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

SECOND REPORT OF THE INFORMATION OFFICER
DELOITTE RESTRUCTURING INC.
JUNE 15, 2015

INTRODUCTION

1. On April 6, 2015 (the "**Petition Date**"), Xinergy Ltd., which is incorporated pursuant to the laws of the Province of Ontario ("**Xinergy**" or the "**Applicant**"), and 25 subsidiaries of Xinergy incorporated in the United States (the "**U.S. Subsidiaries**" and together with Xinergy, the "**Chapter 11 Debtors**") commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Court**") by each filing a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). A listing of the Chapter 11 Debtors is attached as **Appendix A**.

2. Xinergy has no Canadian operations or Canadian employees. Xinergy's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, was listed on the Toronto Stock Exchange (the "**TSX**") until it was de-listed on May 12, 2015, and has one bank account and four known creditors domiciled in Canada. Xinergy, as the ultimate parent of the U.S. Subsidiaries, determined that recognition of the Chapter 11 Proceedings in Canada is necessary so that, among other things, certain assets of Xinergy, including net operating loss carryforwards, will receive appropriate protection in Canada to the extent those assets may be subject to the Court's jurisdiction.

3. Beginning on the Petition Date and continuing until the following day, the Chapter 11 Debtors filed various motions for interim and/or final orders (the "**First Day Motions**") in the Chapter 11 Proceedings to permit the Chapter 11 Debtors to continue to operate their business in the ordinary course. The First Day Motions included a motion for entry of an order (the "**Foreign Representative Order**") authorizing Xinergy to act as foreign representative on behalf of the Chapter 11 Debtors' estates (the "**Foreign Representative**").

4. On April 7, 2015, the U.S. Court entered the Foreign Representative Order and on April 7, 2015 and April 8, 2015, the U.S. Court entered certain other orders in respect of the First Day Motions.

5. On April 14, 2015, Xinergy, as the proposed Foreign Representative for itself only (and not the other Chapter 11 Debtors as discussed in the Preliminary Report of the Proposed Information Officer (the "**Preliminary Report**")), commenced, via a notice of application (the "**Notice of Application**"), an application before the Ontario Superior Court of Justice

(Commercial List) (the "**Court**") pursuant to Part IV of the Companies' Creditors Arrangement Act ("**CCAA**") for the following relief and orders:

(a) An initial recognition order (the "**Initial Recognition Order**"), *inter alia*:

(i) Declaring that the Applicant is the "foreign representative" as such term is defined in section 45 of the CCAA;

(ii) Declaring that the centre of main interests (the "**COMI**") for Xinergy is the United States, and declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding" as such term is defined in section 45 of the CCAA;

(iii) Staying, until further Court order, all actions and proceedings against Xinergy in accordance with section 48 of the CCAA; and,

(iv) Prohibiting Xinergy from selling or otherwise disposing of (A) any of its property in Canada related to the business outside the ordinary course of its business, and (B) any of its other property in Canada.

(b) A supplemental order (the "**Supplemental Order**") pursuant to section 49 of the CCAA, *inter alia*:

(i) Recognizing in Canada and giving full force and effect to certain orders of the U.S. Court made in the Chapter 11 Proceedings;

(ii) Appointing Deloitte Restructuring Inc. ("**Deloitte**") as the Information Officer in respect of this proceeding (the "**Information Officer**");

(iii) Granting the Information Officer and its counsel a super-priority first-ranking charge on the assets of Xinergy in Canada, which charge shall not exceed $100,000, as security for their professional fees and disbursements incurred in respect of this proceeding (the "**Administration Charge**"); and,

(iv) Granting a super-priority second-ranking charge (subordinate only to the Administration Charge) in favour of the post petition lender under the post petition credit facility approved by the U.S. Court pursuant to the Interim DIP Facility Order (as defined in the Preliminary Report).

6. On April 23, 2015, the Court granted the relief requested and issued the Initial Recognition Order and the Supplemental Order.

7. On May 13, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable May 21, 2015 pursuant to the CCAA for:

   (a) An order pursuant to section 49 of the CCAA, *inter alia*, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court made in the Chapter 11 Proceedings:

      (i) 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**");

      (ii) 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 (the "**Final Cash Management Order**"); and,

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

   The First Report of the Information Officer dated May 19, 2015 (the "**First Report**") reported on the Foreign Representative's motion returnable May 21, 2015.

8. Beginning on May 14, 2015, Jon Nix, a shareholder of Xinergy, filed materials seeking certain relief. Those materials and the related Order of the Court are described below.

9. On May 21, 2015, the Court granted an order: i) recognizing the Final DIP Order, the Final Cash Management Order, and the Final NOL Order in Canada; ii) approving the Preliminary Report and the First Report; and iii) approving the activities of the Information Officer as outlined in the Preliminary Report and the First Report.

10. Since the date of the First Report and up to June 11, 2015, the U.S. Court entered further orders of which the Applicant seeks to have three recognized as part of the CCAA Recognition Proceeding. These orders are described in more detail below. Please refer to

Appendix B for a listing of all Orders that have been entered in the Chapter 11 Proceedings as at June 11, 2015.

11. This report - the Second Report of the Information Officer (the "**Second Report**", and collectively with the Preliminary Report and First Report, the "**Reports of the Information Officer**") - will report to the Court on the Foreign Representative's motion to the Court returnable June 18, 2015.

12. On June 11, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable June 18, 2015 for:

    (a) An order pursuant to section 49 of the CCAA, *inter alia*, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court made in respect of the Chapter 11 Proceedings:

        (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, 262, 363, and 364 (the "**Modified Final 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 "**Bar Date Order**").

13. Other than this proceeding (the "**CCAA Recognition Proceeding**"), there are no other foreign proceedings in respect of Xinergy or any of the other Chapter 11 Debtors.

14. Motion materials and other documentation filed in the CCAA Recognition Proceeding, including the Reports of the Information Officer, and a website link for the materials filed in the Chapter 11 Proceedings, are available on the Information Officer's website at http://www.insolvencies.deloitte.ca/xinergy.

TERMS OF REFERENCE

15. In preparing this Second Report of the Information Officer (the "**Second Report**"), the Information Officer has been provided with, and has relied upon, unaudited financial information, declarations and affidavits of an executive officer of Xinergy, and financial information prepared by Xinergy, and public information available filed as part of the Chapter 11 Proceedings (collectively, the "**Information**"). The Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided; however, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

16. Any future oriented financial information referred to in this Second Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

17. The Information Officer has requested that Xinergy bring to its attention any significant matters that were not addressed in the course of its specific inquiries. Accordingly, this report is based solely on the Information made available to the Information Officer.

18. This Second Report should be read in conjunction with the Preliminary Report and the First Report, and the Affidavit of Michael R. Castle sworn June 11, 2015 (the "**Third Castle Affidavit**"), which was included as a part of Xinergy's Motion Record for the motion returnable June 18, 2015, and which can also be found (without appendices) attached as **Appendix C** for reference.

19. All references to currency in this report are in United States dollars unless otherwise noted.

20. Defined terms are as defined in the Reports of the Information Officer.

PURPOSE OF SECOND REPORT

21. The purpose of this Second Report is to assist the Court in considering the Foreign Representative's request for recognition of certain orders of the U.S. Court made in the Chapter 11 Proceedings, and to provide the Court with certain pertinent background and other information in order to do so, including the following:

    (a) Update on certain matters, motions, and orders issued in relation to the Chapter 11 Proceedings including, but not limited to, the Modified Final DIP Order, the Nix Stipulated Order, and the Bar Date Order;

    (b) Information related to the Canadian operations and in particular, the Canadian creditors;

    (c) Update on the status of the Chapter 11 Debtors' reorganization plan and related milestone dates;

    (d) Summary of activities of the Information Officer since the First Report;

    (e) Conclusion.

THE CHAPTER 11 PROCEEDINGS

22. As set out in the Third Castle Affidavit, the U.S. Court heard certain additional motions that resulted in the issuance of the Modified Final DIP Order and the Nix Stipulated Order – both of which were issued on June 5, 2015. The U.S. Court also issued the Bar Date Order without a hearing on June 8, 2015. Xinergy is seeking recognition of these orders in Canada in the CCAA Recognition Proceeding.

The Modified Final DIP Order

23. The Final DIP Order was issued on May 5, 2015 at a time when no official committee of unsecured creditors had been appointed in the Chapter 11 Proceedings, and the Office of the United States Trustee had advised the U.S. Court that no such appointment was anticipated.

24. On May 11, 2015, the position of the Office of the United States Trustee changed and a notice appointing an official committee of unsecured creditors (the "**UCC**") was filed. Please refer to **Appendix D** for a copy of the notice.

25. Negotiations were subsequently held between the UCC, the Chapter 11 Debtors, and the lenders under the post-filing credit agreement (the "**DIP Lenders**") with respect to amendments to the Final DIP Order requested by the UCC. The resulting Modified Final DIP Order is substantially the same as the Final DIP Order, with the following exceptions:

    (a) Adjustments to the challenge period and related provisions to address the appointment of the UCC and allow the UCC the opportunity to challenge the validity, enforceability, priority, extent or amount of the Prepetition Obligations (as defined in the Modified Final DIP Order), which amendments are found in paragraph 25(b) of the Modified Final DIP Order;

    (b) Adjustments to the carve-out provisions for the investigation regarding liens granted pursuant to the Prepetition Documents (as defined in the Modified Final DIP Order) during the challenge period from $25,000 to $50,000, which amendments are found in paragraph 26 of the Modified Final DIP Order;

    (c) Requirement for the UCC to be provided with copies of any supplemental budgets prepared by the Chapter 11 Debtors; and

    (d) Addition of certain clarifying language regarding the Chapter 11 Debtors adequate protection obligations in respect of the financial advisor to the prepetition lenders.

    Please refer to **Appendix E** for a copy of the Modified Final DIP Order and **Appendix F** for a copy of the notice filed with the U.S. Court identifying the material changes from the Final DIP Order.

26. The Applicant is of the view that recognition of the Modified Final DIP Order is warranted to allow the restructuring of the Chapter 11 Debtors to continue uninterrupted.

The Nix Stipulated Order

27. As previously described in the Reports of the Information Officer, in a letter to Xinergy dated April 16, 2015, Wildeboer Dellelce LLP on behalf of Mr. Nix, requisitioned the directors of Xinergy (the "**Shareholder Requisition**") to call a meeting of the shareholders to consider removing and appointing certain directors (the "**Shareholder Meeting**").

28. The Board of Directors declined to call the Shareholder Meeting as they determined that scheduling the requested meeting would not be in the best interests of Xinergy and the other Chapter 11 Debtors for numerous reasons detrimental to the restructuring process.

29. On May 8, 2015, Xinergy and the other Chapter 11 Debtors filed a Complaint for Injunctive and Declaratory Relief in respect of the Shareholder Requisition in the U.S. Court seeking the following:

    (a) A declaration that the automatic stay in the Chapter 11 Proceedings prohibits Mr. Nix from calling or holding the Shareholder Meeting;

    (b) A declaration that Xinergy is not required to call the Shareholder Meeting, and if a meeting is held by Mr. Nix, it shall have no force and effect; and

    (c) An injunction enjoining Mr. Nix from taking any further action to call or hold any shareholder meeting.

30. On May 13, 2015, Mr. Nix provided notice of a special meeting of shareholders of Xinergy in the Globe and Mail.

31. On May 14, 2015, Mr. Nix served a motion as part of the CCAA Recognition Proceeding (the "**Nix Motion**") for an order, *inter alia*:

    (a) Declaring that the stay of proceeding granted pursuant to the Initial Recognition Order does not apply to the Shareholder Meeting;

    (b) In the alternative, declaring that the stay of proceedings in the Initial Recognition Order shall be lifted for the limited purpose of holding the Shareholder Meeting; and

    (c) Granting certain administrative relief regarding the conduct of the Shareholder Meeting.

32. On May 19, 2015, Xinergy filed a motion with the U.S. Court seeking a preliminary injunction enjoining Mr. Nix from taking any further action to call or hold the Shareholder Meeting (the "**Preliminary Injunction Motion**").

33. At a scheduling hearing with the Court, Justice Wilton-Siegel determined that certain issues (the "**Initial Questions**") raised by the Nix Motion would be heard on May 28, 2015. On May 27, 2015, Mr. Nix served an amended notice of motion seeking additional relief (as amended, the "**Amended Nix Motion**").

34. On May 29, 2015, the Court released a brief endorsement (the "**Nix Stay Order**") finding that Mr. Nix's actions to call the Shareholder Meeting and the related actions addressed in the Amended Nix Motion are prohibited by the stay of proceedings in the Supplemental Order.

35. The Court released the reasons for judgement pertaining to the Nix Stay Order on June 9, 2015. The Court found that the continuing actions of Nix in respect of the Shareholder Meeting and the related actions contained in the Nix Motion constituted the exercise of rights in respect of Xinergy by an individual – representing a contravention of the stay of proceedings in the Supplemental Order.

36. The Preliminary Injunction Motion was scheduled to be heard by the U.S. Court on June 9, 2015; however, after the Court issued the Nix Stay Order and following further discussion among the parties, it was determined that the best use of estate resources was to work constructively towards a plan of reorganization. As a result, the Chapter 11 Debtors and Mr. Nix agreed to a stipulated order staying the adversary proceeding in the U.S. Court and the Preliminary Injunction Motion. Please refer to **Appendix G** for a copy of the Nix Stipulated Order.

37. Specifically, the Nix Stipulated Order provides for the following, *inter alia*:

    (a) The Preliminary Injunction Motion and the adversary proceeding are stayed;

    (b) The Chapter 11 Debtors or Mr. Nix may file a statement (a "**Statement**") with the U.S. Court advising that negotiations have reached an impasse and that the applicable party wishes the stay to be lifted;

(c) A timeline for the resumption of litigation upon the filing of a Statement by either the Chapter 11 Debtors or Mr. Nix;

(d) Mr. Nix agrees not to renew any steps to hold the Shareholder Meeting during the stay period imposed by the Nix Stipulated Order;

(e) The Chapter 11 Debtors may enforce the stay of proceedings granted in the CCAA Recognition Proceeding for any other shareholder that takes actions towards calling or holding a meeting of the shareholders; and

(f) The parties will seek an adjournment from the Court of the remaining relief set out in the Amended Nix Motion.

38. In relation to the Nix Stipulated Order, the proposed recognition order contained within the Notice of Motion dated June 11, 2015 proposes an adjournment until the earlier of:

(a) A determination by the U.S. Court on the Preliminary Injunction Motion (as defined in the Nix Stipulated Order); and

(b) 21 days after the date the earliest Statement is filed.

39. The Applicant is of the view that recognition of the Nix Stipulated Order will allow Xinergy to focus its efforts on developing a plan of reorganization and provide certainty regarding the Amended Nix Motion.

<u>The Bar Date Order</u>

40. The Bar Date Order provides for the following, *inter alia*:

(a) Establishing the general bar date, the date by which all creditors and equity holders including section 503(b)(9) claims (other than certain entities listed in the Bar Date Order that are not required to file proofs of claim or proofs of interest) must file proofs of claim against the Chapter 11 Debtors or proofs of equity interest in the Applicant, to be <u>July 31, 2015 at 4:00PM prevailing Eastern Time</u> (the "**General Bar Date**");

(b) Establishing the date by which all government entities must file proofs of claim against the Chapter 11 Debtors to be September 23, 2015 at 4:00PM prevailing Eastern Time (the "**Governmental Unit Bar Date**").

Please refer to **Appendix H** for a copy of the Bar Date Order.

41. The Information Officer requested that Xinergy publish a notice of the General Bar Date in a national Canadian newspaper to ensure that any unknown Canadian creditors receive notice of the General Bar Date. The Chapter 11 Debtors agreed and the Bar Date Order issued by the U.S. Court provides for publication of such a notice.

42. The Applicant is of the view that recognition of the Bar Date Order will assist Xinergy in the following manners:

(a) Ensuring that the deadlines for filing proofs of claim, proofs of equity interests, and other claims are recognized in Canada; and

(b) Enabling Xinergy to accurately identify the classification and quantum of claims against the estates of the Chapter 11 Debtors.

43. Should this Court recognize the Bar Date Order, the Information Officer will post the Bar Date Order along with a link to the relevant notices and forms on its case website, including the bar date notice, proof of claim form, and proof of interest form.

View of the Information Officer

44. The Information Officer, having considered the circumstances of this case, believes that the recognition by the Court of the Modified Final DIP Order, the Nix Stipulated Order, and the Bar Date Order appears to be reasonable.

UPDATE ON XINERGY'S ACTIVITIES IN CANADA

45. As noted previously in the Reports of the Information Officer, Xinergy has no Canadian operations or Canadian employees. Xinergy's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, was listed on the TSX until it

was delisted on May 12, 2015, has a bank account in Canada and four known creditors domiciled in Canada.

46. As of the date of this Second Report, neither Xinergy nor the Information Officer are aware of any additional Canadian creditors other than the four creditors that were noted in the Preliminary Report.

UPDATE ON THE STATUS OF THE CHAPTER 11 DEBTORS' REORGANIZATION PLAN AND RELATED MILESTONE DATES

47. The Chapter 11 Debtors' debtor-in-possession ("**DIP**") credit agreement contains certain stipulations and milestone dates which Xinergy must comply with.

48. In particular, the Chapter 11 Debtors must file a reorganization plan acceptable to the DIP Lenders, along with a disclosure statement and plan solicitation procedures on or before June 20, 2015. The Chapter 11 Debtors have communicated to the Information Officer that they are currently preparing these documents.

49. The following dates represent other important milestone dates as detailed in the DIP credit agreement:

    (a) August 9, 2015 – The date by which the U.S. Court must enter an order approving the disclosure statement and plan solicitation procedures;
    (b) October 8, 2015 – The date by which the U.S. Court must enter an order confirming the Chapter 11 reorganization plan; and
    (c) November 7, 2015 – The date by which the reorganization plan must be implemented.

50. The Information Officer will provide additional information to the Court regarding the reorganization plan and its status in future reports.

ACTIVITIES OF THE INFORMATION OFFICER

51. Since the date of the First Report, the activities of the Information Officer have included the following:

(a) Attending to various telephone discussions and corresponding with Xinergy's Canadian legal counsel and the Information Officer's legal counsel regarding the status of the matters related to the Chapter 11 Proceedings and the CCAA Recognition Proceedings;
(b) Reviewing materials filed to date by various parties in the Chapter 11 Proceedings and the CCAA Recognition Proceeding;
(c) Updating and maintaining a website to make available copies of the orders granted in the CCAA Recognition Proceeding, as well as other relevant motion materials and reports;
(d) Preparing for and attending at Court for the scheduled hearings pertaining to the CCAA Recognition Proceeding;
(e) Responding to creditor inquiries regarding the CCAA Recognition Proceedings; and,
(f) Preparing this Second Report and discussions with the Information Officer's legal counsel regarding same.

CONCLUSION

Based on the information provided in this Second Report, the Information Officer believes the relief requested by Xinergy in its Notice of Motion dated June 11, 2015 appears to be reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at TORONTO, ONTARIO, CANADA this 15th day of JUNE, 2015.

DELOITTE RESTRUCTURING INC., solely
in its capacity as the Information Officer of
Xinergy Ltd. and not in its personal or corporate capacity

Per: _____
Adam Bryk

APPENDIX A
Listing of the Chapter 11 Debtors

Chapter 11 Debtors

1. Xinergy Ltd.
2. Xinergy Corp.
3. Xinergy Finance (US), Inc.
4. Pinnacle Insurance Group LLC
5. Xinergy of West Virginia, Inc.
6. Xinergy Straight Creek, Inc.
7. Xinergy Sales, Inc.
8. Xinergy Land, Inc.
9. Middle Fork Mining, Inc.
10. Big Run Mining, Inc.
11. Xinergy of Virginia, Inc.
12. South Fork Coal Company, LLC
13. Sewell Mountain Coal Co., LLC
14. Whitewater Contracting, LLC
15. Whitewater Resources, LLC
16. Shenandoah Energy, LLC
17. High MAF, LLC
18. Wise Loading Services, LLC
19. Strata Fuels, LLC
20. True Energy, LLC
21. Raven Crest Mining, LLC
22. Brier Creek Coal Company, LLC
23. Bull Creek Processing Company, LLC
24. Raven Crest Minerals, LLC
25. Raven Crest Leasing, LLC
26. Raven Crest Contracting, LLC

APPENDIX B
Listing of all Orders issued in the Chapter 11 Proceedings
As at June 11, 2015

Listing of all Orders issued in the Chapter 11 Proceedings as at June 11, 2015
(excluding Orders Granting Motion to Appear)

FILING DATE	DESCRIPTION
April 7, 2015	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)
April 7, 2015	ORDER AUTHORIZING XINERGY LTD. TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505
April 7, 2015	INTERIM TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
April 8, 2015	ORDER DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
April 8, 2015	ORDER SETTING AN EXPEDITED HEARING ON "FIRST DAY MOTIONS" AND RELATED RELIEF
April 8, 2015	ORDER APPROVING THE FORM AND MANNER OF NOTICE OF COMMENCEMENT OF THE CHAPTER 11 CASES
April 8, 2015	ORDER AUTHORIZING DEBTORS TO (I) PREPARE A LIST OF CREDITORS IN LIEU OF SUBMITTING A FORMATTED MAILING MATRIX AND (II) FILE A CONSOLIDATED LIST OF DEBTORS' 30 LARGEST UNSECURED CREDITORS

FILING DATE	DESCRIPTION
April 8, 2015	ORDER (I) EXTENDING THE TIME TO FILE SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS AND (II) EXTENDING THE TIME TO SCHEDULE THE MEETING OF CREDITORS
April 8, 2015	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 45(b) OF THE BANKRUPTCY CODE
April 8, 2015	ORDER (I) AUTHORIZING DEBTORS TO PAY PREPETITION WAGES, SALARIES AND BENEFITS; (II) AUTHORIZING DEBTORS TO CONTINUE EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY COURSE OF BUSINESS; (III) AUTHORIZING CURRENT AND FORMER EMPLOYEES TO PROCEED WITH WORKERS COMPENSATION CLAIMS; AND (IV) DIRECTING APPLICABLE FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	ORDER (i) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE, (ii) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND (iii) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE
April 8, 2015	INTERIM ORDER AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; (II) PAYMENT OF 503(b)(9) CLAIMS TO CERTAIN CRITICAL VENDORS; AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

FILING DATE	DESCRIPTION
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY, PROPERTY, CASUALTY AND OTHER INSURANCE PROGRAMS AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
April 9, 2015	ORDER AUTHORIZING THE APPOINTMENT OF AMERICAN LEGAL CLAIMS SERVICES, LLC AS CLAIMS, NOTICING AND BALLOTING AGENT
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE PAMELA MYLES
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE JANET K. WILLIAMS
April 23, 2015	ORDER GRANTING MOTION TO SHORTEN NOTICE REQUIREMENT
April 28, 2015	ORDER WITHDRAWING MOTION TO RECONSIDER

FILING DATE	DESCRIPTION
May 4, 2015	ORDER GRANTING MOTION BY SUZANNE JETT TORWBRIDGE, COUNSEL FOR WHAYNE-WALKER TO PARTICIPATE TELEPHONICALLY IN 05/05/2015 HEARING
May 5, 2015	STIPULATED PROTECTIVE ORDER
May 5, 2015	ORDER GRANTING MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST PETITION FINANCING PURSUANT TO 11 USC Â§Â§ 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 USC Â§ 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 USC Â§Â§ 361, 362, 363, AND 364
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; (II) PAYMENT OF 503(B)(9) CLAIMS TO CERTAIN CRITICAL VENDORS; AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS. LIMITED OBJECTION WITHDRAWN
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

FILING DATE	DESCRIPTION
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF 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
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY, PROPERTY, CASUALTY AND OTHER INSURANCE PROGRAMS AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
May 8, 2015	FINAL ORDER APPROVING/DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER APPROVING PROCEDURES FOR THE RETENTION AND COMPENSATION OF CERTAIN ORDINARY COURSE PROFESSIONALS OF THE DEBTORS, RETROACTIVE TO THE PETITION DATE

FILING DATE	DESCRIPTION
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING PROCEDURES FOR INTERIM MONTHLY COMPENSATION AND REIMBURSEMENT
May 8, 2015	ORDER GRANTING APPLICATION TO EMPLOY HUNTON & WILLIAMS LLP AS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE
May 8, 2015	ORDER GRANTING/AUTHORIZING THE EMPLOYMENT AND RETENTION OF CASSELS BROCK & BLACKWELL LLP AS SPECIAL COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8,2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF MICHAEL WILSON PLC AS SPECIAL CONFLICTS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF STUBBS ALDERTON & MARKILES, LLP AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	FINAL TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
May 11, 2015	APPOINTMENT OF UNSECURED CREDITORS COMMITTEE

FILING DATE	DESCRIPTION
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING SIGNED ON 5/12/2015
May 12, 2015	ORDER GRANTING APPLICATION TO EMPLOY AND RETAIN SEAPORT GLOBAL SECURITIES AS FINANCIAL ADVISORS AND INVESTMENT BANKERS TO DEBTORS AND DEBTORS IN POSSESSION AS OF THE PETITION DATE
June 2, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, 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; AND (B) GRANTING RELATED RELIEF
June 3, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, THE DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO IMPLEMENT NON-INSIDER KEY EMPLOYEE RETENTION PLAN; AND (B) GRANTING RELATED RELIEF
June 4, 2015	ORDER DENYING MOTION TO APPOINT AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
June 4, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, THE MOTION TO MODIFY THE FINAL DIP ORDER; AND (B) GRANTING RELATED RELIEF

FILING DATE	DESCRIPTION
June 5, 2015	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
June 8, 2015	ORDER AUTHORIZING THE EMPLOYMENT OF MCGUIREWOODS AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
June 8, 2015	ORDER PURSUANT TO SECTION 1103(a) OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF WHITEFORD, TAYLOR & PRESTON LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
June 8, 2015	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
June 8, 2015	ORDER AUTHORIZING DEBTORS TO IMPLEMENT NON-INSIDER KEY EMPLOYEE RETENTION PLAN
June 11, 2015	ORDER GRANTING IN PART MOTIONS FOR RELIEF FROM STAY WITH CONDITIONS AND GRANTING MOTION FOR RELIEF FROM STAY

APPENDIX C
Third Castle Affidavit

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

APPENDIX D
Notice appointing the UCC

Form 12 01/01

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA

In re:	)	
Xinergy, Ltd, et al (see included list of debtors) 15-70444	)	Chapter 11
	)	
Debtors.	)	

APPOINTMENT OF UNSECURED CREDITORS COMMITTEE

A petition in the above case has been filed under chapter 11 of the bankruptcy code and an order for relief has been entered. Pursuant to 11 U.S.C. § 1102, the following creditors are hereby appointed by the United States Trustee to serve on the Unsecured Creditors Committee:

Christopher Signorelli
Security America, Inc.
3412 Chesterfield Ave.
Charleston, WV 25304

Gary Stover
Penn Virginia Operating Co., LLC
Suite 100. One Carbon Center
Chesapeake, WV 25315

Date : May 11, 2015

JUDY A. ROBBINS
United States Trustee for Region 4

By: */s/ Margaret K. Garber*
Margaret K. Garber
Assistant United States Trustee

Office of the U.S. Trustee
210 First Street, Suite 505
Roanoke, VA 24011
Tel 540-857-2806

CERTIFICATE OF SERVICE

I certify that true copies of the foregoing Appointment were mailed to the debtor, counsel for the debtor, and all appointed creditors listed above, on the date set out below.

Date: May 11, 2015

By: */s/ Margaret K. Garber*
Margaret K. Garber
Assistant United States Trustee

Xinergy, Ltd 15-70444
List of associated cases

Name	EIN	Case #
Big Run Mining, Inc.	80-0391585	15-70445
Brier Creek Coal Company LLC	45-1019999	15-70446
Bull Creek Processing Company LLC	45-1020894	15-70447
High MAF LLC	27-1895418	15-70448
Middle Fork Mining Inc.	80-0391593	15-70448
Pinnacle Insurance Group LLC	61-1626851	15-70450
Raven Crest Contracting LLC	20-4527796	15-70451
Raven Crest Leasing LLC	20-4527844	15-70452
Raven Crest Minerals LLC	20-4527746	15-70453
Raven Crest Mining LLC	20-4370122	15-70454
Sewell Mountain Coal Co. LLC	37-1709737	15-70455
Shenandoah Energy LLC	20-4476770	15-70456
South Fork Coal Company LLC	27-4613113	15-70442
Strata Fuels LLC	27-1981559	15-70457
True Energy LLC	27-2082894	15-70443
Whitewater Contracting LLC	32-0397740	15-70458
Whitewater Resources LLC	36-4749929	15-70459
Wise Loading Services LLC	27-4367154	15-70460
Xinergy Corp.	26-1153865	15-70461
Xinergy Finance (US) Inc.	27-1485692	15-70462
Xinergy Land Inc.	26-2788121	15-70463
Xinergy Ltd.	98-0653697	15-70444
Xinergy of Virginia, Inc.	45-2878046	15-70441
Xinergy of West Virginia, Inc.	27-4612401	15-70464
Xinergy Sales, Inc.	26-2788180	15-70465
Xinergy Straight Creek, Inc.	26-2790071	15-70466

APPENDIX E
Modified Final DIP Order

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.

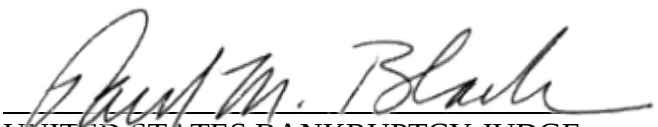
33. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases on a permanent basis, including without limitation, the DIP Agent, the DIP Lenders, the Prepetition 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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Henry P. (Toby) Long, III (VSB No. 75134)
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Counsel to the Debtors and Debtors in Possession

SEEN AND AGREED:

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APPENDIX F
Blackline document – Modified Final DIP Order

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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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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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~~*Proposed*~~ *Counsel to the Debtors and Debtors in Possession*

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United States Trustee

APPENDIX G
Nix Stipulated Order

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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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.

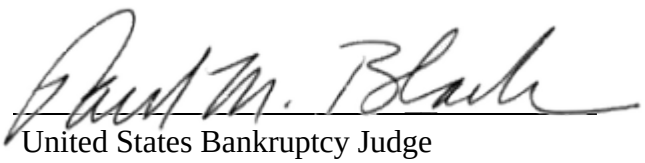
6. The right of parties-in-interest, including the *ad hoc* group of holders of the 9.25% senior secured notes issued by Xinergy Corp. and the lenders under the Debtors' postpetition secured term loan credit facility and the Official Committee of Unsecured Creditors, to seek to intervene as parties to 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:

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- *AND*-

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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)

APPENDIX H
Bar Date 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 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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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**.

---

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:

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-and-

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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)

SECOND REPORT OF THE INFORMATION OFFICER
JUNE 15, 2015

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