the DIP Lenders' assertion, enforcement or realization on the Collateral once an Event of Default has occurred and is continuing in accordance with the DIP Documents, the Interim Order and this Final Order, provided that the Debtors may contest or dispute whether an Event of Default has occurred as provided for in paragraph 17(a) of this Final Order, (d) seeking to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Parties hereunder or under the DIP Documents or the Prepetition Documents, in each of the foregoing cases, without such parties' prior written consent, (e) paying any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Documents and the Budget, (f) using or seeking to use cash collateral except to the extent

permitted under the DIP Documents and not otherwise prohibited hereunder, (g) selling or otherwise disposing of the Collateral except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders, or (h) using or seeking to use any insurance proceeds related to the Collateral, except as permitted by the DIP Documents or otherwise with the consent of the DIP Agent or the DIP Lenders. Notwithstanding the foregoing, advisors to the Creditors' Committee, if any, may investigate claims and issues with respect to the liens granted pursuant to the Prepetition Documents during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed $~~25~~50,000.

27. Priorities Among Prepetition Secured Parties. Notwithstanding anything to the contrary herein or in any other order of this Court, in determining the relative priorities and rights of the Prepetition Secured Parties (including, without limitation, the relative priorities and rights of the Prepetition Secured Parties with respect to the Adequate Protection Obligations granted hereunder), such priorities and rights shall continue to be governed by the Prepetition Documents, including, without limitation, the Prepetition Collateral Trust Agreement.

28. Payments Held in Trust. Except as expressly permitted in this Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible satisfaction of all DIP Obligations under the DIP Documents, and termination of the Commitment Amount (as defined in the DIP Documents) in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Agent and DIP Lenders and shall immediately turn over such

proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents, the Interim Order and this Final Order.

29. Proofs of Claim. None of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties will be required to file proofs of claim in any of Chapter 11 Cases or any successor case. Any order entered by the Bankruptcy Court in connection with the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any successor case shall not apply to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

30. Right of Access and Information. Without limiting the rights of access and information afforded the DIP Agent and DIP Lenders under the DIP Documents or the Prepetition Secured Parties under the Prepetition Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent and the Prepetition Lenders reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and the Prepetition Documents, as the case may be, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, restructuring advisers, investment bankers and consultants to cooperate, consult with, and provide to the DIP Agent, the Prepetition Lenders and the Prepetition Indenture Trustee (and so long as an Event of Default has occurred and is continuing, each Prepetition Secured Party and DIP Lender) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors.

31. Retention of Jurisdiction. This Court has and will retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Documents or this Final Order.

32. Order Governs. In the event of any inconsistency between the provisions of this Final Order and the DIP Documents, the provisions of this Final Order shall govern. Additionally, to the extent that there may be an inconsistency between the terms of this Final Order and the Order Establishing Certain Notice, Case Management and Administrative Procedures, the terms of this Final Order shall govern. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order.

33. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases on a permanent basis, including without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors, or similar responsible person or similar designee or litigation trust hereinafter appointed or elected for the estates of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties and their respective successors and assigns, including after conversion or dismissal of any of the Chapter 11 Cases; provided that, except to the extent expressly set forth in this Final Order, the DIP Agent, the DIP Lenders, and the

Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereunder appointed for the estates of the Debtors.

34. Limitation on Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

35. Effectiveness. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Order.

Dated: ~~May~~June ___, 2015
Roanoke, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

~~*/s/ DRAFT*~~
/s/ Tyler P. Brown
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Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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~~*Proposed*~~ *Counsel to the Debtors and Debtors in Possession*

SEEN AND AGREED:

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Proposed Counsel to the Official Committee of Unsecured Creditors of Xinergy Ltd., et al.

/s/ Margaret K. Garber
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margaret.k.garber@usdoj.gov

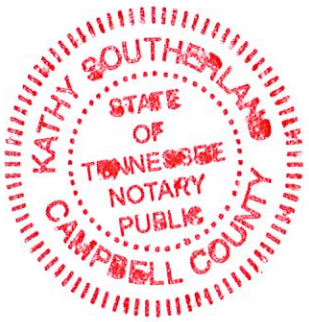
United States Trustee

TAB G

Exhibit "G" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



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

In re: **XINERGY LTD., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 15-70444 (PMB)** **(Jointly Administered)**
XINERGY LTD., *et al.*, **Plaintiffs,** **v.** **JON NIX,** **Defendant.**	**Adv. Pro. No. 15-07008 (PMB)**

STIPULATED ORDER STAYING ADVERSARY PROCEEDING

Based upon the stipulation and agreement by and between the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") and defendant Jon Nix (the "Defendant";

[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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Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

Counsel to the Debtors
and Debtors in Possession

together with the Debtors, the "Parties" and each a "Party"), through their respective counsel, to the terms hereof, including without limitation, that the above-captioned adversary proceeding (the "Adversary Proceeding") should be stayed in order to avoid the litigation costs to both Parties and to allow the Parties the opportunity to attempt to reach agreement on the terms of the Debtors' chapter 11 plan of reorganization (the "Plan"), and it appearing to the Court that entry of this Order is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest:

IT IS HEREBY ORDERED THAT:

1. The Adversary Proceeding is hereby stayed until the earlier to occur of (a) the date an Order confirming the Plan becomes a final, non-appealable order, at which time this Adversary Proceeding shall be dismissed and (b) the date that either of the Parties files a statement with the Court (a "Statement") in the Adversary Proceeding declaring that, notwithstanding good-faith efforts to engage in discussions concerning the terms of the Plan, the Parties have reached a material impasse and the Party filing the Statement desires for the stay of the Adversary Proceeding to be lifted, at which time the Adversary Proceeding shall no longer be stayed, subject to the terms of this Order.

2. In mutual consideration of the Parties' agreement to a stay of this Adversary Proceeding and to engage in good faith discussions concerning the terms of a Plan, during the pendency of the stay of this Adversary Proceeding each of the Parties agrees not to take, or to cause or encourage anyone else to take, any further action in the Debtors' recognition proceeding under the Companies' Creditors Arrangement Act before the Ontario Superior Court of Justice (the "CCAA Proceeding") with respect to enforcing or seeking relief from the stay in the CCAA Proceeding in connection with the Defendant's attempt to call or hold a special shareholder

meeting of Xinergy Ltd. The Defendant further agrees, during the pendency of the stay of this Adversary Proceeding, not to take, or to cause or encourage anyone else to take, any further action in the United States or in Canada to call or hold a special shareholder meeting of Xinergy Ltd. or to otherwise take any action to alter the composition of Xinergy Ltd.'s board of directors. If any other shareholder of Xinergy Ltd. takes any additional or further steps to call or hold a special shareholder meeting, or renews any prior steps taken by the Defendant, the Debtors may, in addition to seeking any other remedies available to them in this Court, take any steps necessary to enforce the stay granted in the CCAA Proceeding.

3. The time for the Defendant to serve an answer or other responsive pleading to the Complaint shall be extended to and including the tenth (10th) day following the expiration or lifting of the stay of the Adversary Proceeding.

4. The hearing on the *Motion of the Debtors and Debtors-in-Possession for a Preliminary Injunction and Memorandum in Support* (the "Motion for a Preliminary Injunction") [Adv. Proc. No. 4] currently scheduled for June 9, 2015, shall be continued and rescheduled for a date that is at least fourteen (14) days after the filing of a Statement in accordance with this Order. As soon as practicable following the filing of a Statement in accordance with this Order, the Debtors shall request a time and date from the Court and re-notice the hearing on the Motion for a Preliminary Injunction, and the date by which any objections to the Motion for a Preliminary Injunction must be filed (which date shall be no earlier than seven (7) days prior to the hearing date).

5. The pre-trial conference currently scheduled for July 7, 2015, shall be continued and rescheduled as a status conference on September 1, 2015 at 10:00 a.m. at the U.S. Bankruptcy Court, 2nd Floor, 210 Church Ave., Roanoke, Virginia 24011.

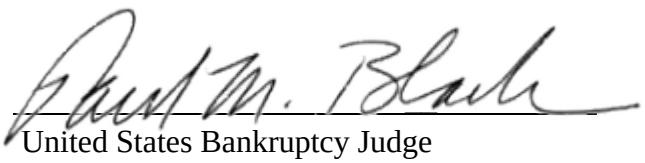
6. The right of parties-in-interest, including the *ad hoc* group of holders of the 9.25% senior secured notes issued by Xinergy Corp. and the lenders under the Debtors' postpetition secured term loan credit facility and the Official Committee of Unsecured Creditors, to seek to intervene as parties to this Adversary Proceeding shall be preserved and not abridged by the stay of this Adversary Proceeding. No party will assert as a defense or objection to any such motion to intervene that such motion is untimely due to the imposition of the stay imposed hereby.

7. In the event one or both of the Parties files a Statement in accordance with this Order, the Parties agree that neither Party shall take any further action to enforce or seek relief from the stay granted in the CCAA Proceeding in connection with the Defendant's subsequent attempt to call or hold a special shareholder meeting of Xinergy Ltd., except as provided in paragraph 2 hereof, until the earlier of (a) a determination by this Court on the Motion for a Preliminary Injunction and (b) twenty-one (21) days after the date the earliest Statement is filed.

8. This Order shall be effective immediately upon entry and the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

9. The Parties agree that it is appropriate to seek, and consent to, the recognition of this Order in the CCAA Proceeding and to seek an adjournment in the CCAA Proceeding of the Defendant's pending motion with respect to the shareholder meeting on terms consistent with this Order.

Dated: June 5, 2015
Roanoke, Virginia



United States Bankruptcy Judge

WE ASK FOR THIS:

/s/ *Tyler P. Brown*
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- *AND*-

/s/ *Robert S. Westermann*
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Counsel for Ad Hoc Group of Secured Noteholders

SCHEDULE 1

(Debtor Entities)

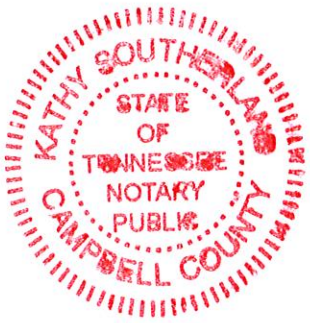
1. Xinergy Ltd. (3697)
2. Xinergy Corp. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
6. Xinergy Straight Creek, Inc. (0071)
7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
9. Middle Fork Mining, Inc. (1593)
10. 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)

TAB H

Exhibit "H" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



CITATION: *Xinergy Ltd. (Re)*, 2015 ONSC 3699
COURT FILE NO.: CV-15-10936-00CL
DATE: 20150609

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *J. Grout* and *A. Nicholson,* for the Applicant, Jon Nix

J. Dietrich and *N. Levine*, for the Respondent, Xinergy Ltd.

J. Bell, for the Information Officer, Deloitte Restructuring Inc.

A. Kauffman, for the DIP Lenders, Whitebox Advisors Inc. and Highbridge Capital Management LLC, and a Group of Second Lien Lenders

HEARD: May 21, 2015

ENDORSEMENT

[1] The applicant on this motion, Jon Nix ("Nix"), has called a shareholders meeting of Xinergy Ltd. ("Xinergy") pursuant to section 105(4) of the *Business Corporations Act*, R.S.O. 1990, c.B.16 (the "OBCA"). On this motion, he sought, among other things, a declaration that the stay of proceedings granted pursuant to the Recognition Order (as defined below) and the stay of proceedings granted pursuant to the Supplemental Order (as also defined below) do not apply to such action and further sought additional relief of an administrative nature relating to the proposed meeting.

[2] The motion has been bifurcated on consent. At this hearing, the parties addressed a single, but important, legal issue respecting the application of the stay of proceedings in each of these Orders to the actions of Nix related to calling the shareholders meetings. On May 29, 2015, the Court advised the parties that, for written reasons to follow, the Court found that the actions of Nix in calling the proposed shareholders meeting, and the related actions addressed in the motion, constituted the exercise of rights in respect of Xinergy by an individual for the purposes of paragraph 7 of the Supplemental Order and, accordingly, all such actions were stayed pursuant to such provision. This Endorsement sets out the Court's reasons for this finding.

Background

[3] Xinergy is a corporation incorporated under the OBCA that is a holding corporation for a number of U.S. subsidiaries that own and operate coal mining assets in West Virginia and Virginia.

[4] Nix is the founder and former chief executive officer of Xinergy. He is also the largest shareholder, owning approximately 18.5% of the outstanding common shares.

[5] On April 6, 2015, Xinergy and 25 of its 26 subsidiaries commenced a proceeding under Chapter 11 of Title 11 of the *United States Bankruptcy Code* (the "*Code*") (the U.S. Proceeding") by filing a voluntary petition in the United States Bankruptcy Court for the Western District of Virginia (the "U.S. Court"). As a result, an automatic stay of proceedings applies in respect of Xinergy and its subsidiaries pursuant to § 362 of the *Code*.

[6] On April 16, 2015, Nix requisitioned the board of directors of Xinergy (the "Board") to call a shareholders meeting pursuant to section 105 of the OBCA. The requisition proposed a reduction of the number of directors to four, the removal of three named directors, the election of two new proposed directors, and the re-election of the two remaining directors.

[7] On April 23, 2015, the Court issued an initial recognition order (the "Recognition Order") pursuant to section 48 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") recognizing the U.S. Proceeding as a "foreign main proceeding", declaring the centre of main interests of Xinergy to be the United States and containing a stay of proceedings. On the same day, the Court also issued a supplemental order (the "Supplemental Order") pursuant to section 49 of the CCAA containing, among other things, a stay of proceedings using language from the Model CCAA Initial Order.

[8] On May 7, 2015, the Board advised Nix by a letter of its counsel that it did not intend to call a shareholders meeting on the basis of its view that the requested meeting would not be in the best interests of Xinergy and the other debtors in the U. S. Proceeding for the reasons set out in such letter.

[9] On May 8, 2015, Xinergy filed a complaint with the U.S. Court (the "Complaint") seeking a declaration that the actions of Nix in attempting to call and/or hold the proposed shareholders meeting are subject to the automatic stay of proceedings under § 362 of the *Code*. In the alternative, Xinergy seeks an order enjoining Nix from taking any further action in respect of the proposed shareholders meeting.

[10] On May 12, 2015, Nix requested a shareholders list from Xinergy and its transfer agent. On or about May 13, 2015, Nix called a shareholders meeting to be held on June 19, 2015 pursuant to section 105(4) of the OBCA. The record date for the meeting is May 20, 2015.

[11] On May 14, 2015, Nix commenced this motion in this court (the "Nix Motion") seeking a declaration that the actions of calling the shareholders meeting, as well as seeking certain administrative relief related to the conduct of the meeting, including seeking an order requiring Xinergy to deliver a shareholder list to Nix, did not violate the stay of proceedings under the Recognition Order and under the Supplemental Order.

[12] On May 21, 2015, this Court granted a further order recognizing and giving effect to certain additional orders of the U.S. Court, including a final order respecting debtor-in-possession financing (the "Final DIP Order"). The Final DIP Order specifies a number of tight timelines for any plan of reorganization, and provides that a failure to meet any of these timelines would constitute an event of default under the DIP financing. The Final DIP Order also provides for an event of default on the occurrence of a "change of control", which is defined to include certain changes to the Board. Nix objected unsuccessfully to inclusion of the latter provision in the Final DIP Order at the hearing before the U.S. Court that considered and ultimately granted the Final DIP Order.

[13] On May 19, 2015, Xinergy filed a motion with the U.S. Court seeking a preliminary injunction enjoining Nix from taking any further action to call or hold the proposed shareholders meeting. This motion is scheduled to be heard by the U.S. Court on June 9, 2015.

[14] At a 9:30 a.m. conference before this Court on May 20, 2015, Xinergy requested that the Nix Motion be adjourned from its original return date of May 21, 2015 to a date after June 9, 2015. In view of Xinergy's time constraints regarding delivery of responding materials to the Nix Motion, the Court ordered that the issues addressed in this Endorsement be heard on an expedited basis on May 28, 2015 before a schedule is set, if required, to hear the remainder of the Nix Motion.

Stay Provisions

[15] The applicable stay provisions in the orders of this Court are as follows.

[16] Paragraph 4 of the Recognition Order provides as follows:

> THIS COURT ORDERS that until otherwise ordered by this Court:
>
> (a) all proceedings taken or that might be taken against the Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
>
> (b) further proceedings in any action, suit or proceeding against the Debtor are restrained; and
>
> (c) the commencement of any action, suit or proceeding against the Debtor is prohibited.

[17] Paragraph 7 of the Supplemental Order further provides as follows:

> THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Debtor, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court or with the written consent of the Debtor and the Information Officer, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and

remedies outside of Canada, (ii) empower the Debtor to carry on any business in Canada which the Debtor is not lawfully entitled to carry on, (iii) effect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; or (iv) prevent the DIP Lenders from making any personal property lien registrations in Canada.

The Issue

[18] The parties are agreed that, notwithstanding the Recognition Order, this Court has the authority to determine issues pertaining to the application of the Recognition Order and the Supplemental Order to the actions of Nix in calling the proposed shareholders meeting and in seeking related relief from the Court pursuant to the Nix Motion. Conversely, the U.S. Court has the authority to determine any similar issues raised by the parties in the U.S. Proceeding.

[19] The parties also agree that the sole issue to be determined on this hearing is whether either or both of the stay of proceedings in the Recognition Order and the stay of proceedings in the Supplemental Order apply to Nix's actions in calling the proposed shareholders meeting and in seeking ancillary relief by bringing the Nix Motion.

[20] With respect to the application of the Recognition Order, the actions at issue do not fall within paragraph 4(a). The parties dispute whether such actions fall under the provisions of paragraphs 4(b) and 4(c) – in particular 4(c). I incline to the view that such actions would constitute the "commencement of a proceeding against the Debtor" for the purposes of paragraph 4(c) based on the interpretive principles applied below in respect of paragraph 7 of the Supplemental Order. However, given the determination below, it is not necessary to address this issue and I therefore decline to do so.

[21] Accordingly, the remainder of this Endorsement addresses the application of the stay of proceedings in paragraph 7 of the Supplemental Order to the actions of Nix in respect of the proposed shareholders meeting.

Preliminary Matter

[22] Xinergy argues, as a preliminary matter, that the Court should not address the issue on this hearing at this time on the grounds of prematurity. It argues that exactly the same issues are before the U.S. Court in the hearing scheduled for June 9, 2015. Xinergy submits that the principles of comity referred to in paragraph 44(a) of the CCAA require that the Court defer hearing this issue until after the U.S. Court renders its decision. In addition, Xinergy argues that the decision of the U.S. Court may be determinative, thereby removing the need for any determination by this Court.

[23] I accept that it is important in cross-border insolvencies to recognize and respect the principle of comity if such insolvencies are to function effectively. I am not persuaded, however, that the determination sought by Nix on this motion involves any infringement of that principle.

[24] On this motion, the issue is limited to a determination of whether the provisions of paragraph 7 of the Supplemental Order, which was issued by this Court, apply to the actions of Nix. The Court is not being asked to address the operation of any orders issued by the U.S. Court. Nor is it addressing the further issue of whether the stay under the Supplemental Order

should be lifted. Accordingly, it is not the case that the Court is being asked to determine the same issue as will be before the U.S. Court on June 9, 2015.

[25] While Xinergy says that it does not believe such a determination will be necessary after the U.S. Court renders its decision, I do not agree. If the U.S. Court were to find either that the stay in §362 of the *Code* does not apply or that such stay should be lifted, a determination of this Court will simplify the issues before the parties with respect to the operation of the Recognition Order and the Supplemental Order and may thereby remove the need for any further hearing. I note that counsel for the DIP Lenders and for most of the second lien lenders also supported this position. Further, Xinergy did not demonstrate any prejudice to it that would result if the Court were to render a determination on the issue before it.

[26] Accordingly, the preliminary submission of Xinergy is rejected.

The Applicant's Position

[27] Nix argues that the stay of proceedings in paragraph 7 of the Supplemental Order does not apply to his continuing actions in respect of the proposed shareholders meeting, including his actions in bringing this motion to request, among other things, a declaration to that effect and a copy of the shareholder list. He submits that the stay of proceedings in paragraph 7 of the Supplemental Order should not be interpreted to extend to prevent on-going corporate governance within Xinergy, including the calling of a shareholders meeting by a shareholder and actions in furtherance of the holding of such meeting.

[28] Nix relies in particular on three authorities: the statements of Blair J.A. at paragraphs 44-48 of *Stelco, Re*, [2005] O.J. No. 1171 (C.A.); and the decisions of this Court in *Unique Broadband Services, Re*, 2011 ONSC 224 (S. Ct.) ("USB #1") and *Unique Broadband Services, Re*, 2011 ONSC 1429 (S. Ct.) ("USB #2").

Analysis and Conclusions

[29] I conclude that both the plain meaning of paragraph 7 of the Supplemental Order and the policy of the CCAA compel an interpretation of that provision that engages the provisions of paragraph 7 in the present circumstances. I will address each consideration in turn.

[30] With respect to the plain meaning of paragraph 7 of the Supplemental Order, Nix has called the shareholders meeting pursuant to the exercise of his right as a requisitioning shareholder under section 105(4) of the OBCA. As such, on this motion and otherwise, he is asserting or exercising rights and remedies against or in respect of Xinergy. Such actions contravene the express language of paragraph 7 of the Supplementary Order, which is not limited to the assertion of rights and remedies as creditors. Similarly, Nix asserts a right to a copy of the shareholder list pursuant to section 146 of the OBCA. Such action also constitutes the exercise of his rights against Xinergy and, as such, is caught by the stay in paragraph 7 of the Supplementary Order. Clearly, given these findings, any other actions having the purpose of furthering the conduct of the shareholders meeting, including the bringing of the Nix Motion, must also be caught by the stay.

[31] With respect to the policy that should inform the interpretation of paragraph 7, it is necessary to begin with the policy of the CCAA. As is well established, the policy of the CCAA

is to maintain the *status quo* as between all stakeholders of a debtor corporation for a period of time to permit an orderly reorganization process to proceed with a view to obtaining approval for, and implementation of, a plan of compromise or arrangement between the debtor company and its creditors. To this end, pursuant to section 11 of the CCAA, considerable authority and discretion is vested in the Court to supervise an on-going process under the CCAA with a view to preventing one or more stakeholders from gaining an advantage over other creditors while the corporation is seeking to reorganize its affairs in order to maximizing the likelihood of a successful restructuring.

[32] This policy suggests that the provisions of any stay of proceedings granted in restructuring proceedings under the CCAA should be broadly construed. Such an interpretation balances the objective of ensuring maintenance of the *status quo* with the discretion of a court to lift the stay in circumstances where it is satisfied that the objectives of the CCAA will not be materially prejudiced.

[33] On the other hand, I accept that the commencement of proceedings under the CCAA, and in particular the issue of a stay of proceedings, does not suspend or terminate ongoing corporate governance of the debtor corporation. To this end, the debtor corporation continues to be governed by its board of directors, which continues to have the authority, among other things, to call meetings of shareholders. Accordingly, the rights and obligations of shareholders and directors of an OBCA corporation under the provisions of the OBCA and common law principles continue, except to the extent that an order of a court in the CCAA proceedings otherwise applies.

[34] The issue on this motion is, therefore, whether there is any policy reason why the stay of proceedings should not apply in respect of matters pertaining to internal corporate governance of a debtor company. Nix has failed to demonstrate any substantive reason why a stay of proceedings under the CCAA should not apply to shareholder actions in furtherance of the calling and holding of a shareholders meeting. Moreover, I think there are several reasons why it should apply from a policy perspective that are consistent with the policy of the CCAA.

[35] First, in many circumstances, shareholders of a debtor company in proceedings under the CCAA have a modest economic interest in the company at best. Second, the calling of a shareholders meeting in the course of a CCAA proceeding always carries the potential to distract or upset the reorganization process by diverting time and monetary resources away from the process of developing a plan of arrangement, when the primary goal of the debtor company necessarily must be to proceed as expeditiously as possible in order to maximize the likelihood of success. Third, in many circumstances, a change in the board of directors of a debtor company may have consequences for the business and affairs of a debtor company, including under outstanding DIP financing, or, more generally, for the likelihood of a viable plan of arrangement being proposed by the debtor company.

[36] These considerations argue in favour of a broad application of the stay with the necessary consequence that a court has the discretion to lift the stay in circumstances in which the court is satisfied that the purposes of the CCAA will not be adversely affected by the holding of the shareholders meeting. Application of the stay of proceedings in this context combined with the

Court's discretion to lift the stay permits the Court to assess the likelihood of any such prejudice to the reorganization process, or any abuse, on a case-by-case basis.

[37] In the case of a cross-border insolvency, there is also the added consideration that control of the reorganization process rests with the judicial authority in the centre of main interests. If that court is located outside Ontario, a broad application of a stay of proceedings permits courts in Ontario to take into consideration any determination of the same issue by such external judicial authority – that is, it allows the Ontario court the ability to recognize the principle of comity as a consideration in the exercise of its discretion to lift the stay.

[38] In reaching the conclusion that the stay of proceedings applies to actions directed toward the holding of a shareholders meeting, I have also concluded that the authorities relied upon by Nix do not support his position on this motion. In particular, both *Stelco* and *USB #1* dealt with the discretion of a court pursuant to the CCAA to remove directors. In *Stelco*, Blair J.A. held that the discretion of a court under section 11 of the CCAA was not available to remove a director given the existence of an explicit statutory procedure under the OBCA for doing so. The decision did not address whether the stay of proceedings in that case applied to an action by the shareholders to seek to remove directors. Similarly, the issue in *USB #1* was whether the court should exercise its express discretionary authority to remove certain directors under section 11.5 of the CCAA, as amended subsequent to *Stelco*. In *UBS #2*, the Court held that the stay of proceedings did not extend to a partial takeover bid. This is clearly a different circumstance which, as the Court stated at paragraph 35, did not involve legal rights and remedies of a contractual or statutory nature and therefore fell outside the language of the stay of proceedings.

[39] Further, it is well established that the discretion of a court under section 11 of the CCAA to grant a stay extends to issuing a stay that affects not only the secured and unsecured creditors of a debtor corporation but also "all non-creditors and other parties who could potentially jeopardize the success of the plan and thereby the continuance of the company": see *Lehndorff General Partner, Re*, [1993] O.J. No. 14 (Ont. Ct. J. (Gen. Div.- Comm. List)) at para. 10. While the cases referred to in paragraph 11 of that decision do not include any situations involving a shareholder seeking to call a shareholders meeting or seeking to remove or replace directors, I see no principled reason for, in effect, disregarding this consideration in respect of shareholders of a debtor company, as Nix suggests. I do not think that any of the decisions relied upon by Nix evidence a policy that third parties asserting their rights as shareholders in respect of matters of corporate governance should be excluded from the application of a stay of proceedings that would otherwise apply to all other third parties asserting rights against the debtor company. In other words, I do not accept that shareholders are any less third parties to a debtor corporation than such other parties to whom a stay of proceedings has been held to apply.

Conclusion

[40] Based on the foregoing, the Court finds that the continuing actions of Nix in respect of the proposed shareholders meeting, and the related actions addressed in the Nix Motion, constituted the exercise of rights in respect of Xinergy by an individual for the purposes of paragraph 7 of the Supplemental Order and, accordingly, all such actions are stayed pursuant to such provision.

Wilton-Siegel J.

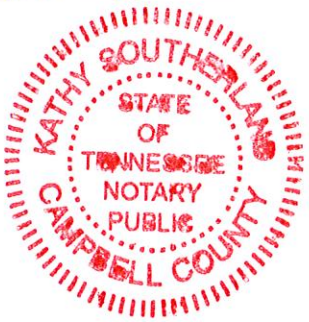
Date: June 9, 2015

TAB I

Exhibit "I" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

Kathy Southerland

A Notary for the State of Tennessee



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)**

DEBTORS' MOTION FOR AN ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF

The above captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby move the Court (the "Motion"), pursuant to section 501 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and Rules 2002, 3003(c) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order: (i) establishing the general bar date by which all creditors and equity holders must file proofs of claim or proofs of interests in these chapter 11 cases, including without limitation

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

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Counsel to the Debtors
and Debtors in Possession

claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the twenty (20) days prior to the Petition Date (as defined below) (the "General Bar Date"); (ii) establishing the date by which governmental units must file proofs of claim in these chapter 11 cases (the "Governmental Unit Bar Date"); (iii) establishing the date by which proofs of claim relating to the Debtors' rejection of executory contracts or unexpired leases must be filed in these chapter 11 cases (the "Rejection Bar Date"); and (iv) establishing a bar date by which creditors holding claims that have been amended by the Debtors in their Schedules (as defined below) must be filed in these chapter 11 cases (the "Amended Schedule Bar Date"; together with the General Bar Date, the Governmental Unit Bar Date and the Rejection Bar Date, the "Bar Dates"); (v) approving a tailored proof of claim form to be distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief. In support of this Motion, the Debtors respectfully represent as follows:

I. Jurisdiction, Venue and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2).

2. The statutory predicate for the relief requested herein is section 501 of the Bankruptcy Code, and Bankruptcy Rules 2002, 3003(c) and 9007.

II. Background

3. On April 6, 2015 (the "Petition Date"), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their

businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 8, 2015, the Court entered an order authorizing the joint administration of these chapter 11 cases [Doc. No. 57].

4. On May 11, 2015, the United States Trustee for the Western District of Virginia (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed.

5. Pursuant to an order of this Court dated April 8, 2015 [Doc. No. 70], American Legal Claim Services, LLC ("ALCS") is the authorized claims, noticing and balloting agent for the Court with respect to the Debtors' cases.

6. Additionally, pursuant to an order of this Court dated April 8, 2015 [Doc. No. 61], each of the Debtors is required to file their respective Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules") on or before June 19, 2015.

7. The section 341(a) meeting of the creditors is scheduled to be held on June 23, 2015, at 1:00 p.m. (prevailing Eastern Time).

8. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Declaration of Michael R. Castle in Support of Chapter 11 Petitions and Related Motions [Doc. No. 18]. Additional facts in support of the specific relief sought herein are set forth below.

III. Relief Requested

9. By this Motion, the Debtors seek entry of an order, in substantially the form attached hereto as Exhibit A (the "Bar Date Order"): (i) establishing the General Bar Date; (ii) establishing the Governmental Unit Bar Date (iii) establishing the Rejection Bar Date; (iv) establishing the Amended Schedule Bar Date; (v) approving a tailored proof of claim form to be

distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief.

IV. Basis for Relief

A. Establishment of Bar Dates

10. Bankruptcy Rule 3003(c)(3) provides that "[t]he court shall fix . . . the time within which proofs of claim or interest may be filed." The Debtors now seek to establish certain Bar Dates to determine what claims are asserted against the Debtors and interests are held in Xinergy Ltd.

i. General Bar Date

11. The Debtors request that the Court establish the General Bar Date at **4:00 p.m. (prevailing Eastern Time) on July 31, 2015**, which the Debtors submit will be no less than forty-five (45) days after the date of mailing of the Bar Date Notice Package (as defined herein).

12. As set forth in the proposed Bar Date Order, the Debtors request that any person or entity ("Entity") that asserts a claim against one or more of the Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or holds an equity interest in Xinergy Ltd. that *arose prior to the Petition Date* (any such claim, a "Prepetition Claim"; and any such interest, a "Prepetition Interest") be required to file an original, written proof of such Prepetition Claim or Prepetition Interest, substantially in the form of the Proof of Claim Form (as defined below) or the Proof of Interest Form (as defined below), as applicable, so as to be received on or before the General Bar Date by either mail or delivery by hand, courier, or overnight service to (i) if via mail, c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650

or (ii) if via delivery by hand, courier or overnight service, c/o American Legal Claim Services, LLC, 5985 Richard St., STE 3, Jacksonville, FL 32216 (either, the "Claims Docketing Center").

13. The proposed Bar Date Order provides that the Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means, and the Debtors request that the Court order that all proofs of claim and proofs of interest be deemed timely filed only if the original Proof of Claim Form or the original Proof of Interest Form actually is received by the Claims Docketing Center on or before the General Bar Date.

14. Except as provided below, the General Bar Date would apply to all Entities holding Prepetition Claims (whether secured, unsecured priority, or unsecured nonpriority) or Prepetition Interests, including, but not limited to, the following:

(a) Entities whose Prepetition Claims arise out of the rejection of executory contracts or unexpired leases by the Debtors prior to the entry of the Bar Date Order;

(b) Entities whose Prepetition Claims arise out of the obligations of such Entities under a contract for the provision of liability insurance to a Debtor;

(c) any Entity whose Prepetition Claim against the Debtors is not listed in the Schedules or whose Prepetition Claim is listed as disputed, contingent or unliquidated and that desires to participate in these chapter 11 cases or share in any distribution in these chapter 11 cases;

(d) any Entity whose Prepetition Interest is not listed in the Schedules;

(e) any Entity that believes that its Prepetition Claim or Prepetition Interest is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and

(f) any Entity that asserts a claim against the Debtors under Bankruptcy Code section 503(b)(9) on account of goods delivered

to the Debtors during the twenty (20) days prior to the Petition Date.

15. The General Bar Date would apply to all Prepetition Claims and Prepetition Interests asserted by such Entities, except that the following Entities would not need to file proofs of claim or proofs of interest:

(a) any Entity that has already properly filed with the Claims Docketing Center a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts, claims, or interests are sought;

(b) any Entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Schedules, (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation of or interest in only the specific Debtor against which the Prepetition Claim is listed in the Schedules;

(c) any Entity (i) whose Prepetition Interest is listed in the Schedules and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;

(d) any Entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors' Schedules) previously has been allowed by, or paid pursuant to, an order of this Court;

(e) any Entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date;

(f) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors;

(g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and

(h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as thereafter amended, supplemented or modified from time to time.

16. Notwithstanding anything herein to the contrary, in accordance with the Court's order approving the Debtors' debtor-in-possession financing [Doc. No. 156] (the "DIP Financing Order"), none of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties (each as defined in the DIP Financing Order) shall be required to file proofs of claim in any of the Debtors' chapter 11 cases or any successor case, and the Debtors' stipulations in the DIP Financing Order shall be deemed to constitute a timely filed proof of claim."

ii. Governmental Unit Bar Date

17. Section 502(b)(9) of the Bankruptcy Code provides that a governmental unit's ("Governmental Units")[2] claim is timely if it is filed before 180 days after the petition date or such later time as the Bankruptcy Rules may provide. 11 U.S.C. § 502(b)(9). Therefore, pursuant to section 502(b)(9) of the Bankruptcy Code, a claim filed by a Governmental Unit is timely if it is filed within 180 days after the Petition Date, or by September 23, 2015. The Debtors seek an order from this Court establishing **September 23, 2015, at 4:00 p.m. (prevailing Eastern Time)** as the Governmental Unit Bar Date in these chapter 11 cases. The Governmental Unit Bar Date would apply to all Governmental Units holding claims against the Debtors (whether secured, unsecured priority or unsecured non-priority) that arose prior to or on the Petition Date, including governmental units with claims against the Debtors for unpaid taxes,

[2] The term "Governmental Unit," as used herein, has the meaning ascribed to it in section 101(27) of the Bankruptcy Code.

whether such claims arise from prepetition tax years or prepetition transactions to which the Debtors were a party.

18. The Debtors request that Governmental Units wishing to assert a claim be required to file an original, written request for payment of any such claim, substantially in the form of the Proof of Claim Form (as defined below), so as to be received on or before the Governmental Unit Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

19. The Bar Date Order provides that the Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means, and the Debtors request that the Court order that all proofs of claim be deemed timely filed only if the original Proof of Claim Form actually is received by the Claims Docketing Center on or before the Governmental Unit Bar Date.

iii. Rejection Bar Date

20. The Debtors have the right to reject any executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code and, therefore, anticipate that certain Entities may assert Prepetition Claims in connection with a Debtor's rejection of executory contracts and unexpired leases. The Debtors propose that, for any Prepetition Claim relating to a Debtor's rejection of an executory contract or unexpired lease (a "Rejection Damages Claim") that becomes effective after entry of the Bar Date Order but before confirmation of the Plan, the Rejection Bar Date for such Rejection Damages Claim shall be the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

21. The Debtors request that Entities wishing to assert a Rejection Damages Claim be required to file an original, written request for payment of any such Rejection Damages Claim, substantially in the form of the Proof Claim Form (as defined below), so as to be received on or before the Rejection Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

22. The Bar Date Order provides that the Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means, and the Debtors request that the Court order that all proofs of claim be deemed timely filed only if the original Proof of Claim Form is actually received by the Claims Docketing Center on or before the Rejection Bar Date.

iv. Amended Schedule Bar Date

23. The Debtors propose further that they shall retain the right to: (a) dispute or assert offsets or defenses against any filed Prepetition Claim or Prepetition Interest or any Prepetition Claim or Prepetition Interest listed or reflected in the Schedules as to nature, amount, liability, classification, or otherwise; (b) subsequently designate any Prepetition Claim as disputed, contingent or unliquidated; and (c) add a claim or equity interest in Xinergy Ltd. to the Schedules; *provided, however,* that if the Debtors amend the Schedules to reduce the undisputed, noncontingent, and liquidated amount, or change the nature or classification of a Prepetition Claim or Prepetition Interest and/or add a claim or equity interest in Xinergy Ltd. to the Schedules, then the affected claimant will have until the Amended Schedule Bar Date to file a proof of claim or proof of interest or to amend any previously filed proof of claim or proof of interest ("Amended Schedule Claim").

24. The Debtors request that the Court establish the Amended Schedule Bar Date as the later of (a) the General Bar Date or (b) thirty (30) days after the date that notice of the amendment is served on the affected claimant. Notwithstanding the foregoing, nothing set forth herein would preclude the Debtors from objecting to any Prepetition Claim or Prepetition Interest, whether scheduled or filed, on any grounds.

25. The Debtors request that Entities wishing to assert an Amended Schedule Claim be required to file an original, written request for payment of any such Amended Schedule Claim, substantially in the form of the Proof of Claim Form or Proof of Interest Form, so as to be received on or before the Amended Schedule Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

26. The Bar Date Order provides that the Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means, and the Debtors request that the Court order that all proofs of claim or proofs of interest be deemed timely filed only if the original Proof of Claim Form or Proof of Interest form is actually received by the Claims Docketing Center on or before the Amended Schedule Bar Date.

B. Effect of Failure to File by Applicable Bar Date

27. The Debtors propose that, pursuant to Bankruptcy Rule 3003(c)(2), any Entity that is required to file a proof of claim or proof of interest in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, but that fails to do so in a timely manner, shall be forever barred, estopped, and enjoined from asserting any Prepetition Claim or Prepetition Interest against any of the Debtors (or filing a proof of claim or proof of interest with respect thereto), and the Debtors and their property shall be forever discharged from

any and all indebtedness or liability with respect to such Prepetition Claim or Prepetition Interest. Additionally, any holder of any Prepetition Claim or Prepetition Interest who is required, but fails, to file a proof of such claim or interest in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtors' chapter 11 cases on account of such Prepetition Claim or Prepetition Interest or to receive further notices regarding such Prepetition Claim.

C. Tailored Proof of Claim Form and Proof of Interest Form

28. The Debtors have prepared a proof of claim form tailored to these cases (the "Proof of Claim Form"), a copy of which is annexed as Exhibit B. The proposed Proof of Claim Form is based on Official Form No. 10. The Debtors request that the Court approve the Proof of Claim Form in a form substantially conforming to the Proof of Claim Form.

29. The Debtors also have prepared a proof of interest form tailored to these cases (the "Proof of Interest Form"), a copy of which is annexed as Exhibit C. The Debtors request that the Court approve the Proof of Interest Form in a form substantially conforming to the Proof of Interest Form.

30. In accordance with the Proposed Bar Date Order, the Debtors request that the Court order that each proof of claim and proof of interest must (a) be written in the English language, (b) denominated in lawful currency of the United States, (c) conform substantially with the provided Proof of Claim Form or the Proof of Interest Form, as applicable, and (d) attach copies of any writings upon which the claim or interest is based.

D. Actual Notice of Bar Date

i. Actual Notice of the General Bar Date, the Governmental Unit Bar Date and the

Rejection Bar Date

31. Pursuant to Bankruptcy Rule 2002(a)(7), the Debtors, with the help of ALCS, propose to provide actual notice of the Bar Dates by mailing (a) a notice of the Bar Dates (the "Bar Date Notice"; together with a Proof of Claim Form and the Proof of Interest Form, the "Bar Date Notice Package") in substantially the form attached hereto as Exhibit D; (b) the Proof of Claim Form; and (c) the Proof of Interest Form to:

(a) the U.S. Trustee;

(b) each member of the Committee and counsel for the Committee;

(c) all holders of Prepetition Claims or Prepetition Interests, including all such persons or entities listed on the Schedules;

(d) all counterparties to executory contracts and unexpired leases;

(e) all current and former employees of the Debtors to the extent that contact information for former employees is available in the Debtors' records;

(f) all taxing authorities for locations in which the Debtors do business;

(g) all parties to litigation in which the Debtors are involved;

(h) all providers of utility services to the Debtors;

(i) all insurance providers;

(j) all of the Debtors' ordinary course professionals;

(k) the Debtors' banks;

(l) the Debtors' pre-petition note holders;

(m) all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the entry of the Bar Date Order; and

(n) all parties that have filed proofs of claim or proofs of interest in these Cases as of the date of entry of the Bar Date Order.

(collectively, the "Bar Date Notice Parties").

32. The Debtors further reserve the right, out of an abundance of caution, to serve the Bar Date Notice to certain Entities not described above with which, prior to the Petition Date, the Debtors had done business or that may have asserted a claim or interest against the Debtors in the recent past.

33. The proposed Bar Date Notice Package includes a proposed Bar Date Notice that notifies the parties of the Bar Dates and contains information regarding who must file a proof of claim or proof of interest, the procedures for filing a proof of claim or proof of interest, and the consequences of failure to timely file a proof of claim or proof of interest.

34. The Debtors request that the Court approve the form and use of the Bar Date Notice Package.

ii. Actual Notice of Amended Schedule Bar Date, as necessary

35. If and when the Debtors amend their Schedules to reduce any undisputed, noncontingent, and liquidated amount, to change the nature or classification of a Prepetition Claim or Prepetition Interest or to add a claim or equity interest in Xinergy Ltd., the Debtors will provide notice to the affected claimant of any such amended or added claim or interest, which will include information regarding the Amended Schedule Bar Date and how to file a proof of claim or proof of interest or amend an existing proof of claim or proof of interest.

36. The Debtors request that the Court approve this method of notice of the Amended Schedule Bar Date.

E. Timing of Proposed Notice by Mail

37. Based upon the number of Entities to whom the Debtors propose to provide notice, including all creditors who are entitled to receive notice, the Debtors, pursuant to Bankruptcy Rule 2002(a)(7), intend to mail the Bar Date Notice Package to all known creditors

and equity security holders within five (5) business days after entry of the Bar Date Order, but in no event later than June 15, 2015. With the General Bar Date fixed at 4:00 p.m. (prevailing Eastern Time) on July 31, 2015 and the Governmental Unit Bar Date fixed at 4:00 p.m. (prevailing Eastern Time) on September 23, 2015, all potential claimants or interest holders should have more than 40-days' notice of such Bar Dates. Such notice period is well in excess of the twenty-one (21) day notice period required under Bankruptcy Rule 2002(a)(7) and will provide creditors and equity security holders ample time within which to prepare and file proofs of claim or proofs of interest, if necessary.

i. Supplemental Mailings of the Bar Date Notice Package

38. After the initial mailing of the Bar Date Notice Package occurs as provided for above, the Debtors anticipate that they may be required to make supplemental mailings of the Bar Date Notice Package in a number of situations including in the event that: (a) Bar Date Notice Packages are returned by the post office with forwarding addresses, necessitating a remailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along Bar Date Notice Packages to such parties and instead return their names and addresses to the Debtors for direct mailing, and (c) additional potential claimants or interest holders become known to the Debtors (collectively, the "Special Bar Date Parties"). Therefore, the Debtors, with the help of ALCS, request the right to make supplemental mailings of the Bar Date Notice Package up to twenty-three (23) days in advance of the applicable Bar Dates, with any such supplemental mailings being deemed timely.

39. While the Debtors anticipate there may be a need to establish one or more later special bar dates and request the right to do so below, the Debtors believe that the proposed supplemental mailing of the Bar Date Notice Package will serve to preserve the integrity of the

Bar Dates, will reduce the number of special bar dates that may need to be established, will permit the claims process to be completed expeditiously, and will ease the administrative burden of these cases.

ii. Establishment of Special Bar Dates

40. To minimize the time and expense associated with having to seek subsequent orders from this Court, the Debtors request that they be permitted to establish special bar dates with respect to the Special Bar Date Parties as to which a mailing or remailing of the Bar Date Notice Package is necessary and cannot be accomplished prior to twenty-three (23) days in advance of an applicable Bar Date. With respect to the Special Bar Date Parties, the Debtors request the right to establish special bar dates at least twenty-one (21) days after the date on which the Debtors mail the notice of each such special bar date. Such notice will substantially take the form of the Bar Date Notice (with necessary modifications to reflect the special bar date provisions).

41. The Debtors submit that twenty-one (21) days' notice of each special bar date is appropriate, rather than the longer period provided in connection with the other Bar Dates, because any such special bar dates will be established later in these cases and must be structured so as not to delay the progress of these cases, and because such special bar dates will be applicable to parties who will be receiving notice directly, presumably within three (3) days of mailing, rather than through intermediate channels that may delay ultimate receipt. Moreover, the Debtors anticipate establishing special bar dates on a very limited basis, and only if necessary to ensure adequate bar date noticing and discharge protection, to the extent applicable.

42. The Debtors propose to advise this Court of the establishment of each special bar date by filing a notice, together with a list that specifically identifies the Special Bar Date Parties

that are subject thereto and a copy of the bar date notice applicable to the special bar date. In addition to being filed with this Court, such notice will be served upon the U.S. Trustee, the attorneys for the informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing, and counsel for the Committee. A certificate of service subsequently will be filed to evidence the mailing of each special bar date notice to the parties subject thereto.

43. Each of the special bar dates will apply only to the Special Bar Date Parties who are specifically identified as being subject thereto in the lists to be filed with the Court. However, as to any of such specifically identified parties who may be found to have received effective notice of the Bar Dates, the Debtors do not waive the right to assert that the Bar Dates, rather than the special bar date, govern. Moreover, the Bar Dates will remain effective, and it is the Debtors' intention that they be fully enforceable with respect to parties who have received actual notice thereof pursuant to the Bar Date Notice.

F. Assistance of Claims Agent

44. To facilitate and coordinate the claims reconciliation and bar date notice functions, the Bar Date Notice Package or the Bar Date Notice only, as appropriate, will be mailed by ALCS. This will ensure that each party will receive the Bar Date Notice Package, which will include (a) the Bar Date Notice; (b) a Proof of Claim Form; and (c) a Proof of Interest Form.

45. To the extent that ALCS requires any assistance with the preparation and mailing, the Debtors request that ALCS be authorized to employ and pay necessary service providers, subject to prior approval from the Debtors, and to obtain reimbursement from the Debtors for any such payments on the same terms applicable to its direct services. The Debtors further

request that ALCS be authorized to take such other actions as may be necessary to ensure timely preparation and mailing of the Bar Date Notice Package.

G. Filing Proofs of Claim against Multiple Debtors

46. The Debtors propose that all Entities asserting claims against more than one Debtor be required to file a separate proof of claim with respect to each such Debtor. If Entities are permitted to assert claims against more than one Debtor in a single proof of claim, ALCS may have difficulty maintaining separate claim registers for each Debtor, and all named Debtors will be required to object to a proof of claim, that may be applicable to only one of the named Debtors. Likewise, Entities should be required to identify on each proof of claim the particular Debtor against which their claim is asserted. Requiring Entities to identify the Debtor against which a claim is asserted will greatly expedite the Debtors' review of proofs of claim and requests for payment of an Administrative Expense in these cases. This requirement will not be unduly burdensome on claimants because such Entities will know or should know the identity of the Debtor against which they are asserting a claim.

V. Notice

47. Notice of this Motion has been provided to all necessary parties in accordance the *Final Order Establishing Certain Notice, Case Management and Administrative Procedures* entered by this Court on May 8, 2015 [Doc. No. 179]. The Debtors submit that no other or further notice need be provided.

VI. No Previous Request

48. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order: (i) approving (a) the Bar Dates, (b) the Proof of Claim Form, (c) the Proof of Interest Form; and (d) the manner of notice of the Bar Dates; and (ii) granting such other and further relief as the Court may deem proper.

DATED: May 29, 2015

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

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Counsel to the Debtors
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

PROPOSED ORDER

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]	

ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF

Upon the motion (the "Motion")[2] of the above-captioned cases debtors and debtors in possession (collectively, the "Debtors"), for the entry of an Order, pursuant to section 501 the Bankruptcy Code and Bankruptcy Rules 2002, 3003(c) and 9007, (i) establishing the general bar date by which all creditors and equity holders must file proofs of claim or proofs of equity interests in these chapter 11 cases, including without limitation claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the twenty (20) days prior to the Petition

[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.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

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and Debtors in Possession

Date (the "General Bar Date");[3] (ii) establishing the date by which Governmental Units must file proofs of claim in these chapter 11 cases (the "Governmental Unit Bar Date"); (iii) establishing the date by which proofs of claim relating to the Debtors' rejection of executory contracts or unexpired leases must be filed in these chapter 11 cases (the "Rejection Bar Date"); (iv) establishing a bar date by which creditors holding claims that have been amended by the Debtors in their Schedules (as defined below) must be filed in these chapter 11 cases (the "Amended Schedule Bar Date"; together with the General Bar Date, the Governmental Unit Bar Date and the Rejection Bar Date, the "Bar Dates"); (v) approving a tailored proof of claim form to be distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and that the establishment of the Bar Dates and the procedures set forth in the Motion are fair and reasonable and will provide good, sufficient and proper notice to all creditors and equity holders of their rights and obligations in connection with claims or interests they may have against the Debtors or their property in these chapter 11 cases; and the Court finding that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and upon the record therein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

---

[3] For purposes of this Motion, the Bar Dates (as defined herein) requested herein shall not extend to requests for payment of fees and expenses of professionals retained or sought to be retained by order of the Court in these cases.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.

2. Bar Dates. The Bar Dates set forth in the Motion hereby are **APPROVED**.

3. Notices and Forms. The forms of the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form, substantially in the form attached to the Motion, and the manner of providing notice of the Bar Dates proposed in the Motion, are **APPROVED**. The form and manner of notice of the Bar Dates approved hereby are deemed to fulfill the notice requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

4. The General Bar Date. The General Bar Date by which proofs of claim against the Debtors and proofs of interest in Xinergy Ltd. must be filed is **July 31, 2015, at 4:00 p.m. (prevailing Eastern Time).**

5. Any Entity that asserts a claim against one or more of Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or holds an equity interest in Xinergy Ltd. that arose prior to the Petition Date (any such claim, a "Prepetition Claim"; and any such interest, "Prepetition Interest") is required to file an original, written proof of such Prepetition Claim or Prepetition Interest, substantially in the form of the Proof of Claim Form or the Proof of Interest Form, as applicable, so as to be received on or before the General Bar Date by either mail or delivery by hand, courier, or overnight service to: (i) if via mail, c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650 or (ii) if via delivery by hand, courier or overnight service, c/o American Legal Claim Services, LLC, 5985 Richard St., STE 3, Jacksonville, FL 32216 (either, the "Claims Docketing Center").

6. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form is *actually received* by the Claims Docketing Center on or before the General Bar Date.

7. The following Entities do not need to file proofs of claim or proofs of interest:

(a) any Entity that has already properly filed with the Claims Docketing Center a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts or claims are sought;

(b) any Entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Schedules, (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation only of the specific Debtor against which the Prepetition Claim is listed in the Schedules;

(c) any Entity (i) whose Prepetition Interest is listed in the Schedules and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;

(d) any Entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors' Schedules) previously has been allowed by, or paid pursuant to, an order of this Court;

(e) any Entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date;

(f) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors; and

(g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and

(h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as thereafter amended, supplemented or modified from time to time.

8. Except as provided below, the following Entities must file a proof of claim on or before the General Bar Date:

(a) Entities whose Prepetition Claims arise out of the rejection of executory contracts or unexpired leases by the Debtors prior to the entry of the Bar Date Order;

(b) Entities whose Prepetition Claims arise out of the obligations of such Entities under a contract for the provision of liability insurance to a Debtor;

(c) any Entity whose Prepetition Claim against the Debtors is not listed in the Schedules or whose Prepetition Claim is listed as disputed, contingent or unliquidated and that desires to participate in these chapter 11 cases or share in any distribution in these chapter 11 cases;

(d) any Entity whose Prepetition Interest is not listed in the Schedules;

(e) any Entity that believes that its Prepetition Claim or Prepetition Interest is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and

(f) any Entity that asserts a claim against the Debtors under Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date.

9. Notwithstanding anything herein to the contrary, in accordance with the Court's order approving the Debtors' debtor-in-possession financing (Doc. No. 156) (the "DIP Financing Order"), none of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties (each as defined in the DIP Financing Order) shall be required to file proofs of claim in any of the Debtors'

chapter 11 cases or any successor case, and the Debtors' stipulations in the DIP Financing Order shall be deemed to constitute a timely filed proof of claim."

10. The Governmental Unit Bar Date. The Governmental Unit Bar Date by which Governmental Units must file proofs of claim against the Debtors is **September 23, 2015, at 4:00 p.m. (prevailing Eastern Time)**.

11. Governmental Units wishing to assert claims against the Debtors must file an original, written proof of such claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Governmental Unit Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

12. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim filed by a Governmental Unit shall be deemed timely filed only if the original Proof of Claim Form actually is received by the Claims Docketing Center on or before the Governmental Unit Bar Date.

13. The Rejection Bar Date. The Rejection Bar Date by which a proof of claim relating to the Debtors' rejection of any executory contract or unexpired lease must be filed is the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

14. Entities wishing to assert a Rejection Damages Claim are required to file an original, written proof of such Rejection Damages Claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Rejection Bar Date by either mail or

delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

15. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim with respect to a Rejection Damages Claim shall be timely filed only if the original Proof of Claim Form is *actually received* by the Claims Docketing Center on or before the Rejection Bar Date.

16. The Amended Schedule Bar Date. The Amended Schedule Bar Date for creditors holding claims or interest holders holding an equity interest in Xinergy Ltd. which have been amended by the Debtors in their Schedules or added by the Debtors to the Schedules is the later of (a) the General Bar Date or (b) thirty (30) days after the date that notice of the amendment or addition is served on the affected claimant.

17. Entities wishing to file proofs of claim or proofs of interest with respect to claims or equity interests which have been amended by the Debtors in their Schedules or added thereto are required to file an original, written proof of such claim or proof of such equity interest, substantially in the form of the Proof of Claim Form or Proof of Interest Form, as applicable, so as to be received on or before the Amended Schedule Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

18. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest with respect to a claim or equity interest which has been amended by the Debtors in their Schedules or added thereto shall be timely filed only if the original Proof of Claim Form or

Proof of Interest Form is *actually received* by the Claims Docketing Center on or before the Amended Schedule Bar Date.

19. Proof of Claim Form and Proof of Interest Form. Each proof of claim and proof of interest filed must: (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) conform substantially with the Proof of Claim Form or the Proof of Interest Form provided, as applicable, and (d) attach copies of any writings upon which the claim or interest is based.

20. Writings. Upon the advance express written consent of the Debtors, a proof of claim or proof of interest may be filed without the writings upon which the Prepetition Claim or Prepetition Interest, as applicable, is based, as required by Bankruptcy Rules 3001(c) and (d) and this Order; *provided*, *however*, that, upon request of the Debtors or any other party in interest in these cases, any creditor or equity holder that receives such written consent shall be required to transmit promptly such writings to the Debtors and the party in interest making such request as soon as reasonably practicable, but in no event later than ten (10) business days from the date of such request.

21. Filing Proofs of Claim Against Multiple Debtors. All Entities asserting claims against more than one Debtor are required to: (a) file a separate proof of claim with respect to each such Debtor, and (b) identify on each proof of claim the particular Debtor against which such Entity's claim is asserted.

22. Effect of Failure to File by Applicable Bar Date. Any Entity that is required to file a proof of claim or proof of interest in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, but that fails to do so in a timely manner, shall be forever barred, estopped, and enjoined from asserting any Prepetition Claim or

Prepetition Interest against any of the Debtors (or filing a proof of claim or proof of interest with respect thereto), and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to such Prepetition Claim or Prepetition Interest. Additionally, any holder of any Prepetition Claim or Prepetition Interest who is required, but fails, to file a proof of such claim or interest in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtors' chapter 11 cases on account of such Prepetition Claim or Prepetition Interest or to receive further notices regarding such Prepetition Claim.

23. Mailing of Bar Date Notice Packages. The Debtors shall provide actual notice of the Bar Dates by mailing the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form (together, the "Bar Date Notice Package") within five (5) business days of entry of this Order, but in no event later than June 15, 2015, to: (a) the U.S. Trustee; (b) each member of the Committee and counsel for the Committee; (c) all holders of Prepetition Claims or Prepetition Interests, including all such persons or entities listed on the Schedules; (d) all counterparties to executory contracts and unexpired leases; (e) all current and former employees of the Debtors to the extent that contact information for former employees is available in the Debtors' records; (f) all taxing authorities for locations in which the Debtors do business; (g) all parties to litigation in which the Debtors are involved; (h) all providers of utility services to the Debtors; (i) all insurance providers; (j) all of the Debtors' ordinary course professionals; (k) the Debtors' banks; (l) the Debtors' prepetition note holders; (m) all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the entry of this Order; and (n) all parties that have filed proofs of claim or proofs of interest in these cases as of the date of entry of this Order (collectively, the "Bar Date Notice Parties").

24. The Debtors may, in their discretion, but shall not be required to, serve the Bar Date Notice to certain Entities that are not Bar Date Notice Parties with which, prior to the Petition Date, the Debtors had done business or that may have asserted a claim or an interest against the Debtors in the recent past.

25. Supplemental Mailings of Bar Date Notice Packages. In the event that: (a) Bar Date Notice Packages are returned by the post office with forwarding addresses, necessitating a remailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along Bar Date Notice Packages to such parties and instead return their names and addresses to the Debtors for direct mailing, or (c) additional potential claimants or equity security holders become known to the Debtors (collectively, the "Special Bar Date Parties"), the Debtors may, in their discretion, but shall not be required to make supplemental mailings of the Bar Date Notice Package up to twenty-three (23) days in advance of the applicable Bar Dates, with any such supplemental mailings being deemed timely.

26. Establishment of Special Bar Dates. The Debtors are authorized to establish special bar dates with respect to the Special Bar Date Parties as to which a mailing or remailing of the Bar Date Notice Package is necessary and cannot be accomplished prior to twenty-three (23) days in advance of an applicable Bar Date. With respect to the Special Bar Date Parties, the Debtors are authorized to establish special bar dates at least twenty-one (21) days after the date on which the Debtors mail the notice of each such special bar date. Such notice will substantially take the form of the Bar Date Notice (with necessary modifications to reflect the special bar date provisions). The Debtors shall advise the Court of the establishment of each special bar date by filing a notice, together with a list that specifically identifies the Special Bar Date Parties that are subject thereto and a copy of the bar date notice applicable to the special bar

date. In addition to being filed with the Court, the Debtors shall serve such notice upon the U.S. Trustee, the attorneys for the informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing, and counsel for any statutory committees appointed in these cases. The Debtors shall file a certificate of service to evidence the mailing of each special bar date notice to the parties subject thereto.

27. Each of the special bar dates will apply only to the Special Bar Date Parties who are specifically identified as being subject thereto in the lists to be filed with the Court. As to any of such specifically identified parties, however, who may be found to have received effective notice of the Bar Dates, the Debtors do not waive the right to assert that the Bar Dates, rather than the special bar date, governs. The Bar Dates will remain effective and fully enforceable both with respect to known parties who have received actual notice thereof pursuant to the Bar Date Notice and with respect to unknown parties who are deemed to have received constructive notice thereof.

28. Actual Notice of Amended Schedule Bar Date. If and when the Debtors amend their Schedules to reduce the undisputed, noncontingent and liquidated amount, to change the nature or classification of a Prepetition Claim or Prepetition Interest or add a claim or equity interest in Xinergy Ltd. to the Schedules, the Debtors shall provide notice to the affected claimant of any such amended or added claim or equity interest, which shall include information regarding the Amended Schedule Bar Date and how to file a proof of claim or proof of interest or amend an existing proof of claim or proof of interest.

29. Assistance of Claims Agent. American Legal Claim Services, LLC ("ALCS"), the claims agent appointed in these cases, is authorized to facilitate and coordinate the claims reconciliation and bar date notice functions, including the mailing of the Bar Date Notice

Packages. To the extent that ALCS requires any assistance with the preparation and mailing of the Bar Date Notice Package, ALCS is authorized to employ and pay necessary service providers, subject to prior approval from the Debtors, and to obtain reimbursement from the Debtors for any such payments on the same terms applicable to its direct services. ALCS is further authorized to take such other actions as may be necessary to ensure timely preparation and mailing of the Bar Date Notice Package.

30. Reservation of Rights. The Debtors shall retain the right to: (a) dispute, or assert offsets or defenses, against any Prepetition Claim or Prepetition Interest; (b) subsequently designate any Prepetition Claim as disputed, contingent or unliquidated; and (c) object to any Prepetition Claim or Prepetition Interest, whether scheduled or filed, on any grounds.

31. The Debtors are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order, including payment of costs incurred in connection with the process of noticing the Bar Dates.

32. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated:_____, 2015

_____
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

Counsel to the Debtors
and Debtors in Possession

EXHIBIT B

PROOF OF CLAIM FORM

United States Bankruptcy Court
the Western District of Virginia

PROOF OF CLAIM

In re: Xinergy Ltd., *et al*. Debtors.	Chapter 11 Case No. 15-70444 (PMB)
Name of Debtor Against Which Claim is Held	Case No. of Debtor

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

THIS SPACE IS FOR COURT USE ONLY

Name and address of Creditor : (and name and address where notices should be sent if different from Creditor)

Telephone number: Email Address:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____
(*If known*)

Filed on: _____

Name and address where payment should be sent (if different from above)

Telephone number: Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ _____

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete Item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

☐ Check this box if claim is for a claim related to goods delivered during the twenty (20) days prior to (the "Petition Date"), pursuant to 11 U.S.C. §503(b)(9).

2. Basis for Claim: _____
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____
3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe: _____

Value of Property: $_____ Annual Interest Rate _____%

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

$_____ Basis for perfection: _____

Amount of Secured Claim: $_____ Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries or commissions (up to $12,475*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

$_____

** Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)*
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.
If the documents are not available, please explain:

FOR COURT USE ONLY

Date:	**Signature:** The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Name of Debtor, and Case Number:
Fill in the name of the debtor in the bankruptcy case, and the bankruptcy case number. (SEE ATTACHMENT A FOR LIST OF DEBTORS)

If your Claim is against multiple Debtors, complete a separate form for each Debtor.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).
If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim
A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the Claims Agent at the following address:

Xinergy Ltd. Claims Center
c/o American Legal Claims Services, LLC
P.O. Box 23650
Jacksonville, FL 32241-3650

or, if sent by hand-delivery or overnight courier:

Xinergy Ltd. Claims Center
c/o American Legal Claims Services, LLC
5985 Richard St., STE 3
Jacksonville, FL 32216

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured Claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the Claims Agent's system (www.americanlegalclaims.com /xinergy) to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq*.), and any applicable orders of the bankruptcy court.

ATTACHMENT A

List of Debtors

DEBTOR NAME	CASE NO.
Xinergy Ltd.	15-70444 (PMB)
Xinergy Corp.	15-70461 (PMB)
Xinergy Finance (US), Inc.	15-70462 (PMB)
Pinnacle Insurance Group LLC	15-70450 (PMB)
Xinergy of West Virginia, Inc.	15-70464 (PMB)
Xinergy Straight Creek, Inc.	15-70466 (PMB)
Xinergy Sales, Inc.	15-70465 (PMB)
Xinergy Land, Inc.	15-70463 (PMB)
Middle Fork Mining, Inc.	15-70449 (PMB)
Big Run Mining, Inc.	15-70445 (PMB)
Xinergy of Virginia, Inc.	15-70441 (PMB)
South Fork Coal Company, LLC	15-70442 (PMB)
Sewell Mountain Coal Co., LLC	15-70455 (PMB)
Whitewater Contracting, LLC	15-70458 (PMB)
Whitewater Resources, LLC	15-70459 (PMB)
Shenandoah Energy, LLC	15-70456 (PMB)
High MAF, LLC	15-70448 (PMB)
Wise Loading Services, LLC	15-70460 (PMB)
Strata Fuels, LLC	15-70457 (PMB)
True Energy, LLC	15-70443 (PMB)
Raven Crest Mining, LLC	15-70454 (PMB)
Brier Creek Coal Company, LLC	15-70446 (PMB)
Bull Creek Processing Company, LLC	15-70447 (PMB)
Raven Crest Minerals, LLC	15-70453 (PMB)
Raven Crest Leasing, LLC	15-70452 (PMB)
Raven Crest Contracting, LLC	15-70451 (PMB)

EXHIBIT C

PROOF OF INTEREST FORM

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF VIRGINIA

PROOF OF INTEREST

Name of Debtor: Xinergy Ltd.	Case Number: **15-70444 (PMB)**	
1. Name and address of holder of the Equity Interest (the person or entity holding an Equity Interest in the Debtor. Referred to hereinafter as the "Interestholder"): Telephone Number:	☐ Check box if you are aware that anyone else has filed a proof of interest relating to your interest. Attach copy of statement giving particulars.	

NOTE: This form SHOULD NOT be used to make a claim against the Debtor for money owed. A separate Proof of Claim form should be used for that purpose. This form should only be used to assert an Equity Interest in the Debtor. An Equity Interest is any right arising from any capital stock and any equity security in any of the Debtor. An equity security is defined in the Bankruptcy Code as (a) a share in a corporation whether or not transferable or denominated stock or similar security, (b) interest of a limited partner in a limited partnership, or (c) warrant or right other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subsection (a) or (b) herein.

If you have already filed a proof of interest with American Legal Claims Services, LLC, you do not need to file again.

COURT USE ONLY

Account or other number by which Interestholder identifies Debtor:	Check here if this claim: ☐ replaces a previously filed Proof of Interest dated: _____ ☐ amends a previously filed Proof of Interest dated: _____
2. Name and Address of any person or entity that is the record holder for the Equity Interest asserted in this Proof of Interest: Telephone Number:	**3. Date Equity Interest was acquired:**
4. Total amount of member interest: _____	**5. Certificate number(s):** _____

6. Type of Equity Interest:
Please indicate the type of Equity Interest you hold:
☐ Check this box if your Equity Interest is based on common shares of the Debtor.
☐ Check this box if your Equity Interest is based on common non-voting shares of the Debtor.
☐ Check this box if your Equity Interest is based on anything else and describe that interest:
Description: _____

7. Supporting Documents: Attach copies of supporting documents, such as stock certificates, option agreements, warrants, etc.
DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. Date-Stamped Copy: To receive an acknowledgement of the filing of your Proof of Interest, enclose a stamped, self-addressed envelope and copy of this Proof of Interest.

This completed Proof of Interest form must be sent by mail or hand delivered so that it is **actually received on or before 4:00 p.m., prevailing Eastern Standard Time, on July 31, 2015** for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units).

BY MAIL TO:	**BY HAND OR OVERNIGHT MAIL TO:**	**FOR MORE INFORMATION OR TO FILE ELECTRONICALLY, VISIT:**
Xinergy Ltd. Claims Center c/o American Legal Claims Services, LLC P.O. Box 23650 Jacksonville, FL 32241-3650	**Xinergy Ltd. Claims Center** c/o American Legal Claims Services, LLC 5985 Richard St., STE 3 Jacksonville, FL 32216	www.americanlegalclaims.com/xinergy

9. Signature:
Check the appropriate box.
❒ I am the Interestholder. ❒ I am the Interestholder's agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____
Title: _____
Company: _____
Address and telephone number (if different from notice address above):
_____
_____
_____

_____
(Signature) (Date)

Telephone number: email:

Penalty for presenting fraudulent claim is a fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 AND 3571

{1045.002-W0035317.}

EXHIBIT D

BAR DATE NOTICE

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 DEADLINE REQUIRING FILING OF PROOFS OF CLAIM AND PROOFS OF INTEREST BY THE GENERAL BAR DATE, GOVERNMENTAL UNIT BAR DATE AND REJECTION BAR DATE

PLEASE TAKE NOTICE OF THE FOLLOWING:

On April 6. 2015, (the "Petition Date"), Xinergy Ltd.; Xinergy Corp.; Xinergy Finance (US), Inc.; Pinnacle Insurance Group LLC; Xinergy of West Virginia, Inc.; Xinergy Straight Creek, Inc.; Xinergy Sales, Inc.; Xinergy Land, Inc.; Middle Fork Mining, Inc.; Big Run Mining, Inc.; Xinergy of Virginia, Inc.; South Fork Coal Company, LLC; Sewell Mountain Coal Co., LLC; Whitewater Contracting, LLC; Whitewater Resources, LLC; Shenandoah Energy, LLC; High MAF, LLC; Wise Loading Services, LLC; Strata Fuels, LLC; True Energy, LLC; Raven Crest Mining, LLC; Brier Creek Coal Company, LLC; Bull Creek Processing Company, LLC; Raven Crest Minerals, LLC; Raven Crest Leasing, LLC; and Raven Crest Contracting, LLC (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Bankruptcy Court (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the "Court").

By Order of this Court entered on _____, 2015 (the "Bar Date Order"), the Court entered an order establishing certain deadlines to file proofs of claim against the Debtors and proofs of equity interest in Xinergy Ltd.

General Bar Date

Pursuant to the Bar Date Order, the last date and time for filing proofs of claim or proofs of interest for any claim against one or more of the Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or any interest in Xinergy Ltd. that arose prior to the Petition Date (any such claim, a "Prepetition Claim"; and any such interest, a "Prepetition Interest") is **July 31, 2015 at 4:00 p.m. (prevailing Eastern Time)** (the "General Bar Date").

For the avoidance of doubt, you MUST file a proof of claim or proof of interest by the General Bar Date if you have a claim or interest that arose on or before the Petition Date, and it is not an Excluded Prepetition Claim (as defined below) or Excluded Prepetition Interest (defined below) or subject to the Governmental Unit Bar Date (defined below) or Rejection Bar Date (defined below). Acts or omissions of the Debtors that arose on or before the Petition Date may give rise to claims against the

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

Debtors notwithstanding that such claims may not have matured or become fixed or liquidated prior to such date. Under section 101(5) of the Bankruptcy Code as used herein, the word "claim" means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. Under section 101(16) of the Bankruptcy Code as used herein, the word "equity security" means (a) a share in a corporation, whether or not transferable or denominated "stock", or similar security; (b) an interest of a limited partner in a limited partnership; or (c) a warrant or right, other than the right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (a) or (b) above.

In addition to entities holding claims subject to the Governmental Unit Bar Date or the Rejection Bar Date, the following entities do not need to file proofs of claim by the General Bar Date:

(a) any entity that has already properly filed with the Claims Docketing Center (as defined below) a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts, claims, or interests are sought;

(b) any entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Debtors' schedules of assets and liabilities (the "Schedules")[2], (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation of only the specific Debtor against which the Prepetition Claim is listed in the Schedules;

(c) any entity (i) whose Prepetition Interest is listed in the Schedules, and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;

(d) any entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors' Schedules) has been allowed previously by, or paid pursuant to, an order of the Court;

(e) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors;

(f) any entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date; and

(g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and

(h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as thereafter amended, supplemented or modified from time to time.

The foregoing claims are collectively referred to herein as the "Excluded Prepetition Claims" and the foregoing interests are collectively referred to herein as the "Excluded Prepetition Interests."

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[2] Pursuant to an order of the Court dated April 8, 2015 [Doc. No. 61], each of the Debtors is required to file their respective Schedules on or before June 19, 2015.

Governmental Unit Bar Date

Any governmental unit holding claims against the Debtors that arose prior to the Petition Date is required to file proofs of claim on or before **September 23, 2015 at 4:00 p.m. (prevailing Eastern Time)** (the "Governmental Unit Bar Date"). The Governmental Unit Bar Date would apply to all governmental units holding claims against the Debtors (whether secured, unsecured, priority or unsecured non-priority) that arose prior to the Petition Date, including Governmental Units with claims against the Debtors for unpaid taxes, whether such claims arise from petition tax years or prepetition transactions to which the Debtors were a party.

Rejection Bar Date

If you wish to submit a rejection damages claim arising from the Debtors' rejection of an executory contract or unexpired lease during these chapter 11 cases, such proof of claim must be filed by the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court (the "Rejection Bar Date"); together with the General Bar Date and the Governmental Unit Bar Date, the "Bar Dates")). Any other claims arising before the Petition Date with respect to any leases or contracts of the Debtors must be filed by the General Bar Date.

FAILURE TO FILE PROOFS OF CLAIMS OR PROOFS OF INTEREST

EXCEPT WITH RESPECT TO EXCLUDED PREPETITION CLAIMS AND THE EXCLUDED PREPETITION INTERESTS, ANY ENTITY THAT IS REQUIRED TO FILE A PROOF OF CLAIM FOR ANY PREPETITION CLAIM OR PROOF OF INTEREST FOR ANY PREPETITION INTEREST THAT SUCH ENTITY HOLDS OR WISHES TO ASSERT AGAINST A DEBTOR, BUT FAILS TO DO SO BY THE APPLICABLE BAR DATE DESCRIBED IN THIS NOTICE WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH PREPETITION CLAIM (OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH PREPETITION CLAIM) OR SUCH PREPETITION INTEREST (OR FILING A PROOF OF INTEREST WITH RESPECT TO SUCH PREPETITION INTEREST) AGAINST THE DEBTORS, AND THE DEBTORS AND THEIR PROPERTY WILL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH PREPETITION CLAIM OR SUCH PREPETITION INTEREST, AS APPLICABLE, AND SUCH ENTITY SHALL NOT BE PERMITTED TO VOTE ON ANY PLAN OR PARTICIPATE IN ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF SUCH PREPETITION CLAIM OR SUCH PREPETITION INTEREST, OR TO RECEIVE FURTHER NOTICES REGARDING SUCH PREPETITION CLAIM OR SUCH PREPETITION INTEREST.

YOU SHOULD NOT FILE A PROOF OF CLAIM OR A PROOF OF INTEREST IF YOU DO NOT HAVE A CLAIM AGAINST OR EQUITY SECURITY INTEREST IN A DEBTOR. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR EQUITY SECURITY INTEREST OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM OR EQUITY SECURITY INTEREST.

Procedures Generally Applicable to the Filing of Proofs of Claim and Proofs of Interest

Except as provided herein, proofs of claim and proofs of interest must be filed so as to be received on or before the applicable Bar Date. A proof of claim or a proof of interest will be deemed timely filed only if the original proof of claim or proof of interest is mailed or delivered by hand, courier or overnight service so as to be actually received at the following addresses (the "Claims Docketing Center") on or before the applicable Bar Date:

If via U.S. mail:	**If via delivery by hand, courier, or overnight service:**
Xinergy Ltd.. Claims Center c/o American Legal Claim Services, LLC P.O. Box 23650 Jacksonville, FL 32241-3650	Xinergy Ltd. Claims Center c/o American Legal Claim Services, LLC 5985 Richard St., STE3 Jacksonville, FL 32216

Proofs of claim or proofs of interest may not be sent by facsimile, telecopy or other electronic means.

All entities asserting claims against more than one Debtor are required to file a separate proof of claim with respect to each such Debtor.

If you file a proof of claim or proof of interest, your filed proof of claim or proof of interest must (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) comply substantially with the enclosed proof of claim form or proof of interest form, as applicable, (d) attach copies of any writings upon which your asserted Prepetition Claim or Prepetition Interest is based, and (e) be signed by the claimant or by an authorized agent of the claimant or the equity security holder or by an authorized agent of the equity security holder, as applicable. If a proof of claim form or proof of interest form is not enclosed herewith, you may obtain a proof of claim form or proof of interest form by written request to American Legal Claim Services, LLC ("ALCS") sent to the appropriate address set forth above or at the website maintained for these cases by ALCS at the address www.americanlegalclaims.com/xinergy. Additionally, you may obtain a proof of claim form or proof of interest form from any bankruptcy court clerk's office, from your lawyer or from certain business supply stores.

Copies of the Schedules and the Bar Date Order are available and may be examined by interested parties (i) at the website maintained for these cases by ALCS at the address www.americanlegalclaims.com/xinergy, (ii) at the office of the Clerk of the Court, 200 Church Avenue, Roanoke, VA 24011, between the hours of 8:00 a.m. and 3:00 p.m. (prevailing Eastern Time), or (iii) on the Court's electronic docket of these cases at the address www.vawb.uscourts.gov.

If you have any questions regarding the filing, amount, nature or processing of a proof of claim or proof of interest, please call Justin F. Paget or Henry (Toby) P. Long, III, Esq., at (804) 788-8200. YOU SHOULD CONSULT YOUR ATTORNEY REGARDING ANY OTHER INQUIRIES, SUCH AS WHETHER YOU SHOULD FILE A PROOF OF CLAIM OR PROOF OF INTEREST. **DO NOT ATTEMPT TO CONTACT THE COURT FOR ADVICE.**

Dated: _____, 2015

Roanoke, Virginia

BY ORDER OF THE UNITED STATES BANKRUPTCY COURT

SCHEDULE 1

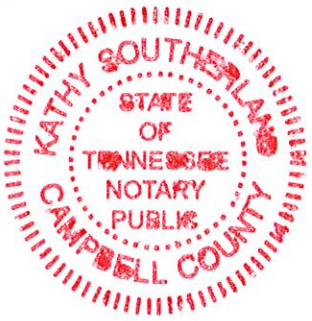
Debtor Entities

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)

TAB J

Exhibit "J" to the Affidavit of Michael R. Castle sworn before me this 11th day of June, 2015.

A Notary for the State of Tennessee



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]	

ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST, (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF

Upon the motion (the "Motion")[2] of the above-captioned cases debtors and debtors in possession (collectively, the "Debtors"), for the entry of an Order, pursuant to section 501 the Bankruptcy Code and Bankruptcy Rules 2002, 3003(c) and 9007, (i) establishing the general bar date by which all creditors and equity holders must file proofs of claim or proofs of equity interests in these chapter 11 cases, including without limitation claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the twenty (20) days prior to the Petition Date (the "General Bar Date");[3] (ii) establishing the date by which Governmental Units must file

[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.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

[3] For purposes of this Motion, the Bar Dates (as defined herein) requested herein shall not extend to requests

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951 East Byrd Street
Richmond, Virginia 23219
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Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

Proposed Counsel to the Debtors
and Debtors in Possession

proofs of claim in these chapter 11 cases (the "Governmental Unit Bar Date"); (iii) establishing the date by which proofs of claim relating to the Debtors' rejection of executory contracts or unexpired leases must be filed in these chapter 11 cases (the "Rejection Bar Date"); (iv) establishing a bar date by which creditors holding claims that have been amended by the Debtors in their Schedules (as defined below) must be filed in these chapter 11 cases (the "Amended Schedule Bar Date"; together with the General Bar Date, the Governmental Unit Bar Date and the Rejection Bar Date, the "Bar Dates"); (v) approving a tailored proof of claim form to be distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and that the establishment of the Bar Dates and the procedures set forth in the Motion are fair and reasonable and will provide good, sufficient and proper notice to all creditors and equity holders of their rights and obligations in connection with claims or interests they may have against the Debtors or their property in these chapter 11 cases; and the Court finding that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and upon the record therein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.

2. Bar Dates. The Bar Dates set forth in the Motion hereby are **APPROVED**.

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for payment of fees and expenses of professionals retained or sought to be retained by order of the Court in these cases.

3. Notices and Forms. The forms of the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form, substantially in the form attached to the Motion, and the manner of providing notice of the Bar Dates proposed in the Motion and set forth herein, are **APPROVED**. The form and manner of notice of the Bar Dates approved hereby are deemed to fulfill the notice requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

4. The General Bar Date. The General Bar Date by which proofs of claim against the Debtors and proofs of interest in Xinergy Ltd. must be filed is **July 31, 2015, at 4:00 p.m. (prevailing Eastern Time).**

5. Any Entity that asserts a claim against one or more of Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or holds an equity interest in Xinergy Ltd. that arose prior to the Petition Date (any such claim, a "Prepetition Claim"; and any such interest, "Prepetition Interest") is required to file an original, written proof of such Prepetition Claim or Prepetition Interest, substantially in the form of the Proof of Claim Form or the Proof of Interest Form, as applicable, so as to be received on or before the General Bar Date by either mail or delivery by hand, courier, or overnight service to: (i) if via mail, c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650 or (ii) if via delivery by hand, courier or overnight service, c/o American Legal Claim Services, LLC, 5985 Richard St., STE 3, Jacksonville, FL 32216 (either, the "Claims Docketing Center").

6. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form

is *actually received* by the Claims Docketing Center on or before the General Bar Date.

7. The following Entities do not need to file proofs of claim or proofs of interest:

(a) any Entity that has already properly filed with the Claims Docketing Center a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts or claims are sought;

(b) any Entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Schedules, (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation only of the specific Debtor against which the Prepetition Claim is listed in the Schedules;

(c) any Entity (i) whose Prepetition Interest is listed in the Schedules and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;

(d) any Entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors' Schedules) previously has been allowed by, or paid pursuant to, an order of this Court;

(e) any Entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date;

(f) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors; and

(g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and

(h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as

thereafter amended, supplemented or modified from time to time.

8. Except as provided below, the following Entities must file a proof of claim on or before the General Bar Date:

(a) Entities whose Prepetition Claims arise out of the rejection of executory contracts or unexpired leases by the Debtors prior to the entry of the Bar Date Order;

(b) Entities whose Prepetition Claims arise out of the obligations of such Entities under a contract for the provision of liability insurance to a Debtor;

(c) any Entity whose Prepetition Claim against the Debtors is not listed in the Schedules or whose Prepetition Claim is listed as disputed, contingent or unliquidated and that desires to participate in these chapter 11 cases or share in any distribution in these chapter 11 cases;

(d) any Entity whose Prepetition Interest is not listed in the Schedules;

(e) any Entity that believes that its Prepetition Claim or Prepetition Interest is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and

(f) any Entity that asserts a claim against the Debtors under Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date.

9. Notwithstanding anything herein to the contrary, in accordance with the Court's order approving the Debtors' debtor-in-possession financing (Doc. No. 156) (the "DIP Financing Order"), none of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties (each as defined in the DIP Financing Order) shall be required to file proofs of claim in any of the Debtors' chapter 11 cases or any successor case, and the Debtors' stipulations in the DIP Financing Order shall be deemed to constitute a timely filed proof of claim."

10. The Governmental Unit Bar Date. The Governmental Unit Bar Date by which Governmental Units must file proofs of claim against the Debtors is **September 23, 2015, at 4:00 p.m. (prevailing Eastern Time)**.

11. Governmental Units wishing to assert claims against the Debtors must file an original, written proof of such claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Governmental Unit Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

12. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim filed by a Governmental Unit shall be deemed timely filed only if the original Proof of Claim Form actually is received by the Claims Docketing Center on or before the Governmental Unit Bar Date.

13. The Rejection Bar Date. The Rejection Bar Date by which a proof of claim relating to the Debtors' rejection of any executory contract or unexpired lease must be filed is the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

14. Entities wishing to assert a Rejection Damages Claim are required to file an original, written proof of such Rejection Damages Claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Rejection Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

15. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim with respect to a Rejection Damages Claim shall be timely filed only if the original Proof of Claim Form is *actually received* by the Claims Docketing Center on or before the Rejection Bar Date.

16. The Amended Schedule Bar Date. The Amended Schedule Bar Date for creditors holding claims or interest holders holding an equity interest in Xinergy Ltd. which have been amended by the Debtors in their Schedules or added by the Debtors to the Schedules is the later of (a) the General Bar Date or (b) thirty (30) days after the date that notice of the amendment or addition is served on the affected claimant.

17. Entities wishing to file proofs of claim or proofs of interest with respect to claims or equity interests which have been amended by the Debtors in their Schedules or added thereto are required to file an original, written proof of such claim or proof of such equity interest, substantially in the form of the Proof of Claim Form or Proof of Interest Form, as applicable, so as to be received on or before the Amended Schedule Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

18. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest with respect to a claim or equity interest which has been amended by the Debtors in their Schedules or added thereto shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form is *actually received* by the Claims Docketing Center on or before the Amended Schedule Bar Date.

19. Proof of Claim Form and Proof of Interest Form. Each proof of claim and proof of interest filed must: (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) conform substantially with the Proof of Claim Form or the Proof of Interest Form provided, as applicable, and (d) attach copies of any writings upon which the claim or interest is based.

20. Writings. Upon the advance express written consent of the Debtors, a proof of claim or proof of interest may be filed without the writings upon which the Prepetition Claim or Prepetition Interest, as applicable, is based, as required by Bankruptcy Rules 3001(c) and (d) and this Order; *provided, however,* that, upon request of the Debtors or any other party in interest in these cases, any creditor or equity holder that receives such written consent shall be required to transmit promptly such writings to the Debtors and the party in interest making such request as soon as reasonably practicable, but in no event later than ten (10) business days from the date of such request.

21. Filing Proofs of Claim Against Multiple Debtors. All Entities asserting claims against more than one Debtor are required to: (a) file a separate proof of claim with respect to each such Debtor, and (b) identify on each proof of claim the particular Debtor against which such Entity's claim is asserted.

22. Effect of Failure to File by Applicable Bar Date. Any Entity that is required to file a proof of claim or proof of interest in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, but that fails to do so in a timely manner, shall be forever barred, estopped, and enjoined from asserting any Prepetition Claim or Prepetition Interest against any of the Debtors (or filing a proof of claim or proof of interest with respect thereto), and the Debtors and their property shall be forever discharged from any and all

indebtedness or liability with respect to such Prepetition Claim or Prepetition Interest. Additionally, any holder of any Prepetition Claim or Prepetition Interest who is required, but fails, to file a proof of such claim or interest in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtors' chapter 11 cases on account of such Prepetition Claim or Prepetition Interest or to receive further notices regarding such Prepetition Claim.

23. Mailing of Bar Date Notice Packages. The Debtors shall provide actual notice of the Bar Dates by mailing the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form (together, the "Bar Date Notice Package") within five (5) business days of entry of this Order, but in no event later than June 15, 2015, to: (a) the U.S. Trustee; (b) each member of the Committee and counsel for the Committee; (c) all holders of Prepetition Claims or Prepetition Interests, including all such persons or entities listed on the Schedules; (d) all counterparties to executory contracts and unexpired leases; (e) all current and former employees of the Debtors to the extent that contact information for former employees is available in the Debtors' records; (f) all taxing authorities for locations in which the Debtors do business, including Canada Revenue Agency; (g) all parties to litigation in which the Debtors are involved; (h) all providers of utility services to the Debtors; (i) all insurance providers; (j) all of the Debtors' ordinary course professionals; (k) the Debtors' banks; (l) the Debtors' prepetition note holders; (m) all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the entry of this Order; and (n) all parties that have filed proofs of claim or proofs of interest in these cases as of the date of entry of this Order (collectively, the "Bar Date Notice Parties").

24. The Debtors may, in their discretion, but shall not be required to, serve the Bar Date Notice to certain Entities that are not Bar Date Notice Parties with which, prior to the

Petition Date, the Debtors had done business or that may have asserted a claim or an interest against the Debtors in the recent past.

25. Publication Notice. The Debtors shall publish notice of the Bar Dates in substantially the form of the Bar Date Notice once in the *Globe and Mail, National Edition*, *Charleston Daily Mail*, and *The Charleston Gazette* as soon as practicable after entry of this Order, but in no event later than forty (40) days before the General Bar Date. Additionally, the Debtors shall post a copy of the Bar Date Notice and the Proof of Claim Form on the Debtors' case information website (located at *https://www.americanlegal.com/xinergy*).

26. Supplemental Mailings of Bar Date Notice Packages. In the event that: (a) Bar Date Notice Packages are returned by the post office with forwarding addresses, necessitating a remailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along Bar Date Notice Packages to such parties and instead return their names and addresses to the Debtors for direct mailing, or (c) additional potential claimants or equity security holders become known to the Debtors (collectively, the "Special Bar Date Parties"), the Debtors may, in their discretion, but shall not be required to make supplemental mailings of the Bar Date Notice Package up to twenty-three (23) days in advance of the applicable Bar Dates, with any such supplemental mailings being deemed timely.

27. Establishment of Special Bar Dates. The Debtors are authorized to establish special bar dates with respect to the Special Bar Date Parties as to which a mailing or remailing of the Bar Date Notice Package is necessary and cannot be accomplished prior to twenty-three (23) days in advance of an applicable Bar Date. With respect to the Special Bar Date Parties, the Debtors are authorized to establish special bar dates at least twenty-one (21) days after the date on which the Debtors mail the notice of each such special bar date. Such notice will

substantially take the form of the Bar Date Notice (with necessary modifications to reflect the special bar date provisions). The Debtors shall advise the Court of the establishment of each special bar date by filing a notice, together with a list that specifically identifies the Special Bar Date Parties that are subject thereto and a copy of the bar date notice applicable to the special bar date. In addition to being filed with the Court, the Debtors shall serve such notice upon the U.S. Trustee, the attorneys for the informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing, and counsel for any statutory committees appointed in these cases. The Debtors shall file a certificate of service to evidence the mailing of each special bar date notice to the parties subject thereto.

28. Each of the special bar dates will apply only to the Special Bar Date Parties who are specifically identified as being subject thereto in the lists to be filed with the Court. As to any of such specifically identified parties, however, who may be found to have received effective notice of the Bar Dates, the Debtors do not waive the right to assert that the Bar Dates, rather than the special bar date, governs. The Bar Dates will remain effective and fully enforceable both with respect to known parties who have received actual notice thereof pursuant to the Bar Date Notice and with respect to unknown parties who are deemed to have received constructive notice thereof.

29. Actual Notice of Amended Schedule Bar Date. If and when the Debtors amend their Schedules to reduce the undisputed, noncontingent and liquidated amount, to change the nature or classification of a Prepetition Claim or Prepetition Interest or add a claim or equity interest in Xinergy Ltd. to the Schedules, the Debtors shall provide notice to the affected claimant of any such amended or added claim or equity interest, which shall include information

regarding the Amended Schedule Bar Date and how to file a proof of claim or proof of interest or amend an existing proof of claim or proof of interest.

30. Assistance of Claims Agent. American Legal Claim Services, LLC ("ALCS"), the claims agent appointed in these cases, is authorized to facilitate and coordinate the claims reconciliation and bar date notice functions, including the mailing of the Bar Date Notice Packages. To the extent that ALCS requires any assistance with the preparation and mailing of the Bar Date Notice Package, ALCS is authorized to employ and pay necessary service providers, subject to prior approval from the Debtors, and to obtain reimbursement from the Debtors for any such payments on the same terms applicable to its direct services. ALCS is further authorized to take such other actions as may be necessary to ensure timely preparation and mailing of the Bar Date Notice Package.

31. Reservation of Rights. The Debtors shall retain the right to: (a) dispute, or assert offsets or defenses, against any Prepetition Claim or Prepetition Interest; (b) subsequently designate any Prepetition Claim as disputed, contingent or unliquidated; and (c) object to any Prepetition Claim or Prepetition Interest, whether scheduled or filed, on any grounds.

32. The Debtors are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order, including payment of costs incurred in connection with the process of noticing the Bar Dates.

33. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated: June 8, 2015

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
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Tel: (804) 788-8200
Fax: (804) 788-8218

Counsel to the Debtors
and Debtors in Possession

SEEN AND NO OBJECTION:

/s/ Margaret K. Garber
Margaret K. Garber
Assistant U.S. Trustee
Office of the United States Trustee
210 First Street, SW, Suite 505
Roanoke, VA 24011
Tel: (540) 857-2806
Fax: (540) 857-2844

United States Trustee

-and-

/s/ Michael E. Hastings
Michael E. Hastings (VSB No. 36090)
WHITEFORD, TAYLOR & PRESTON LLP
114 Market Street, Suite 210
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Proposed Counsel for the Official Committee
of Unsecured Creditors

Court File No. CV-15-10936-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF MICHAEL R. CASTLE
(SWORN JUNE 11, 2015)

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Lawyers for Xinergy Ltd.

Court File No. CV-15-10936-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(RETURNABLE JUNE 18, 2015)

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Lawyers for Xinergy Ltd.