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

FOURTH REPORT OF THE INFORMATION OFFICER
DELOITTE RESTRUCTURING INC.
JANUARY 28, 2016

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 two creditors domiciled in Canada that have filed proofs of claim. A third Canadian creditor, Cassels Brock & Blackwell LLP, has filed a claim against Xinergy Corp. as discussed further below. Xinergy, as the ultimate parent of the U.S. Subsidiaries, determined that recognition of the Chapter 11 Proceedings in Canada was necessary so that, among other things, certain assets of Xinergy, including net operating loss carryforwards, 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 of Xinergy Ltd. is 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 (the "**DIP Lender**") under the post-petition credit facility (the "**DIP 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, Mr. Jon Nix ("**Mr. Nix**"), the former founder and CEO of Xinergy and its single largest shareholder at approximately 18%, 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. 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**").

    The Second Report of the Information Officer dated June 15, 2015 (the "**Second Report**") reported on the Foreign Representative's motion returnable June 18, 2015.

11. On June 18, 2015, the Court granted an order (the "**June 18 Order**"): i) recognizing the Modified Final DIP Order, the Nix Stipulated Order, and the Bar Date Order; ii) adjourning a motion for certain other relief sought by Nix; and iii) approving the Second Report and the activities of the Information Officer as outlined in the Second Report.

12. On September 16, 2015, the Chapter 11 Debtors filed with the U.S. Court a Joint Chapter 11 Plan of Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession (the "**Plan**"), a Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession (the "**Disclosure Statement**") and a motion to approve the Disclosure Statement and related solicitation procedures (the "**Disclosure Statement Motion**").

13. On October 14, 2015, following discussions with their stakeholders, the Chapter 11 Debtors filed a revised Plan (the "**Amended Plan**") and amended Disclosure Statement ("**Amended Disclosure Statement**").

14. On October 20, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable October 26, 2015 for, among other things:

    (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 in respect of the Chapter 11 Proceedings;

        i) Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing under the DIP Credit Agreement and Granted Related Relief (the "**First Supplemental DIP Order**") granted on August 27, 2015 on an interim basis; and

        ii) Order (I) Approving The Disclosure Statement; (II) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, Including (A) Approving Form And Manner Of Solicitation Procedures, (B) Approving Form And Notice Of The Confirmation Hearing, (C) Establishing Record Date And Approving Procedures For Distribution Of Solicitation Packages, (D) Approving Forms Of Ballots, (E) Establishing Deadline For Receipt Of Ballots And (F) Approving Procedures For Vote Tabulations; (III) Establishing Deadline And Procedures For Filing Objections (A) To Confirmation Of The Plan, And (B) To Proposed Cure Amounts; And (IV) Granting Related Relief (the "**Disclosure Statement Order**") granted on October 16, 2015.

    The Third Report of the Information Officer dated October 21, 2015 (the "**Third Report**") reported on the Foreign Representative's motion returnable October 26, 2015.

15. The Disclosure Statement Order established December 1, 2015 as the hearing date in the U.S. Court to consider confirmation of the Amended Plan (the "**Confirmation Hearing**"). However, prior to the Confirmation Hearing, the Chapter 11 Debtors determined that they required additional time to continue negotiating the terms of the exit facility as well as continue to address certain corporate and governance issues of the reorganized Chapter 11 Debtors. Accordingly, on November 20, 2015, the Chapter 11 Debtors filed a Notice of Motion

returnable on November 24, 2015 seeking an Order for an adjournment of the Confirmation Hearing. On November 24, 2015, the U.S. Court issued an Order (the "**Continuation Order**"): i) adjourning the Confirmation Hearing to January 27, 2016; ii) extending the Voting Deadline by which Ballots accepting or rejecting the Amended Plan must be actually received to January 20, 2016; iii) setting the deadline by which the Chapter 11 Debtors must file the Plan Supplement to no later than five (5) business days before the Voting Deadline; and iv) setting the deadline for filing of any objections to the confirmation of the Amended Plan to on or before January 20, 2016.

16. On January 14, 2016, the Chapter 11 Debtors filed the Plan Supplement. The Plan Supplement sets out: i) a summary of the proposed principal terms of governance and related rights for the new reorganized parent company; ii) the Exit Facility Term Sheet; iii) the Disclosure of Proposed Officers and Directors of the Reorganized Debtors; and iv) a list of rejected executory contracts and unexpired leases of nonresidential real property. A copy of the Plan Supplement is attached hereto as **Appendix B**.

17. On January 26, 2016, the Foreign Representative served a motion returnable on January 29, 2016 (the "**Plan Recognition Motion**") for an Order (the "**Plan Recognition Order**"):

    (a) 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 in respect of the Chapter 11 Proceedings;

        i) Second Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing under the DIP Credit Agreement and Granted Related Relief (the "**Second Supplemental DIP Order**") granted on January 5, 2016 on an interim basis; and

        ii) Findings of Fact and Conclusions of Law and Order Confirming the Debtors' Amended Joint Chapter 11 Plan (the "**Confirmation Order**"), granted on January 27, 2016.

    (b) granting related relief to facilitate certain transactions pursuant to the Amended Plan;

(c) approving the activities of the Information Officer, discharging Deloitte as Information Officer and releasing Deloitte and its counsel from any and all liability with respect to these proceedings; and

(d) terminating these proceedings upon the filing of the Information Officer's Certificate (as defined and discussed further below).

18. Since the date of the Third Report, the U.S. Court entered further orders of which the Applicant seeks to have two recognized as part of the CCAA Recognition Proceeding. These two orders are described in more detail below. Please refer to **Appendix C** for a listing of all Orders that have been entered in the Chapter 11 Proceedings as at January 25, 2016.

19. 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.

20. 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.

PURPOSE OF FOURTH REPORT

21. The purpose of this Fourth Report is to:

i) assist the Court in considering the Foreign Representative's request for recognition of the Second Supplemental DIP Order and the Confirmation Order;

ii) provide the Court with certain pertinent background and other information in order to do so, including the following:

(a) an update on certain matters, motions, and orders issued in relation to the Chapter 11 Proceedings including, but not limited to, the Plan Supplement, Second Supplementary DIP Order and the Confirmation Order;

(b) an update on the Nix Stipulated Order and other matters involving Mr. Nix;

(c) an update on the voting on the Amended Plan;

(d) an update on objections filed to confirmation of the Amended Plan;

(e) a summary of the activities of the Information Officer since the Third Report; and

(f) the Information Officer's conclusion.

TERMS OF REFERENCE

22. In preparing this Fourth Report of the Information Officer (the "**Fourth 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 generally accept assurance standards, and accordingly, the Information Officer expresses no opinion or other form of assurance in respect of the Information.

23. In view of the purpose of this Fourth Report, some of the financial information herein may not comply with generally accepted accounting principles.

24. Some of the information referred to in this report consists of forecasts and projections, which were prepared based on management's estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. Indeed, the reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.

25. The Information Officer has requested that Xinergy's Canadian counsel 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.

26. This Fourth Report should be read in conjunction with the Preliminary Report, the First through Third Reports, and the Affidavit of Michael R. Castle sworn January 26, 2016 (the "**Fifth Castle Affidavit**"), which was included as a part of Xinergy's Motion Record for the Plan Recognition Motion, and which can also be found (without appendices) attached as **Appendix D** for reference.

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

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

THE CHAPTER 11 PROCEEDINGS

Second Supplemental DIP Order

29. As set out in the Fifth Castle Affidavit, in light of the postponement of the date of the Confirmation Hearing, the Chapter 11 Debtors determined that: i) they required additional financing to continue to operate their business and complete the Chapter 11 Cases; and ii) certain provisions of the DIP Credit Agreement, the DIP Order and the First Supplemental DIP Order required amendment.

30. On December 31, 2015, the Chapter 11 Debtors filed a motion (the "**Second Supplemental DIP Motion**") returnable on January 5, 2016 seeking the Second Supplemental DIP Order to obtain additional financing and modify the exiting DIP agreement and related orders. The material modifications include:

    (a) access to an additional $1,500,000 of financing to be used for general corporate purposes (the "**Incremental Financing**");

    (b) termination of the lenders' commitment for certain CapEx funding, which commitment was undrawn and determined by the Chapter 11 Debtors to not be required prior to the completion of the Chapter 11 Proceedings;

    (c) an extension of the credit agreement milestones related to confirmation of the Amended Plan and the effective date of the Amended Plan to January 28, 2016 and February 5, 2016, respectively;

    (d) an extension of the maturity date of the DIP facility to February 5, 2016;

    (e) a modification of priorities among the DIP lenders to allow the Incremental Financing to be repaid prior to other amounts under the DIP facility; and

    (f) modification of the events of default under the DIP Credit Agreement to include the payment of any professional fees incurred by, or for which the Chapter 11 Debtors are

responsible, including the fees of professionals retained by the DIP Lenders and the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "**UCC**"), which are paid without the written consent of the DIP Agent. It is expected that the professional fees will be paid in connection with the effective date of the Amended Plan.

31. On January 4, 2016, the UCC filed a Limited Objection to the Second Supplemental DIP Motion on the basis that it considered the fees relating to the Incremental Financing to be excessive and that it wished to understand from the perspective of the DIP Lenders and the Consenting Noteholders (as that term is defined in the Amended Plan) their level of commitment to the confirmation and effectuation of the Amended Plan.

32. On January 5, 2016, at the hearing of the Second Supplemental DIP Motion, the objection of the UCC was overruled and the U.S. Court granted the Second Supplemental DIP Order. A copy of the Second Supplemental DIP Order is attached hereto at **Appendix E**. The Second Supplemental DIP Order is an interim order. Objections to the Second Supplemental DIP Order were to be filed with the U.S. Court by January 20, 2016 and any such objections were to be heard at the Confirmation Hearing. However, if no objections to the Second Supplemental DIP Order were filed by January 20, 2016, the interim order was to automatically become a final order. The Information Officer understands that no objections were filed resulting in the Second Supplemental DIP Order becoming a final order.

33. The Foreign Representative is seeking recognition of the Second Supplemental DIP Order by the Court and has advised the Information Officer that it believes recognition is appropriate to further the coordination of the proceedings in the United States and Canada. The Foreign Representative further advises that the funds provided to the Chapter 11 Debtors thereunder are necessary for the protection of Xinergy's property and to effect a successful reorganization. Given that the Court has approved prior financing orders and agreements, the Foreign Representative is of the view that it is appropriate for the Court to recognize and enforce the most current version of the documents in the form of the Second Supplemental DIP Order.

The Amended Plan

34. As set out in the Third Report, the key components of the Amended Plan are i) a new capital structure for the Chapter 11 Debtors, ii) exit financing on terms that were to be determined, and iii) certain releases of the Chapter 11 Debtors and certain third-party releases.

35. With respect to the new capital structure, the Amended Plan provides for a debt for equity swap in which the Chapter 11 Debtors' prepetition secured noteholders (Class 3 creditor claims) will acquire equity in the reorganized enterprise with the existing equity being extinguished. The Information Officer understands that it is contemplated that Xinergy will be dissolved and that a new Delaware company, White Forest Resources Inc. ("**White Forest**"), will become the new corporate parent. The portion of the current DIP Financing provided pursuant to the Second Supplemental DIP Order will be rolled into a first lien term loan under the exit facility, pursuant to which the lenders providing such DIP Financing will receive a pro rata share of equity in White Forest as a commitment fee. The remaining DIP Financing will be converted into a second lien term loan under the exit facility and will convert to equity in White Forest at maturity if not refinanced in cash or prepaid in full. The Amended Plan does not lay out the specific transaction steps, but allows the Chapter 11 Debtors to take the necessary action to effect the Reorganization Transactions.

36. With respect to Exit Financing, as set out in the Plan Supplement, the Exit Facility is proposed to be:

    - a senior secured term loan facility in an aggregate principal amount of $12,000,000 (the "**First Lien Facility**" and the loans thereunder, the "**First Lien Term Loans**"), $1,500,000 of which will consist of the incremental term loans incurred on January 7, 2016 under the DIP Credit Facility (which will be automatically converted into First Lien Term Loans on a dollar for dollar basis), and $10,500,000 of which will consist of new money (such portion, the "**New Money First Lien Term Loan**");
    - a second lien secured term loan facility in an aggregate principal of $47,000,000 under the Existing DIP Credit Facility (the "**2015 DIP Term Loans**") (plus any accrued and unpaid capitalized interest as of the effective date of the Amended Plan) (the "**Second Lien Facility**" and the loans thereunder, the "**Second Lien Term Loans**"), which shall consist solely of converted 2015 DIP Term Loans on a dollar for dollar basis;

- equity: 100% to holders of the senior secured notes due in 2019 (in the original principal amount of $200,000,000) (the "**Prepetition Notes**"), subject to certain dilution in respect of the commitment fee under the first lien exit facility, the potential conversion of the second lien exit facility and provisions relating to a management incentive plan.

37. With respect to the releases, the Amended Plan provides for certain releases of the Chapter 11 Debtors, certain consensual third-party releases, exculpation of the Released Parties (as defined in the Amended Plan), and certain injunctions.

38. Under the Amended Plan, general unsecured creditors (Class 4 creditor claims under the Amended Plan) will receive a portion of $200,000 that the secured lenders have agreed to make available to facilitate a consensual plan process.

39. The charts below provide a summary of the treatment of claims and interests under the Amended Plan and the estimated recoveries as set out in the Amended Disclosure Statement:

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

Class	**Claim or Interest**	**Voting Rights**	**Treatment under the Amended Plan**	**Estimated Allowed Claims**	**Projected Amended Plan Recovery**
1	Priority Non-Tax Claims	Deemed to Accept	Paid in full in Cash	$0	100%
2	Other Secured Claims	Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124	$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	$202,114,791	27.5% - 32.44%
4	General Unsecured Claims	Entitled to Vote	Lesser of Pro Rata share of $200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	$141,600,000 ($4,500,000 - $5,500,000 excluding Senior Secured Note Deficiency Claims)	<0.2% (which may increase to 4% in certain circumstances)
5	Intercompany Claims and Interests	Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	$280,394,441	0%/100%
6	Interests in Xinergy Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%

40. As reported in the Third Report, the Foreign Representative advised the Information Officer that two claims were filed by Canadian domiciled creditors against Xinergy pursuant to the claims process. It further advised that to the extent a creditor had not yet filed a claim in accordance with the U.S. Court approved claims procedures, such creditor would not be entitled to participate in any distributions under the Amended Plan.

41. A listing of the claims filed by Canadian domiciled creditors is included below. The Information Officer understands that these claims were not objected to by the Chapter 11 Debtors.

Creditor	**Amount of Claim Asserted in Proof of Claim (in US$)**
CNW Group Ltd.	$ 24,987.62
DSA Corporate Services Inc.	$ 7,504.37

42. Although the Information Officer had understood that Cassels Brock & Blackwell LLP ("**Cassels**") had a claim against Xinergy, the Claims Register indicates that Cassels filed its claim against Xinergy Corp.

Objections to the Confirmation of the Amended Plan

43. Pursuant to the Continuation Order, the deadline for voting on the Amended Plan was extended to January 20, 2016. In addition, any objections to the confirmation of the Amended Plan were due by end of business on January 20, 2016.

44. The Information Officer understands that a number of objections were filed with the U.S. Court concerning the confirmation of the Amended Plan.

45. The first objection to confirmation of the Amended Plan was filed on November 20, 2015 by the Internal Revenue Service (the "**IRS**") who objected: i) that the Amended Plan does not adequately provide for the IRS's priority tax claims; ii) to the scope of the Chapter 11 Debtors' discharge; and iii) that third-party non-debtor limitation of liability, exculpation, injunction, and release provisions included in the Amended Plan violate the *Anti-Injunction Act*, I.R.C. § 7421(a).

46. On January 21, 2016, after the deadline for filing objections, the Officer of the United States Trustee (the "**US Trustee**") filed an objection to the confirmation of the Amended Plan claiming

that the third-party release and exculpation provisions in the Amended Plan did not comply with all applicable provisions of the Bankruptcy Code. On January 22, 2016, also after the deadline for filing objections, Mr. Nix filed a Joinder to the US Trustee's objections to confirmation of the Amended Plan.

47. In addition, a number of creditors have objected to the assumption and assignment of their contracts or the proposed cure amounts concerning those contracts. The Foreign Representative advises that Xinergy is not party to any of the contracts to be assumed or rejected under the Amended Plan.

48. On January 25, 2016, the Chapter 11 Debtors filed with the U.S. Court a Memorandum of Law in Support of Consensual Third Party Release, Exculpation, and Injunction Provisions of the First Amended Joint Chapter 11 Plan of Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession and Response to Certain Objections Thereto ("**Memorandum of Law**"). The Memorandum of Law was filed in response to the objections of the US Trustee and Mr. Nix, and certain of the objections of the IRS. The Memorandum of Law did not address the objections filed by the IRS with respect to the priority of its tax claims in the Amended Plan.

49. On January 26, 2016, the Chapter 11 Debtors filed with the U.S. Court a Findings of Fact and Conclusions of Law and Order Confirming the Debtor's Amended Joint Chapter 11 Plan.

Voting on the Amended Plan

50. Pursuant to the Continuation Order, the deadline for voting on the Amended Plan was extended to January 20, 2016.

51. As set out above, holders of Class 3 claims and Class 4 claims were entitled to vote on the confirmation of the Amended Plan. The Foreign Representative advises that the holders of Class 3 and 4 claims voted unanimously in favour of the Amended Plan.

Confirmation Order

52. On January 27, 2016, at the Confirmation Hearing, the U.S. Court granted the Confirmation Order, a copy of which is attached hereto as **Appendix F**.

Restructuring Transactions

53. As set out in the Fifth Castle Affidavit, once the Amended Plan becomes effective, the Chapter 11 Debtors anticipate that they will carry out the following restructuring transaction steps with respect to the assets of the Applicant in order to effect the Amended Plan:

    (a) the Applicant contributes all its assets other than the shares of Xinergy Corp. (i.e., the shares of Xinergy Finance Canada Ltd. and Xinergy Finance (US) Inc. and any cash on hand, if any) to Xinergy Corp. in exchange for Xinergy Corp.'s payment to the Applicant of the portion of the $200,000 set aside for Class 4 Creditors of the Applicant;

    (b) the common stock of Xinergy Corp. owned by the Applicant and its subsidiaries is cancelled or transferred to White Forest;

    (c) the common stock of the Applicant is cancelled; and

    (d) White Forest issues new stock to the senior secured noteholders and DIP lenders.

54. The Chapter 11 Debtors advise that the restructuring transactions set out above are in the best interests of the Applicant and its creditors because:

    (a) without the funds contributed by Xinergy Corp., the Applicant would not have sufficient funds to pay the amounts owing to the Applicant's Class 4 creditors;

    (b) the assets of the Applicant (other than the stock of Xinergy Corp.) are of minimal value;

    (c) the transfer of assets to Xinergy Corp. is necessary to effect the Amended Plan and the compromised of claims set forth therein;

    (d) there are less than 15 creditors of Xinergy Ltd. (other than the senior secured noteholders) and only two of those creditors are domiciled in Canada; and

    (e) the senior secured noteholders who will own all of the equity of the reorganized corporate group have secured claims at the Applicant and Xinergy Corp. exceeding

the value of the assets at both entities and thus a transfer of assets from one entity to another does not prejudice any other creditors.

55. It is a condition of the Amended Plan that the Applicant obtain an order of this Court recognizing the Confirmation Order. It is also a requirement of the Applicant's post-filing financing that the date on which the Amended Plan is implemented is no later than February 5, 2016 (the "**Effective Date**").

56. Upon implementation of the Amended Plan, there will be no further need for relief from this Court. Accordingly, following implementation, the Information Officer will file a certificate (the "**Information Officer's Certificate**") certifying that:

    i) the Effective Date has occurred; and

    ii) the Restructuring Transactions with respect to the Debtor are complete.

57. Pursuant to the proposed Recognition Order being sought, the filing of the Information Officer's Certificate will trigger the termination of these recognition proceedings.

View of the Information Officer

58. The Information Officer, having considered the circumstances of this case, believes that the recognition by the Court of the Second Supplemental DIP Order and the Confirmation Order appear to be reasonable.

UPDATE ON THE NIX STIPULATED ORDER

59. As previously described in the Reports of the Information Officer, Mr. Nix, Xinergy and the other Chapter 11 Debtors became involved in an adversary proceeding in the U.S. Court.

60. The adversary proceeding was adjourned a number of times, most recently to the date of the Confirmation Hearing. At the Confirmation Hearing, as a result of the U.S. Court advising that it would grant the Confirmation Order, the Chapter 11 Debtors advised the U.S. Court that they would craft an order with Mr. Nix dismissing the adversary proceeding.

UPDATE ON XINERGY'S ACTIVITIES IN CANADA

61. 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, and has a bank account in Canada. As per the results of the claims process, two creditors filed claims against Xinergy.

62. As of the date of this Fourth Report, neither Xinergy nor the Information Officer is aware of any additional Canadian creditors other than the creditors noted above.

ACTIVITIES OF THE INFORMATION OFFICER

63. Since the date of the Third Report, the activities of the Information Officer have included the following:

    (a) 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, including the Amended Plan, the Amended Disclosure Statement and the Plan Supplement;

    (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; and

    (e) preparing this Fourth Report and discussions with the Information Officer's legal counsel regarding same.

64. The fees of the Information Officer and its counsel have been paid from time to time by the Applicant. In addition, the Information Officer and its counsel are both in possession of retainers provided by the Applicant as provided for in the Supplemental Order.

65. Once the accounts of the Information Officer and its counsel are paid in full, there will no longer be a need for the Administration Charge.

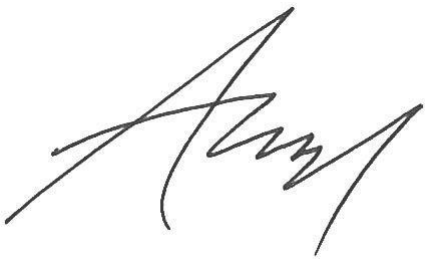
66. Paragraph 19 of the Supplemental Order provides that the Information Officer and its counsel are only required to pass their accounts before this Court if requested by this Court, Xinergy or any other interested person. No party has requested that the Information Officer or its counsel pass its accounts. Accordingly, in the interest of minimizing costs, the Information Officer and its counsel have not, and do not intend to, pass their accounts.

CONCLUSION

Based on the information provided in this Fourth Report, the Information Officer believes the relief requested by Xinergy in its Plan Recognition Motion appears to be reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at TORONTO, ONTARIO, CANADA this 28th day of January, 2016.

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
Plan Supplement

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)
Debtors.[1]	**(Jointly Administered)**

NOTICE OF FILING OF PLAN SUPPLEMENT RELATING TO THE DEBTORS' FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION

PLEASE TAKE NOTICE the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby file the *Plan Supplement Related to the First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the "Plan Supplement") with the United States Bankruptcy Court for the Western District of Virginia.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is filed in support of, and in accordance with, the *First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the "Plan").[2]

PLEASE TAKE FURTHER NOTICE that the following documents are included in the Plan Supplement, as each may be amended, modified, or supplemented:

Exhibit	Description
A	Summary of Proposed Principal Terms of Governance and Related Rights
B	Exit Facility Term Sheet
C	Disclosure of Proposed Officers and Directors of Reorganized Debtors
D	List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

[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 Plan.

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

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Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

Counsel to the Debtors
and Debtors in Possession

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in the Plan Supplement remain subject to continuing negotiations among the Debtor and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court.

PLEASE TAKE FURTHER NOTICE that inclusion of any contract or lease on the Rejection Schedule attached hereto as Exhibit D is not an admission by the Debtors that such contract or lease constitutes an executory contract or unexpired lease of nonresidential real property under section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that a copy of the Plan Supplement may be obtained at no charge at *www.americanlegalclaims.com/xinergy* or for a fee at *https://ecf.vawb.uscourts. gov*.

DATED: January 13, 2016

Respectfully submitted,

/s/ *Justin F. Paget*

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and Debtors in Possession

EXHIBIT A

Summary of Proposed Principal Terms of Governance and Related Rights

Exhibit A – Proposed Principal Terms of Governance and Related Rights

WHITE FOREST RESOURCES, INC.:
SUMMARY OF PROPOSED PRINCIPAL TERMS OF GOVERNANCE AND RELATED RIGHTS

JANUARY 13, 2016

The following is a description of certain proposed terms of governance and related rights with respect to White Forest Resources, Inc., a Delaware corporation (the "Company"), to be set forth in (i) the Stockholders' Agreement to be entered into by and among the Company and its initial stockholders (the "Stockholders' Agreement"), (ii) the Certificate of Incorporation of the Company (the "Charter"), and (iii) the Bylaws of the Company (the "Bylaws"), in each case effective upon the restructuring of the indebtedness of Xinergy Corp., a Tennessee corporation ("Xinergy"), and its affiliated debtors pursuant to the plan of reorganization filed with the United States Bankruptcy Court, Western District of Virginia, pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Restructuring"). The Company will be a newly-formed holding company formed to hold the equity interests of Xinergy as of immediately following the effectiveness of the Restructuring.

Stockholders' Agreement

I. Parties
The Company, Centerbridge Partners ("Centerbridge"), Spectrum Group Management ("Spectrum"), Credit Suisse Asset Management ("CSAM"), one or more funds managed by Whitebox Advisors LLC (such funds collectively, "Whitebox") and each other holder of shares of common stock ("Common Stock" and shares of such Common Stock, "Shares") of the Company as set forth on Annex A hereto immediately following the completion of the Restructuring (each holder of equity interests of the Company, a "Stockholder" and each Stockholder set forth on Annex A hereto, an "Initial Stockholder").
II. Board of Directors
A. Board of Directors

i. The Board will initially be comprised of five members (each, a "Director"), as follows:

(a) Centerbridge and Spectrum will each designate one Director; provided, that if either Centerbridge or Spectrum ceases to hold at least 70% of the total number of Shares initially held by such party (as set forth on Annex A hereto), such party will no longer have the right to designate a Director;

(b) CSAM and Whitebox (each, a "CSAM/Whitebox Party") will jointly designate one Director (the "CSAM/Whitebox Director"); provided, that if either CSAM or Whitebox ceases to hold at least 85% of the total number of Shares initially held by such party, the CSAM/Whitebox Director will be designated solely by the other CSAM/Whitebox Party; provided, further that if both CSAM and Whitebox cease to hold at least 85% of the total number of Shares initially held by such parties respectively, CSAM and Whitebox will no longer have the right to designate a CSAM/Whitebox Director;

(c) one Director will be the Company's chief executive officer; and

(d) the remaining Directors (initially, one Director), each of whom will be independent directors (to be defined), will be elected by the vote of a supermajority (66 2/3rds) of the Shares issued and outstanding.

B. Transferability

i. The right of each of Centerbridge and Spectrum to designate one Director will be transferable by such party in connection with a transfer (in any single transaction or series of related transactions) of Shares held by such party to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer.

ii. The right of the CSAM/Whitebox Parties to jointly designate one Director will be transferable by the CSAM/Whitebox Parties in connection with a transfer (in any single transaction or series of related transactions) of Shares collectively held by the CSAM/Whitebox Parties to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer; provided that immediately following such transfer, neither CSAM/Whitebox Party shall be entitled to designate a Director.

C. Board Observers

i. Each Initial Stockholder will be entitled to have one representative attend, as an observer, all meetings of the Board (a "Board Observer"); provided that no Initial Stockholder will be entitled to designate a Board Observer for so long as such Stockholder has a Director designated to the Board.

ii. For the avoidance of doubt, each CSAM/Whitebox Party will be entitled to appoint one Board Observer in the event that the CSAM/Whitebox Parties are entitled to jointly designate a CSAM/Whitebox Director and such CSAM/Whitebox Director is a representative of the other CSAM/Whitebox Party.

B. Committees

i. The composition and governance of committees of the Board will be structured in a manner that preserves the Board nomination rights and consent rights of the Stockholders and their Board designations.

C. Power to Fill Vacancies

i. Centerbridge, Spectrum and the CSAM/Whitebox Parties (each, a "Designating Stockholder") will have the right to designate a replacement Director to the Board in the event of the death, incapacity, resignation or removal of such Designating Stockholder's designee. Any vacancies of the Director(s) elected by the vote of a majority of the Shares will be replaced by an independent director according to the vote of a majority of the Shares issued and outstanding at the time of determination.

ii. If a Designating Stockholder loses the right to designate a Director to the Board as a result of such Designating Stockholder ceasing to satisfy the required ownership threshold set forth above, such Designating Stockholder's designee shall immediately resign and the resulting vacancy on the Board will be filled by an independent director pursuant to the vote of a majority of the Shares issued and outstanding at the time of determination.

III. Negative Control Rights

i. The following actions of the Company will require the approval of the Stockholder(s) holding at least two-thirds of the issued and outstanding Shares:

(a) any increase or decrease in the size or composition of the Board;

(b) any fundamental changes to the nature of the business of the Company or its subsidiaries involving the entry by the Company or its subsidiaries into material new and unrelated lines of business; and

(c) the consummation of a change of control, merger, consolidation or other business combination.

ii. Any transaction between the Company or its subsidiaries, on the one hand, and any Stockholder, Director or affiliate of any Stockholder or Director, on the other hand, must be approved by a majority of the votes of the Directors then in office, excluding any Director who is, or has been designated by, a party that has an interest in such transaction.

IV. Indemnification

To the fullest extent provided by law, the Company will indemnify its and its subsidiaries' Directors and officers from any and all losses, costs, claims, liabilities, damages or expenses (including the advancement of legal fees and expenses) arising from third party claims relating to such Director's or officer's service to or on behalf of the Company or its subsidiaries.

V. Information and Access Rights

Each Stockholder will have the right to receive customary information, including audited annual financial statements, unaudited quarterly financial statements and copies of all board materials that are not privileged.

VI. Drag-Along Rights

If Stockholder(s) holding at least two-thirds in the aggregate of the issued and outstanding Shares (collectively, the "Drag-Along Stockholder(s)"), propose to transfer (in any single transaction or series of related transactions) all of the Shares owned by the Drag-Along Stockholder(s) to an unaffiliated third party (a "Drag-Along Sale"), then (i) such Drag-Along Stockholder(s) shall have the right to require the other Stockholder(s) to participate and transfer all of their Shares in such Drag-Along Sale on the same terms and conditions as the Drag-Along Stockholder(s) and/or vote in favor of such Drag-Along Sale, and (ii) the other Stockholders must waive any appraisal rights in connection therewith.

VII. Tag-Along Rights

If any Stockholder (a "Selling Stockholder") proposes to transfer (in any single transaction or series of related transactions) at least

two-thirds of the equity securities of the Company to an unaffiliated third party (a "Tag-Along Sale"), then the other Stockholders will have the right to participate proportionately in such Tag-Along Sale on the same terms and conditions as the Selling Stockholder.
VIII. Preemptive Rights
In the event the Company proposes to issue or sell any Shares, then each Stockholder holding at least 5% of the issued and outstanding Shares will have a preemptive right to proportionately participate in such offering or sale on the same terms as the proposed offering. The preemptive rights are also not transferable except to an affiliate and shall be subject to other customary exceptions set forth in the Stockholders' Agreement.
IX. Transferability
Except in connection with a Drag-Along Sale, Tag-Along Sale, or transfer requiring board approval as described below, there are no transfer restrictions on the transfer of Shares by the Stockholders.
X. Transfers Requiring Board Approval
Any transfer of Shares by one or more Stockholders to any person that is not an institutional investor (including without limitation, an investment bank, a hedge fund, private equity fund or other investment fund) or that is a company that operates in the mining industry or holds at least 10% of the equity interests in a company that operates in the mining industry (other than transfers of Shares to any Initial Stockholder), shall, in each case, require the prior approval of a majority of all of the directors on the Board, such approval not to be unreasonably withheld.
XI. Confidential Information
If any Stockholder desires to disclose confidential information regarding the Company to a potential purchaser of all or any portion of its Shares in connection with a potential sale of such Shares, such Stockholder shall cause the potential purchaser to enter into a confidentiality agreement approved by the Company (such approval not to be unreasonably withheld) and the Company shall be a third party beneficiary to such confidentiality agreement.
XII. Jurisdiction; Venue
The Stockholders' Agreement will be governed by Delaware law. Any disputes under the Stockholders' Agreement will be

adjudicated by the courts located in the State of Delaware.

Annex A

Initial Stockholders

Initial Stockholders	**Shares**
Albert Fried & Company/Vineyard	
Armory	
Bank of America	
Bayside	
Centerbridge	
Credit Suisse Asset Management	
Highbridge	
Spectrum Group Management	
Whitebox Advisors	
[other]	
Total	

EXHIBIT B

Exit Facility Term Sheet

Exhibit B – Exit Facility Term Sheet

XINERGY CORP.
Summary Term Sheet for
Exit Financing

This Term Sheet (this "Term Sheet") sets forth the preliminary outline of certain material terms and conditions of proposed transactions (the "Transactions") involving the debt obligations and equity ownership of Xinergy Corp. and its subsidiaries. This Term Sheet is intended as a summary for discussion purposes only and does not constitute a commitment, obligation or agreement to provide, arrange or syndicate any financing on the part of the lenders identified herein. Only execution and delivery of definitive documentation relating to the transactions contemplated herein shall result in any binding or enforceable obligations of any party relating to the Transactions. This Term Sheet does not include descriptions of all of the terms, conditions and other provisions that would be contained in the definitive documentation relating to the Transactions and is not intended to limit the scope of discussion and negotiation of any matter not inconsistent with the specific matters set forth herein. The terms and conditions for the Transactions set forth herein are dependent upon, among other things, internal authorization and approval by the appropriate credit committees for each of the lenders.

Reference is made to that certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of April 8, 2015 (as amended, the "**Existing DIP Credit Agreement**"), by and among Xinergy Corp., as borrower, the guarantors party thereto, WBOX 2014-4 Ltd., as DIP Agent, and the lenders from time to time party thereto.

Borrower: Xinergy Corp., a Tennessee corporation (the "***Borrower***").

Current Capital Structure:

- Senior secured DIP facility with:
  - $47,000,000 term loans under the Existing DIP Credit Agreement (the "***2015 DIP Term Loans***"); and
  - $1,500,000 incremental term loans incurred on January 7, 2016 under the Existing DIP Credit Agreement (the "***Senior DIP Term Loans***" and, collectively with the 2015 DIP Term Loans, the "***DIP Term Loans***").
- 9.25% Senior Secured Notes due 2019 in the original principal amount of $200,000,000 issued pursuant to that certain note indenture, dated as of May 6, 2011, among the Borrower, certain guarantors and Wells Fargo Bank, National Association, as trustee (the "***Prepetition Notes***").

Exit Capital Structure:

- A senior secured term loan facility in an aggregate principal amount of $12,000,000 (the "***First Lien Facility***" and the loans thereunder, the "***First Lien Term Loans***"), $1,500,000 of which will consist of the Senior DIP Term Loans (which will be automatically converted into First Lien Term Loans on a dollar for dollar basis), and $10,500,000 of which will consist of new money (such portion, the "***New Money First Lien Term Loan***").[1]
- A second lien secured term loan facility in an aggregate principal amount

[1] Participation in the New Money First Lien Term Loan to be offered to holders of DIP Term Loans and Prepetition Notes on a 60/40 basis (with the 60% allocations offered on a pro rata basis in respect of the DIP Term Loan commitments).

	of $47,000,000 (plus any accrued and unpaid capitalized interest on the 2015 DIP Term Loans as of the effective date of the plan) (the "***Second Lien Facility***" and the loans thereunder, the "***Second Lien Term Loans***"), which shall consist solely of converted 2015 DIP Term Loans on a dollar for dollar basis. • Equity: 100% to holders of Prepetition Notes, subject to dilution as set forth below.
Guarantors:	Each existing and subsequently acquired or organized subsidiary of the Borrower (together with the Borrower, the "***Obligors***").
Collateral:	Substantially all the assets of the Obligors subject to intercreditor arrangements between the First Lien Facility and the Second Lien Facility to be agreed.
Interest:	• First Lien Facility: At Borrower option, either: (i) 10% payable in cash, or (ii) 15% PIK (and in each case payable quarterly). • Second Lien Facility: 15% PIK.
Maturity:	1 year. • At maturity, if not refinanced with cash and prepaid in full (including all accrued and unpaid interest), the Second Lien Facility will automatically convert into 48% of the equity of the Borrower (the "***Second Lien Conversion***").[2] • All equity shall be subject to dilution pursuant to the Borrower management incentive plan (providing for up to 10% of Borrower equity, on a fully diluted basis, pursuant to the plan of reorganization).
Fees:	• First Lien Facility: lenders will receive their pro rata portion of 20% of Borrower equity at issuance as a commitment fee, resulting in immediate dilution of the Prepetition Note holders from 100% to 80%. The equity fee to the First Lien Term Lenders shall not be diluted by the Second Lien Conversion. • Second Lien Facility: None.
Voluntary Prepayments:	The First Lien Facility and the Second Lien Facility may be prepaid at any time in minimum principal amounts to be agreed without premium or penalty.
Mandatory Prepayments:	Customary for transactions of this type.
Representations and	Customary for transactions of this type.

[2] Expected equity ownership of Borrower after one year: (i) 20% First Lien Facility, (ii) 32% Prepetition Notes, and (iii) 48% Second Lien Facility (i.e., 60% of Prepetition Note holders' 80%), in each case, subject to dilution under the management incentive plan.

Exhibit B – Exit Facility Term Sheet

Warranties:

Affirmative and Negative Covenants:	Customary for transactions of this type, with covenant levels for the Second Lien Facility set at a cushion to the corresponding levels for the First Lien Facility.
Financial Covenants:	[TBD]
Additional Financing Covenant:	Solely with respect to the initial incurrence of debt (not otherwise contemplated by this Term Sheet) that is secured on a senior or pari basis with the First Lien Facility, a portion of such debt shall be first offered to each New Money First Lien Term Lender on a pro rata basis to the extent of its then existing holdings of First Lien Term Loans.
Events of Default:	Customary for transactions of this type.
First Lien Agent/Trustee:	[TBD]
Second Lien Agent/Trustee:	[TBD]
Additional Conditions:	Bankruptcy court approval of a plan of reorganization in form and substance acceptable to the First Lien Term Loan lenders and Second Lien Term Loan lenders.
Governing Law:	New York.

EXHIBIT C

Disclosure of Proposed Officers and Directors of Reorganized Debtors

Exhibit C – Proposed Officers and Directors

Section 4.13 of the Plan provides that the New Board will consist of five or seven members, one of whom will be New Holdco's Chief Executive Officer. This Exhibit C lists the identities and affiliations of the individuals who have been proposed as of the date hereof to serve as members of the New Board. One or more of the proposed members of the New Board or the proposed officers identified below will service as officers, directors and/or managers of each of the Reorganized Debtors. In accordance with Section 4.13 of the Plan, the Debtors submit the following information:

Proposed Directors of the New Board:

1. Matthew Cantor – *Director*. Mr. Cantor previously served as Chief General Counsel and Executive Vice President of Legal Affairs of Lehman Brothers Holdings, Inc. Mr. Cantor was a Founding Principal, Executive Officer, and an Investment Manager at Normandy Hill Capital and focused on distressed, event-driven credit and special situations. Mr. Cantor joined Normandy Hill Capital in 2007. Prior to this, Mr. Cantor was a Partner at Kirkland & Ellis LLP where he specialized in restructuring, insolvency, and workout & bankruptcy. Mr. Cantor was a Principal at Valley Lane Industries from 1998 to 2001 and a Partner at Weil, Gotshal & Manges LLP from 1997 to 1998. He previously served as a Director of Lehman Brothers Special Finance Corp. He is a Member of the New York State Bar Association, Member Business Law Section. Mr. Cantor holds a J.D. from New York University School of Law and B.A. from State University of New York at Binghamton.

2. Jeffrey Wilson – *Director*. Mr. Wilson has recently served as Sr. Vice President-Operations for the Debtors and was formerly Interim President of the J.W. Resources companies based in Knoxville, TN. Mr. Wilson spent almost 20 years with A.T. Massey Coal Company and 5 years with James River Coal Company in various roles in production, engineering, sales, and operations management. Since 2005, he has also been owner and manager of Wilson Energy Advisors, LLC, a consultancy specializing in management, property evaluations, and financial analyses related to the mining industry. Jeff holds a B.S. in Mining Engineering from West Virginia University and an MBA from Marshall University. He is a Registered Professional Engineer, a Registered Member of SME-AIME and serves on the Visiting Committee for the WVU Department of Mining Engineering.

3. Jacob Mercer – *Director*. Jacob Mercer joined Whitebox Advisors, LLC, in 2007 and is a Senior Portfolio Manager with a focus on special situations and distressed assets. Previously, Mr. Mercer worked for Xcel Energy from 2005 to 2007 as Assistant Treasurer and Managing Director. Prior to that, he worked at Piper Jaffray as a Senior Credit Analyst and Principal and at Voyageur Asset Management as a Credit Analyst. In addition, Mr. Mercer served as a Logistics Officer in the United States Army. Mr. Mercer holds a B.A. in both Business Management and Economics from St. John's University. He also holds the Chartered Financial Analyst (CFA) designation. Mr. Mercer has served on a number of boards including Ceres Global Ag, Hycroft Mining, Jerritt Canyon Gold, Par Petroleum, Piceance Energy, and Platinum Energy Solutions.

Exhibit C – Proposed Officers and Directors

4. Jeffrey Buller – *Director*. Mr. Buller is a Managing Director at Spectrum Group Management LLC. He has 20 years of broad experience in analyzing, structuring and executing complex transactions involving mergers & acquisitions, capital restructuring and turnaround management. Prior to joining Spectrum in 2003, Mr. Buller was responsible for the strategic and financial management of Eureka Broadband Corporation, a national provider of integrated communications services. From 1996 to 1998, Mr. Buller was an Investment Banker at Salomon Brothers focusing on debt restructuring, mergers and acquisitions, as well as workout management in various industries. From 1994 to 1996, Mr. Buller was an Associate at Coopers & Lybrand, where he obtained his CPA. In addition, Mr. Buller currently serves as a Director of JHT Holdings, Inc., a specialized transportation and logistics company. Mr. Buller received a B.S. from the State University of New York at Binghamton and an M.B.A. from Columbia Business School.

5. The fifth director will be an independent director to be disclosed prior to the Confirmation Hearing.

In accordance with Section 4.13 of the Plan, the Debtors submit the following information about the officers of the Reorganized Debtors as of the Effective Date.[1]

Individual proposed to serve as officers of the Reorganized Debtors:

1. Chief Executive Officer — Jeffrey A. Wilson
2. Chief Financial Officer — Michael R. Castle

[1] The senior management of the Reorganized Debtors may change after the Effective Date.

EXHIBIT D

List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

Exhibit D – Rejection Schedule

List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

Section 5.1 of the Plan provides that unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. In accordance with Section 5.1 of the Plan, the Debtors submit the following Rejection Schedule:

Debtor Entity	Counterparty	Description of Lease or Executory Contract
South Fork Coal Company, LLC	MERAL Incorporated	Asset Purchase Agreement, dated January 31, 2011, concerning the purchase of that certain Coal Mining Lease by and between WPP, LLC and Seller dated August 13, 2008 and certain Other Assets
South Fork Coal Company, LLC	MERAL Incorporated	Amendment to Asset Purchase Agreement, dated March 17, 2014
Xinergy Corp.	WPP LLC	Mineral Lease (WPP Lease 7323) dated August 22, 2012, regarding property located in Leslie County, Kentucky
Raven Crest Contracting, LLC	Appalachian Power Company	Electric Utility Contract dated June 22, 2012, regarding premises located at Bull Creek Hollow, Dartmouth, WV
South Fork Coal Company, LLC	Appalachian Power Company	Electric Utility Contract dated January 21, 2014, regarding account number 0224277383
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 15 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 24.75 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 15 acre tract
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 24.75 acre tract
Whitewater Resources, LLC	Sabra Investments, LP	Lease Agreement, dated December 29, 2014, concerning the lease of six (6) cabins, the office building and the "lounge" and the site on which the trailer is located, plus (1) acre surrounding each site

APPENDIX C
Listing of all Orders issued in the Chapter 11 Proceedings
As at January 25, 2016

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 §§ 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 § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 USC §§ 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
July 6, 2015	ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF XINERGY, LTD, ET AL., TO RETAIN AND EMPLOY GADDY ENGINNERING COMPANY AS MINING CONSULTANTS

FILING DATE	DESCRIPTION
July 13, 2015	ORDER GRANTING/AUTHORIZING DEBTORS TO (A) EMPLOY AND RETAIN ZOLFO COOPER MANAGEMENT, LLC TO PROVIDE INTERIM MANAGEMENT SERVICES AND (B) DESIGNATE SHERMAN EDMISTON AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS NUNC PRO TUNC TO JUNE 15, 2015
July 31, 2015	AGREED ORDER ADJOURNING 9019 MOTION TO OMNIBUS HEARING SET FOR SEPTEMBER 1, 2015, AT 10:00 AM (PREVAILING EASTERN TIME)
August 27, 2015	SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING UNDER TH DIP CREDIT AGREEMENT AND GRANTED RELATED RELIEF
August 27, 2015	ORDER AUTHORIZING THE DEBTORS TO (A) EMPLOY AND RETAIN WILSON ENERGY ADVISORS, LLC TO PROVIDE INTERIM MANAGEMENT SERVICES AND (B) DESIGNATE JEFFERY A. WILSON AS SENIOR VICE PRESIDENT-OPERATIONS FOR THE DEBTORS EFFECTIVE AS OF AUGUST 13, 2015
August 28, 2015	ORDER EXPEDITING CONSIDERATION AND SHORTENING THE APPLICABLE NOTICE PERIOD
September 1, 2015	ORDER AUTHORIZING THE DEBTORS AND DEBTORS-IN POSSESSION TO ENTER INTO PREMIUM FINANCE AGREEMENT
September 2, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF HUNTON & WILLIAMS LLP AS COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015

FILING DATE	DESCRIPTION
September 10, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF CASSELS BROCK & BLACKWELL LLP AS CANADIAN COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015
September 10, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF SEAPORT GLOBAL SECURITIES LLC AS FINANCIAL ADVISORS AND INVESTMENT BANKERS FOR DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015
September 10, 2015	ORDER APPROVING THE MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER EXTENDING DEBTORS' EXCLUSIVE PERIODS WITHIN WHICH TO FILE A PLAN AND SOLICIT VOTES THEREON
September 10, 2015	ORDER APPROVING THE MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
September 10, 2015	ORDER PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY CODE AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING REJECTION OF AN EMPLOYMENT AGREEMENT
September 14, 2015	AGREED ORDER ADJOURNING 9019 MOTION TO OMNIBUS HEARING SET FOR OCTOBER 6, 2015, AT 11:00 A.M. (PREVAILING EASTERN TIME)

FILING DATE	DESCRIPTION
September 17, 2015	ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT
September 17, 2015	AMENDED ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT
October 5, 2015	ORDER PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY CODE AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING REJECTION OF EXCLUSIVE COAL SALES SERVICES AGREEMENT
October 5, 2015	ORDER APPROVING SETTLEMENT OF RIGHTS TO ESCROWED FUNDS
October 5, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF WHITEFORD TAYLOR & PRESTON LLP AS COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD MAY 14, 2015 THROUGH JUNE 30, 2015
October 5, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF GADDY ENGINEERING AS MINING CONSULTANT FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE QUARTERLY PERIOD ENDING JUNE 30, 2015
October 6, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF MCGUIREWOODS LLP AS CO-COUNSEL FOR OFFICAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD MAY 11, 2015 THROUGH JUNE 30, 2015

FILING DATE	DESCRIPTION
October 16, 2015	ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM AND MANNER OF SOLICITATION PROCEDURES, (B) APPROVING FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOTS, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (III) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS (A) TO CONFIRMATION OF THE PLAN, AND (B) TO PROPOSED CURE AMOUNTS; AND (IV) GRANTING RELATED RELIEF
November 9, 2015	ORDER (I) GRANTING DEBTORS' FIRST OMNIBUS OBJECTIONS AS TO CERTAIN CLAIMS (CLAIMS NOT TIMELY FILED AND PAID AND SATISFIED CLAIMS) AND (II) CONTINUING THE DEBTORS' FIRST OMNIBUS OBJECTIONS AS TO CERTAIN OTHER CLAIMS TO DECEMBER 8, 2015
November 24, 2015	ORDER (I) CONTINUING AND RESCHEDULING HEARING ON CONFIRMATION OF JOINT PLAN OF REORGANIZATION, (II) EXTENDING DEADLINE FOR SUBMITTING BALLOTS, (III) EXTENDING DEADLINE FOR FILING PLAN SUPPLEMENT AND (IV) GRANTING RELATED RELIEF

FILING DATE	DESCRIPTION
December 17, 2015	ORDER (I) GRANTING DEBTORS' SECOND OMNIBUS OBJECTION AS TO CERTAIN CLAIMS (RECLASSIFICATION AND/OR REDUCTION OF ALLEGED ADMINISTRATIVE, PRIORITY, AND SECURED CLAIMS; AMENDED AND SUPERSEDED CLAIMS; EQUITY CLAIMS; PAID AND SATISFIED CLAIMS), (II) WITHDRAWING THE DEBTORS' SECOND OMNIBUS OBJECTION AS TO CERTAIN CLAIMS, AND (III) CONTINUING THE DEBTORS' SECOND OMNIBUS OBJECTION AS TO CERTAIN OTHER CLAIMS
January 5, 2016	SECOND SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING UNDER THE DIP CREDIT AGREEMENT AND GRANTING RELATED RELIEF
January 6, 2016	ORDER EXPEDITING CONSIDERATION AND SHORTENING THE APPLICABLE NOTICE PERIOD

APPENDIX D
Fifth 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 JANUARY 26, 2016)

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

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**") to the following orders (the "**Foreign Orders**") granted, or which the Applicant has requested be granted, by the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Bankruptcy Court**") in respect of the case (the "**Chapter 11 Case**") commenced by Xinergy in the U.S. Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"):

(a) *Second Supplemental Order Authorizing The Debtors to Amend The DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granting Related Relief* (the "**Second Supplemental DIP Order**"), granted on January 5, 2016; and

(b) *Findings of Fact and Conclusions of Law and Order Confirming the Debtors' Amended Joint Chapter 11 Plan* (the "**Confirmation Order**"), scheduled to be heard on January 27, 2016.

3. I understand that the Applicant's counsel will serve a supplemental affidavit attaching the form of Confirmation Order, if granted, in advance of the hearing of the Applicant's motion.

4. In order to comply with the terms of its post-filing financing, the Applicant's plan of reorganization must be effective no later than February 5, 2016. Under the Amended Plan (as defined below), it is a condition to the Effective Date (defined below), that this Court enter an order recognizing the Confirmation Order. The Applicant is serving its motion record prior to the hearing in the U.S. Bankruptcy Court in order to provide this Court and the parties on the service list with time to consider and review the materials.

Corporate Overview

5. Xinergy, an Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the U.S. Until it was delisted on May 12, 2015, Xinergy was listed on the Toronto Stock Exchange. A corporate organizational chart is attached hereto as **Exhibit "A".**

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

Background on Proceedings

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 U.S. Bankruptcy Court authorizing it to act as the foreign representative of the Chapter 11 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 of 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 "B"**. A copy of the reasons of Justice Newbould of April 24, 2015 is attached hereto as **Exhibit "C"**.

10. On April 23, 2015, this Court also granted a second order, which, among other things, (i) appointed Deloitte Restructuring Inc. as Information Officer, (ii) recognized the order of the U.S. Bankruptcy Court appointing Xinergy as the foreign representative, and (iii) recognized certain interim orders of the U.S. Bankruptcy Court (the "**Supplemental Order**"). A copy of the Supplemental Order (without schedules) of April 23, 2015 is attached hereto as **Exhibit "D"**.

11. From time to time, this Court has recognized other orders of the U.S. Bankruptcy Court in order to facilitate the administration of these cross-border proceedings. A list of orders recognized by this Court is attached hereto as **Exhibit "E"**.

The Plan and Disclosure Statement

12. On September 16, 2015, the Chapter 11 Debtors filed their *Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* (the "**Plan**") and their *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the "**Disclosure Statement**").

13. On September 16, 2015, the Chapter 11 Debtors' also filed their *Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the "**Disclosure Statement Motion**").

14. Following conversations with their stakeholders, on October 14, 2015, the Chapter 11 Debtors filed revised versions of the Plan (the "**Amended Plan**"), Disclosure Statement (the "**Amended Disclosure Statement**") and proposed order. A copy of the Amended Plan is attached hereto as **Exhibit "F"**.

15. I understand that the Applicant is likely to make further, immaterial modifications to the Amended Plan in advance of the confirmation hearing and that if a revised plan is filed, the Applicant's counsel will provide this Court with a copy of the revisions.

16. The Amended Plan essentially provides for a debt for equity swap in which the Chapter 11 Debtors' senior secured noteholders will acquire equity in the reorganized enterprise. The portion

of the current post-petition financing (the "**DIP Financing**") provided pursuant to the Second Supplemental DIP Order will be rolled into an first lien term loan under the exit facility, pursuant to which the lenders providing such DIP Financing will receive a pro rata share of equity in the reorganized enterprise as a commitment fee. The remaining DIP Financing will be converted into a second lien term loan under the exit facility and will convert to equity in the reorganized enterprise at maturity if not refinanced in cash or prepaid in full. Unsecured creditors will receive a portion of a cash "gift" that the secured lenders have agreed to make available to facilitate a consensual plan process. Although the Amended Plan is presented as a "joint plan" it is a separate Amended Plan for each Chapter 11 Debtor.

17. Below is a brief description of the treatment of claims and interests under the Amended Plan. This information is included in the Amended Disclosure Statement, but reproduced here for the convenience of the Court. Terms used in the two charts below and not defined herein have the meanings set forth in the Amended Disclosure Statement. The amounts set forth below are in U.S. dollars.

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

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

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

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

18. As provided in the Amended Disclosure Statement, holders of Class 3 claims will initially receive a distribution of 100% of the equity in anewly created company named White Forest

Resources, Inc. ("**White Forest**"). Upon the closing of the exit financing, which is anticipated to occur substantially contemporaneous with the Effective Date (defined below), the lenders providing the first lien term loans under the exit financing will receive 20% of the equity in White Forest as a commitment fee, thereby diluting the shares received by holders of Class 3 claims under the Amended Plan. DIP lenders providing the Incremental Amount under the Supplemental DIP Motion (defined below) will receive a pro rata share of the equity paid as a commitment fee because the Incremental Amount will be rolled into the first lien term loans. The terms of the exit financing, including a description of the payment of equity in White Forest to the first lien term loan lenders as a commitment fee, was disclosed in the Plan Supplement (defined below). The Chapter 11 Debtors have not received any objections from holders of Class 3 claims to the terms of the exit facility.

19. The Amended Plan provides for releases of third parties (i) by the Chapter 11 Debtors and (ii) by certain third parties who consent to the releases (the "**Third Party Release**"). The Third Party Release does not bind shareholders or other parties who hold impaired claims and elect not to be bound by the Third Party Release. The Amended Plan also contains language exculpating the Released Parties (as defined in the Amended Plan) for actions in connection with the Chapter 11 Cases and the Recognition Proceedings and an injunction against continuing claims that are released or exculpated pursuant to the Amended Plan.

20. It is contemplated that Xinergy will be dissolved and that a new Delaware company, White Forest, will become the new corporate parent. The Amended Plan does not lay out the specific transaction steps, but allows the Chapter 11 Debtors to take the necessary action to effect the Reorganization Transactions. The corporate steps with respect to Xinergy are described in detail below.

The Disclosure Statement Order

21. The Disclosure Statement Motion sought an order, among other things (i) approving the Disclosure Statement; (ii) establishing solicitation and tabulation procedures with respect to votes on the Amended Plan; and (iii) establishing procedures for objections to the Amended Plan and proposed cure amounts in connection with contracts to be assumed under the Amended Plan.

22. The Official Committee of Unsecured Creditors filed a response in support of approval of the Disclosure Statement. Lexon Insurance Company and Bond Safeguard Insurance Company (collectively, "**Lexon**") and one of the largest shareholders ("**Mr. Nix**"), filed objections to the Disclosure Statement. Lexon withdrew its objection prior to the hearing. After argument, the Court overruled the objection of Mr. Nix to approval of the Disclosure Statement, but requested, and the Chapter 11 Debtors agreed, that the notice to non-voting parties be amended to include an additional disclosure that the Third Party Release did not apply to shareholders.

23. On October 16, 2015, the U.S. Bankruptcy Court granted the *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the "**Disclosure Statement Order**").

24. On October 26, 2015, Justice Penny granted an order recognizing the Disclosure Statement Order. A copy of Justice Penny's order (with schedules) is attached hereto at **Exhibit "G"**.

Adjournment of Confirmation

25. Although the Disclosure Statement Order set a voting deadline of November 24, 2015 and scheduled a hearing on confirmation of the Amended Plan (the "**Confirmation Hearing**") for December 1, 2015, on November 20, 2015, the Chapter 11 Debtors filed a motion to continue and reschedule the Confirmation Hearing and the related voting, filing and objection deadlines.

26. On November 24, 2015, the U.S. Bankruptcy Court granted an order (the "**Continuation Order**") continuing the Confirmation Hearing to January 27, 2016 and extending the voting deadline to January 20, 2016. A copy of the Continuation Order is attached hereto at **Exhibit "H"**.

Second Supplemental DIP Order

27. In light of the continuation of the Confirmation Hearing, the Chapter 11 Debtors determined that they required additional financing to complete the Chapter 11 Cases.

28. On December 31, 2015, the Chapter 11 Debtors filed a motion (the "**Supplemental DIP Motion**") seeking the Second Supplemental DIP Order to obtain additional financing and modify the existing DIP agreement and related orders. The material modifications include:

(a) access to an additional US$1,500,000 (the "**Incremental Amount**");

(b) termination of the lenders' commitment for certain CapEx funding, which commitment is currently undrawn and no longer necessary prior to the Effective Date;

(c) an extension of the credit agreement milestones related to confirmation of the Amended Plan and the Effective Date of the Amended Plan to January 28, 2016 and February 5, 2016, respectively;

(d) an extension of the maturity date of the DIP facility to February 5, 2016;

(e) a modification of priorities among the DIP lenders to allow the Incremental Amount to be repaid prior to other amounts under the DIP facility; and

(f) creation of a new event of default in the event that any professional fees for which the Chapter 11 Debtors are responsible are paid without the written consent of the agent under the DIP facility. It is expected that the professional fees will be paid in connection with the Effective Date of the Amended Plan.

29. Although the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases filed a limited objection to the Supplemental DIP Motion, the objection was overruled and the U.S. Bankruptcy Court granted the Second Supplemental DIP Order on January 5, 2016. A copy of the Second Supplemental DIP Order is attached hereto at **Exhibit "I"**.

Solicitation of Votes on the Amended Plan

30. The Disclosure Statement Order governs the solicitation and tabulation of votes on the Amended Plan. Canadian creditors are subject to the same solicitation procedures; there has been and will be no separate solicitation process in Canada.

31. Between October 20, 2015 and October 23, 2015, the Chapter 11 Debtors' solicitation agent served the parties identified by the solicitation procedures with copies of the:

(a) Notice of (I) Approval of Disclosure Statement, (II) Deadline for Voting on the Joint Plan of Reorganization of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession, (III) Hearing to Consider Confirmation of the Plan, and (IV) Last Date and Procedures for Filing Objections to Confirmation of the Plan;

(b) Letter in support of the Plan from the Official Committee of Unsecured Creditors;

(c) Disclosure Statement Order;

(d) Plan;

(e) Ballots; and

(f) Notice of (I) Approval of Disclosure Statement, (II) Hearing to Consider Confirmation of the Plan, and (III) Last Date and Procedures for Filing Objections to Confirmation of the Plan.

32. Pursuant to the Continuation Order, on November 24, 2015, the Chapter 11 Debtors served the parties entitled to vote with a notice regarding the continuation of the Confirmation Hearing and the extension of the voting deadline. A copy of the notice is attached to the Continuation Order.

33. The Continuation Order established January 20, 2016 as the deadline for submission of ballots to the Chapter 11 Debtors' solicitation agent.

34. The Amended Plan designates seven classes of claims and interests. Classes 3 and 4 are entitled to vote on the Amended Plan.

35. I understand that Xinergy's counsel will serve a further affidavit, attaching the voting results.

Confirmation of the Amended Plan

36. Objections to assumption of contracts pursuant to the Amended Plan (and the related cure amounts) were due November 10, 2015. None of the contracts to be assumed under the Amended Plan are contracts with Canadian counterparties. To the best of my knowledge, there are also no contracts with the Applicant to be rejected pursuant to the Amended Plan.

37. Objections to confirmation of the Amended Plan were due on January 20, 2016.

38. On November 20, 2015, the Internal Revenue Service ("**IRS**") filed an objection to the Amended Plan. The IRS objected to the treatment of the IRS's priority tax claim, the scope of the Chapter 11 Debtors' discharge and the third party-releases as they relate to the IRS's claims.

39. On January 14, 2016, the Chapter 11 Debtors filed certain additional documents (the "**Plan Supplement**") providing additional disclosure regarding the implementation of the Amended Plan. A copy of the Plan Supplement is attached hereto as **Exhibit "J"**.

40. On January 21, 2016, the Office of the United States Trustee (the "**U.S. Trustee**") filed an objection to the Amended Plan, opposing the third party release and exculpation provisions in the Amended Plan.

41. On January 22, Jon Nix, the holder of certain of the issued and outstanding voting and non-voting shares of Xinergy, filed a joinder to the U.S. Trustee's objection to the Amended Plan.

42. In addition, a small number of other creditors have objected to the proposed cure amounts with respect to contracts to be assumed under the Amended Plan. The Applicant is not party to any contracts to be assumed or rejected under the Amended Plan.

43. The Chapter 11 Debtors expect that if the U.S. Bankruptcy Court confirms the Amended Plan, the Confirmation Order will be entered on January 27, 2016, following the Confirmation Hearing. I understand that the Applicant's counsel will serve a supplemental affidavit attaching the form of order, if granted, in advance of the hearing on this motion.

44. A draft of the Confirmation Order attached hereto at **Exhibit "K".**

45. As noted above, it is a condition to the Effective Date of the Amended Plan that the Applicant obtain an order of this Court recognizing the Confirmation Order. In addition, the

Chapter 11 Debtors' post-filing financing requires that the date on which the Amended Plan is implemented (the "**Effective Date**") occur no later than February 5, 2016. As a result, it is critical that this Court enter an order recognizing the Confirmation Order so that Xinergy and the other Chapter 11 Debtors may timely consummate the Amended Plan.

Relief to Effect the Amended Plan

46. Pursuant to the Amended Plan and Plan Supplement, the secured noteholders will receive shares in White Forest, a Delaware corporation, instead of the current corporate parent (the Applicant). In addition, the Amended Plan provides that the Chapter 11 Debtors may take steps to dissolve, merge or otherwise eliminate the Applicant from the corporate structure.

47. The Applicant has limited assets, consisting mostly of interests in related entities (as set out in **Exhibit "A"**). The only assets of the Applicant at this time are:

(a) the shares of Xinergy Finance Canada Ltd. (an inactive, non-debtor entity);

(b) the shares of Xinergy Finance (U.S.) Inc. (a Chapter 11 Debtor);

(c) the shares of Xinergy Corp. (a Chapter 11 Debtor);

(d) an intercompany receivable of approximately $37 million; and

(e) a bank account with approximately CAD $11,000.

48. In order to effect the Amended Plan, the Chapter 11 Debtors anticipate the following restructuring transactions (the "**Restructuring Transactions**") with respect to the assets of the Applicant:

(a) Step One: The Amended Plan becomes effective;

(b) Step Two: The Applicant contributes all its assets other than the shares of Xinergy Corp. (i.e., the shares of Xinergy Finance Canada Ltd. and Xinergy Finance (U.S.) Inc. and any cash on hand, if any) to Xinergy Corp. in exchange for Xinergy Corp.'s payment to the Applicant of the portion of the US$200,000 set aside for Class 4 Creditors of the Applicant;

(c) Step Three: The common stock of Xinergy Corp. owned by the Applicant and its subsidiaries is cancelled or transferred to White Forest (to be determined prior to the Effective Date);

(d) Step Four: The common stock of the Applicant is cancelled;

(e) Step Five: White Forest issues new stock to the senior secured noteholders and DIP lenders.

49. The transactions described above are in the best interests of the Applicant and its creditors because:

(a) Without the funds contributed by Xinergy Corp., the Applicant would not have sufficient funds to pay the amounts owing to the Applicant’s Class 4 creditors;

(b) The assets of the Applicant are of minimal value;

(c) The transfer of assets to Xinergy Corp. is necessary to effect the Amended Plan and the compromises of claims set forth therein;

(d) There are less than 15 creditors of Xinergy Ltd. (other than the senior secured noteholders) and only two of those creditors are domiciled in Canada; and

(e) The senior secured noteholders who will own the equity of the reorganized corporate group have secured claims at the Applicant and Xinergy Corp. exceeding the value of the assets at both entities and thus a transfer of assets from one entity to another does not prejudice any other creditors.

50. Following the first business day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 of the Amended Plan have been satisfied or waived in accordance with Section 9.3 of the Amended Plan (the "**Effective Date**") the Applicant will have no assets remaining. In addition, pursuant to the Amended Plan, on the Effective Date, the directors of the Applicant will be deemed to have resigned. Consistent with section 4.16 of the Amended Plan, the Chapter 11 Debtors in connection with the equity holders in the reorganized enterprise will determine the appropriate disposition of the Applicant.

51. Once the Amended Plan has been implemented, there will be no further need for relief from this Court. Following implementation, the Information Officer will file a certificate (the "**Information Officer's Certificate**") indicating that the Amended Plan has been implemented, that the charges granted in the Supplemental Order have been released, and that these proceedings may be terminated.

52. Following the Effective Date of the Amended Plan and the consummation of the Restructuring Transactions, I believe there will no longer be a need for this recognition proceeding, and that termination of the proceeding will be in the best interests of the Applicant.

53. I make this affidavit in support of the motion of Xinergy returnable January 29, 2016 and for no other or improper purpose.

SWORN/AFFIRMED BEFORE ME at the City of Knoxville in the State of Tennessee this 26th day of January, 2016.

Notary Public for the State of Tennessee

MICHAEL R. CASTLE

VIRGINIA E. MCKNIGHT
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF LOUDON

APPENDIX E
Second Supplemental DIP Order

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

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

SECOND SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING UNDER THE DIP CREDIT AGREEMENT AND GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure(the "Bankruptcy Rules"), seeking, among other things, a second supplemental order (this "Supplemental Order") authorizing the Debtors to (i) obtain up to an aggregate principal amount of $1,500,000 in incremental post-petition financing under the DIP Credit Agreement (the "Subsequent Incremental DIP Financing") substantially on the same terms as the Initial Term Loans and the Delayed Draw Term Loans approved under the DIP Order and the Incremental DIP Financing approved under the First Supplemental DIP Order, except as

[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 ascribed to them in the Court's *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* [Dkt. No. 263], entered by the Court on June 5, 2015 (the "DIP Order"), as supplemented and amended, including by the *Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing under the DIP Credit Agreement and Grant[ing] Related Relief* [Dkt. No. 363], entered by the Court on August 27, 2015 (the "First Incremental DIP Order").

otherwise provided below, from those DIP Lenders who have executed Incremental Amendment No. 2, (ii) amend the DIP Credit Agreement to, among other things, permit the incurrence of the Subsequent Incremental DIP Financing, and (iii) pay certain fees and expenses to the DIP Lenders who have executed the Incremental Amendment No. 2 in connection with the Subsequent Incremental DIP Financing; and the Court having considered the Motion, and the record in these cases; and it appearing that notice of the Motion, the relief requested therein and the hearing on the Motion (the "Interim Hearing") are adequate and appropriate under the particular circumstances; and the Court having considered all objections, if any, to the Motion; and upon the record made by the Debtors in the Motion, the Declaration of Michael R. Castle in support of the Chapter 11 Petitions and Related Motions (the "Castle Declaration") [Doc. No. 18], and at the Hearing, and at the hearing on the DIP Order, and after due deliberation and consideration and it appearing that sufficient cause exists for granting the requested relief and that the relief requested is in the best interest of the Debtors, their estates, and their creditors;

IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED THAT:

1. The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled without prejudice to the rights of parties in interest to object to the granting of the Motion on a final basis in accordance with paragraph 18 hereof.

2. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and properties affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Hearing constitutes due and sufficient notice of the Motion and the Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The terms of Incremental Amendment No. 2, a copy of which was attached to the Motion in substantially final form, and the transactions related thereto are hereby authorized and approved on an INTERIM BASIS; provided that this Supplemental Order shall become a final order to the extent provided in paragraph 18 below. Promptly upon entry of this Supplemental Order, the Borrower is authorized to borrow up to an aggregate principal amount of $1,500,000 pursuant to the Subsequent Incremental DIP Financing, and the guarantors under the Subsequent Incremental DIP Financing are hereby authorized to guarantee such borrowings, 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 and the Incremental Amendment No. 2, under the Subsequent Incremental DIP Financing and in accordance with the terms and conditions of the DIP Credit Agreement, the DIP Order, the First Supplemental DIP Order, this Supplemental Order, and Incremental Amendment No. 2.

5. The Debtors are hereby authorized to perform and do all acts, including to make, execute and deliver Incremental Amendment No. 2 and all instruments and documents as may be required to effect the Subsequent Incremental DIP Financing and the transactions contemplated thereby. The Debtors are authorized to perform each of their obligations in respect of the Subsequent Incremental DIP Financing and to pay fees and other amounts that may be reasonably required or necessary for the Debtors' performance under the DIP Documents

(including Incremental Amendment No. 2) or in connection with the Subsequent Incremental DIP Financing, including, without limitation, payment of the Subsequent Incremental DIP Amendment Fee referenced in the Fee Letter executed in connection with the Subsequent Incremental Amendment and the agreement to pay the reasonable fees and out-of-expenses of the professionals of the DIP Agent and the DIP Lenders in accordance with the DIP Order.

6. The amendments and modifications to the DIP Credit Agreement and the DIP Order as set forth herein and in Section 2 of Incremental Amendment No. 2 are hereby approved on an interim basis in all respects, subject to this Supplemental Order becoming a final order as provided in paragraph 18 below.

7. Good cause has been shown for entry of this Supplemental Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management, and preservation of the Debtors' assets and personal property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Subsequent Incremental DIP Financing.

8. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (ii) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code, or (iii) secured debt under section 364(c)(2) or (3) of the Bankruptcy Code. No other source of financing exists on terms more favorable than those offered in connection with the Subsequent Incremental DIP Financing.

9. The Subsequent Incremental DIP Financing and the amendments to the DIP Credit Agreement are vital to avoid immediate and irreparable loss or harm to the Debtors'

estates, which will otherwise occur if immediate access to the Subsequent Incremental DIP Financing is not obtained.

10. The terms of the Subsequent Incremental DIP Financing and Incremental Amendment No. 2 are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The Subsequent Incremental DIP Financing, the amendments to the DIP Credit Agreement, Incremental Amendment No. 2 and this Order have been negotiated in good faith and at arm's length between the Debtors and the DIP Lenders. Consequently, the Subsequent Incremental DIP Financing shall be deemed to have been extended by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

11. The obligations under the Subsequent Incremental DIP Financing and Incremental Amendment No. 2 shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes. The Subsequent Incremental DIP Financing and all other obligations under Incremental Amendment No. 2 shall be treated as Superpriority Claims, Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes hereunder, under the DIP Order and the DIP Documents (which, for the avoidance of doubt, shall include Incremental Amendment No. 2), and, except for the Carve Out, no claims having an administrative priority superior to or *pari passu* with such DIP Obligations shall be granted while any portion thereof remains outstanding, without the consent of the DIP Lenders in accordance with the DIP Documents. All references in the DIP Credit Agreement, the DIP Documents and the DIP Order to the DIP Facility shall be read to include the Subsequent Incremental DIP Financing, and references to the DIP Credit Agreement shall be read to include Incremental

Amendment No. 2. Incremental Amendment No. 2 and all definitive documents relating to the Subsequent Incremental DIP Financing shall be considered DIP Documents.

12. All DIP Liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the DIP Lenders in the DIP Order and the DIP Documents with respect to or relating to the DIP Financing or the DIP Collateral shall apply with equal force and effect to the Subsequent Incremental DIP Financing, Incremental Amendment No. 2 and all obligations incurred under or in connection therewith or related thereto, and the various claims, liens, super-priority claims and other protections granted pursuant to this Supplemental Order will not be affected by any subsequent reversal or modification of this Supplemental Order, the DIP Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Supplemental Order.

13. Notwithstanding anything to the contrary in the DIP Order, the principal amount of the Subsequent Incremental Term Loans (as such term is defined in Incremental Amendment No. 2) shall be senior in right of payment relative to the other loans provided under the DIP Order, the First Supplemental DIP Order or the DIP Credit Agreement.

14. The terms of the DIP Order, including the terms of the First Supplemental DIP Order, are incorporated herein and made a part of this Supplemental Order. Except to the extent modified by this Supplemental Order, the terms, provisions and conditions of, and relief granted by, the DIP Order remain in full force and effect, and shall apply with equal weight to the Subsequent Incremental DIP Financing as if the Subsequent Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing. All factual and other findings and conclusions of law contained in the DIP Order shall remain fully applicable to the DIP Financing, and shall apply with equal weight to the Subsequent Incremental DIP Financing

as if the Subsequent Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Supplemental Order, the DIP Order and the definitive documents related to the Subsequent Incremental DIP Financing, the provisions of the DIP Order shall govern, except as expressly modified by this Supplemental Order.

15. The provisions of this Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), and the Debtors' estates.

16. All liens and priority granted to the DIP Lenders pursuant to this Supplemental Order shall be deemed perfected by operation of law as of the date hereof.

17. This Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Supplemental Order.

18. The Final Hearing to consider entry of this Supplemental Order on a final basis is scheduled for January 27, 2016, at 11:00 a.m. (EST) before this Court. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Objections, if any, to entry of this Supplemental Order

on a final basis are due January 20, 2016, at 4:00 p.m. (EST); provided, however, if no such objections are received by such date, this Supplemental Order shall automatically become final without further order or action by the Court or the Debtors and the Final Hearing shall be cancelled.

19. This Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: January 5, 2016
Roanoke, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ *Justin F. Paget*
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
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Counsel to the Debtors
and Debtors in Possession

APPENDIX F
Confirmation 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]	

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER CONFIRMING THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN

I. RECITALS

A. On April 6, 2015 (the "Petition Date"), the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases, commenced their chapter 11 cases (the "Chapter 11 Cases") in good faith by filing their respective Voluntary Petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Virginia (the "Court"). The Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 8, 2015, the Court entered an order authorizing joint administration of these chapter 11 cases [Doc. No. 184]. On May 11, 2015, the Office of the United States Trustee for the Western District of Virginia (the "United States Trustee") appointed an official committee of unsecured creditors (the "Committee") in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

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

B. On September 16, 2015, the Debtors filed the *Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 406] and the *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 407]. On October 14, 2015, the Debtors filed the *First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453][2] and the *First Amended Disclosure Statement Accompanying First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 454].

C. After due notice and a hearing held on October 16, 2015, the United States Bankruptcy Court for the Western District of Virginia (the "Court") entered its *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (c) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* [Doc. No. 465] (the "Disclosure Statement Order") that, among other things, (i) approved the Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical investor of the relevant voting Classes under the Plan to make an informed judgment whether to vote to accept or reject the Plan; (ii) established the deadline to vote to accept or reject the Plan; (iii) established the deadline to file and serve

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

objections to the Plan; and (iv) scheduled a hearing to consider confirmation of the Plan. Thereafter the Debtors commenced their solicitation of votes to accept or reject the Plan. including a form of confirmation hearing notice (the "Confirmation Hearing Notice").

D. The manner in which votes were solicited in respect of the Plan is described in the Affidavit of Service, dated October 27, 2015 [Doc. No. 477], prepared by American Legal Claims Services, LLC (the "Solicitation Affidavit").

E. On November 20, 2015, the Debtors filed the *Motion for Entry of an Order (I) Continuing Hearing on Confirmation of Joint Plan of Reorganization, (II) Extending Deadline for Submitting Ballots, (III) Extending the Deadline for Filing the Plan Supplement and (IV) Granting Related Relief* [Doc. No. 519] (the "Motion to Continue"). On November 24, 2015, the Court granted the Motion to Continue, and entered its *Order (I) Continuing and Rescheduling Hearing on Confirmation of Joint Plan of Reorganization, (II) Extending Deadline for Submitting Ballots, (III) Extending Deadline for Filing Plan Supplement and (IV) Granting Related Relief* [Doc. No. 523] (the "Continuance Order"). The Continuance Order (i) extended the previous deadline to vote to accept or reject the Plan to January 20, 2016, at 5:00 p.m. (prevailing Eastern Time) (the "Voting Deadline"); (ii) extended the previously scheduled deadline to file and serve objections to the Plan to January 20, 2016, at 5:00 p.m. (prevailing Eastern Time) (the "Plan Objection Deadline"); and (iii) adjourned the previously scheduled confirmation hearing to January 27, 2016 at 11:00 a.m. (prevailing Eastern Time) (the "Confirmation Hearing").

F. On January 14, 2016, the Debtors filed the *Plan Supplement to the First Amended Chapter 11 Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 628].

G. On January 25, 2016, the Debtors filed the *Declaration of Jeffrey L. Pirrung Certifying Vote On and Tabulation of Ballots Accepting and Rejecting the First Amendment Plan of Xinergy Ltd.* [Doc. No. 660] (the "Pirrung Declaration"), which summarizes the certified results from the Plan solicitation process.

H. The Confirmation Hearing was held before the Court on January 27, 2016.

(a) **NOW, THEREFORE**, the Court having reviewed and considered the Disclosure Statement, the Plan, the Plan Supplement, the Solicitation Affidavit, and the Pirrung Declaration; and the Court having heard statements of counsel in support of Confirmation of the Plan at the Confirmation Hearing; and upon the record of the Confirmation Hearing, including evidence proffered; and the Court having considered objections to the Plan and confirmation and any responses or replies to such objections; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases; and it appearing to the Court that the legal and factual bases set forth in the *Memorandum of Law in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession and Response to Certain Objections Thereto* [Doc. No. 661] and the *Memorandum of Law in Support of the Consensual Third Party Release, Exculpation, and Injunction Provisions of the First Amended Joint Chapter 11 Plan of Xinergy Ltd. and its Subsidiary Debtors and Debtors in Possession and Response to Certain Objections Thereto* [Doc. No. 659] and presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing

therefor, the Court hereby makes and issues the following findings of fact and conclusions of law and order:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction, Venue and Other Matters[3]

1. Incorporation of the Recitals. Each of the Recitals shall be, and hereby is, incorporated herein as a Finding of Fact.

2. Exclusive Jurisdiction; Venue; Core Proceeding. The Court has subject matter jurisdiction over this proceeding and the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court has jurisdiction to enter a Final Order with respect thereto. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code, and thus, whether the Plan should be confirmed.

3. Objections Overruled. Any resolution of objections to Confirmation explained on the record at the Confirmation Hearing is hereby incorporated by reference. All unresolved objections and joinders therein, statements, and reservations of rights are hereby overruled on the merits for the reasons set forth on the record at the Confirmation Hearing, including the specific factual findings made with respect to approval of the "Consensual Third Party Releases" set forth in Section 8.4 of the Plan and the "Exculpation" provision set forth in Section 8.5 of the Plan.

4. Burden of Proof. In accordance with section 1121(a) of the Bankruptcy Code, the Debtors, as proponents of the Plan, have met their burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable

[3] Headings to sections and paragraphs in this Confirmation Order are inserted for convenience of reference only and are not intended to affect the interpretation of this Confirmation Order.

evidentiary standard for Confirmation of the Plan. Further, the Debtors have proven the elements of section 1129 of the Bankruptcy Code by clear and convincing evidence.

5. Transmittal of Solicitation Packages. The Solicitation Packages were transmitted and served in compliance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, as amended and promulgated under 28 U.S.C. § 2075, and the Local Rules of the Bankruptcy Court, as the same may be applicable (collectively, the "Bankruptcy Rules") and the Disclosure Statement Approval Order as evidenced by the Solicitation Affidavit. Such transmittal and service of the Solicitation Packages was adequate and sufficient.

6. Notice of the Confirmation Hearing and Voting Deadline. As evidenced by the Solicitation Affidavits, notice of the Confirmation Hearing and Voting Deadline was mailed to Holders of Claims against the Debtors, Holders of Interests in the Debtors and other parties in interest. As evidenced by the Affidavit of Publication filed with the Court on January 13, 2016 [Doc. No. 624] (the "Publication Affidavit"), the Confirmation Hearing Notice, which also provided notice of the Voting Deadline, was also published timely in the print editions of the *Globe and Mail* on October 22, 2015, and the *Charleston Gazette-Mail* on October 22, 2015. Accordingly, adequate and sufficient notice of the Confirmation Hearing and Voting Deadline was given in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Approval Order, and no other or further notice was, is or shall be required.

7. Votes on the Plan. Votes for acceptance or rejection of the Plan were solicited in good faith and such solicitation complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other applicable provisions of the Bankruptcy Code, and the Disclosure Statement Order. As evidenced by the Pirrung Declaration, Ballots were

tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order, and the Continuance Order.

8. Plan Supplement. The Debtors caused the Plan Supplement to be filed with the Court in compliance with the terms of the Plan. The documents included in the Plan Supplement were negotiated in good faith and at arm's length. The filing and notice of the Plan Supplement was good and proper and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order, and the Continuance Order.

B. Compliance with the Applicable Provisions of the Bankruptcy Code

9. The Plan's Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with all, and is not inconsistent with, the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification of Claims and Interests (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims and Priority Claims, which need not be classified, the Plan designates five Classes of Claims, one Class of Intercompany Claims and Interests, and one Class of Interests. *See* Plan at Article III. The Claims or Interests placed in each Class are substantially similar to the other Claims or Interests, as the case may be, in such Class. Valid business, factual and legal reasons exist for separately classifying the various categories of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and the creation of such Classes does not unfairly discriminate

between or among Holders of Claims or Interests. Thus, the Plan satisfies the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Classes 1, 2, and 5 are Unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan specifies that Classes 3, 4, 6, and 7 are Impaired and specifies the treatment of the Claims and Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) Equal Treatment within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in a particular Class, as the case may be, unless the Holder of a particular Claim or Interest in such Class has agreed to less favorable treatment of its Claim or Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and Plan Supplement provide adequate and proper means for implementation of the Plan, including but not limited to: (i) the good faith compromise and settlement of all Claims and Interests; (ii) the issuance of the Plan Securities; (iii) providing the Debtors the ability to obtain adequate exit financing; (iv) exempting the offering, issuance, and distribution of

Securities, including the Plan Securities, from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable; (v) the reservation of rights to properly re-classify any Allowed Claim or Interest; (vi) the vesting of rights in and the continued corporate existence of the Reorganized Debtors; (vii) the establishment of the Professional Fee Escrow Account; (viii) the cancellation of notes, instruments, Certificates, and other documents evidencing Claims or Interests; (ix) the approval of actions taken by the Reorganized Debtors pursuant to the Plan; (x) the amendment of the Debtors' certificates of incorporation and bylaws; (xi) the issuance, execution, delivery, filing, and recording of effectuating documents; (xii) the exemption from section 1146(a) of the Bankruptcy Code; (xiii) the identification of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors; (xiv) the inclusion of provisions governing incentive plans and employee and retiree benefits; (xv) the preservation of Causes of Action; and (xvi) the implementation of the Restructuring Transactions. Accordingly, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

(f) Prohibition on Issuance of Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Reorganized Debtors shall amend, as necessary, their organizational documents to prohibit the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy

Code. Accordingly, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied.

(g) The Plan's Provisions Regarding Directors, Managers and Officers are Consistent with the Interests of Creditors and Interest Holders and Public Policy (11 U.S.C. § 1123(a)(7)). Article 4.13 of the Plan states that, the members of the Debtors' board of directors are deemed to have resigned as of the Effective Date of the Plan. Upon such resignation, the New Board selected by the Majority Consenting Noteholders in their sole discretion will be appointed and, thereafter, members of the New Board shall be selected pursuant to the director election process set forth in the New Holdco Bylaws. Members or directors, as applicable, of the Reorganized Debtors other than New Holdco shall be determined according to such entities' existing organizational documents. The officers of the Reorganized Debtors as of the Effective Date shall be the officers disclosed in the Plan Supplement. In light of the foregoing, the requirements of section 1123(a)(7) of the Bankruptcy Code have been satisfied.

(h) Future Income (11 U.S.C. § 1123(a)(8)). Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Plan because none of the Debtors are individuals.

10. The Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as proponents of the Plan, have complied with all

applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically, (a) the Debtors are proper debtors under section 109 of the Bankruptcy Code and are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code, (b) the Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and (c) as stated above, the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Disclosure Statement Approval Order and the Continuance Order in transmitting the Solicitation Packages and in soliciting and tabulating votes on the Plan.

11. The Debtors' Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting and filing it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Clerk of the Court satisfies Bankruptcy Rule 3016(b).

12. The Debtors' Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d) and the Disclosure Statement Approval Order and the Continuance Order. The transmittal and service of the Solicitation Packages was (i) in compliance with the Disclosure Statement Approval Order and the Continuance Order, and (ii) sufficient under the Bankruptcy Rules and the circumstances surrounding the Chapter 11 Cases.

13. The Debtors' Compliance with Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan solely from Holders of Allowed Claims in Classes entitled to vote to accept or reject the Plan as of the Voting Record Date satisfies Bankruptcy Rule 3018. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order, and the Continuance Order.

14. The Debtors Proposed the Plan in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The Chapter 11 Cases were filed and the Plan was proposed with the legitimate and honest purpose of reorganizing the Debtors' assets and liabilities. The Plan (including all documents necessary to effectuate the Plan, including but not limited to those compromising the Plan Supplement) is the result of extensive arm's-length negotiations among the Debtors, the informal committee of holders of the Senior Secured Notes, and the Committee. The Plan achieves two of the primary objectives underlying a chapter 11 bankruptcy—the resolution of disputed claims and distribution of value to creditors for amounts owing. Therefore, the Debtors have proposed the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

15. Bankruptcy Court Approval of Certain Payments as Reasonable (11 U.S.C. § 1129(a)(4)). The Plan complies with section 1129(a)(4) of the Bankruptcy Code because any payment made or to be made by the Debtors for services or goods in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by the Court or is subject to the approval of the Court as reasonable.

16. Disclosure of All Necessary Information Regarding Directors, Managers and Officers is Consistent with the Interests of Creditors and Interest Holders and Public Policy (11 U.S.C. § 1129(a)(5)). The Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code. The Plan Supplement, in accordance with Section 4.13 of the Plan, discloses the identities and affiliations of the proposed directors and officers of the Reorganized Debtors.

The appointment of the directors and officers identified in the Plan Supplement is consistent with the best interests of the Holders of Claims against, and Interests in, the Debtors and with public policy.

17. Government Regulatory Control over Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code does not apply because the Plan does not provide for any changes in rates over which a governmental regulatory commission has jurisdiction.

18. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis contained in the Disclosure Statement and any other evidence proffered or adduced at the Confirmation Hearing (i) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented or proffered, (ii) utilize reasonable and appropriate methodologies and assumptions, (iii) have not been successfully challenged or controverted by other evidence, and (iv) establish that each Holder of a Claim or Interest in an Impaired Class either (x) has voted to accept the Plan (as evidenced by the Pirrung Declaration) or (y) will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would have received if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.

19. Acceptance or Rejection of the Plan by Certain Classes (11 U.S.C. § 1129(a)(8)). As set forth in the Pirrung Declaration, the percentage of Holders of Claims in Impaired Classes entitled to vote on the Plan that voted to accept or reject the Plan is as follows:

Impaired Class of Claims	Percentage Accepting (Dollar Amount)	Percentage Accepting (Number of Claims)
Class 3	100% ($65,291,416.50)	100% (40)
Class 4 (excluding Senior Secured Note Deficiency	100% ($2,231,659.58)	100% (31)

Claims)[4]

Accordingly, Classes 3 and 4 have accepted the Plan pursuant to section 1126(c) of the Bankruptcy Code. Classes 1, 2, and 5 which are Unimpaired, are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. As to the Unimpaired Class and the Impaired and accepting Classes, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied. Holders of Claims and Interests in Classes 6 and 7 will not receive any distributions of property under the Plan and therefore are deemed to have rejected the Plan. Because the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied in connection with Classes 6 and 7, section 1129(b) of the Bankruptcy Code applies to these Classes. No filed Claims in Class 7 have been allowed in these chapter 11 cases. Therefore, as Class 7 is an empty Class, the requirements of section 1129(b) of the Bankruptcy Code are only applicable to Class 6. Notwithstanding the lack of compliance of Class 6 with section 1129(a)(8) of the Bankruptcy Code, the Plan is confirmable because it satisfies section 1129(b) of the Bankruptcy Code with respect to Class 6, as set forth in paragraph 28 below.

20. Treatment of Claims Entitled to Priority (11 U.S.C. § 1129(a)(9)). The Plan complies with section 1129(a)(9) of the Bankruptcy Code because it provides for treatment of Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims entitled to priority pursuant to section 507 of the Bankruptcy Code in the manner required by section 1129(a)(9) of the Bankruptcy Code.

21. Acceptance of at Least One Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Pirrung Declaration, Classes 3 and 4, whose members are Impaired, have voted to accept the Plan and have accepted the Plan in requisite numbers and amounts without the need to

[4] Pursuant to Section 3.2 of the Plan, the Holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number have voted to accept the Plan. Therefore, the Senior Secured Note Deficiency Claims will not receive Distributions on account of such Class 4 Claims.

include any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). Thus, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

22. Feasibility of the Plan (11 U.S.C. § 1129(a)(11)). The Plan satisfies section 1129(a)(11) of the Bankruptcy Code because the Debtors will have sufficient funds and other financial wherewithal on the Effective Date to allow the Debtors to substantially consummate the Plan. The Debtors have sufficient monies and assets available and existing on the Effective Date to pay in accordance with the Plan, all Allowed Administrative Claims, Allowed Priority Non-Tax Claims and Allowed Priority Claims. The evidence proffered or adduced at the Confirmation Hearing in support of feasibility of the Plan (i) is reasonable, persuasive, credible, and accurate, and (ii) has not been challenged or controverted by any other evidence. Confirmation of the Plan is not likely to be followed by the liquidation or further reorganization of the Reorganized Debtors. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

23. Payment of Bankruptcy Fees (11 U.S.C. § 1129(a)(12)). In accordance with section 1129(a)(12) of the Bankruptcy Code, the Debtors have paid, or will pay on or before the Effective Date, all fees payable under section 1930 of title 28 of the United States Code. As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

24. Retiree Benefits (11 U.S.C. § 1129(a)(13)). The evidence adduced or proffered at the Confirmation Hearing established that the Debtors are not obligated now, nor will they become obligated in the future, to pay "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) as described in section 1129(a)(13) of the Bankruptcy Code. Accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

25. Post-petition Domestic Support Obligations and Disposable Income (11 U.S.C. § 1129(a)(14) and (15)). Sections 1129(a)(14) and (15) of the Bankruptcy Code impose certain requirements on individual chapter 11 debtors. As corporate entities, sections 1129(a)(14) and (15) of the Bankruptcy Code are not implicated by the Plan.

26. Transfers of Property by Nonprofit Entities (11 U.S.C. § 1129(a)(16)). Section 1129(a)(16) of the Bankruptcy Code imposes certain requirements on corporations or trusts that are not a moneyed, business or commercial corporation. As none of the Debtors is a corporation that is not a moneyed, business, or commercial corporation, section 1129(a)(16) of the Bankruptcy Code is not implicated by the Plan.

27. Satisfaction of Confirmation Requirements. For all of the above reasons, the Plan satisfies the requirements for confirmation set forth in section 1129(a) of the Bankruptcy Code other than subsection (a)(8) with respect to Class 6.

28. Confirmation of the Plan Over Nonacceptance of Impaired Classes (11 U.S.C. § 1129(b)). As described in paragraphs 8 through 26 above, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than subsection (a)(8) with respect to Class 6. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding the fact that Class 6 has not voted to accept the Plan. Based upon the Pirrung Declaration and the evidence proffered, adduced, or presented by the Debtors at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable, as required by section 1129(b)(1) of the Bankruptcy Code, with respect to the members of Class 6. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code in connection with Class 6. After the entry of this

Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon all Classes.

29. Only One Plan (11 U.S.C. § 1129(c)). Other than the Plan (including the previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

30. Principal Purpose (11 U.S.C. § 1129(d)). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of section 5 of the Securities Act of 1933 (the "Securities Act"), and no Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) has requested that the Court deny Confirmation of the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

31. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court, the Debtors and their agents, officers, directors, LLC managers, employees, counsel and advisors have solicited votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the releases and exculpatory and injunctive provisions set forth in Article VIII of the Plan.

C. Other Findings

32. Conditions to Confirmation. Entry of this Confirmation Order shall satisfy the conditions set forth in section 9.1 of the Plan.

33. Releases, Exculpation, and Injunction. The releases, exculpations, and injunction provisions set forth in Article VIII of the Plan constitute good faith compromises and settlements

of the matters covered thereby. Each of the release, exculpation, and injunction provisions set forth in Article VIII of the Plan: (a) is within the jurisdiction of the Court under 28 U.S.C. § 1334; (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral element of the reorganization of the Debtors and the resolution of the Chapter 11 Cases in accordance with the Plan and the failure to effect such provision would seriously impair the Debtors' ability to confirm the Plan; (d) confers material benefits on, and is in the best interests, of the Debtors, the Debtors' Estates, and Holders of Claims and Interests; (e) is, *inter alia*, supported by extensive consideration; (f) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors; and (f) is consistent with sections 105, 1123, 1129, and other applicable sections of the Bankruptcy Code. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the release, exculpation, and injunction provisions contained in Article VIII of the Plan.

34. Consensual Third Party Releases. The releases described in Section 8.4 of the Plan are consensual third party releases and constitute an integral component of the Plan (the "Consensual Third Party Releases"). The Consensual Third Party Releases provide that each Holder of an Impaired Claim in Classes 3 and 4, regardless of whether such Holder votes to accept or reject the Plan or does not vote at all, may elect to opt out of the Consensual Third Party Releases. The Ballots that were sent to Holders of Claims in Classes 3 and 4 clearly and explicitly stated that Holders of such Claims could opt out of the Consensual Third Party Releases by checking the "opt out" box provided on the Ballot, and directed Holders of such Claims to Section 8.4 of the Plan for further information about the release provisions. Thus, Holders of Claims in Classes 3 and 4 were given due and adequate notice that they could opt out

of the Consensual Third Party Releases. The Holders of Claims in Class 3 and 4 who did not exercise the option to opt out of the Consensual Third Party Releases have manifested their consent to, and are contractually bound by, the Consensual Third Party Releases, including, without limitation, releases of claims against non-debtors to the extent set forth in Section 8.4 of the Plan. Further, the Released Parties compensated the Holders of Claims in Classes 3 and 4 for these Consensual Third Party Releases with adequate consideration, including by providing financing to allow these Debtors to reorganize and by engaging in extensive, good faith negotiation of, and participation in, the restructuring process, which ultimately resulted in the Debtors being able to submit a confirmable plan providing for efficient and timely distributions to be made to creditors. Additionally, the Consensual Third Party Releases constitute: (i) a good-faith settlement and compromise of the Claims and Causes of Action released by the Consensual Third Party Releases; (ii) are in the best interests of the Debtors and their Estates; (iii) are fair, equitable, and reasonable; (iv) are given and made after due notice and opportunity for hearing; (v) are narrowly tailored; and (vi) are a bar to any Claim or Cause of Action released by the Consensual Third Party Releases against any of the Released Parties.

35. Exculpation. The Exculpation provisions set forth in Section 8.5 of the Plan are essential to the Plan. The record in the Chapter 11 Cases fully supports the Exculpation and the Exculpation provisions set forth in Section 8.5 of the Plan, which are appropriately tailored to protect the Released Parties from inappropriate litigation.

36. Injunction. The Injunction provisions set forth in Section 8.6 of the Plan are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the Debtor Release, the Consensual Third Party Releases, and the Exculpation provisions in Section 8.5 of the Plan. Such Injunction provisions are appropriately tailored to achieve those purposes.

37. Executory Contracts and Unexpired Leases. The Debtors have exercised reasonable business judgment in determining to assume all remaining executory contracts and unexpired leases as set forth in Article V of the Plan and to reject the executory contracts and unexpired leases set forth on the Rejection Schedule. Pursuant to the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, each executory contract and unexpired lease of the Debtors that is not identified on the Rejection Schedule, has not been assumed and assigned through the True Energy Assumption and Assignment Procedures, or that has not been previously rejected by the Debtors, is hereby deemed assumed by the Debtors. The Debtors have provided adequate assurance of future performance for each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each executory contract and unexpired lease that is being assumed by the Debtors pursuant to the Plan. The Plan and such assumptions, therefore, satisfy the requirements of section 365 of the Bankruptcy Code.

38. Exit Facility. The incurrence of indebtedness and granting of collateral under the Exit Facility and Exit Facility Documents are essential elements of the Plan and in the best interests of the Reorganized Debtors, and are appropriate for the consummation of the Plan and the operations of the Reorganized Debtors. The Exit Facility Documents were negotiated at arm's length, and in good faith, without the intent to hinder, delay or defraud any creditor of the Debtors. The Debtors have provided sufficient and adequate notice of the Exit Facility and Exit Facility Documents to all parties in interest in these Chapter 11 Cases. The terms and conditions of the Exit Facility, as set forth in the Exit Facility Documents, are fair and reasonable, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

39. Vesting of Assets. Pursuant to Section 4.6 of the Plan except as otherwise provided in the Plan, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, including New Holdco, free and clear of all Liens, Claims, charges, or other encumbrances. From and after the Effective Date, the Reorganized Debtors may take any action, including, without limitation, the operation of their businesses, the use, acquisition, sale, lease and disposition of property, and the entry into transactions, agreements, understandings or arrangements, whether or not in the ordinary course of business, and execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers or otherwise in connection with any of the foregoing, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as explicitly provided in the Plan. Such transactions are appropriate, and are in the best interests of the Debtors and their Estates.

40. Implementation of the Plan. Pursuant to section 1142(b) of the Bankruptcy Code, no action of any of the Debtors' managers or board of directors will be required (a) to authorize the Debtors (or any of their officers, employees or agents acting on their behalf) to effectuate and carry out the Plan or any order of the Court relating thereto, (b) to consummate the transactions contemplated by the Plan or this Confirmation Order, or (c) to take any other action contemplated by the Plan or this Confirmation Order as may be necessary and appropriate to fully effectuate the intent and purposes hereof and thereof, and all such actions hereby are or will be deemed to have been taken or done with like effect as if they have been duly authorized or approved by unanimous actions of the managers or board of directors, as appropriate.

III. ORDER

A. Confirmation of the Plan

1. Approval and Confirmation of the Plan. The Plan, including the Plan Supplement, which is annexed hereto as **Exhibit A**, shall be, and hereby is, **APPROVED** and **CONFIRMED** pursuant to section 1129 of the Bankruptcy Code.

2. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall control and take precedence. The provisions of this Confirmation Order are integrated with each other and are non-severable and are mutually dependent.

3. The Plan and this Confirmation Order will be effective and binding on all parties in interest in the Chapter 11 Cases.

4. The failure to include or refer to any particular article, section, or provision of the Plan, Plan Supplement, or any related document or exhibit does not impair the effectiveness of that article, section, or provision; it being the intent of the Court that the Plan, Plan Supplement, and any related document or exhibit will all be approved in their entirety.

5. The Debtors and all other appropriate parties shall be, and hereby are, authorized and directed to: (a) take all actions necessary or appropriate to enter into, implement and consummate the Plan and any other contracts, instruments, releases, indentures and other agreements created in connection with the Plan or referred to therein, all of which Plan

documents and such other contracts, instruments, releases, indentures and other agreements shall be, and hereby are, approved, (b) to take such other steps to perform such other acts as may be necessary to implement and effectuate the Plan and such other contracts, instruments, releases, indentures and other agreements, and (c) to execute and deliver any instrument and perform any other act that is necessary for the consummation of the Plan and such other contracts, instruments, releases, indentures and other agreements, in accordance with section 1142(b) of the Bankruptcy Code, without further application to, or order of the Court, or further action by the respective officers, managers, or board of directors, as appropriate, and with the effect that such actions have been taken by unanimous action of such officers, managers, or board of directors, as appropriate.

6. Objections. To the extent any objections (including any reservations of rights contained therein) to Confirmation have not been withdrawn, waived, or settled prior to entry of this Confirmation Order, are not cured by the relief granted in this Confirmation Order, or have been otherwise resolved as stated by the Debtors on the record at the Confirmation Hearing, all such objections (including any joinder or reservation of rights therein) are hereby overruled on the merits.

7. Findings of Facts and Conclusions of Law. This Confirmation Order constitutes this Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure. All findings of fact shall constitute findings of fact even if stated as conclusions of law, and all conclusions of law shall constitute conclusions of law even if stated as findings of fact. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the

Court at the Confirmation Hearing and incorporated herein) constitutes an order of this Court, it is adopted as such.

8. Notice and Solicitation of Votes. Through service and publication of the Confirmation Hearing Notice, as evidenced by the Solicitation and Publication Affidavit, Holders of Claims and Interests in the Debtors and all other parties in interest received adequate and sufficient notice of the Voting Deadline, the Objection Deadline, and the Confirmation Hearing. The Debtors solicitation of votes through the Solicitation Agent, as described in the Pirrung Affidavit, was appropriate and done in good faith. Accordingly, the Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order and the Continuance Order.

9. Binding Effect. The Plan and its provisions shall be binding on the Debtors, any entity acquiring or receiving property or a Distribution under the Plan, and any Holder of a Claim or Interest in the Debtors, including all governmental entities, whether or not the Claim or Interest of such Holder is impaired under the Plan or such Holder has accepted the Plan.

10. Implementation. On and after the Effective Date, the Reorganized Debtors are authorized to (i) execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, including, without limitation, those contained in the Plan Supplement, (ii) make any and all Distributions and transfers contemplated pursuant to, and as provided for in, the Plan, and (iii) take such other actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Plan.

11. Effectiveness of Plan Provisions. Each term and provision of the Plan, as approved by this Confirmation Order, is binding, valid, and enforceable pursuant to its terms

12. Execution by Third Parties. Each and every federal, state and local governmental agency or department shall be, and hereby is, directed to accept, and lessors and holders of liens are directed to execute, any and all documents, instruments or amendments necessary and appropriate to consummate the transactions contemplated by the Plan, including without limitation, documents, instruments or amendments for recording in county and state offices in order to effectuate the Plan.

13. General Settlement of Claims and Interests. Except as otherwise provided in the Plan or this Confirmation Order, pursuant to Section 4.1 of the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all controversies, Claims, and Interests resolved pursuant to the Plan.

14. Preservation of Claims and Causes of Action. Pursuant to Section 4.15 of the Plan and in accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court

15. Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of the United States Judicial Code shall be paid for each quarter (including any fraction thereof) until these Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

16. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any other documents, instruments or agreements contained therein, and any amendments or modifications of any of the foregoing.

17. Continued Organizations Existence. Except as otherwise provided in the Plan and subject to any Restructuring Transactions consummated as permitted by the Plan or described in the Plan Supplement, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all of the powers of a corporation, limited liability company or other applicable legal entity form, under the laws of its jurisdiction or organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable law. Additionally, except as otherwise provided in the Plan and subject to any Restructuring Transactions consummated as permitted by the Plan or described in the Plan Supplement, each Debtor may, at such time that the Reorganized Debtors consider appropriate and consistent with the implementation of the Plan pertaining to such Debtor, dissolve such Debtor under the laws of its jurisdiction or organization.

18. Authorization of New Common Stock. Without further act or action under applicable law, regulation, order or rule, the Reorganized Debtors are authorized to issue the New Common Stock in New Holdco. Each of the New Common Stock issued and distributed pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable and the holders of New Common Stock shall be deemed to have accepted the terms of the New

Holdco Shareholders Agreement (in their capacity as shareholders of New Holdco) and to be parties thereto without further action or signature. The Debtors or the Reorganized Debtors, as the case may be, are authorized to execute and deliver all documentation relating to the issuance of the aforementioned New Common Stock and the Restructuring Transactions, and are authorized to engage in such further transactions as determined by the Debtors, or the Reorganized Debtors, to be necessary in furtherance of the Plan.

19. Exit Facility. The Reorganized Debtors' entry on the Effective Date into the Exit Facility and the Exit Facility Documents, and the incurrence of indebtedness thereunder, the granting of collateral and other security interests in accordance therewith, including, without limitation, the issuance of the First Lien Term Loans and conversion of the Senior DIP Term Loans into a portion thereof and the conversion of the 2015 DIP Term Loans into the Second Lien Term Loans, consistent with the terms set forth in the Plan Supplement, and all other actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors shall be authorized and approved in all respects by virtue of entry of this Confirmation Order, in accordance with the Bankruptcy Code and any other applicable law and without the need for any further corporate action or any further action by the Holders of Claims or Interests in the Debtors or Reorganized Debtors or stockholders, directors, or members of the Debtors or the Reorganized Debtors, and with like effect as if such actions had been taken by unanimous action thereof. Each of the Reorganized Debtors, without any further action by the Court or each respective Reorganized Debtors' officers, directors or stockholders, is hereby authorized and directed to enter into, and take such actions as necessary to perform under, or otherwise effectuate, the Exit Facility and Exit Facility Documents, as well as any note, documents or agreements in connection therewith, including, without limitation, any documents required in

connection with the creation or perfection of Liens or other security interests in connection therewith. The Reorganized Debtors and the secured parties under the Exit Facility and Exit Facility Documents are hereby authorized to make all filings and recordings, and to obtain all government approvals and consents to evidence, establish and perfect such Liens and other security interests under the provisions of the applicable state, provincial, federal or other law that would be applicable in the absence of the Plan or this Confirmation Order.

20. Release of Liens. Except as otherwise provided in this Confirmation Order, the Plan, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, any Lien, mortgage, deed of trust, pledge, or other security interest securing any Secured Claim shall be deemed fully released, settled, and compromised and the Holder of such Secured Claim shall be authorized and directed to release any collateral or other property of the Debtors held by such Holder and to take such actions as may be requested by the Debtors or the Reorganized Debtors to evidence the release of such Lien, including, without limitation, the execution, delivery, filing, or recording of such releases as may be requested by the Debtors or Reorganized Debtors. The filing of this Confirmation Order with any federal, state, provincial or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims, and other interests described above. Any Entity holding such Liens, Claims, or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtors such instruments of termination, release, satisfaction, and/or assignment (in recordable form) as may be reasonably requested by the Debtors or Reorganized Debtors.

21. Restructuring Transactions. On or after the Effective Date, the Reorganized Debtors may engage or take such actions as may be necessary or appropriate to effect the Restructuring Transactions. The Debtors or Reorganized Debtors, as applicable, are hereby authorized to execute and deliver such contracts, instruments, certificates, agreements and documents to make such filings under applicable law and to take such other actions as any appropriate officer may determine to be necessary, appropriate or desirable to effectuate the Restructuring Transactions. Each appropriate officer of each Debtor or Reorganized Debtor is authorized to execute, deliver, file and have recorded any of the aforementioned documents and to take such other actions on behalf of such Debtor or Reorganized Debtor as such person may determine to be required, appropriate or desirable under applicable law in connection with the Restructuring Transactions, and the appropriate officers of each Debtor or Reorganized Debtor are authorized to certify or attest to any of the foregoing actions. The execution and delivery or filing of any of the aforementioned documents, or the taking of any such action shall be deemed conclusive evidence of the authority of such person to so act. Each federal, state, provincial and local governmental agency or department is authorized and directed to accept the filing of any of the aforementioned documents. This Confirmation Order is declared to be in recordable form and shall be accepted by any filing or recording officer or authority of any applicable governmental authority or department without any further orders, certificates or other supporting documents.

22. Exemption from Securities Laws. The offering, issuance, and distribution of the New Common Stock in accordance with the Plan is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended, and any state or local law requiring registration for the offer, issuance, or distribution of a security by reason of section 1145(a) of the Bankruptcy Code.

23. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Facility, including, without limitation, the First Lien Term Loans and the Second Lien Term Loans; and/or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax to which the exemption under section 1146 of the Bankruptcy Code applies.

B. The Release, Injunction, Exculpation, and Related Provisions

24. The Debtor Release. The Debtor Release set forth in Section 8.3 of the Plan is hereby approved.

25. The Consensual Third Party Releases. The Consensual Third Party Releases set forth in Section 8.4 of the Plan are hereby approved.

26. Exculpation. The Exculpation provisions set forth in Section 8.5 of the Plan are hereby approved.

27. The Injunction. Except as otherwise provided in the Plan or the Confirmation Order, and in addition to the injunction provided under sections 524(a) and 1141 of the Bankruptcy Code, the Confirmation Order shall permanently enjoin the commencement,

continuation, or prosecution by any Person or Entity, directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released or exculpated pursuant to the Plan, including without limitation the Claims and Causes of Action released in Article VIII of the Plan. Any Person or Entity injured by any willful violation of such injunction may recover actual damages, including attorneys' fees and costs, and, in appropriate circumstances, may recover punitive damages from the willful violator. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms, or as provided in the Bankruptcy Code. The injunction provision in Section 8.6 of the Plan is necessary to implement the Plan and to preserve and enforce, among other things, the Debtor Release, the Consensual Third Party Releases, and the Exculpation.

C. Effects of Plan Confirmation

28. Administrative Claims Bar Date. All requests for payment of Administrative Claims must be filed with the Bankruptcy Court and served on counsel for the Debtors no later than the first Business Day that is **thirty (30) calendar days after the Effective Date**. Any Person or Entity that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such a request shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors or participating in distributions under the Plan on account thereof. The Reorganized Debtors, in their sole and absolute discretion, may settle Administrative Claims in the ordinary course of business without further Bankruptcy Court approval. The Reorganized Debtors and any other party with standing shall have the right to object to any Administrative Claim by filing and serving on the appropriate parties, including the claimant, an objection to such an Administrative Claim on or

before the Administrative Claims Objection Deadline. Unless the Reorganized Debtors or another party with standing objects to an Administrative Claim on or before the first day that is **one hundred twenty (120) calendar days after the Effective Date** (unless extended by Order of the Bankruptcy Court) such an Administrative Claim shall be deemed an Allowed Administrative Claim in the amount requested.

29. Assumption and Rejection of Executory Contracts and Unexpired Leases. The Debtors are authorized to assume Executory Contracts and Unexpired Leases pursuant to Section 5.1 of the Plan, and such Executory Contracts and Unexpired Leases shall be deemed assumed pursuant to section 365 of the Bankruptcy Code as of the Effective Date. The Debtors are authorized to reject each Executory Contract and Unexpired Lease set forth on the Rejection Schedule, and such Executory Contracts and Unexpired Leases shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date.

30. Rejection Damages Claims Bar Date. Pursuant to Section 5.1 of the Plan and this Order, if the rejection of an executory contract or unexpired lease by any of the Debtors as part of the Plan results in a rejection damages Claim by the other party or parties to such executory contract or unexpired lease, such a rejection damages Claim shall be disallowed and expunged in its entirety without further order of or process before the Bankruptcy Court unless a proof of claim asserting such Claim is filed with the Bankruptcy Court or the Solicitation Agent and served upon the Debtors within thirty (30) days after the Effective Date. Any such rejection damages Claims shall be treated as Class 4 General Unsecured Claims under the Plan.

31. Insurance Policies. Pursuant to Section 5.4 of the Plan, as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtor if necessary to continue the insurance policies in full force) all of the Debtors' insurance policies and any agreements,

documents, or instruments relating thereto. Nothing in this Confirmation Order shall constitute or be deemed a waiver of any Claims, or Causes of Action that the Debtors may hold against any Entity or Person, including without limitation, under any of the Debtors' insurance policies.

32. Plan Classification Controlling. The classification of Claims and Interests in the Debtors for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications and amounts of Claims, if any, set forth on the Ballots returned by Holders of Claims in Classes 3 and 4 in connection with voting on the Plan: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent, and in no event, shall be deemed to modify or otherwise affect the actual amount or classification of such Claims under the Plan for distribution purposes; and (iii) shall not be binding on the Debtors.

33. Setoffs. The Debtors or the Reorganized Debtors, as the case may be, may, to the extent permitted under applicable law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and Causes of Action of any nature that the Reorganized Debtors may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; provided, however, that neither such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Reorganized Debtors of any such claims, rights and Causes of Action that the Reorganized Debtors possess against such Holder.

34. Notice of Entry of the Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), the Debtors (or their agents), shall be, and hereby are, directed to file and serve a notice of entry of this Confirmation Order in substantially the form annexed hereto as **Exhibit B** (the "Confirmation Notice") on all Holders of Claims and Interests as of the

Voting Record Date, all Persons and Entities listed on the Debtors' consolidated creditors matrix, the United States Trustee and all parties that filed notices of appearance or requests for notices pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases. The Confirmation Notice shall also be published in the *Globe and Mail* and the *Charleston Gazette-Mail* and posted electronically at https://www.americanlegal.com/xinergy. Such notice is adequate under the particular circumstances and no other or further notice is necessary.

35. Notice of Effective Date. The Debtors, shall be, and hereby are, directed to file and serve a notice of the occurrence of Effective Date in substantially the form annexed hereto as **Exhibit C** (the "Notice of Effective Date") on all Holders of Claims and Interests as of the Voting Record Date, all Persons and Entities listed on the Debtors' consolidated creditors matrix, the United States Trustee and all parties that filed notices of appearance or requests for notices pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases within two business days of the occurrence of the Effective Date. The Notice of the Effective Date shall also be published in the *Globe and Mail* and the *Charleston Gazette-Mail* and posted electronically at https://www.americanlegal.com/xinergy. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The Notice of Effective Date shall also serve as the notice setting forth the Administrative Claims Bar Date. Such notice of the Administrative Claims Bar Date is adequate under the particular circumstances and no other or further notice is necessary.

D. Resolution of Claims

36. Except as expressly provided for in the Plan or ordered by the Bankruptcy Court prior to the Effective Date, no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or by the Bankruptcy Code or the Bankruptcy Court

has entered a Final Order allowing such Claim. Any Claim that is not an Allowed Claim shall be determined, resolved or adjudicated in accordance with the terms of the Plan.

E. Resolutions of Objections

37. Resolution of the Objection of the United States of America [Doc. No. 518]. The following modifications resolve the objection filed by the United States of America.

(a) The Allowed Priority Tax Claim of the Internal Revenue Service shall be paid within 5 years of the order of relief, with interest from the Confirmation Date at the rate set forth in 26 U.S.C. § 6621(a)(2).

(b) Upon the failure of the Debtors or Reorganized Debtors to pay any Allowed Priority Tax Claim of the Internal Revenue Service, the Internal Revenue Service may, with written notice and following an opportunity by the Debtors or Reorganized Debtors, as applicable, to cure such failure within 30 days of such notice, exercise any and all rights and remedies under applicable nonbankruptcy law and seek such relief as may be appropriate in this Court.

(c) With respect to the Internal Revenue Service or federal taxes, nothing in the Plan is intended to expand, nor shall it be construed as expanding, the jurisdiction of the Bankruptcy Court beyond what is provided in 28 U.S.C. § 1334, nor shall it limit the right of other courts to hear matters otherwise properly within their jurisdiction.

(d) Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, the Debtors' discharge is limited to applicable provisions contained in Title 11 and non-Title 11 statutes.

(e) There shall be no requirement that the Internal Revenue Service file any request for payment of administrative expenses in order to receive payment for any liability described in 11 U.S.C. § 503(b)(1)(B) and (C). Nor shall the failure to pay such liabilities result in a discharge, injunction, exculpation, release, or in any other manner defeat the Internal Revenue Service's right or ability to collect such liability pursuant to the requirements of Title 26.

(f) Nothing in the Plan or this Confirmation Order shall affect the ability of the Internal Revenue Service to pursue any non-debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors' Estates.

38. Resolution of the Objection of Lexon Insurance Company and Bond Safeguard Insurance Company [Doc. No. 642]. The following modifications resolve the objections filed by Lexon Insurance Company and Bond Safeguard Insurance Company (collectively, "Lexon"):

(a) On or prior to the Effective Date, or soon as reasonably practicable thereafter, the Debtors shall pay Lexon any unpaid premium or loss adjustment expenses then due and owing under the applicable agreements between the parties.

(b) Notwithstanding any provision in the Plan or this Confirmation Order to the contrary, in the event any Governmental Unit determines that any mining or environmental permit is not transferrable from the Debtors to any Reorganized Debtors, to the extent any such transfer is required to

effectuate the Restructuring Transactions, any Surety Bond issued as a financial accommodation for such permit shall likewise not be transferred.

(c) On or within a reasonable period of time following the Effective Date, New Holdco shall execute a General Agreement of Indemnity with Lexon Insurance Co. that reflects the continuing indemnification obligations assumed through the Plan.

(d) The reference to "Section 8.5" in line 3 of Section 5.3 of the Plan is hereby modified to read "Section 8.6."

39. Resolution of the Objection of Penn Virginia Operating Co., LLC and Loadout, LLC [Doc. No. 637]. The following modifications resolve the objection filed by Penn Virginia Operating Company, LLC and Loadout, LLC:

(a) The first sentence of Section 5.5 of the Plan is hereby modified to read as follows: "The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as reasonably practicable thereafter or on such other terms as the Debtors or Reorganized Debtors and the counterparty to such Executory Contract or Unexpired Lease may agree."

(b) The third paragraph of Section 5.5 of the Plan is hereby modified by adding the clause "Subject to the payment of any Cure" to the beginning of the first sentence of such paragraph.

(c) The Debtors shall not assign any Unexpired Leases with Penn Virginia Operating Co., LLC, or Loadout, LLC, to any Affiliates pursuant to Section 5.1 of the Plan without first providing (i) notice to such applicable

counterparty of the assignment, and (ii) information with respect to the identity of such Affiliate, its management and its financial condition. Pending review by the applicable counterparty of such information, all rights will be reserved to object to the assignment pursuant to section 365(f)(2)(B) of the Bankruptcy Code.

F. Miscellaneous

40. Confirmation Recognition Order. The Court requests the aid and recognition of the Canadian Court to give effect to this Confirmation Order through entry of the Confirmation Recognition Order.

41. Dissolution of the Committee. On the Effective Date, the Committee shall dissolve and its respective members shall be released from all further authority, duties, responsibilities and obligations relating to this Chapter 11 Case; provided, however, that the Committee shall continue to have a right to be heard with respect to any and all applications for Professional Fee Claims and requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code, if applicable.

42. Finality of Confirmation Order. This Confirmation Order is intended to be a final order and the period in which a notice of appeal must be filed shall commence upon the entry of this Confirmation Order on the docket of the Chapter 11 Cases.

43. Validity of Actions. If any provisions of this Confirmation Order are reversed, modified, vacated, or otherwise altered, such reversal, modification, vacatur, or alteration shall not impact the validity of any actions or obligations taken or incurred under or in connection with the Plan prior to the receipt of such an order, unless such actions or obligations are duly stayed pending appeal.

44. Substantial Consummation. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to the Effective Date set forth in Article IX of the Plan. Notwithstanding sections 9.1 and 9.3 of the Plan, the reasonable and documented fees and expenses of the Trustee and the Collateral Trustee (including, without limitation, attorneys' fees) shall be paid in full in cash as a condition precedent to the Effective Date, and such condition precedent to the Effective Date may not be waived without the prior written consent of the Trustee and the Collateral Trustee. The substantial consummation of the Plan, within the meaning of section 1101 of the Bankruptcy Code, is deemed to occur on the Effective Date.

45. Effectiveness of Confirmation Order. This Confirmation Order shall be effective upon the date of its entry, and the requirement that this Confirmation Order be stayed for a period of fourteen (14) days under Bankruptcy Rule 3020(e) shall not apply.

46. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan and any amendments or modifications thereto, duly made in accordance with the terms hereof, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

47. Retention of Jurisdiction. Notwithstanding the entry of this Order and the occurrence of the Effective Date, on and after the Effective Date, this Court shall retain exclusive jurisdiction over all matters arising out of, or related to, this Chapter 11 Case and the Plan pursuant to Article XI of the Plan.

Dated: January 27, 2016
Roanoke, Virginia

Judge Paul M. Black
United States Bankruptcy Judge

WE ASK FOR THIS:

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Counsel to the Debtors
and Debtors in Possession

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Counsel for the Informal Prepetition Noteholder Committee and DIP Lenders

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD

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United States Trustee

SCHEDULE 1

Debtor Entities

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

EXHIBIT A

DEBTORS' AMENDED JOINT CHAPTER 11 PLAN AND PLAN SUPPLEMENT

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]	

FIRST AMENDED JOINT CHAPTER 11 PLAN OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION

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Counsel to the Debtors
and Debtors in Possession

Dated: October 14, 2015

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

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INTRODUCTION

Xinergy, Ltd. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases jointly propose this Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Interests in, as applicable, each Debtor pursuant to the Bankruptcy Code. The Debtors seek to consummate the Restructuring on the Effective Date of the Plan. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in ARTICLE III shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, operations, projections, risk factors, a summary and analysis of this Plan, the Restructuring, and certain related matters.

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

1.1 Defined Terms

1. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

2. "*Administrative Claims Bar Date*" means the last date by which a request for payment of an Administrative Claim may be filed, which date is thirty (30) days after the Effective Date.

3. "*Administrative Claims Objection Deadline*" means the last day for filing an objection to any request for the payment of an Administrative Claim, which shall be the later of (a) one hundred twenty (120) days after the Effective Date or (b) such other date specified in this Plan or ordered by the Bankruptcy Court.

4. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code.

5. "*Allowed*" means, as to a Claim, a Claim allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable.

6. "*Avoidance Actions*" means claims of the Estate arising under sections 544, 547 or 548 of the Bankruptcy Code and, solely to the extent related to the foregoing, section 550 of the Bankruptcy Code.

7. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

8. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Western District of Virginia or such other court having jurisdiction over the Chapter 11 Cases.

9. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

10. "*Bar Date Order*" means 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*, approved and entered by the Bankruptcy Court on June 8, 2015 [Doc. No. 276], as the same may be amended from time to time.

11. "*BLBA*" means the Federal Black Lung Benefit Act, 30 U.S.C. §§ 901-944.

12. "*Business Day*" means any day, other than a Saturday, Sunday, or a legal holiday, as defined in Bankruptcy Rule 9006(a).

13. "*Canadian Court*" means the Ontario Superior Court of Justice (Commercial List) that has recognized the chapter 11 case of Xinergy Ltd. as a "foreign main proceeding" under the CCAA.

14. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

15. "*Causes of Action*" means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against insiders and/or any other Entities under the Bankruptcy Code) of any of the Debtors and/or the Debtors' estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

16. "*CCAA*" means *Companies' Creditors Arrangement Act* (Canada) R.S.C. 1985 c. C. 36, as amended.

17. "*Certificate*" means any instrument evidencing a Claim or an Interest.

18. "*Chapter 11 Cases*" means the procedurally consolidated Chapter 11 Cases pending for the Debtors in the Bankruptcy Court.

19. "*Claim*" has the meaning set forth in section 101(5) of the Bankruptcy Code.

20. "*Claims Register*" means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

21. "*Class*" means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

22. "*Collateral Trustee*" means Wells Fargo Bank, National Association, as collateral trustee under that certain Collateral Trust Agreement, dated May 6, 2011, between, among others, Xinergy Corp., Xinergy Ltd., and Wells Fargo Bank, National Association, as amended, restated, supplemented or otherwise modified from time to time.

23. "*Confirmation*" means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

24. "*Confirmation Date*" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

25. "*Confirmation Hearing*" means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

26. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

27. "*Confirmation Recognition Order*" means the order of the Canadian Court recognizing and enforcing the Confirmation Order, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

28. "*Consenting Noteholders*" means members of the informal committee of Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, Kutak Rock LLP, Fasken Martineau and Houlihan Lokey Capital, Inc., as disclosed in the *Verified Statement of the Informal Prepetition Noteholder Committee and DIP Lenders Pursuant to Bankruptcy Rule 2019* [Doc. No. 176], that support the Plan.

29. "*Consummation*" means the occurrence of the Effective Date.

30. "*Creditor*" has the meaning set forth in section 101(10) of the Bankruptcy Code.

31. "*Creditors Committee*" means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Debtors' Chapter 11 Cases, as reconstituted from time to time.

32. "*Cure*" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

33. "*Cure Objection Deadline*" means the deadline established by the Bankruptcy Court by which non-debtor parties to Executory Contracts and Unexpired Leases that the Debtors propose to assume as part of the Plan must object to (i) the Cure proposed by the Debtors and (ii) the proposed assumption of the Executory Contracts and Unexpired Leases.

34. "*Debtors*" means, collectively, each of the entities listed on Schedule 1 hereto.

35. "*DIP Facility*" means that certain $49.0 million debtor-in-possession credit facility provided under the DIP Facility Loan Agreement.

36. "*DIP Facility Agent*" means that certain administrative agent under the DIP Facility.

37. "*DIP Facility Claims*" means any Claim held by the DIP Facility Lenders or the DIP Facility Agent arising under or related to the DIP Facility Loan Agreement or the DIP Facility Order, including, without limitation, claims for principal, interest, fees and expenses (including professional fees and expenses), penalties, premiums, and other obligations incurred under or in connection with the DIP Facility.

38. "*DIP Facility Consenting Lenders*" means DIP Facility Lenders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding borrowings under the DIP Facility held by all DIP Facility Lenders.

39. "*DIP Facility Lenders*" means those certain lenders party to the DIP Facility Loan Agreement.

40. "*DIP Facility Loan Agreement*" means that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of April 8, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the DIP Facility Lenders, and the DIP Facility Agent, as amended by that certain Incremental Assumption Agreement, Amendment No. 1, and Waiver, dated as of August 28, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the lenders party thereto from time to time and the DIP Facility Agent

41. "*DIP Facility Order*" means, collectively, the interim and final orders and supplemental orders entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Facility Loan Agreement and access the DIP Facility.

42. "*Disclosure Statement*" means the disclosure statement for the Plan, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

43. "*Disputed*" means, as to a Claim or an Interest, a Claim or an Interest: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as

applicable; and (c) with respect to which a party in interest has filed a Proof of Claim or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

44. "*Distribution*" means any initial or subsequent payment or transfer made under the Plan.

45. "*Distribution Agent*" means, as applicable, the Reorganized Debtors or any Person the Reorganized Debtors select to make or to facilitate Distributions in accordance with the Plan.

46. "*Distribution Date*" means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, upon which the Distribution Agent shall make Distributions to holders of Allowed Claims entitled to receive Distributions under the Plan.

47. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 have been satisfied or waived in accordance with Section 9.3.

48. "*Entity*" has the meaning set forth in section 101(15) of the Bankruptcy Code.

49. "*Environmental Law*" means all federal, state and local statutes, regulations, ordinances and similar provisions having the force or effect of law, all judicial and administrative orders, agreements and determinations and all common law concerning pollution or protection of the environment, or environmental impacts on human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Clean Air Act; the Emergency Planning and Community Right-to-Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act; and any state or local equivalents.

50. "*Equity Security*" has the meaning set forth in section 101(16) of the Bankruptcy Code and includes, for the avoidance of doubt, Xinergy Ltd. Common Stock.

51. "*Estate*" means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor's Chapter 11 Case.

52. "*Executory Contract*" means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

53. "*Exit Conversion*" means the Debtors' right, with the consent of the DIP Facility Consenting Lenders, to elect to convert the DIP Facility into the Exit Facility Term Loan, consistent in all respects with the applicable Exit Facility Term Sheet.

54. "*Exit Facility*" means, collectively, the Exit Facility Term Loan and any additional or alternative financing that may be provided in the form of a term loan or revolving

credit facility by one or more of the DIP Facility Lenders or a third party, the material terms of which will be set forth in the applicable Exit Facility Term Sheet(s).

55. "*Exit Facility Agreement*" means one or more credit agreements governing the Exit Facility executed by and among reorganized Xinergy Corp., as borrower, and reorganized Xinergy Corp.'s wholly-owned subsidiaries and New Holdco (as applicable), as guarantors, and each of the Exit Facility Parties from time to time party thereto, to be effective on the Effective Date, which agreement(s) shall be consistent in all respects with the Exit Facility Term Sheet(s).

56. "*Exit Facility Documents*" means, collectively, each Exit Facility Agreement, each other Loan Document (as defined in such Exit Facility Agreement), and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents) each of which shall be (a) satisfactory in form and substance to the DIP Facility Consenting Lenders, and (b) consistent in all respects with the Exit Facility Term Sheet(s).

57. "*Exit Facility Parties*" means, collectively, any administrative agent, trustee, collateral trustee, or lender to one or more Exit Facility Agreements.

58. "*Exit Facility Term Loan*" means that certain term loan to be provided upon the exercise of the Exit Conversion.

59. "*Exit Facility Term Sheet*" means the term sheet providing the material terms of the Exit Facility Term Loan, and, if applicable, the term sheet providing the material terms of such additional or alternative Exit Facility, in each case, to be mutually agreed to by the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, and which shall be filed in the Plan Supplement.

60. "*Final Decree*" means the decree contemplated under Bankruptcy Rule 3022.

61. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction (including the Canadian Court) with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to seek leave to appeal, appeal or seek certiorari has expired and no application for leave to appeal, appeal or petition for certiorari has been timely taken, or as to which any application for leave to appeal or appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

62. "*General Unsecured Claim*" means any Claim other than an Administrative Claim, a Professional Claim, a Secured Tax Claim, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an Intercompany Claim, a DIP Facility Claim, a Senior Secured Note Claim, or a Section 510(b) Claim, and shall include Senior Secured Note Deficiency Claims as set forth in Article 3.2(d).

63. "*Governmental Unit*" has the meaning set forth in section 101(27) of the Bankruptcy Code.

64. "*Impaired*" means, with respect to any Class of Claims, a Claim that is not Unimpaired.

65. "*Indemnification Provisions*" means each of the Debtors' indemnification provisions currently in place whether in the Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, contracts or other agreements with current and former directors, officers, managers, employees, attorneys, other professionals, and agents of the Debtors.

66. "*Indenture*" means that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., certain parties thereto as guarantors, the Collateral Trustee, and the Trustee, pursuant to which Xinergy Corp. issued the Senior Secured Notes, as amended, restated, supplemented or otherwise modified from time to time.

67. "*Information Officer*" means Deloitte Restructuring Inc. in its capacity as the court-appointed officer in connection with the Recognition Proceeding.

68. "*Initial Distribution Date*" means the Effective Date or as soon thereafter as practicable, but no later than thirty (30) days after the Effective Date.

69. "*Insider*" has the meaning set forth in section 101(31) of the Bankruptcy Code.

70. "*Intercompany Claim*" means any Claim held by a Debtor against another Debtor.

71. "*Intercompany Interest*" means any Interest held by one Debtor in any of the other Debtors.

72. "*Interest*" means any Equity Security of a Debtor existing immediately prior to the Effective Date.

73. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

74. "*Majority Consenting Noteholders*" means Consenting Noteholders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding Senior Secured Notes held by all Consenting Noteholders as of the filing of the Plan.

75. "*Management Incentive Plan*" means that certain post-Effective Date management incentive plan that may provide for up to 10% of the New Common Stock, on a fully diluted basis, to be reserved for issuance to management of the Reorganized Debtors at the discretion of the New Board after the Effective Date.

76. "*New Board*" means New Holdco's initial board of directors.

77. "*New Common Stock*" means the common stock of New Holdco.

78. "*New Holdco*" means reorganized Xinergy Corp. or such other Debtor entity as the Debtors select with the consent of the Majority Consenting Noteholders, which will be the Reorganized Debtors' ultimate parent company upon Consummation of the Plan.

79. "*New Holdco Bylaws*" means the bylaws of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

80. "*New Holdco Certificate of Incorporation*" means the certificate of incorporation of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

81. "*New Holdco Governance Documents*" means, as applicable, the New Holdco Certificate of Incorporation, the New Holdco Bylaws, and the New Holdco Shareholders Agreement each in form and substance satisfactory to the Majority Consenting Noteholders.

82. "*New Holdco Shareholders Agreement*" means that certain shareholders agreement to be filed as part of the Plan Supplement, effective as of the Effective Date, to which all parties receiving New Common Stock (and all persons to whom such parties may sell or transfer their equity in the future and all persons who purchase or acquire equity from the Debtors in future transactions) will be required to become or will be deemed parties, in substantially the form included in the Plan Supplement, which agreement shall be in form and substance satisfactory to the Majority Consenting Noteholders.

83. "*Noteholder*" means a holder of the Senior Secured Notes.

84. "*Priority Non-Tax Claim*" means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

85. "*Other Secured Claim*" means any Secured Claim other than the following: (a) a Secured Tax Claim; (b) a DIP Facility Claim; or (c) a Senior Secured Note Claim. For the avoidance of doubt, "Other Secured Claims" includes any Claim arising under, derived from, or based upon any letter of credit issued in favor of one or more Debtors, the reimbursement obligation for which is either secured by a Lien on collateral or is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

86. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

87. "*Petition Date*" means the date on which each of the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

88. "*Plan*" means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof, including the Plan Supplement and all exhibits, supplements, appendices, and schedules, which plan shall be in form and substance satisfactory to the DIP Facility Consenting Lenders and the Majority Consenting Noteholders.

89. "*Plan Securities*" means the New Common Stock to be issued pursuant to the Plan to holders of Claims in Class 3.

90. "*Plan Supplement*" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors no later than 5 business days before the voting deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be satisfactory in form and substance to the DIP Facility Consenting Lenders, the Majority Consenting Noteholders and the Debtors. The Plan Supplement includes, but is not limited to, the following: the New Holdco Shareholders Agreement, the New Holdco Governance Documents, the Rejection Schedule, and the Exit Facility Term Sheet(s).

91. "*Police or Regulatory Law*" means any police or regulatory statute or regulation including, but not limited to, Environmental Law, the Federal Mine Safety and Health Act, or the BLBA.

92. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

93. "*Pro Rata*" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

94. "*Professional*" means a Person employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code.

95. "*Professional Claim*" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328, 330 or 331 of the Bankruptcy Code.

96. "*Professional Fee Amount*" means the aggregate amount of Professional Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Section 2.3 herein.

97. "*Professional Fee Escrow Account*" means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Amount.

98. "*Proof of Claim*" means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

99. "*Recognition Proceeding*" means the recognition proceeding under Part IV of the CCAA pending for Xinergy Ltd in the Canadian Court.

100. "*Rejection Schedule*" means the schedule of Executory Contracts and Unexpired Leases in the Plan Supplement, as may be amended from time to time, setting forth certain Executory Contracts and Unexpired Leases for rejection as of the Effective Date under section 365 of the Bankruptcy Code.

101. "*Released Parties*" means each of the following in its capacity as such: (a) Representatives of the Debtors; (b) the Trustee and the Collateral Trustee; (c) the Consenting Noteholders; (d) the DIP Facility Agent; (e) the DIP Facility Lenders; (f) the members of the Creditors Committee; (g) the Information Officer and (h) the Representatives of the Persons set forth in (b) – (g) of this paragraph.

102. "*Reorganization Value*" means the theoretical enterprise valuation of the Reorganized Debtors through the application of various relative and intrinsic valuation methodologies, as described in the Disclosure Statement.

103. "*Reorganized Debtor*" means a Debtor, or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the Effective Date.

104. "*Representative*" means, with respect to any Person, any successor, assign, predecessor, subsidiary, affiliate, current or former officer or director, to the extent serving in such capacity at any point during the Chapter 11 Cases, principal, partner, limited partner, general partner, member, manager, management company, investment manager, employee, agent, attorney, advisor, investment banker, financial advisor, restructuring advisor, consultant, accountant or other Professional of such entity or any of the foregoing.

105. "*Restructuring*" means the restructuring and reorganization to be effectuated by the Plan.

106. "*Restructuring Transactions*" means the transactions described in Section 4.16.

107. "*Section 510(b) Claim*" means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

108. "*Secured Claim*" means a Claim: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

109. "*Secured Tax Claim*" means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

110. "*Securities Act*" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, applicable Canadian securities legislation, or any similar federal, state, or local law.

111. "*Security*" has the meaning set forth in section 2(a)(1) of the Securities Act or applicable Canadian securities legislation.

112. "*Senior Secured Notes*" means the 9.25% Senior Secured Notes Due 2019 issued by Xinergy Corp. pursuant to the Indenture.

113. "*Senior Secured Note Deficiency Claim*" means that portion of a Claim of a holder of Senior Secured Notes that is unsecured pursuant to section 506(a) of the Bankruptcy Code.

114. "*Solicitation Agent*" means American Legal Claims Services LLC, the notice, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

115. "*Sureties*" means all sureties that have issued one or more of the Surety Bonds.

116. "*Surety Bonds*" means each of the surety bonds listed on Exhibit B to the *Debtors Motion for Entry of Interim and Final Orders Authorizing (I) Debtors to Continue and Renew Surety Bond Program and (II) Financial Institutions to Honor and Process Related Checks and Transfers* [Doc. No. 13].

117. "*Surety Indemnity Agreements*" means the indemnity agreements entered into by one or more of the Debtors with the Sureties in connection with the issuance of the Surety Bonds, existing and valid as of the Effective Date.

118. "*Trustee*" means Wells Fargo Bank, National Association, as trustee under the Indenture.

119. "*Unclaimed Distribution*" means any Distribution under the Plan on account of an Allowed Claim to a holder that has not: (a) accepted a particular Distribution or, in the case of Distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular Distribution; (c) responded to the Debtors' or Reorganized Debtors' requests for information necessary to facilitate a particular Distribution; or (d) taken any other action necessary to facilitate such Distribution.

120. "*Unexpired Lease*" means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

121. "*Unimpaired*" means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

122. "*Xinergy Corp.*" means Xinergy Corp., a corporation existing under the laws of the state of Tennessee and that is a Debtor in these Chapter 11 Cases.

123. "*Xinergy Ltd.*" means Xinergy Ltd., a corporation organized under the laws of Ontario, Canada and that is a Debtor in these Chapter 11 Cases.

124. "*Xinergy Ltd. Common Stock*" means all of Xinergy Ltd.'s issued and outstanding voting shares of common stock and any options, warrants, or other rights to acquire Xinergy Ltd. Common Stock.

1.2 Rules of Interpretation

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, hereof or hereto; (e) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (i) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (j) references to "Proofs of Claim," "Holders of Claims," "Disputed Claims," and the like shall include "Proofs of Interest," "Holders of Interests," "Disputed Interests," and the like as applicable; (k) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (l) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court, the Canadian Court, or any other Entity.

1.3 Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

1.4 Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall

be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.

1.5 Reference to Monetary Figures

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

1.6 Reference to the Debtors or the Reorganized Debtors

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

1.7 Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II

ADMINISTRATIVE AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in ARTICLE III.

2.1 Administrative Claims

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

upon such terms as may be agreed upon by such holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

All requests for allowance and payment of an Administrative Claim, other than Professional Claims, must be filed with the Court and served on counsel for the Debtors and counsel for the DIP Facility Lenders and the Consenting Noteholders by no later than the Administrative Claims Bar Date. In the event that the Consenting Noteholders or the Debtors or the Reorganized Debtors, if applicable, objects to an Administrative Claim on or before the Administrative Claims Objection Deadline, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

2.2 DIP Facility Claims

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

2.3 Professional Claims

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

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation

for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

2.4 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as reasonably practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim or, at the Debtors' election and with the consent of the Majority Consenting Noteholders, regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

ARTICLE III

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

3.1 Classification of Claims and Interests

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in ARTICLE II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

Class	Claim or Interest	Status	Voting Rights
1	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Senior Secured Note Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims and Intercompany Interests	Unimpaired/Impaired	Deemed to Accept/Deemed to

			Reject
6	Interests in Xinergy Ltd.	Impaired	Deemed to Reject
7	Section 510(b) Claims (if any)	Impaired	Deemed to Reject

3.2 Treatment of Classes of Claims and Interests

Except to the extent that the Debtors and a holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, with the consent of the Majority Consenting Noteholders, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Interest. Unless otherwise indicated, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

(a) **Class 1 — Priority Non-Tax Claims**

(1) *Classification*: Class 1 consists of any Priority Non-Tax Claims against any Debtor.

(2) *Treatment*: Each holder of an Allowed Class 1 Claim shall receive, as applicable:

A. **if the Allowed Class 1 Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim; or**

B. **if the Allowed Class 1 Claim is not due and payable on or before the Effective Date, Cash in an amount as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.**

(3) *Voting*: Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

(b) **Class 2 — Other Secured Claims**

(1) *Classification*: Class 2 consists of any Other Secured Claims against any Debtor.

(2) *Treatment*: Each holder of an Allowed Class 2 Claim shall receive, as the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, determine:

A. **payment in full in Cash of its Allowed Class 2 Claim, including any accrued and unpaid interest, fees, and expenses as may be required to be paid;**

B. **the collateral securing its Allowed Class 2 Claim; or**

C. **such other treatment rendering its Allowed Class 2 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.**

(3) *Voting*: Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

(c) **Class 3 — Senior Secured Note Claims**

(1) *Classification*: Class 3 consists of Senior Secured Note Claims against any Debtor.

Treatment: The Senior Secured Note Claims (including the Senior Secured Note Deficiency Claims) shall be Allowed in the aggregate principal amount of $195,000,000 plus accrued and unpaid interest of $7,114,791.67 as of the Petition Date, plus, to the extent the following are payable in accordance with the Indenture, fees and expenses (including any prepayment fees and professional fees and expenses), penalties, premiums and other obligations incurred in connection with the Senior Secured Note Claims. The Senior Secured Note Claims are secured claims pursuant to section 506(a) of the Bankruptcy Code to the extent of the midpoint of the Debtors' Reorganization Value less the estimated amount of the DIP Facility Claims and the Other Secured Claims, or approximately $65,500,000. The remaining portion of the Senior Secured Note Claims are unsecured Senior Secured Note Deficiency Claims, and shall be treated as General Unsecured Claims in Class 4.

Each holder of an Allowed Class 3 Claim shall receive its Pro Rata share of 100% of the Plan Securities on account of the secured portion of its Senior Secured Note Claim.

(2) *Voting*: Class 3 is Impaired. Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

(d) **Class 4 — General Unsecured Claims**

(1) *Classification*: Class 4 consists of any General Unsecured Claims against any Debtor.

(2) *Treatment*: Each holder of an Allowed Class 4 Claim shall receive a cash Distribution equal to the lesser of its Pro Rata share of $200,000, or four percent (4%) of the Allowed Amount of Class 4 Claims (excluding Senior Secured Note Deficiency Claims) on the Effective Date; provided, however, that if holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then holders of Senior Secured Note Deficiency Claims shall agree to waive their right to Distributions on account of such Class 4 Claims. In addition, notwithstanding anything to the contrary in Section 4.15 of the Plan, or any other provision in the Plan, the Estate and the Reorganized Debtors shall waive and release each holder of an Allowed Class 4 Claim from any Avoidance Actions.

(3) *Voting*: Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) **Class 5 — Intercompany Claims and Intercompany Interests**

(1) *Classification*: Class 5 consists of any Intercompany Claims and Intercompany Interests.

(2) *Treatment*: Each holder of an Allowed Class 5 Claim or Interest shall, at the option of the Debtors, with the consent of the Majority Consenting Noteholders, have its Allowed Class 5 Claim or Interest:

(i) canceled; or

(ii) left unaltered, reinstated or otherwise rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

Allowed Class 5 Claims shall not be entitled to any Distribution under the Plan.

(3) *Voting*: Holders of Allowed Class 5 Claims and Interests are conclusively deemed to have accepted or rejected the Plan under section 1126(f) or 1126(g) of the Bankruptcy Code, as applicable. Therefore, such holders are not entitled to vote to accept or reject the Plan.

(f) **Class 6 — Interests in Xinergy Ltd.**

(1) *Classification*: Class 6 consists of any Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock.

(2) *Treatment*: All Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock, shall be deemed canceled as of the Effective Date of the Plan and no Distribution shall be made on account of Class 6 Interests.

(3) *Voting*: Class 6 is Impaired. Holders of Class 6 Interests are deemed to vote against the Plan.

(g) **Class 7 — Section 510(b) Claims (if any)**

(1) *Classification*: Class 7 consists of any Section 510(b) Claims (if any) against any Debtor.

(2) *Allowance*: Notwithstanding anything to the contrary herein, a Class 7 Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Class 7 Claim and believe that no such Class 7 Claim exists.

(3) *Treatment*: Allowed Class 7 Claims, if any, shall be discharged, canceled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and holders of Allowed Section 510(b) Claims shall not receive any Distribution on account of such Allowed Section 510(b) Claims.

(4) *Voting*: Class 7 is Impaired. Holders (if any) of Allowed Class 7 Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders (if any) of Allowed Class 7 Claims are not entitled to vote to accept or reject the Plan.

3.3 Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

3.4 Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

3.5 Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims eligible to vote and no holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the holders of such Claims in such Class.

3.6 Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, reserve the right to modify the Plan in accordance with ARTICLE X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE IV

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

4.1 General Settlement of Claims and Interests

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests, including those arising from, or related to, (i) the Senior Secured Notes, (ii) the total enterprise value of the Debtors' estates and the Reorganized Debtors for allocation purposes under the Plan, and (iii) the treatment of holders of General Unsecured Claims and holders of Interests. In the event that, for any reason, the Confirmation Order is not entered or the Effective Date does not occur, the Debtors, the DIP Facility Lenders and the Consenting Noteholders reserve all of their respective rights with respect to any and all disputes resolved and settled under the Plan. The entry of the Confirmation Order shall constitute the Court's approval of each of the compromises and settlements embodied in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their estates, creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. The Plan, the Confirmation Order and the Confirmation Recognition Order shall have res judicata, collateral estoppel, and estoppel (judicial, equitable, or otherwise) effect with respect to all matters provided for, or resolved pursuant to, the Plan, the Confirmation Order and/or the Confirmation Recognition Order, including, without limitation, the release, injunction, exculpation, discharge, and compromise provisions contained in the Plan, the Confirmation Order, and/or the Confirmation Recognition Order.

4.2 New Holdco Equity Interests

All existing Equity Securities in Xinergy Ltd., including without limitation Xinergy Ltd. Common Stock, shall be canceled as of the Effective Date. New Holdco's equity interests shall consist of New Common Stock.

The Plan Securities shall be issued in accordance with the Plan to holders of Allowed Claims in Class 3 upon the Effective Date. The Plan Securities will be subject to dilution by any awards of New Common Stock subsequently issued under the Management Incentive Plan.

The issuance of New Common Stock is authorized without the need for any further corporate action and without any further action by the Debtors or New Holdco, as applicable. New Holdco's Governance Documents shall authorize the issuance and distribution on the Effective Date of Plan Securities to the Distribution Agent for the benefit of holders of Allowed Claims in Class 3. All New Common Stock issued or contemplated under the Plan, including New Common Stock to be issued to holders of equity based awards issued under the Management Incentive Plan, shall be duly authorized, validly issued, fully paid, and non-assessable and the holders of New Common Stock shall be deemed to have accepted the terms of the New Holdco Shareholders Agreement (in their capacity as shareholders of New Holdco) and to be parties thereto without further action or signature. The New Holdco Shareholders Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Common Stock shall be bound thereby.

4.3 Exit Facility

The Debtors anticipate the need for exit financing on terms to be determined. The exit financing may involve the conversion of the DIP Facility pursuant to the Exit Conversion and such additional or alternative financing, the material terms of which shall be set forth in the Exit Facility Term Sheets. On or before the Effective Date, the Debtors shall execute and deliver the Exit Facility Agreements evidencing such exit financing arrangements, which shall become effective and enforceable in accordance with their terms and the Plan. Confirmation of the Plan shall be deemed approval of the Exit Facility and the Exit Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Facility and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

4.4 Exemption from Registration Requirements

The offering, issuance, and distribution of any Securities, including the Plan Securities, pursuant to the Plan will be exempt from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable. Pursuant to section 1145 of the Bankruptcy Code, the Plan Securities will be freely transferrable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments in the New Holdco Shareholders Agreement; and (c) any other applicable regulatory approval.

4.5 Subordination

The allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and be consistent with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right, with the consent of the Majority Consenting Noteholders, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4.6 Vesting of Assets in the Reorganized Debtors; Continued Corporate Existence

Except as otherwise provided herein, or in any agreement, instrument, or other document incorporated in the Plan (including, without limitation, the Exit Facility Documents, as applicable), on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

Except as otherwise provided herein, the Debtors will, as Reorganized Debtors, continue to exist after the Effective Date as separate legal entities, with all of the powers of such legal entities under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law. On and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire, and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject only to those restrictions expressly imposed by the Plan or the Confirmation Order as well as the documents and instruments executed and delivered in connection therewith, including the documents, exhibits, instruments, and other materials comprising the Plan Supplement.

Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur from and after the Effective Date for Professional Fee Claims, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

4.7 Professional Fee Escrow Account

On or prior to the Effective Date, the Debtors shall establish the Professional Fee Escrow Account and fund such account with Cash equal to the Professional Fee Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. The Debtors shall pay Allowed Professional Fee Claims in Cash from the Professional Fee Escrow Account as soon as reasonably practicable after such Claims have been Allowed by the Bankruptcy Court. All amounts remaining in the Professional Fee Escrow Account after all Allowed Professional Fee Claims have been paid in full shall revert to the Reorganized Debtors.

4.8 Cancellation of Notes, Instruments, Certificates, and Other Documents

On the Effective Date, except to the extent otherwise provided herein, all notes, instruments, Certificates, and other documents evidencing Claims or Interests shall be canceled and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged; *provided*, *however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing holders of Allowed Claims to receive Distributions under the Plan and (b) allowing and preserving the rights of the Distribution Agent, as applicable, to make Distributions on account of Allowed Claims as provided herein.

4.9 Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be deemed authorized and approved in all respects without the need for any further corporate action and without any further action by the Debtors or the Reorganized Debtors, as applicable. Such actions may include: (a) the adoption and filing of the New Holdco Certificate of Incorporation; (b) the adoption of the New Holdco Bylaws and New Holdco Shareholders Agreement; (c) the selection of the directors, managers, and officers for the Reorganized Debtors, including the appointment of the New Board; (d) the authorization, issuance, and distribution of New Common Stock; (e) the adoption or assumption, as applicable, of Executory Contracts or Unexpired Leases; and (f) the entry into the Exit Facility and the execution and delivery of the Exit Facility Documents, as applicable.

4.10 Charter, Bylaws, and New Holdco Shareholders Agreement

The Debtors' respective certificates of incorporation and bylaws (and other formation and constituent documents relating to limited liability companies) shall be amended as may be required to be consistent with the provisions of the Plan, the Exit Facility Documents, as applicable, and the Bankruptcy Code, and such documents and agreements shall be consistent in

all respects with, and shall otherwise contain, the terms and conditions set forth in the documents included in the Plan Supplement. The New Holdco Governance Documents shall, among other things: (a) authorize the issuance of the New Common Stock; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. After the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

4.11 Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, as applicable, and the Equity Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

4.12 Section 1146(a) Exemption

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Facility; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

4.13 Directors and Officers

In accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the members of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors, and any Person proposed to serve as an officer of New Holdco, will be identified in the Plan Supplement and shall be designated by the Majority Consenting Noteholders. The members of Xinergy Ltd.'s board of directors are deemed to have resigned as of the Effective Date. On the Effective Date, the New Board will consist of five or seven (5 or 7) members, one of whom will be New Holdco's chief executive officer. The remaining directors of the New Board will be selected by the Majority Consenting Noteholders in their sole discretion and thereafter shall be selected pursuant to the director election process set forth in the New Holdco Bylaws. On the Effective Date, unless replaced, the existing officers of the Debtors shall continue to serve in their current capacities for the Reorganized Debtors. From and after the Effective Date, each director, officer, or manager of the Reorganized Debtors shall serve pursuant to the terms of the respective charter and bylaws or other formation and constituent documents, and applicable laws of the respective Reorganized Debtor's jurisdiction of formation.

In connection with the Transaction, the Debtors will secure tail liability coverage for the Debtors' directors and officers effective as of the Effective Date that is consistent with the existing directors and officers liability coverage and is on terms reasonably satisfactory to the Majority Consenting Noteholders.

4.14 Incentive Plans and Employee and Retiree Benefits

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

4.15 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce

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

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

4.16 Restructuring Transactions

On the Effective Date, the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may take any actions as may be necessary or appropriate to implement the Restructuring Transactions and effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided herein, which may include: one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions. Among other Restructuring Transaction to be effectuated, the Debtors may take steps to dissolve, merge or otherwise eliminate Xinergy Ltd. from the corporate structure of the Reorganized Debtors. The actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable U.S. state or Canadian law; (d) an application to the Canadian Court under applicable law; and (e) all

other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

ARTICLE V

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions and assignments.

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

If a Claim arises from the rejection of any Executory Contract or Unexpired Lease pursuant to Section 5.1, such Claim shall be barred and unenforceable against the Debtors, Reorganized Debtors or their property unless a proof of claim asserting such Claim is filed with the Bankruptcy Court or the Solicitation Agent and served upon the Debtors within thirty (30) days after the Effective Date. Unless otherwise ordered by the Bankruptcy Court, any such rejection damages Claims shall be treated as General Unsecured Claims under the Plan.

5.2 Indemnification

Indemnification Provisions owed to directors, officers, and employees of the Debtors (or the Estates of any of the foregoing) who served or were employed by the Debtors as of or after the Petition Date, excluding claims which have been determined by Final Order to have resulted from gross negligence, willful misconduct or intentional tort, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan. In addition, and notwithstanding any other term of the Plan,

the Indemnification Provisions owed under the Senior Secured Notes shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code.

Notwithstanding anything to the contrary in the Plan, following the Effective Date, each of the Reorganized Debtors shall jointly and severally indemnify and hold harmless (i) the DIP Facility Agent, the DIP Facility Lenders, the Exit Facility Parties, the Trustee, and the Collateral Trustee and (ii) the Representatives of any of the foregoing (the "Indemnitees") from and against any claims, demands, judgments, actions or Causes of Action, liabilities, obligations, damages, losses, deficiencies, assessments, costs, fines, penalties, interest and expenditures (including the reasonable fees and out-of-pocket expenses of counsel) suffered or incurred by any Indemnitee arising out of, based upon, attributable to or resulting from: (w) the DIP Facility Loan Agreement, or the Exit Facility Agreements, (x) any breach or inaccuracy of any representation or warranty made by the Debtors; (y) any breach or failure by the Debtors to perform any of their respective covenants or obligations contained in the Plan; or (z) any legal proceedings relating to or arising out of the Plan or the Chapter 11 Cases, in each case except to the extent of the fraud, gross negligence or willful misconduct of an Indemnitee (as finally determined by a court of competent jurisdiction).

5.3 Surety Bonds

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

5.4 Insurance Policies

All of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. Notwithstanding anything herein to the contrary, as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtor if necessary to continue the insurance policies in full force) all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption (and assignment, if necessary) of each of the insurance policies.

5.5 Cure of Defaults and Objections to Cure and Assumption

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

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

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any

assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

5.6 Contracts and Leases Entered Into After the Petition Date

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

5.7 Reservation of Rights

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to determine whether to assume, assign or reject the related contract or lease, if applicable.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Distributions on Account of Claims Allowed as of the Effective Date

Except as otherwise provided herein, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the holder of the applicable Claim or Interest, on the Initial Distribution Date, the Distribution Agent shall make Distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims; *provided*, *however*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (2) Allowed Priority Tax Claims shall be paid in accordance with Section 2.4. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law in the ordinary course of business or, at the Debtors' election and with the consent of Majority Consenting Noteholders, through regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. A Distribution Date shall occur no less frequently than once in every 30-day period after the Effective Date, as necessary, in the Reorganized Debtors' sole discretion.

6.2 Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until such Claim becomes an Allowed Claim.

6.3 Delivery of Distributions

(a) **Record Date for Distributions to Holders of Claims**

On the Confirmation Date, the Claims Register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those record holders, if any, listed on the Claims Register as of the close of business on the Confirmation Date. Notwithstanding the foregoing, if a Claim is transferred and the Debtors have been notified in writing of such transfer no later than 10 days before the Effective Date, the Distribution Agent shall make Distributions to the transferee (rather than the transferor) only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor. The Distribution Agent and the Reorganized Debtors may, but shall have no obligation to, recognize transfers occurring after 10 days before the Effective Date.

(b) **Distribution Process**

The Distribution Agent shall make all Distributions required under the Plan. Except as otherwise provided herein, and notwithstanding any authority to the contrary, Distributions to holders of Allowed Claims, including Claims that become Allowed after the Effective Date, shall be made to beneficial holders of record as of the Confirmation Date by the Distribution Agent: (1) to the address of such holder as set forth in the books and records of the applicable Debtor (or if the Debtors have been notified in writing, on or before the date that is 10 days before the Effective Date, of a change of address, to the changed address); (2) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors' books and records, no Proof of Claim has been filed and the Distribution Agent has not received a written notice of a change of address on or before the date that is 10 days before the Effective Date; or (3) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. Notwithstanding anything to the contrary in the Plan, including this Section 6.3, Distributions under the Plan to holders of Senior Secured Note Claims shall be made to, or to Entities at the direction of, the Trustee and the Collateral Trustee in accordance with the terms of the Plan and the Indenture. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any Distributions under the Plan.

(c) **Accrual of Dividends and Other Rights**

For purposes of determining the accrual of Distributions or other rights after the Effective Date, the New Holdco Interests shall be deemed distributed as of the Effective Date regardless of the date on which it is actually issued, dated, authenticated, or distributed; *provided*, *however*,

the Reorganized Debtors shall not pay any such Distributions or distribute such other rights, if any, until after Distributions of the New Holdco Interests actually take place.

(d) **Compliance Matters**

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances, to the extent applicable.

(e) **Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition on the Petition Date, for all purposes under the Plan, including voting, allowance and distribution.

(f) **Fractional, Undeliverable, and Unclaimed Distributions**

(1) *Fractional Distributions*. Whenever any Distribution of fractional shares of New Common Stock would otherwise be required pursuant to the Plan, the actual Distribution shall reflect a rounding of such fraction to the nearest share (up or down), with half shares or less being rounded down. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

(2) *Undeliverable Distributions*. If any Distribution to a holder of an Allowed Claim is returned to the Distribution Agent as undeliverable, no further Distributions shall be made to such holder unless and until the Distribution Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed Distributions shall be made to such holder on the next Distribution Date. Undeliverable Distributions shall remain in the possession of the Reorganized Debtors until such time as a Distribution becomes deliverable, or such Distribution reverts to the Reorganized Debtors or is

canceled pursuant to Section 6.3(f)(3), and shall not be supplemented with any interest, dividends, or other accruals of any kind.

(3) *Reversion*. Any Distribution under the Plan that is an Unclaimed Distribution for a period of six months after Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revest in the applicable Reorganized Debtor and, to the extent such Unclaimed Distribution is New Common Stock, shall be deemed canceled. Upon such revesting, the Claim or Interest of any holder or its successors with respect to such property shall be canceled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the Distribution that is an Unclaimed Distribution, to the contrary.

(4) *De Minimis Distributions*. The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make Distributions of Cash in an amount less than $50 to any holder of an Allowed Claim. Any Allowed Claims affected by the Section 6.3(f)(4) shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective property or Estates.

(g) **Surrender of Canceled Instruments or Securities**

On the Effective Date, each holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent. Such Certificate shall be canceled solely with respect to the Debtors and the Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate.

6.4 Claims Paid or Payable by Third Parties

(a) **Maximum Distribution**

An Allowed Claim that receives (i) Distributions in the Allowed amount of such Claim or (ii) Distributions that combined with Distributions or other consideration provided on the Allowed Claim equal the Allowed amount of such Claim shall, in each case be deemed satisfied in full as to such Allowed Claim, and in no event shall an Allowed Claim receive Distributions in excess of the Allowed amount of such Claim.

(b) **Claims Paid by Third Parties**

The Reorganized Debtors may, in their sole discretion, request that a holder of an Allowed Claim certify in writing and provide evidence reasonably acceptable to the Reorganized Debtors to confirm whether: (i) the holder of such Claim has received payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor; or (ii) such holder has been notified by or on behalf of a third party of any future Distributions or payment anticipated or estimated to be made on account of such Claim from such third party.

If (i) the Reorganized Debtors determine, based on the foregoing, that an Allowed Claim has been satisfied in full in accordance with Section 6.4(a) of the Plan, then unless the Bankruptcy Court orders otherwise, no Distributions shall thereafter be made on account of such Allowed Claim, or (ii) a holder of an Allowed Claim does not comply with this section, then unless the Bankruptcy Court orders otherwise, the Reorganized Debtors shall not be required to make Distributions on account of such Allowed Claim, *provided* that nothing herein shall preclude a holder of an Allowed Claim from challenging the determination of the Reorganized Debtors in the Bankruptcy Court.

(c) **Rights of Reimbursement**

The Reorganized Debtors' rights to assert or prosecute claims for reimbursement, indemnification, recoupment or any other similar right, including, without limitation, any right to setoff with respect to any of the foregoing, against any entity on account of Distributions made to the holders of Allowed Claims, shall be fully preserved to the fullest extent permitted by applicable law.

(d) **Claims Payable by Insurance Carriers**

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), such Claim shall be disallowed and expunged to the extent of any agreed upon satisfaction in accordance with this section after notice to such Holder of an Allowed Claim and an opportunity for a hearing.

(e) **Applicability of Insurance Policies**

Except as otherwise provided herein, Distributions to holders of Allowed Claims shall be in accordance with the provisions of an applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

6.5 Setoffs

Except with respect to the DIP Facility Claims, or as otherwise expressly provided for herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or

otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

6.6 Allocation Between Principal and Accrued Interest

Except as otherwise provided herein, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Effective Date.

ARTICLE VII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

7.1 Disputed Claims Process

Except as otherwise provided herein, if an Entity files a Proof of Claim and the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this ARTICLE VII. Except as otherwise provided herein, all Proofs of Claim not filed in accordance with the requirements set forth in the Bar Date Order shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.

7.2 Prosecution of Objections to Claims and Interests

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

7.3 Estimation of Claims

The Debtors or the Reorganized Debtors may at any time, request that the Court estimate any contingent, unliquidated, or Disputed Claim, to the extent permitted by the Bankruptcy Code and Bankruptcy Rules, regardless of whether the Debtors, the Reorganized Debtors or any other Person has previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim and any appeal thereof. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount may constitute either (a) the Allowed amount of such Claim, (b) the amount on which a reserve is to be calculated for purposes of any reserve requirement in the Plan, or (c) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

7.4 Recoupment

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

7.5 No Interest

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

7.6 Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

ARTICLE VIII

EFFECT OF CONFIRMATION OF THE PLAN

8.1 Dissolution of the Creditors Committee

The Creditors Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors Committee shall be dissolved automatically and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases and this Plan and its implementation, and the retention or employment of the Creditors Committee's attorneys, financial advisors, and other agents shall terminate as of the Effective Date; provided, however, such attorneys and financial advisors shall be entitled to pursue their own Professional Claims and represent the Creditors Committee in connection with the review of and the right to be heard in connection with all Professional Claims.

8.2 Discharge of Claims and Termination of Interests

The Reorganized Debtors shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, the Reorganized Debtors may operate the Debtors' business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies related to the contractual, legal and equitable rights that a holder of a Claim or Interest may have in respect of such Claim or Interest. All Distributions made to holders of Allowed Claims in any Class are intended to, and shall be, final.

Except as otherwise provided for herein and effective as of the Effective Date pursuant to section 1141(d) of the Bankruptcy Code: (a) the rights afforded in the Plan and the treatment of all Claims, Interests, and Causes of Action that arose before the Effective Date shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, whether known or unknown, notwithstanding whether any such holders has filed a Proof of Claim or Interest or has failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code, regardless of whether a Proof of Claim or Interest with respect thereto was filed, whether the Claim or Interest is

Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

8.3 Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.3 shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any

objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in this Section 8.3 apply only to the Released Parties solely in their respective capacities as such.

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

8.4 Consensual Third Party Releases

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in this Section 8.4, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under this Section 8.4), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized

Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.4 shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in this Section 8.4 apply only to the Released Parties solely in their respective capacities as such.

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

8.5 Exculpation

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding, or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined

in a Final Order to have constituted gross negligence or willful misconduct; *provided, further,* that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

8.6 Injunction

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

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under

the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

8.7 Protection Against Discriminatory Treatment

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

8.8 Release of Liens

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

8.9 Reimbursement or Contribution

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

ARTICLE IX

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

9.1 Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 9.3:

(a) a Confirmation Order shall have been entered by the Bankruptcy Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(b) the Confirmation Order shall not have been stayed, modified, or vacated on appeal;

(c) the Confirmation Recognition Order shall be entered by the Canadian Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(d) the Confirmation Recognition Order shall not have been stayed, modified or vacated on appeal;

(e) all authorizations, consents, regulatory approvals, rulings or documents (if any) that are necessary for the Plan's effectiveness shall have been obtained;

(f) each of the Plan Supplement documents shall have been filed in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders;

(g) all respective conditions precedent to consummation of the Exit Facility Agreements shall have been waived or satisfied in accordance with the terms thereof;

(h) the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Amount;

(i) payment in full in Cash of all reasonable and documented fees and expenses of the DIP Facility Lenders, the Consenting Noteholders, the Trustee and the Collateral Trustee incurred by the following advisors to the such Persons in connection with the Restructuring: (i) Paul, Weiss, Rifkind, Wharton & Garrison, LLP, (ii) Kutak Rock LLP, (iii) Fasken Martineau (iv) Houlihan Lokey Capital, Inc. and (v) Thompson Hine LLP;

(j) payment in full in Cash of all reasonable and documented fees and expenses of the Information Officer and its counsel; and

(k) with respect to all documents, applications, and agreements necessary to implement the Plan: (1) all conditions precedent to such documents, applications, and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements; (2) such documents, applications, and agreements shall have been tendered for delivery to the required parties and been approved by any required parties and, to the extent required, filed with and approved by any applicable Governmental Units, regulators, or commissions in accordance with applicable laws; and (3) such documents, applications, and agreements shall have been effected or executed.

9.2 Substantial Consummation

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

9.3 Waiver of Conditions Precedent

The Debtors, with the prior written consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, may waive any of the conditions to the Effective Date set forth in Section 9.1 at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan; provided, however, that section 9.1(j) may not be waived without the consent of the Information Officer.

9.4 Effect of Non-Occurrence of Conditions to Consummation

If the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or any claims held by the Debtors; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

9.5 Vacatur of Confirmation Order

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE X

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

10.1 Modification of Plan

Effective as of the date hereof: (a) the Debtors, with the consent of the Majority Consenting Noteholders, reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (b) after the entry of the Confirmation Order, the Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy

Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

10.2 Effect of Confirmation on Modifications

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

10.3 Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Interests, or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE XI

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of an Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential

contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) any dispute regarding whether a contract or lease is or was executory or expired; and (d) any dispute regarding rejection damages claims.

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to Distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim or an Interest for amounts not timely repaid pursuant to Section 6.4(a); (b) with respect to the releases, injunctions, and other provisions contained in ARTICLE VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

13. issue any order in aid of implementation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

14. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

15. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

16. enforce all orders previously entered by the Bankruptcy Court; and

17. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all holders of Claims receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.2 Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

12.3 Waiver of Federal Rule of Civil Procedure 62(a)

The Debtors may request that the Confirmation Order include (a) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

12.4 Reservation of Rights; Binding Effect

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

Upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements,

compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor.

12.5 Successors and Assigns

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Person.

12.6 Closing of Chapter 11 Cases and the Canadian Proceeding

The Reorganized Debtors shall, as promptly as practicable after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required to obtain closures of the Chapter 11 Cases under Bankruptcy Rule 3022, any applicable local rules, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases. The Confirmation Order shall identify a Reorganized Debtor to serve as foreign representative, who shall, as promptly as practicable after the full administration of the Chapter 11 Cases (or at such other time as the Reorganized Debtors determine appropriate), seek to terminate the Canadian Proceeding.

12.7 Service of Documents

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

Reorganized Debtors	**Xinergy Corp.** 8351 East Walker Springs Lane Suite 400 Knoxville, TN 37923 Attn: Bernie Mason
Counsel to Debtors	**Hunton & Williams LLP** 951 East Byrd Street Richmond, Virginia 23219 Attn.: Tyler P. Brown
United States Trustee	**Office of the United States Trustee** **for the Western District of Virginia** First Campbell Square 210 First Street, Suite 505 Roanoke, VA 24011 Attn: Margaret K. Garber

12.8 Term of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, or in the Confirmation Recognition Order, all injunctions or stays in effect during the Chapter 11 Cases or the Recognition Proceeding (pursuant to sections 105 or 362 of the Bankruptcy Code, any order of the Bankruptcy Court, or the Canadian Court, as applicable) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, or the Confirmation Recognition Order shall remain in full force and effect in accordance with their terms.

12.9 Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

12.10 Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from https://www.americanlegal.com/xinergy or the Bankruptcy Court's website at www.vawb.uscourts.gov or the Information Officer's website at http://www.insolvencies.deloitte.ca/en-ca/Pages/XinergyLtd.aspx. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

12.11 Non-Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' and the DIP Facility Consenting Lenders' and the Majority Consenting Lenders' consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

[Remainder of page intentionally left blank.]

DATED: October 14, 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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Counsel to the Debtors
and Debtors in Possession

SCHEDULE 1
(Debtor Entities)

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

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

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

NOTICE OF FILING OF PLAN SUPPLEMENT RELATING TO THE DEBTORS' FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION

PLEASE TAKE NOTICE the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby file the *Plan Supplement Related to the First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the "Plan Supplement") with the United States Bankruptcy Court for the Western District of Virginia.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is filed in support of, and in accordance with, the *First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the "Plan").[2]

PLEASE TAKE FURTHER NOTICE that the following documents are included in the Plan Supplement, as each may be amended, modified, or supplemented:

Exhibit	Description
A	Summary of Proposed Principal Terms of Governance and Related Rights
B	Exit Facility Term Sheet
C	Disclosure of Proposed Officers and Directors of Reorganized Debtors
D	List of Rejected Executory Contracts and Unexpired Leases of Nonresidential

[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 Plan.

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

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Counsel to the Debtors
and Debtors in Possession

Real Property

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in the Plan Supplement remain subject to continuing negotiations among the Debtor and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court.

PLEASE TAKE FURTHER NOTICE that inclusion of any contract or lease on the Rejection Schedule attached hereto as Exhibit D is not an admission by the Debtors that such contract or lease constitutes an executory contract or unexpired lease of nonresidential real property under section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that a copy of the Plan Supplement may be obtained at no charge at *www.americanlegalclaims.com/xinergy* or for a fee at *https://ecf.vawb.uscourts. gov*.

DATED: January 13, 2016

Respectfully submitted,

/s/ *Justin F. Paget*

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EXHIBIT A

Summary of Proposed Principal Terms of Governance and Related Rights

Exhibit A – Proposed Principal Terms of Governance and Related Rights

White Forest Resources, Inc.:
Summary of Proposed Principal Terms of Governance and Related Rights

January 13, 2016

The following is a description of certain proposed terms of governance and related rights with respect to White Forest Resources, Inc., a Delaware corporation (the "Company"), to be set forth in (i) the Stockholders' Agreement to be entered into by and among the Company and its initial stockholders (the "Stockholders' Agreement"), (ii) the Certificate of Incorporation of the Company (the "Charter"), and (iii) the Bylaws of the Company (the "Bylaws"), in each case effective upon the restructuring of the indebtedness of Xinergy Corp., a Tennessee corporation ("Xinergy"), and its affiliated debtors pursuant to the plan of reorganization filed with the United States Bankruptcy Court, Western District of Virginia, pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Restructuring"). The Company will be a newly-formed holding company formed to hold the equity interests of Xinergy as of immediately following the effectiveness of the Restructuring.

Stockholders' Agreement

I. Parties
The Company, Centerbridge Partners ("Centerbridge"), Spectrum Group Management ("Spectrum"), Credit Suisse Asset Management ("CSAM"), one or more funds managed by Whitebox Advisors LLC (such funds collectively, "Whitebox") and each other holder of shares of common stock ("Common Stock" and shares of such Common Stock, "Shares") of the Company as set forth on Annex A hereto immediately following the completion of the Restructuring (each holder of equity interests of the Company, a "Stockholder" and each Stockholder set forth on Annex A hereto, an "Initial Stockholder").
II. Board of Directors
A. Board of Directors

i. The Board will initially be comprised of five members (each, a "Director"), as follows:

(a) Centerbridge and Spectrum will each designate one Director; provided, that if either Centerbridge or Spectrum ceases to hold at least 70% of the total number of Shares initially held by such party (as set forth on Annex A hereto), such party will no longer have the right to designate a Director;

(b) CSAM and Whitebox (each, a "CSAM/Whitebox Party") will jointly designate one Director (the "CSAM/Whitebox Director"); provided, that if either CSAM or Whitebox ceases to hold at least 85% of the total number of Shares initially held by such party, the CSAM/Whitebox Director will be designated solely by the other CSAM/Whitebox Party; provided, further that if both CSAM and Whitebox cease to hold at least 85% of the total number of Shares initially held by such parties respectively, CSAM and Whitebox will no longer have the right to designate a CSAM/Whitebox Director;

(c) one Director will be the Company's chief executive officer; and

(d) the remaining Directors (initially, one Director), each of whom will be independent directors (to be defined), will be elected by the vote of a supermajority (66 2/3rds) of the Shares issued and outstanding.

B. Transferability

i. 6 [Doc. No. 624] (the "Publicadge and Spectrum to designate one Director will be transferable by such party in connection with a transfer (in any single transaction or series of related transactions) of Shares held by such party to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer.

ii. The right of the CSAM/Whitebox Parties to jointly designate one Director will be transferable by the CSAM/Whitebox Parties in connection with a transfer (in any single transaction or series of related transactions) of Shares collectively held by the CSAM/Whitebox Parties to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer; provided that immediately following such transfer, neither CSAM/Whitebox Party shall be entitled to designate a Director.

C. Board Observers

i. Each Initial Stockholder will be entitled to have one representative attend, as an observer, all meetings of the Board (a "Board Observer"); provided that no Initial Stockholder will be entitled to designate a Board Observer for so long as such Stockholder has a Director designated to the Board.

ii. For the avoidance of doubt, each CSAM/Whitebox Party will be entitled to appoint one Board Observer in the event that the CSAM/Whitebox Parties are entitled to jointly designate a CSAM/Whitebox Director and such CSAM/Whitebox Director is a representative of the other CSAM/Whitebox Party.

B. Committees

i. The composition and governance of committees of the Board will be structured in a manner that preserves the Board nomination rights and consent rights of the Stockholders and their Board designations.

C. Power to Fill Vacancies

i. Centerbridge, Spectrum and the CSAM/Whitebox Parties (each, a "Designating Stockholder") will have the right to designate a replacement Director to the Board in the event of the death, incapacity, resignation or removal of such Designating Stockholder's designee. Any vacancies of the Director(s) elected by the vote of a majority of the Shares will be replaced by an independent director according to the vote of a majority of the Shares issued and outstanding at the time of determination.

ii. If a Designating Stockholder loses the right to designate a Director to the Board as a result of such Designating Stockholder ceasing to satisfy the required ownership threshold set forth above, such Designating Stockholder's designee shall immediately resign and the resulting vacancy on the Board will be filled by an independent director pursuant to the vote of a majority of the Shares issued and outstanding at the time of determination.

III. Negative Control Rights

i. The following actions of the Company will require the approval of the Stockholder(s) holding at least two-thirds of the issued and outstanding Shares:

(a) any increase or decrease in the size or composition of the Board;

(b) any fundamental changes to the nature of the business of the Company or its subsidiaries involving the entry by the Company or its subsidiaries into material new and unrelated lines of business; and

(c) the consummation of a change of control, merger, consolidation or other business combination.

ii. Any transaction between the Company or its subsidiaries, on the one hand, and any Stockholder, Director or affiliate of any Stockholder or Director, on the other hand, must be approved by a majority of the votes of the Directors then in office, excluding any Director who is, or has been designated by, a party that has an interest in such transaction.

IV. Indemnification

To the fullest extent provided by law, the Company will indemnify its and its subsidiaries' Directors and officers from any and all losses, costs, claims, liabilities, damages or expenses (including the advancement of legal fees and expenses) arising from third party claims relating to such Director's or officer's service to or on behalf of the Company or its subsidiaries.

V. Information and Access Rights

Each Stockholder will have the right to receive customary information, including audited annual financial statements, unaudited quarterly financial statements and copies of all board materials that are not privileged.

VI. Drag-Along Rights

If Stockholder(s) holding at least two-thirds in the aggregate of the issued and outstanding Shares (collectively, the "Drag-Along Stockholder(s)"), propose to transfer (in any single transaction or series of related transactions) all of the Shares owned by the Drag-Along Stockholder(s) to an unaffiliated third party (a "Drag-Along Sale"), then (i) such Drag-Along Stockholder(s) shall have the right to require the other Stockholder(s) to participate and transfer all of their Shares in such Drag-Along Sale on the same terms and conditions as the Drag-Along Stockholder(s) and/or vote in favor of such Drag-Along Sale, and (ii) the other Stockholders must waive any appraisal rights in connection therewith.

VII. Tag-Along Rights

If any Stockholder (a "Selling Stockholder") proposes to transfer (in any single transaction or series of related transactions) at least

two-thirds of the equity securities of the Company to an unaffiliated third party (a "Tag-Along Sale"), then the other Stockholders will have the right to participate proportionately in such Tag-Along Sale on the same terms and conditions as the Selling Stockholder.
VIII. Preemptive Rights
In the event the Company proposes to issue or sell any Shares, then each Stockholder holding at least 5% of the issued and outstanding Shares will have a preemptive right to proportionately participate in such offering or sale on the same terms as the proposed offering. The preemptive rights are also not transferable except to an affiliate and shall be subject to other customary exceptions set forth in the Stockholders' Agreement.
IX. Transferability
Except in connection with a Drag-Along Sale, Tag-Along Sale, or transfer requiring board approval as described below, there are no transfer restrictions on the transfer of Shares by the Stockholders.
X. Transfers Requiring Board Approval
Any transfer of Shares by one or more Stockholders to any person that is not an institutional investor (including without limitation, an investment bank, a hedge fund, private equity fund or other investment fund) or that is a company that operates in the mining industry or holds at least 10% of the equity interests in a company that operates in the mining industry (other than transfers of Shares to any Initial Stockholder), shall, in each case, require the prior approval of a majority of all of the directors on the Board, such approval not to be unreasonably withheld.
XI. Confidential Information
If any Stockholder desires to disclose confidential information regarding the Company to a potential purchaser of all or any portion of its Shares in connection with a potential sale of such Shares, such Stockholder shall cause the potential purchaser to enter into a confidentiality agreement approved by the Company (such approval not to be unreasonably withheld) and the Company shall be a third party beneficiary to such confidentiality agreement.
XII. Jurisdiction; Venue
The Stockholders' Agreement will be governed by Delaware law. Any disputes under the Stockholders' Agreement will be

adjudicated by the courts located in the State of Delaware.

Exhibit A – Proposed Principal Terms of Governance and Related Rights

Annex A

Initial Stockholders

Initial Stockholders	**Shares**
Albert Fried & Company/Vineyard	
Armory	
Bank of America	
Bayside	
Centerbridge	
Credit Suisse Asset Management	
Highbridge	
Spectrum Group Management	
Whitebox Advisors	
[other]	
Total	

EXHIBIT B

Exit Facility Term Sheet

Exhibit B – Exit Facility Term Sheet

XINERGY CORP.
Summary Term Sheet for
Exit Financing

This Term Sheet (this "Term Sheet") sets forth the preliminary outline of certain material terms and conditions of proposed transactions (the "Transactions") involving the debt obligations and equity ownership of Xinergy Corp. and its subsidiaries. This Term Sheet is intended as a summary for discussion purposes only and does not constitute a commitment, obligation or agreement to provide, arrange or syndicate any financing on the part of the lenders identified herein. Only execution and delivery of definitive documentation relating to the transactions contemplated herein shall result in any binding or enforceable obligations of any party relating to the Transactions. This Term Sheet does not include descriptions of all of the terms, conditions and other provisions that would be contained in the definitive documentation relating to the Transactions and is not intended to limit the scope of discussion and negotiation of any matter not inconsistent with the specific matters set forth herein. The terms and conditions for the Transactions set forth herein are dependent upon, among other things, internal authorization and approval by the appropriate credit committees for each of the lenders.

Reference is made to that certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of April 8, 2015 (as amended, the "**Existing DIP Credit Agreement**"), by and among Xinergy Corp., as borrower, the guarantors party thereto, WBOX 2014-4 Ltd., as DIP Agent, and the lenders from time to time party thereto.

Borrower: Xinergy Corp., a Tennessee corporation (the "***Borrower***").

Current Capital Structure:

- Senior secured DIP facility with:
  - $47,000,000 term loans under the Existing DIP Credit Agreement (the "***2015 DIP Term Loans***"); and
  - $1,500,000 incremental term loans incurred on January 7, 2016 under the Existing DIP Credit Agreement (the "***Senior DIP Term Loans***" and, collectively with the 2015 DIP Term Loans, the "***DIP Term Loans***").
- 9.25% Senior Secured Notes due 2019 in the original principal amount of $200,000,000 issued pursuant to that certain note indenture, dated as of May 6, 2011, among the Borrower, certain guarantors and Wells Fargo Bank, National Association, as trustee (the "***Prepetition Notes***").

Exit Capital Structure:

- A senior secured term loan facility in an aggregate principal amount of $12,000,000 (the "***First Lien Facility***" and the loans thereunder, the "***First Lien Term Loans***"), $1,500,000 of which will consist of the Senior DIP Term Loans (which will be automatically converted into First Lien Term Loans on a dollar for dollar basis), and $10,500,000 of which will consist of new money (such portion, the "***New Money First Lien Term Loan***").[1]
- A second lien secured term loan facility in an aggregate principal amount

[1] Participation in the New Money First Lien Term Loan to be offered to holders of DIP Term Loans and Prepetition Notes on a 60/40 basis (with the 60% allocations offered on a pro rata basis in respect of the DIP Term Loan commitments).

of $47,000,000 (plus any accrued and unpaid capitalized interest on the 2015 DIP Term Loans as of the effective date of the plan) (the "***Second Lien Facility***" and the loans thereunder, the "***Second Lien Term Loans***"), which shall consist solely of converted 2015 DIP Term Loans on a dollar for dollar basis.

- Equity: 100% to holders of Prepetition Notes, subject to dilution as set forth below.

Guarantors: Each existing and subsequently acquired or organized subsidiary of the Borrower (together with the Borrower, the "***Obligors***").

Collateral: Substantially all the assets of the Obligors subject to intercreditor arrangements between the First Lien Facility and the Second Lien Facility to be agreed.

Interest:

- First Lien Facility: At Borrower option, either: (i) 10% payable in cash, or (ii) 15% PIK (and in each case payable quarterly).

- Second Lien Facility: 15% PIK.

Maturity: 1 year.

- At maturity, if not refinanced with cash and prepaid in full (including all accrued and unpaid interest), the Second Lien Facility will automatically convert into 48% of the equity of the Borrower (the "***Second Lien Conversion***").[2]

- All equity shall be subject to dilution pursuant to the Borrower management incentive plan (providing for up to 10% of Borrower equity, on a fully diluted basis, pursuant to the plan of reorganization).

Fees:

- First Lien Facility: lenders will receive their pro rata portion of 20% of Borrower equity at issuance as a commitment fee, resulting in immediate dilution of the Prepetition Note holders from 100% to 80%. The equity fee to the First Lien Term Lenders shall not be diluted by the Second Lien Conversion.

- Second Lien Facility: None.

Voluntary Prepayments: The First Lien Facility and the Second Lien Facility may be prepaid at any time in minimum principal amounts to be agreed without premium or penalty.

Mandatory Prepayments: Customary for transactions of this type.

[2] Expected equity ownership of Borrower after one year: (i) 20% First Lien Facility, (ii) 32% Prepetition Notes, and (iii) 48% Second Lien Facility (i.e., 60% of Prepetition Note holders' 80%), in each case, subject to dilution under the management incentive plan.

Exhibit B – Exit Facility Term Sheet

Representations and Warranties:	Customary for transactions of this type.
Affirmative and Negative Covenants:	Customary for transactions of this type, with covenant levels for the Second Lien Facility set at a cushion to the corresponding levels for the First Lien Facility.
Financial Covenants:	[TBD]
Additional Financing Covenant:	Solely with respect to the initial incurrence of debt (not otherwise contemplated by this Term Sheet) that is secured on a senior or pari basis with the First Lien Facility, a portion of such debt shall be first offered to each New Money First Lien Term Lender on a pro rata basis to the extent of its then existing holdings of First Lien Term Loans.
Events of Default:	Customary for transactions of this type.
First Lien Agent/Trustee:	[TBD]
Second Lien Agent/Trustee:	[TBD]
Additional Conditions:	Bankruptcy court approval of a plan of reorganization in form and substance acceptable to the First Lien Term Loan lenders and Second Lien Term Loan lenders.
Governing Law:	New York.

EXHIBIT C

Disclosure of Proposed Officers and Directors of Reorganized Debtors

Exhibit C – Proposed Officers and Directors

Section 4.13 of the Plan provides that the New Board will consist of five or seven members, one of whom will be New Holdco's Chief Executive Officer. This Exhibit C lists the identities and affiliations of the individuals who have been proposed as of the date hereof to serve as members of the New Board. One or more of the proposed members of the New Board or the proposed officers identified below will service as officers, directors and/or managers of each of the Reorganized Debtors. In accordance with Section 4.13 of the Plan, the Debtors submit the following information:

Proposed Directors of the New Board:

1. Matthew Cantor – *Director*. Mr. Cantor previously served as Chief General Counsel and Executive Vice President of Legal Affairs of Lehman Brothers Holdings, Inc. Mr. Cantor was a Founding Principal, Executive Officer, and an Investment Manager at Normandy Hill Capital and focused on distressed, event-driven credit and special situations. Mr. Cantor joined Normandy Hill Capital in 2007. Prior to this, Mr. Cantor was a Partner at Kirkland & Ellis LLP where he specialized in restructuring, insolvency, and workout & bankruptcy. Mr. Cantor was a Principal at Valley Lane Industries from 1998 to 2001 and a Partner at Weil, Gotshal & Manges LLP from 1997 to 1998. He previously served as a Director of Lehman Brothers Special Finance Corp. He is a Member of the New York State Bar Association, Member Business Law Section. Mr. Cantor holds a J.D. from New York University School of Law and B.A. from State University of New York at Binghamton.

2. Jeffrey Wilson – *Director*. Mr. Wilson has recently served as Sr. Vice President-Operations for the Debtors and was formerly Interim President of the J.W. Resources companies based in Knoxville, TN. Mr. Wilson spent almost 20 years with A.T. Massey Coal Company and 5 years with James River Coal Company in various roles in production, engineering, sales, and operations management. Since 2005, he has also been owner and manager of Wilson Energy Advisors, LLC, a consultancy specializing in management, property evaluations, and financial analyses related to the mining industry. Jeff holds a B.S. in Mining Engineering from West Virginia University and an MBA from Marshall University. He is a Registered Professional Engineer, a Registered Member of SME-AIME and serves on the Visiting Committee for the WVU Department of Mining Engineering.

3. Jacob Mercer – *Director*. Jacob Mercer joined Whitebox Advisors, LLC, in 2007 and is a Senior Portfolio Manager with a focus on special situations and distressed assets. Previously, Mr. Mercer worked for Xcel Energy from 2005 to 2007 as Assistant Treasurer and Managing Director. Prior to that, he worked at Piper Jaffray as a Senior Credit Analyst and Principal and at Voyageur Asset Management as a Credit Analyst. In addition, Mr. Mercer served as a Logistics Officer in the United States Army. Mr. Mercer holds a B.A. in both Business Management and Economics from St. John's University. He also holds the Chartered Financial Analyst (CFA) designation. Mr. Mercer has served on a number of boards including Ceres Global Ag, Hycroft Mining, Jerritt Canyon Gold, Par Petroleum, Piceance Energy, and Platinum Energy Solutions.

Exhibit C – Proposed Officers and Directors

4. Jeffrey Buller – *Director*. Mr. Buller is a Managing Director at Spectrum Group Management LLC. He has 20 years of broad experience in analyzing, structuring and executing complex transactions involving mergers & acquisitions, capital restructuring and turnaround management. Prior to joining Spectrum in 2003, Mr. Buller was responsible for the strategic and financial management of Eureka Broadband Corporation, a national provider of integrated communications services. From 1996 to 1998, Mr. Buller was an Investment Banker at Salomon Brothers focusing on debt restructuring, mergers and acquisitions, as well as workout management in various industries. From 1994 to 1996, Mr. Buller was an Associate at Coopers & Lybrand, where he obtained his CPA. In addition, Mr. Buller currently serves as a Director of JHT Holdings, Inc., a specialized transportation and logistics company. Mr. Buller received a B.S. from the State University of New York at Binghamton and an M.B.A. from Columbia Business School.

5. The fifth director will be an independent director to be disclosed prior to the Confirmation Hearing.

In accordance with Section 4.13 of the Plan, the Debtors submit the following information about the officers of the Reorganized Debtors as of the Effective Date.[1]

Individual proposed to serve as officers of the Reorganized Debtors:

1.	Chief Executive Officer	Jeffrey A. Wilson
2.	Chief Financial Officer	Michael R. Castle

[1] The senior management of the Reorganized Debtors may change after the Effective Date.

EXHIBIT D

List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

Exhibit D – Rejection Schedule

List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

Section 5.1 of the Plan provides that unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. In accordance with Section 5.1 of the Plan, the Debtors submit the following Rejection Schedule:

Debtor Entity	Counterparty	Description of Lease or Executory Contract
South Fork Coal Company, LLC	MERAL Incorporated	Asset Purchase Agreement, dated January 31, 2011, concerning the purchase of that certain Coal Mining Lease by and between WPP, LLC and Seller dated August 13, 2008 and certain Other Assets
South Fork Coal Company, LLC	MERAL Incorporated	Amendment to Asset Purchase Agreement, dated March 17, 2014
Xinergy Corp.	WPP LLC	Mineral Lease (WPP Lease 7323) dated August 22, 2012, regarding property located in Leslie County, Kentucky
Raven Crest Contracting, LLC	Appalachian Power Company	Electric Utility Contract dated June 22, 2012, regarding premises located at Bull Creek Hollow, Dartmouth, WV
South Fork Coal Company, LLC	Appalachian Power Company	Electric Utility Contract dated January 21, 2014, regarding account number 0224277383
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 15 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 24.75 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 15 acre tract
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 24.75 acre tract
Whitewater Resources, LLC	Sabra Investments, LP	Lease Agreement, dated December 29, 2014, concerning the lease of six (6) cabins, the office building and the "lounge" and the site on which the trailer is located, plus (1) acre surrounding each site

EXHIBIT B

CONFIRMATION NOTICE

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]	

NOTICE OF ENTRY OF AN ORDER CONFIRMING THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN

PLEASE TAKE NOTICE THAT:

1. ***Confirmation of the Plan***. On _____, the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court") entered an Order confirming the *Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453] (as modified and amended in accordance with the terms of the Confirmation Order, the "Plan"). Copies of the Confirmation Order and the Plan are available, for free, at American Legal Claim Services LLC's website https://www.americanlegal.com/xinergy. You may also obtain copies of the Confirmation Order and Plan, for a fee, through the Bankruptcy Court's website via PACER at www.vawb.uscourts.gov. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan or the Confirmation Order.

2. ***Effect of Plan***. Pursuant to section 1141 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), except as otherwise provided in the Plan or in the Confirmation Order, and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interests in, the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder will receive a distribution. Accordingly, the Debtor is authorized to implement the Plan on the Effective Date.

3. ***Releases by the Debtors***. In consideration of the contributions of the Released Parties to the Debtors' Chapter 11 Cases, section 8.3 of the Plan provides for the following releases:

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

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however,* that the foregoing provisions of this Section 8.3 shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized

Debtors are a party. The releases in this Section 8.3 apply only to the Released Parties solely in their respective capacities as such.

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

4. ***Consensual Third Party Releases***. Section 8.4 of the Plan provides for the following Consensual Third Party Releases:

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in this Section 8.4, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under this Section 8.4), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the

Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.4 shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in this Section 8.4 apply only to the Released Parties solely in their respective capacities as such.

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

5. ***Exculpation***. Section 8.5 of the Plan contains the following exculpation provision:

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding, or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without

limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

6. ***Injunction***. Section 8.6 of the Plan provides for the following injunction related to the Debtor Releases, Consensual Third Party Releases, and Exculpation:

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

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

Dated: _____ BY ORDER OF THE COURT

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

Counsel to the Debtors
and Debtors in Possession

SCHEDULE 1

Debtor Entities

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

EXHIBIT C

NOTICE OF EFFECTIVE DATE

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

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

NOTICE OF (I) OCCURRENCE OF EFFECTIVE DATE OF THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN AND (II) ADMINISTRATIVE CLAIMS BAR DATE

PLEASE TAKE NOTICE THAT:

1. ***Confirmation of the Plan***. On _____, the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court") entered an order (the "Confirmation Order") confirming the *Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453] (as modified and amended in accordance with the terms of the Confirmation Order, the "Plan"). Copies of the Confirmation Order and the Plan are available, for free, at American Legal Claim Services LLC's website https://www.americanlegal.com/xinergy. You may also obtain copies of the Confirmation Order and Plan, for a fee, through the Bankruptcy Court's website via PACER at www.vawb.uscourts.gov. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan and the Confirmation Order.

2. ***Effective Date***. The Effective Date of the Plan occurred on _____.

3. ***Administrative Claims Bar Date***. The Administrative Claims Bar Date for applications or requests for payment of Administrative Claims (including but not limited to Professional Fee Claims) shall be the date that is the first Business Day that is thirty (30) calendar days after the Effective Date. Any Person or Entity that is required to file and serve a request for payment of an Administrative Claim and fails to timely file with the Bankruptcy Court and serve such a request on counsel for the Debtors shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors or participating in distributions under the Plan on account thereof. Any such request for payment of an Administrative Claim must be served on counsel to the Debtors at Hunton & Williams LLP,

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

Attn: Tyler P. Brown, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219.

Dated: _____ BY ORDER OF THE COURT

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
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Counsel to the Debtors
and Debtors in Possession

SCHEDULE 1

Debtor Entities

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2. Xinergy Ltd. (3865)
3. Xinergy Finance (US), Inc. (5692)
4. Pinnacle Insurance Group LLC (6851)
5. Xinergy of West Virginia, Inc. (2401)
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7. Xinergy Sales, Inc. (8180)
8. Xinergy Land, Inc. (8121)
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10. Big Run Mining, Inc. (1585)
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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)

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)

FOURTH REPORT OF THE INFORMATION OFFICER
January 28, 2016

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