

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
SECURITIES AND EXCHANGE COMMISSION, :
:
Plaintiff, :
:
-v- :
:
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
:
Defendants. :
-----X

No. 16-cv-6848 (BMC)

**CERTIFICATE OF NO OBJECTION TO ENTRY OF THE PROPOSED ORDER
APPROVING THE SALE OF THE ASSETS OF LC ENERGY HOLDINGS LLC AND
LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND OTHER INTERESTS¹**

The undersigned hereby certifies that, as of the date hereof, no answer, objection or other responsive pleading has been received with respect to entry of the proposed *Order Approving the Sale of the Assets of LC Energy Holdings LLC and LC Energy Operations LLC Free and Clear of all Liens, Claims, Encumbrances and Other Interests* (the “**Proposed Sale Order**”) filed on August 27, 2019 along with the *Notice of Successful Bidder for the Assets of LC Energy Holdings LLC and LC Energy Operations LLC* (the “**Notice**”). Docket No. 487.

The undersigned further certifies that this Court’s docket has been reviewed in this case and no objection, responsive pleading, or request for hearing with respect to the Proposed Sale Order appears thereon.

¹ All capitalized terms not defined herein shall have the meanings ascribed by the Sale Motion.

On September 10, 2019, the Receiver was served with the response (the “*WPP Response*”) to the Notice, attached hereto as Exhibit A, of Western Pocahontas Properties Limited Partnership (“*WPP*”). Counsel for the Receiver certifies that it has since confirmed with counsel for WPP that WPP does not oppose entry of the Proposed Sale Order provided it reflects the filing of the WPP Response and reserves WPP’s rights to assert a claim against LC Energy. Counsel for the Receiver has modified the Proposed Sale Order accordingly.

Based upon the forgoing, it is hereby respectfully requested that the Proposed Sale Order, attached hereto as Exhibit B, be entered at the earliest convenience of the Court.

Dated: September 11, 2019

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
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Attorneys for Melanie L. Cyganowski, as Receiver

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
- v -	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----	X

RESPONSE OF WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP TO NOTICE OF SUCCESSFUL BIDDER FOR THE ASSETS OF LC ENERGY HOLDINGS LLC, AND LC ENERGY OPERATIONS LLC

Western Pocahontas Properties Limited Partnership (“**WPPLP**”), by and through their undersigned counsel, hereby submits this response (the “**Response**”) to the *Notice of Successful Bidder for the Assets of LC Energy Holdings LLC, and LC Energy Operations LLC* (the “**Sale Notice**”) [Docket No. 487]. In support of this Response, WPPLP respectfully states as follows:

BACKGROUND

1. WPPLP and LC Energy Holdings LLC (“**LC Energy**”) are parties to a certain “Coal Mining Lease” dated as of January 1, 2011 (the “**Lease**”), a copy of which is attached hereto as Exhibit A. LC Energy is the lessee of the Lease by virtue of Platinum Partners Credit Opportunities Master Fund LP’s (“**PPCO**”) acquisition of Lily Group, Inc. LC Energy is the indirect subsidiary of PPCO. WPPLP and LC Energy then entered into a certain “Third

Amendment to Lease” dated July 14, 2015, a copy of which is attached hereto as Exhibit B (the Coal Mining Lease and Third Amendment to Lease, collectively, are referred to herein as the “Lease”).

2. On October 16, 2017, this Court entered the *Second Amended Order Appointing Receiver* (the “Receivership Order”) [Docket No. 276]. The Receivership Order appointed a receiver (the “Receiver”) to take custody of LC Energy and its assets. The Receivership Order also vested this Court with exclusive jurisdiction over LC Energy and its property.

3. On December 6, 2018, the Receiver filed a *Motion for Entry of an Order (I) (a) Authorizing the Receiver to Sell the Receivership’s Rights in and to LC Energy Operations LLC and/or its Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (b) Authorizing the Receiver to Enter into a Stalking Horse Agreement and Approving Certain Bid Protections in Connection Therewith; (c) Approving the Form and Manner of Notice of the Sale; (d) Approving Certain Procedures for the Filing of Claims Against LC Energy and the Resolution Thereof; and (e) Approving Bid Procedures for the Sale of LC Energy Upon the Selection of a Stalking Horse and (II) Approving the Sale of LC Energy Free and Clear of All liens, Claims, Encumbrances and Other Interests* (the “Sale Motion”) [Docket 422]. The Court then approved the requests for relief in the sale Motion in an order entered on January 17, 2019 [Docket 444].

4. On February 20, 2019, WPPLP and the Receiver, on behalf of LC Energy, entered into a certain Letter Agreement allowing LC Energy “to pay the 2019 advance minimum royalty payment, which was due as of January 1, 2019 per Section 4 of the Lease as Amended by the Third Amendment dated July 14, 2015, in four (4) equal installments” upon certain terms and conditions contained therein (the “Letter Agreement”). A copy of the Letter Agreement is attached hereto as Exhibit C.

5. On August 27, 2019, the Receiver filed the Sale Notice. The Sale Notice states that “the proposed relief granted in the Sale Order is the deemed termination of all contracts, agreements and/or leases of any kind between any contract counterparty and LC Energy unless scheduled for assignment under the APA (the ‘*Non-Assigned Agreements*’).” Sale Notice, ¶ 7. The Sale Notice then imposes a deadline of September 10, 2019, by when “any party-in-interest wishing to be heard with respect to . . . the termination of the Non-Assigned Agreements (other than parties named in the caption), shall electronically deliver to the Receiver via the Receiver’s email address (platinumreceiver@otterbourg.com), that party-in-interest’s response” Sale Notice, ¶ 8 (emphasis added).

6. Upon information and belief, the Lease is not scheduled for assignment under the APA, and, therefore, it qualifies as a Non-Assigned Agreement, which shall be deemed terminated upon entry of the proposed “Sale Order.”

RESPONSE

7. Notwithstanding the Receiver’s intent to terminate the Lease, LC remains responsible for all obligations that currently are due or become due under the Lease and/or Letter Agreement, including royalties, taxes, indemnity, reclamation, other environmental obligations, and compliance with all federal and state laws.

8. LC Energy currently owes WPPLP \$1,919.51 for unpaid property taxes. WPPLP sent an invoice for this amount to the Receiver on May 7, 2018, a copy of which is attached hereto as Exhibit D. Furthermore, the fourth installment of the 2019 advance minimum royalty payment will come due on October 1, 2019, in the amount of \$25,000.00 pursuant to the terms of the Letter Agreement. Finally, the 2020 advance minimum royalty payment will come due on January 1, 2020 pursuant to the terms of the Lease. Thus, the total known amount due from LC Energy to

WPPLP for obligations arising under the Lease and/or Letter Agreement is \$126,919.51. A spreadsheet that outlines the breakdown this amount is attached hereto as Exhibit E.

9. In addition to the claims asserted above, WPPLP hereby reserves its right to assert further claims for any and all obligations due under the Leases, including, but not limited to, such claims that have not yet been discovered or disclosed by LC Energy or the Receiver, and those claims that have not yet been discovered by WPPLP.

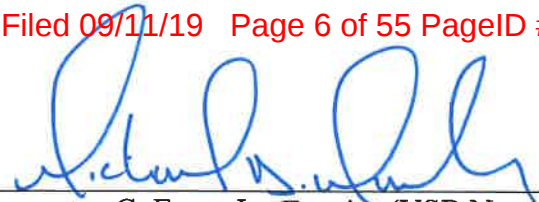
10. Lastly, to the extent that the Lease is terminated, then LC Energy no longer has a right to enter the Leased Premises (defined in the Lease) without first obtaining permission from WPPLP. “In the event that th[e] Lease is terminated for any reason prior to removal of all merchantable and mineable coal, all buildings, structure and improvements then affixed to the Leased Premises, at [WPPLP’s] option, shall be and become property of [WPPLP].” Lease at 29, § 14. Furthermore, if any mobile mining equipment and personal property remain on the Leased Premises after six months from the termination of the Lease, such equipment and property shall become the absolute property of WPPLP. *Id.*

WHEREFORE, Western Pocahontas Properties Limited Partnership respectfully requests that the Receiver seek approval from the Court to pay Western Pocahontas Properties Limited Partnership \$126,919.51 in satisfaction of the obligations outlined in Exhibit E pursuant to the Lease and/or Letter Agreement; grant Western Pocahontas Properties Limited the right to assert any and all additional claims against LC Energy Holdings LLC as such claims are discovered; and to grant such other and further relief as this Court deems just and appropriate under the circumstances.

Date: September 10, 2019

Respectfully Submitted,

**WESTERN POCAHONTAS PROPERTIES
LIMITED PARTNERSHIP**

By: 

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Michael D. Mueller, Esquire (VSB No. 38216)
Jennifer M. McLemore, Esquire (VSB No. 47164)
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EXHIBIT A

LEASE NO. 1235

COAL MINING LEASE

by and between

**WESTERN POCAHONTAS PROPERTIES
LIMITED PARTNERSHIP**

Lessor

and

LILY GROUP, INC.

Lessee

Dated as of January 1, 2011

THIS COAL MINING LEASE dated as of January 1, 2011, is between WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership ("Lessor"), and LILY GROUP, INC., an Indiana corporation ("Lessee").

SECTION 1. LEASE FOR COAL MINING PURPOSES.

In consideration of the terms, conditions, and stipulations set forth to be performed and observed by Lessee, Lessor, acting on its own behalf and with the intention of exercising any right, option or power held by it on behalf of any other person or entity, does hereby demise, lease and let to Lessee, for the purpose of deep mining and surface mining, processing and transporting, the Indiana No. 3, No. 4, and No. 5 Seams of coal described in and by the methods stated in map entitled "Exhibit A, Map to Accompany Coal Mining Lease, Dated: January 1, 2011, between WESTERN POCAHONTAS PROPERTIES L.P.. and LILY GROUP, Inc.", attached hereto and made a part hereof, and hereinafter referred to as the Leased Premises.

SECTION 2. RESERVATIONS AND EXCEPTIONS.

All rights, title and interest vested in Lessor and not herein specifically granted to Lessee are reserved to Lessor, its successors and assigns.

Without limiting the generality of this reservation, there are hereby expressly excepted from this Lease and reserved to Lessor, its successors and assigns:

- (1) all existing licenses, easements and rights-of-way for railroad or other purposes heretofore granted by or otherwise lawfully acquired from Lessor or its predecessors in title;

- (2) all oil, gas (including gas and/or methane in the coal leased, however it is understood that a certain amount of methane will be liberated by natural means in the mining process by Lessee, timber, minerals other than coal, and coal not leased herein;
- (3) the following rights and privileges in and respecting the Leased Premises:
 - (a) the right at all reasonable times to enter upon the premises, and to drill, bore, excavate, cut, remove, develop, store, and market (or to lease or license to others said rights), all such oil, gas, timber and other minerals, hereinabove reserved to Lessor;
 - (b) the right to construct and operate railroads, roads, structures, and appliances which may be necessary for the removal or processing of such oil, gas, timber, coal, and other minerals, or to serve other properties of the Lessor;
 - (c) the right and privilege of leasing to tenants the surface of the above described tracts of land for the purposes of occupying and farming said surface, or of constructing thereon such plants and appliances as may be needed for the removal or processing of said oil, gas, timber and other minerals; and
 - (d) the right to grant and convey from time to time to any electric or other power company, pipeline, gas, oil, mining or railroad company, so much of said premises and property as may be required for rights-of-way by such company or companies.

In the event Lessor shall give written notice to Lessee that Lessor (including, without limitation, its successors and/or assigns) desires to exercise any of the rights reserved herein to Lessor and that such exercise shall include operations to be conducted on a portion of the Leased Premises with regard to which Lessee has posted a reclamation or performance bond or has received a permit or other authorization from any federal, state, local or other governmental agency to conduct operations on such portion of the Leased Premises, then Lessee shall either execute such documents and take whatever action is necessary to include Lessor's operations within the scope of Lessee's bonds, permits and/or other authorizations, or Lessee shall execute such documents and take whatever action (including without limitation, the obtaining of a release of such portion of the Leased Premises from the coverage of Lessee's bonds, permits, and/or other authorizations) is necessary to assist Lessor to obtain any bonds, permits and/or other authorizations from any federal, state, local or other governmental agencies necessary for Lessor to fully exercise its rights. Lessor shall have no obligation to include Lessee's operations within the scope of Lessor's bonds, permits and/or other authorizations and shall not be obligated to perform reclamation or incur other expenses attributable to Lessee's operations or obligations as a condition for receiving Lessee's assistance in obtaining the necessary bonds, permits and/or other authorizations for Lessor's operations. If Lessee accommodates Lessor's operations by including them within the scope of Lessee's bonds, permits and/or other authorizations, Lessor shall reimburse Lessee for the reasonable additional costs added by Lessor's operations to Lessee's costs of compliance with such bonds, permits, and/or other authorizations; but Lessee shall

remain solely and directly responsible to the federal, state, local or other governmental agencies for all operations and obligations covered by such bonds, permits and/or other authorizations; and in the event such operations are to be carried out by Lessor's successors or assigns, such successors or assigns shall be solely liable to Lessee for reimbursement of such additional costs, and Lessor, its successors and/or assigns, who are not directly conducting such operations shall have no liability for such costs. This paragraph is not intended to limit Lessor's exercise of any rights reserved to it or to require the giving of notice of the intent to exercise such rights; but rather, is intended to insure that Lessor may, at its option, obtain the assistance and cooperation of Lessee in obtaining all governmental approvals which may be necessary for Lessor, its successors and/or assigns, to fully exercise such rights.

Provided, however, that the rights and privileges hereby in this Section 2 excepted and reserved shall be exercised in such manner as to not unreasonably interfere with Lessee's mining operation in connection therewith, having due regard for the requirements, convenience, and safety of said operations; and provided further, that any dispute arising between Lessor and Lessee with reference to the rights herein reserved shall be submitted to arbitration in the manner provided in Section 10 hereof.

SECTION 3. TERM.

The term of this Lease shall be for a period of five (5) years from the date set forth in the preamble paragraph hereto (hereinafter, the "anniversary date"), unless sooner terminated as hereinafter provided. Lessee shall have the right and option to renew this Lease for two (2) additional five (5)-year periods, subject to all of the conditions, covenants

and agreements hereof, except rents, royalties and annual minimum royalties specified in Section 4, provided Lessee has fully complied with and performed all of the conditions, covenants, and agreements to be complied with or performed and has given notice in writing to Lessor of its intention to so renew at least three (3) months prior to the end of the current term. In the event, at the end of the third lease year Lessee has not produced at least one hundred twenty thousand (120,000) tons of coal from the Leased Premises, Lessor has the right and option at its sole discretion to terminate this Lease.

In the event all the merchantable and mineable coal underlying the Leased Premises shall have been mined and removed from the Leased Premises pursuant to the provisions of this Lease, then this Lease shall cease and terminate upon the date when all such coal shall have been mined and removed. Any disagreement between Lessor and Lessee as to whether all of such coal has been mined and removed pursuant to the provisions of this Lease, shall be submitted to arbitration in the manner provided in Section 10 hereof.

In the event the Leased Premises, or any portion or part thereof, or any easement on or interest in all or part of the surface included within the area described in Section 1 of this Lease shall be taken, damaged, or injured by the exercise of the right of condemnation or eminent domain, or any other legal proceedings or acts by federal, state, county, municipal, or other governmental, public, or quasi public authority, or by any corporation, person, or persons having lawful power and authority to exercise the right of condemnation, eminent domain or legal proceeding, then Lessor shall have the right and option to terminate this Lease on thirty (30) days' notice to Lessee, to be given at Lessor's

option either when said action is filed or when the property is taken in whole or in part, and any and all sums legally paid or recoverable in such proceedings shall be paid to and become the property of Lessor, provided, however, this Lease shall automatically terminate with respect to any property taken on the date of such taking. This shall not, however, prevent Lessee from asserting its separate claim against the condemnor for the damage done to Lessee by such taking or action. The right of Lessor to terminate this Lease on account of such taking shall be exercisable upon each such taking or action, and the failure of Lessor to exercise its option to terminate on account of any one or more takings or actions shall not bar its right to terminate this Lease on account of one or more takings or actions at other times.

SECTION 4. ROYALTIES.

Lessee shall pay to Lessor, WESTERN POCAHONTAS PROPERTIES; P. O. Box 8500-55333; Philadelphia, PA 19178-5333, or at such other places as Lessor may from time to time designate in writing, during the term of this Lease, a tonnage royalty for the coal mined from the Leased Premises during each calendar month of the term hereof, to be received by Lessor within twenty (20) days from the end of the month to which payment applies, as follows:

The greater of either Two Dollars and Forty Cents (\$2.40) per ton or six percent (6%) of the gross selling price of the coal, as hereinafter defined, except for the Indiana No. 5 Seam mined by the surface mining method in the box-cut and refuse storage area located in the SE/SE Quarter and the SW/SE Quarter of Section 18, Township 8N, Range 7W. Such tonnage royalty for the Indiana No. 5 Seam mined by the surface mining method in the box-cut and refuse storage area will be six percent (6%) of the gross selling price of the coal, as hereinafter defined.

The term "coal" referred to herein shall include any low-coal content merchantable product that is sometimes sold and shipped under various trade names including, but not limited to, bone, coal, fuel and middlings. The term "ton" referred to herein shall mean 2,000 pounds.

In addition to the foregoing tonnage royalty, Lessee shall pay Lessor an annual minimum payment for each and every lease year. The annual minimum payment will be Fifteen Thousand Dollars (\$15,000) for the first lease year; Twenty Five Thousand Dollars (\$25,000) for the second lease year, Eighty Five Thousand (\$85,000) for the third lease year, and One Hundred Thousand Dollars (\$100,000) for the fourth lease year and for each lease year thereafter to be paid as follows:.

If during any lease year Lessee shall pay a sum of the tonnage royalty and wheelage charges on foreign coal, as defined in Section 15, that is less than the annual minimum payment, then Lessee will pay to Lessor, on the 20th day of January following the end of the lease year, the difference between the sum of the tonnage royalty and wheelage charges paid and the annual minimum payment due, which hereinafter will be called the annual deficiency payment. If during the lease year Lessee shall pay a sum of the tonnage royalty and wheelage charges that are equal to or in excess of the annual minimum payment, then no annual deficiency payment shall be due for that lease year. If during any lease year the sum of the tonnage royalty and wheelage charge exceeds the applicable annual minimum payment, then Lessee shall have the right to recoup any unrecouped annual deficiency payments made with respect to the two (2) preceding lease years. Such recoupment of the annual deficiency payment or

payments shall be made on a first-paid, first-recouped basis. No tonnage royalty payment for coal mined in any lease year shall be credited to the annual minimum payment for any succeeding lease year or years.

Subject to the qualification hereinafter stated in this paragraph, "gross selling price" of coal shall, for all purposes under this Lease, be the amount received, either directly or indirectly by the vendor or vendors thereof, whether or not the Lessee is the vendor, upon sale thereof after preparation and/or tipping, regardless of who owns or operates such facilities, to the ultimate consumer f.o.b. railroad cars or other transport at the ultimate tipple or tipples at which coal mined hereunder has been prepared and loaded into railroad cars or other transport for shipment to the ultimate consumer, without any deduction for selling expense or sale commission. If any party to any sale or other disposition of the coal shall have any direct or indirect financial interest in any other party to such transaction, the price charged to the ultimate consumer of the coal involved in such transaction, less such deductions therefrom as Lessor may from time to time approve in writing, shall be taken and treated as the amount received therefor. It is this section's intent that the gross selling price be the highest price received by Lessee, its affiliates or any direct or indirect financially related company, in the last arm's length transaction through the final sale to the ultimate consumer. If Lessee, any affiliated company of the lessee, or the preparer or tippler of the coal shall consume any of the coal, the price of the coal as consumed shall be considered equal to the highest sales price of (1) the coal consumed by the ultimate consumer, if known, or (2) the coal from the Leased Premises which is then being sold to unaffiliated customers, or (3) if there are no unaffiliated

customers, the highest sales price of comparable coal in the open market.

Lessee shall furnish to Lessor on or before the 20th day of each calendar month the railroad and truck scale weights showing the quantity of coal shipped from the Leased Premises and weights of coal, if any, consumed on the Leased Premises or at the preparation plant or tipple during the preceding calendar month. Lessee shall comply with all reasonable rules and regulations, which may be prescribed by Lessor's engineer for the ascertainment of and payment of tonnage royalties on the coal mined, shipped, sold, or consumed under this Lease. Lessee shall keep accurate and correct books of account showing all coal mined, and all coal consumed or disposed of on, transported, or shipped from the Leased Premises or elsewhere, together with the correct weights and gross selling price thereof, to which books and records Lessor shall at all reasonable times have access for verification of statements to be furnished by Lessee.

Lessor, for like purposes is hereby authorized to demand and require of any railroad company or other agents transporting the products of the Leased Premises, inspection of its books and records, showing the weight and quantity of such products and pertinent information in relation thereto. Said carriers and other agents are hereby authorized and requested by Lessee to show Lessor, or its agents, all such books and records and to furnish all such information when requested.

In the event it shall be necessary in mining coal from the Leased Premises to load the same over a tipple or tipples over which other coal is loaded, thereby mixing the coal from the Leased Premises with other coal, Lessee shall keep a strict account of the tonnage of coal from the Leased Premises as well as a strict account of the tonnage of

other coal being loaded over the same tipple or tipples. The method of determining these respective tonnages shall be approved in writing by the Engineer of Lessor before other coal may be mixed with coal from the Leased Premises.

In the event coal from the Leased Premises is so commingled, then the Gross Selling Price, as set forth in Section 4 hereof shall be the average sales price for all coal with which coal from the Leased Premises is commingled, to the end that unless the coal from the Leased Premises is mined, transported, processed, stored and sold separately from all other coals, then the Gross Selling Price shall be the Average Gross Selling Price for all coal sold from the Lessee's facility with which coal from the Leased Premises is commingled.

It is the intent of this Lease to allow monthly royalty payments to be paid on either a sales or a production basis; however, all coal produced from Lessor's property shall be reconciled to total sales along with any foreign coal that is commingled with Lessor's coal. This reconciliation shall be done monthly for coal reported and royalty paid on a sales basis and not less than annually for coal reported and royalty paid on a production basis. The only allowable adjustment to total sales is a reduction for third party coal segregated and not commingled at any time with Lessor's coal. Lessor's portion of total sales will be prorated based on Lessor's percentage of total production since the last reconciliation and adjustments made, plus or minus, at that time. There will be no other adjustments to sales tons or methods used to reconcile Lessor's royalty payments unless expressly agreed to in writing by Lessor.

SECTION 5. TAXES, INDEMNITY, INSURANCE.

A. TAXES

Lessor will, in the first instance, pay all the taxes, levies and assessments on or in respect of Lessor's ownership and during the continuance of this Lease Lessee shall pay to Lessor the full amount of such taxes, levies, and assessments, beginning with those covering the calendar year in which this Lease is effective, promptly upon receipt of Lessor's statement therefor, such amounts to constitute and be treated as additional rental hereunder. Lessee shall promptly pay at the several times they become due and payable all taxes levied or assessed upon coal mined from or products manufactured from coal upon the Leased Premises. Lessee shall also pay any and all taxes due to the state and/or its subdivision for severing, removing, processing, or preparing of said coal, except for taxes on gross or net income of Lessor on receipt of royalties, and Lessee shall also pay all royalties for removal of coal required by any existing or future labor agreements of lessee, its agents, operators or affiliates.

In the event any of the coal reserved unto Lessor in Section 2 hereof shall be leased to others, Lessor shall determine the proportion of taxes to be paid and borne by each Lessee. Lessee may at any time during the continuance of this Lease, at its own cost and expense, and after reasonable notice to Lessor of its intention so to do, contest any of the taxes, levies, or assessments to be borne by Lessee as above provided. In the event of any such contest, Lessee is authorized to proceed in the name of Lessor with respect to the reversionary interest of Lessor in the Leased Premises, but Lessee shall indemnify Lessor against any costs, penalties, expenses, or interest charges arising out of

such contest.

Lessee shall submit to Lessor, for its review, a copy of annual coal appraisal reports or returns prepared pursuant to laws or regulations in the State of Indiana with respect to Lessor's ownership prior to their filing with any governmental agency including but not limited to the Department of Tax and Revenue. It is understood and agreed that the taxes levied or assessed from such reports are based, in part, upon the permitting and/or production of Lessee and for that reason, Lessee's payments to Lessor as provided for in this section shall continue and survive any termination or cancellation of this Lease until such time as said taxes levied or assessed are not based on said coal appraisal reports or returns.

B. INDEMNITY

Lessee agrees that it shall comply with all of the terms and provisions of the black lung laws (defined below) and will secure the payment of black lung benefits (defined below) as hereinafter provided. "Black lung laws" mean the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 901 et seq., and the Internal Revenue Code, 26 U.S.C. 1 et seq., Black Lung Benefits Reform Act of 1977 (P.L. 95-239), Black Lung Benefits Revenue Act of 1977 (P.L. 75-227), Black Lung Benefits Revenue Act of 1981 (P.L. 97-119), as now or hereafter amended, and all rules and regulations adopted pursuant thereto. "Black lung benefits" means any and all benefits payable pursuant to the black lung laws. Lessee acknowledges that, as between itself and Lessor, that Lessee is, and shall be deemed to be, the operator of any coal mine or coal preparation facility or facility used for the extraction, preparation or transportation of coal

produced from the Leased Premises and of all related activities, including, but not limited to, coal mine construction or maintenance, engaged in by Lessee pursuant to the terms of this Lease with respect to any claim for black lung benefits filed by or on account of any of its employees or former employees. Lessee shall secure and shall require any other person or entity who operates, controls, or supervises a coal mine or coal preparation facility on the Leased Premises or performs services of construction, maintenance, transportation, or other activities related to coal mining or preparation under the terms of this Lease, or who otherwise may be liable for the payment of black lung benefits, to secure the payment of such black lung benefits to or on account of employees or former employees in accordance with the black lung laws and shall provide Lessor, upon request, with appropriate certification that each of them has provided security in compliance with all black lung laws for the payment of such black lung benefits. Without limiting the generality of Lessee's obligations to comply with all other provisions of this Lease, Lessee agrees that it will secure and guarantee the payment of all black lung benefits required to be paid under the black lung laws by reason of mining, construction, transportation, and related activities under this Lease, and Lessee does hereby agree that it will indemnify, defend and hold Lessor harmless from any liability or expenses, including reasonable attorney fees and expenses, which Lessor may suffer directly or indirectly, as a result of or with respect to any claim for black lung benefits filed by or on account of any of Lessee's employees or former employees, or employees or former employees of others who may be required to secure the payment of black lung benefits as provided above. Lessee expressly agrees to indemnify, defend and hold harmless Lessor from any and all claims,

liability and expenses as a result of or with respect to any claims for black lung benefits.

Notwithstanding anything in this Lease to the contrary, this Lease does not empower Lessor to make any decisions and Lessor hereby expressly waives and disclaims any right to make any decisions with respect to the terms and conditions under which the leased coal is extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of leased coal to be produced at any particular time, all within the meaning of the black lung laws. The parties hereto do acknowledge, however, that Lessor has reserved certain rights and has imposed certain requirements under the terms of this Lease solely for the purpose of preventing waste and protecting the reserved rights of Lessor.

Lessee covenants and agrees to indemnify, defend and save harmless Lessor, its members and its and their members, partners (general and limited), shareholders, officers, directors, agents, employees, successors, affiliates and assigns from and against (a) any and all claims, demands, actions or causes of action by or on behalf of any person, firm, corporation or governmental body for damages, injuries, deaths, penalties, fines, assessments or otherwise caused by, arising out of, resulting from or as a consequence of, in whole or in part, (i) any acts or omissions of Lessee, its officers, directors, employees, sublessees, contractors, subcontractors, licensees, invitees, engineers, agents, successors, assigns or parent or affiliated corporations or any other persons or entities acting by direct or indirect authority of Lessee or pursuant to any rights granted in this Lease or (ii) the use and enjoyment of the Leased Premises pursuant to this Lease or (iii) the approval by Lessor of any plans of the Lessee and (b) any and all costs, counsel

fees, expenses and liabilities incurred in or about any such claim or action brought thereon, all of which costs, counsel fees, expenses and liabilities shall be reimbursed to Lessor by Lessee immediately upon notification from Lessor to Lessee that the same have been incurred. Lessee expressly agrees to indemnify, defend and hold harmless Lessor from any and all claims, liability and expenses.

C. INSURANCE

During the term of this Lease, Lessee shall carry, with a limit of \$1 million per occurrence and \$5 million aggregate, coal mine liability and contractual liability insurance. Lessor, its members and its and their members, partners (general and limited), shareholders, officers, directors, agents, employees, successors, affiliates and assigns shall be named as additional insureds and provided a certificate of insurance reflecting such coverage, which shall not be cancelable except after thirty- (30) days' notice to Lessor. Such insurance shall provide a waiver of subrogation for all claims regarding this lease and be written on an "occurrence" basis unless the policy is available only on a "claims made" basis, in which case such "claims made" insurance coverage shall be maintained in effect for a period of at least five (5) years after the termination of this Lease, or until final release of Lessee's environmental reclamation bonds required by any regulatory authority, whichever shall last occur. This insurance will be primary to any other liability insurance coverage that Lessor may have or that may be applicable for the benefit of Lessor.

Lessee further covenants and agrees that all employees of Lessee and/or any and all other persons performing work on the Leased Premises pursuant to the rights granted

in this Lease will be fully covered by or insured at all times by Workers' Compensation, and to that end Lessee shall comply with all applicable Workers' Compensation laws, rules and regulations and shall make all necessary contributions and/or premium or other payments.

Lessee further covenants and agrees to keep all buildings, plants, and improvements upon the Leased Premises, as well as those on the adjacent premises that are constructed for the processing, treatment or loading for shipment of coal mined from the premises herein leased, insured during the term of this Lease by responsible insurance companies in an aggregate sum of not less than the full amount of their insurable value, loss, if any, payable to Lessor, provided that in case of any loss the sum received by Lessor on account of the insurance shall be expended, if required by Lessee, in rebuilding or repairing the improvements destroyed or damaged, or in erecting upon the Leased Premises such other improvements for use in Lessee's operations as Lessee and Lessor may agree upon. Lessee shall furnish to Lessor a certificate or certificates of such insurance issued upon the demised premises.

SECTION 6. METHOD OF OPERATION.

Lessee covenants and agrees that when it commences operation in any of the seams leased herein, it will thereafter diligently prosecute its operations hereunder utilizing modern mining equipment best suited for the prevailing mining conditions so as to develop thoroughly the coal herein leased and to conduct such operations in a careful, skillful, and workmanlike manner, and in compliance with the present and any future laws of the State of Indiana and of the United States, and also according to the rules and practices of good

mining and with due regard for the value of the Leased Premises as a coal producing property.

Lessee shall be solely responsible for complying with all present and future laws and governmental regulations, including environmental laws and regulations, impacting on or controlling mining and related operations on the Leased Premises, which responsibility shall survive termination of this Lease. If, as a result of Lessee's operations hereunder, laws or governmental regulations are violated, or are claimed to be violated, then Lessee shall indemnify Lessor and hold it harmless from any penalties, fines, costs, and expenses, including legal fees and court costs, imposed upon or incurred by Lessor as a result of said claim, violation or violations. Any dispute as to the absolute obligation of Lessee to relieve Lessor as provided herein shall be submitted to arbitration in the manner provided in Section 10 hereof.

Notwithstanding Lessee's obligation to comply with all laws, rules, regulations and orders as set forth above, Lessor shall not declare a default hereunder solely as a result of one or more routine operational violations which Lessee cures or abates as promptly as practical. Lessee shall be solely responsible for treatment of any water discharge caused by its operations, if required by present or future law or regulation, which responsibility shall survive termination of this Lease.

Lessee acknowledges that Lessor holds the Leased Premises and adjoining properties for the purpose of maximizing the royalty revenue generated therefrom and agrees that it will work and mine the coal in accordance with said purpose and in accordance with general and detail maps and plans of mining and descriptions to be

prepared by Lessee (hereinafter collectively called "Mine Plans") and will submit a copy of same to the Lessor. Said Mine Plans shall take into consideration the entire area proposed to be developed by Lessee, and shall make suitable provisions for (1) the proper protection of overlying and underlying seams so that they may be economically mined at a later date and (2) the reasonable and proper removal of all the mineable and merchantable coal from the Leased Premises. No Mine Plan shall be proposed which, if adopted, would render otherwise mineable and merchantable coal unmineable or unmerchantable or substantially more difficult or expensive to mine. The said Mine Plans shall be submitted to the Lessor at least thirty (30) days prior to the commencement of any operation on the Leased Premises. In the event Lessor determines that the Mine Plans submitted by Lessee fail to comply with any of the terms of this Lease, Lessor shall so notify Lessee, in which event Lessee will modify said Mine Plans to comply with the terms and conditions hereof. No material change in, modification of, or departures from any Mine Plans so approved shall be made in the development or operation of the mine or mines except pursuant to modified Mine Plans submitted by Lessee to Lessor for the purpose of allowing Lessor to determine that said modification complies with the terms of this Lease. Lessor's right to notify Lessee that proposed mining plans fail to comply with this Lease is a right reserved solely to protect Lessor's interest in the Leased Premises and to prevent waste and is not intended to give and shall not be construed to give Lessor any control over Lessee's operations. Lessor shall have no authority to determine the manner in which or the methods by which any of Lessee's mining operations are to be conducted, all of which shall be solely determined by Lessee.

Anything contained herein to the contrary notwithstanding, Lessee shall only mine the Indiana No. 3 and No. 4 coals by the deep mining method from a mine slope and/or mine shaft(s), located in the Southeast Quarter of Section 18, Township 8N, Range 7W, on the Leased Premises. Also, Lessee shall only mine the Indiana No. 5 coal by the surface mining method. In no event shall lessee mine coal by the auger or highwall mining methods.

In the event Lessee desires to use Lessor's surface rights, if any are owned or controlled by Lessor over the Leased Premises, in connection with the conduct of its mining operations, or for any other permitted purpose under the terms of this Lease, it shall first submit a written statement explaining the extent of its requirements to Lessor, and shall, to the extent Lessor controls and has the right to grant same, be permitted to use only such portions of said surface for the purposes and upon the conditions as Lessor shall authorize in writing.

Lessee shall have no right, without prior written consent of Lessor (which may be arbitrarily withheld), to deposit slate, coal refuse, water or refuse of any kind on or in the Leased Premises and shall have no right to transport foreign coal refuse or any other substances or materials into, over, under, across or through the Leased Premises. "Foreign coal refuse" is refuse resulting from the processing of foreign coal.

Lessor and Lessee have executed a Real Estate Option Agreement, dated May 15, 2009, to allow Lessee to purchase the coal mine works, from Lessor, in the old Monon Coal Company's Mine No. 7, located in the Indiana No. 4 Seam to use for slurry refuse injection. Lessee agrees it will not use as a reason or assertion that said Indiana No. 3

Coal is unmineable due to the presents of the refuse slurry or any residue from the pumping into the Indiana No. 4 Seam works, the extent of which overlay some or all of the Indiana No. 3 Coal. If Lessee is prevented from mining said Indiana No. 3 Coal by any government regulation or any government agency, which is related to the pumping of refuse slurry, then lessee shall pay for the coal which is prevented from mining or any coal which is rendered unmineable or inaccessible due to said prohibition as if it had been mined. This provision shall survive termination of the Lease.

Anything contained in this Lease to the contrary notwithstanding, the Lessee shall give notice in writing to the Lessor at least six (6) months prior to the start of any operations authorized herein which would require or result in the displacement or removal of trees or timber on the surface of the Leased Premises where said surface is owned by Lessor. The Lessor may, at its election, remove such trees or timber, or require Lessee to remove and stockpile any trees or timber deemed merchantable by Lessor's forester. Lessor shall make all reasonable efforts to complete any harvesting operations for trees or timber sold "on the stump" prior to start-up operations by Lessee, but it is understood that both activities may continue simultaneously, provided such continuance does not unreasonably interfere with Lessee's operations. As an additional option, Lessee may give written notice to Lessor and elect to reimburse Lessor for such trees and timber at the fair market value as appraised by Lessor's forester and dispose of such trees or timber in any manner it shall deem appropriate or necessary and upon making payment in full, the Lessee shall not have any further obligation to the Lessor with respect to such trees and timber or the disposition thereof.

Lessee may conduct its operations under this Lease through its contractors or agents when approval has been granted in writing by Lessor, provided in any case Lessee shall be and remain liable to Lessor for all obligations of the Lessee under this authority, and subject to any conditions imposed by Lessor in granting its consent.

If it is found and reported to Lessee in writing by an agent of Lessor that in the progress of the work any areas of merchantable and mineable coal have been passed by or abandoned with the result that coal has not been mined and removed, which in accordance with accepted overburden/coal ratio criterion or in accordance with good mining practice should have been mined and removed, it shall be the duty of Lessee to return as soon as possible to such areas and mine and remove the coal therefrom, or failing so to do, Lessee shall account for the coal contained therein and pay the royalty therefor the same as though it had been mined. If there is a dispute between Lessor and Lessee as to whether Lessee has passed by or abandoned any coal which should have been mined and removed as above provided, such dispute shall be submitted to arbitration in the manner provided in Section 10 hereof.

Lessor shall have the right at its option to lease to another or others while this Lease is still in force and effect the area or areas of coal which may be abandoned by said Lessee under the provisions hereof; provided, however, that the same does not interfere with Lessee's operations. In any event, Lessor may direct Lessee to leave pillars and barriers of coal for the support and protection of the entries and air courses leading to such coal subject to the provisions of this Section.

Lessee shall employ a competent mining engineer, duly registered in the State of

Indiana and acceptable to Lessor, whose duty it shall be to keep up the mine surveys and make accurate maps thereof, which maps shall at all times be subject to the inspection of Lessor, or its duly authorized agents, and copies furnished to the Engineer of Lessor on or before February 1, May 1, August 1, and November 1 of each year. Such maps shall show the location of the coal section numbers obtained by Lessee in addition to those measured by Lessor during mine inspections in a form convenient to Lessee and acceptable to the Engineer of Lessor. Upon request, Lessee shall provide to Lessor, on the date designated by Lessor, either monthly, quarterly or annual tonnage and sales price forecasts, as prescribed by Lessor, for coal to be mined from the Leased Premises in future years.

Lessee shall furnish Lessor copies of data derived from any and all coal exploration activities within the Leased Premises, including, but not limited to, driller's logs, geophysical logs, coal laboratory analyses, and geological maps.

Upon request of Lessor, Lessee shall make available for Lessor's inspection and copying any and all laboratory analyses made of coal mined from the Leased Premises.

Upon request of Lessor, Lessee shall make available for Lessor's inspection and copying any and all Lessee's correspondence with government agencies or departments which pertain to the Leased Premises, or to operations undertaken or to be undertaken thereon.

Lessor, through its duly authorized agents, shall at all reasonable times have the right to enter said mines, inspect the same, and have surveys made thereof to determine if all the terms and conditions of this Lease are fully complied with, and for these purposes to

use freely the means of access to said mines and the workings thereof without hindrance, but in such manner as not unreasonably to interfere with the operation thereof.

SECTION 7. REMEDIES OF LESSOR.

All payments hereunder required to be made by Lessee to Lessor shall be deemed and considered as rent reserved upon contract, and all remedies now or hereafter given by the laws of the State of Indiana for the collection of rent are reserved to Lessor in respect of the sums so payable, and a lien is hereby reserved and imposed upon all the personal property of Lessee at any time acquired for use in connection with Lessee's operations on the Leased Premises and remaining thereon at the time of any default hereunder, as well as also upon this Lease and the leasehold estate hereby created, to secure the payment of any and all sums.

If default be made by Lessee in the payment of the rentals and royalties herein reserved, or in the performance of any of the other terms or conditions hereof required to be kept or performed by Lessee, and such default shall continue for a period of thirty (30) days after written notification thereof has been posted to Lessee, then in such event and as often as the same occurs, Lessor may, at its option, terminate this Lease without any further notice and re-enter upon and take possession of the Leased Premises and hold and possess the same as its absolute property free and clear of any claims of, by, or through Lessee, and pursue any and all other remedies available under the laws of the State of Indiana for violation of any covenant or condition hereof, and all such remedies shall be deemed cumulative and not exclusive. No action by Lessor pursuant to this Section 7 shall impair the right to rental and royalties due or accrued up to the time of

termination and re-entry hereunder, but none shall be charged for any period thereafter.

Lessee further agrees that if the interest of Lessee in the Leased Premises shall be sold on execution or judicial sale, or if bankruptcy proceedings be begun by Lessee, or if Lessee be adjudged a bankrupt, or it makes an assignment for the benefit of creditors, or a receiver be appointed for it or for the Leased Premises, or if an assignment occurs by operation of law, then, and in any such event, this Lease shall forthwith terminate and be forfeited and the Leased Premises and all improvements thereon shall forthwith become the property of Lessor, without compensation to Lessee, and without refund of any royalties paid hereunder.

SECTION 8. ASSIGNMENT OR SUBLETTING.

Lessee covenants and agrees that it will not sell, assign, sublease, mortgage, pledge or otherwise transfer or encumber (collectively "transfer") this Lease or any rights, interests or estates created by this Lease or all or any portion of the Leased Premises, either voluntarily or by operation of law or allow any third party to mine on the Leased Premises under any form of agreement or contract, without having first obtained the written consent of Lessor (which may be arbitrarily withheld), and in the case of an assignment, without first obtaining and presenting to Lessor a covenant of assumption by the assignee, wherein such assignee expressly agrees to and with Lessor to assume and be bound by all of the covenants, terms, conditions and provisions hereof to the same extent as if said assignee had been named as the original Lessee.

Any such transfer shall not relieve Lessee from its obligations to comply with all the covenants, terms, conditions and provisions of this Lease, unless otherwise agreed in

writing by Lessor. In the event Lessor consents to any transfer, such consent shall not relieve Lessee and/or any transferee, assignee, sublessee, etc., from securing Lessor's written consent to any further transfer, nor shall any such consent be construed as a consent to any further transfer or as a waiver of any portion of this section or of Lessor's rights hereunder.

A transfer of control of Lessee's capital stock, either voluntarily or by operation of law, shall constitute a "transfer" of the Lease under this section. "Transfer of Control" as used in the foregoing shall include, without limitation (a) an outright sale, assignment or transfer of sufficient shares of Lessee's capital stock to vest 51% or more of Lessee's capital stock in persons or entities controlled directly or indirectly by persons or entities, some or all of whom are different than those persons or entities which directly or indirectly control 51% or more of Lessee's capital stock as of the effective date of this Lease, or (b) a sale, assignment or other transfer of shares of the capital stock or ownership interest in any corporation, partnership or other entity, which, as of the effective date of this Lease, owns, separately or jointly with others, directly or indirectly, 51% or more of Lessee's capital stock, where such transfer is sufficient to vest 51% or more of such capital stock or ownership interest in persons or entities, some or all of whom are different than those persons or entities owning such shares or ownership interest as of the effective date of this Lease.

Accordingly, a "transfer of control" shall have occurred whenever 51% or more of Lessee's capital stock shall become subject to the direct or indirect control of persons or entities, some or all of whom are different than those persons or entities which directly or

indirectly control that portion of Lessee's capital stock as of the effective date of this Lease.

Upon the occurrence of any such transfer without the prior written approval of Lessor, Lessor shall have the option to terminate this Coal Mining Lease by serving written notice of its election so to do.

SECTION 9. WAIVERS AND RELEASES, ETC.

No waiver, release, modification, or amendment of any of the terms, conditions, or provisions of this Lease shall be valid or set up or relied upon by Lessor or Lessee, or offered by either of said parties in any judicial proceeding, arbitration proceeding or otherwise, unless the same is in writing duly exercised by Lessor and Lessee. The failure to exercise any right upon nonperformance shall not be construed as a waiver of the right to insist on subsequent performance of the terms and conditions hereof.

SECTION 10. ARBITRATION.

In the event of a disagreement between the parties hereto as to any of the questions made subject to arbitration hereunder, such question or questions shall be submitted to three competent and disinterested arbitrators in the following manner. The party desiring such arbitration shall select its arbitrator and give written notice thereof to the other party, and shall in such notice state precisely the matter or matters which it is proposed to bring before the arbitrators, and only the matters so stated shall be considered and decided by them. If the party receiving such notice shall fail to name an arbitrator within fifteen (15) days after notice as aforesaid has been given to it, the arbitrator named by the party giving such notice may and shall name and appoint an arbitrator for and in behalf of the party so in default, and the arbitrator so named and

appointed shall have the same power and authority as if he had been appointed by such party. The arbitrators so chosen shall appoint a third arbitrator, and in the event they are unable to agree on such appointment, the appointment of the third arbitrator may be made by the Chief Judge of the District Court of the United States for the Southern District of Indiana on the application of either of the parties hereto. The three arbitrators shall immediately upon their selection hear and decide the question or questions submitted for arbitration and shall give to each of the parties hereto reasonable notice of the time and place of their meetings, and reasonable opportunity for the production of evidence. After hearing both parties, the arbitrators shall promptly make an award in writing upon the question or questions submitted and shall serve a copy of such award upon each party hereto. The award of such arbitrators, or a majority of them, shall be final and binding upon the parties hereto, and the said arbitrators or a majority of them, shall, in their award and as a part thereof, decide by whom and in what proportion the costs of such arbitration shall be borne and paid and the amount of such costs. Neither party hereto shall have or enforce any right or remedy against the other in respect of any matter herein made the subject of arbitration, until such matter shall have been submitted to and decided by arbitration in the manner above provided, and then only in accordance with such decision in arbitration.

SECTION 11. NOTICES.

Until written notice of a different address, all notices which are anywhere in this Lease provided to be given shall be served upon or mailed to Lessee at :

103 North Court Street;
Sullivan, Indiana 47882

and to Lessor at:

5260 Irwin Road
Huntington, West Virginia 25705-3247.

SECTION 12. WARRANTY.

The Lessor, for itself, its successors and assigns, does hereby covenant and agree with the Lessee, subject to the exceptions and reservations herein set forth, and subject to such limitations, restrictions and defects in Lessor's title to the Leased Premises as were in existence at the time of Lessor's acquisition of title to the various tracts comprising the Leased Premises, that upon the payment of the rentals and royalties and the performance of all and singular the covenants and agreements aforesaid, said Lessee shall and may peaceably and quietly have and enjoy said Leased Premises for and during the term aforesaid, and for the purposes aforesaid, free from any let or hindrance by the Lessor, its successors and assigns. Lessor does not warrant generally its title to the Leased Premises but warrants only that it has done no act to encumber the titles which it acquired to the various tracts comprising the Leased Premises since its acquisition of said tracts which would substantially interfere with the operations of the Lessee hereunder. In the event that Lessee did not have the right to mine coal in any part of the Leased Premises because of the rights of a holder of an outstanding superior title antedating Lessor's acquisition of title to the tract or tracts in question, if the Lessee has mined and removed a part or all of the coal therefrom and paid the Lessor therefor on the royalty basis, the Lessor agrees to repay to the Lessee the amount of royalty so paid, without interest, but

the Lessor shall not be otherwise liable for any damage to Lessee on account of the mining and removing of said coal by the Lessee.

SECTION 13. SUCCESSORS AND ASSIGNS.

All covenants, agreements, and conditions herein set forth to be performed by or on behalf of Lessor or Lessee shall bind their respective successors and assigns, whether so expressed or not, and shall inure to the benefit not only of Lessor and Lessee, but also the benefit of their respective successors and assigns; but this Section 13 shall not be construed as in anywise modifying the provisions of Section 8 hereof.

SECTION 14. REMOVAL OF PROPERTY.

Lessee, having performed all the terms and conditions of this Lease to be by it performed, and having mined all the merchantable and mineable coal herein demised, may, within six (6) months thereafter, remove any and all mobile mining equipment and personal property owned by Lessee, and may remove from the surface overlying the Leased Premises any and all improvements, buildings, or other structures placed thereon by Lessee during the term hereof. If the Lessee shall fail to remove any of the mobile mining equipment and personal property described above within said six (6) months, then at Lessor's option the same shall thereupon be and become the absolute property of Lessor.

In the event this Lease is terminated for any reason prior to removal of all merchantable and mineable coal, all buildings, structures and improvements then affixed to the Leased Premises, at Lessor's option, shall be and become the property of Lessor, but mobile mining equipment and personal property of Lessee shall remain the property of

Lessee; provided, however, that if the Lessee fails to remove the said mobile mining equipment and personal property within six (6) months after such termination of this Lease, then, at Lessor's option, the same shall thereupon be and become the absolute property of Lessor.

SECTION 15. TRANSPORTATION OF COAL MINED FROM ADJACENT TRACTS AND FOREIGN INJECTION OF SLURRY.

Lessee shall have the right (to the extent of Lessor's ownership) to transport foreign coal into, over, through, or under the Leased Premises, in consideration of which Lessee agrees to pay to Lessor on or before the 20th day of the month following the month in which such foreign coal is so transported a wheelage charge equal to one half (1/2) of one percent (1%) of the gross selling price (as "gross selling price" is defined hereunder) or Twenty Cents (\$0.20) per ton, whichever is greater, of the foreign coal so transported. For purposes of this section, the term "foreign coal" shall mean any coal other than coal mined from the Leased Premises and any other coal under lease to Lessee from Lessor. Lessee shall have the right to transport coal, which is not foreign coal into, over, through, or under the Leased Premises free of such wheelage charge.


Lessor and Lessee have executed a Real Estate Option Agreement, dated May 15, 2009, to allow Lessee to purchase the coal mine works from Lessor, in the old Monon Coal Company's Mine No. 7 and Bon Ayr Coal Company's Mine No. 1 (works), located in the Indiana No. 4 Seam to use for slurry refuse injection. Lessee shall have the right to inject slurry refuse, after Lessee purchases the mine works, free of charge into the works for all slurry refuse produced from coal mined on the Leased Premises or extracted from a

mine slope and/or mine shaft(s), located in the Southeast Quarter of Section 18, Township 8N, Range 7W, on the Leased Premises. Lessee shall have the right to inject foreign slurry refuse, after Lessee purchases the mine works, into the works in consideration of which Lessee agrees to pay to Lessor, on or before the 20th day of the month following the month in which such foreign slurry refuse is injected, a payment charge equal to one half (1/2) of one percent (1%) of the gross selling price (as "gross selling price" is defined hereunder) or Twenty Cents (\$0.20) per ton, whichever is greater, for all tonnage produced by the injection of foreign refuse slurry into the works. For purposes of this section, the term "foreign slurry refuse" shall mean any slurry refuse generated from tonnage mined off the Leased Premises. Any slurry generated from tonnage extracted from a mine slope and/or mine shaft(s), located in the Southeast Quarter of Section 18, Township 8N, Range 7W, on the Leased Premises shall not be considered "foreign slurry refuse".

IN TESTIMONY WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their respective representatives thereunto duly authorized, all as of the day and year first above written.

Executed in duplicate.

WESTERN POCAHONTAS PROPERTIES
LIMITED PARTNERSHIP
By Western Pocahontas Corporation
its General Partner

By 
Kevin F. Wall
Its Vice President - Engineering

LILY GROUP, INC.

By

Its

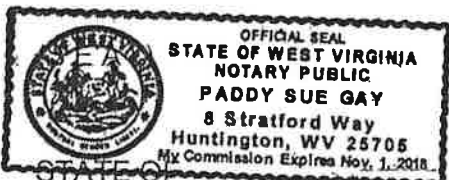
[Handwritten Signature]
PRESIDENT

STATE OF WEST VIRGINIA
COUNTY OF CABELL, SS:

The foregoing instrument was acknowledged before me this 28TH day of DECEMBER, 2010 by Kevin F. Wall, Vice President-Engineering of WESTERN POCAHONTAS CORPORATION, general partner of WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, on behalf of WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a limited partnership.

My commission expires NOVEMBER 1, 2018

[Handwritten Signature]
Notary Public



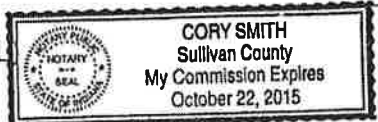
STATE OF INDIANN
COUNTY OF Sullivan, SS:

The foregoing instrument was acknowledged before me this 30th day of December, 2010, by P. Riva Risinger as President of LILY GROUP, INC., an Indiana corporation.

My commission expires October 22, 2015

[Handwritten Signature]
Notary Public

(S E A L)



\\lily group-wpplp-lse-010111

EXHIBIT B

LEASE NO. 1235 (File: SM-0066)

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT ("the AMENDMENT") to the Coal Mining Lease dated January 1, 2011 ("the LEASE") is made and entered into as of the 14th day of July, 2015, but effective as of June 1, 2015, by and between WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, having a mailing address of 5260 Irwin Road, Huntington, West Virginia 25705-3247 ("LESSOR") and LC ENERGY HOLDINGS, LLC, a Delaware limited liability company, having a mailing address of 250 West 55th Street, 14th Floor, New York, NY 10019 ("LESSEE").

WITNESSETH:

WHEREAS, LESSOR and Lily Group, Inc., an Indiana corporation (LILY) entered into the LEASE on certain properties located in Greene and Sullivan Counties, Indiana; and

WHEREAS, LESSOR and LILY amended the LEASE by Amendment to Coal Lease dated February 3, 2011; and

WHEREAS, in the bankruptcy action styled: In Re: Lily Group, Inc., Case No. 13-81073 FJO-11 in the United States Bankruptcy Court for the Southern District of Indiana, Lily Group assumed the LEASE on the terms provided in the Court's "Order Granting Debtor's Omnibus Motion for Authorization to Assume and Assign Executory Contracts and Unexpired Leases of Nonresidential Real Property Pursuant to Section 365(a) and (f) of the Bankruptcy Code and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure [Docket No. 157] Solely with Respect to the Coal Lease Between Lily Group, Inc. and Western Pocahontas Limited Partnership ("the Assumption Order"); and

WHEREAS, the LEASE was assigned to LESSEE pursuant to orders of the Court; and

WHEREAS, LESSOR and LESSEE executed the Second Amendment to the Coal Mining Lease, effective March 31, 2014, pursuant to Court's Assumption Order; and

WHEREAS, LESSOR and LESSEE executed a Letter Agreement, dated March 8, 2015, amending the due date for the eighth and ninth Monthly Minimum Royalty Payments pursuant to the Second Amendment; and

WHEREAS, LESSEE has requested LESSOR modify the LEASE to waive the eighth and ninth Monthly Minimum Royalty Payments pursuant to the Second Amendment along with modifying provisions in Section 4 of the Lease; and

WHEREAS, LESSEE has requested LESSOR consent to an operator assignment; and

WHEREAS, LESSOR is agreeable to LESSEE's requests based on the following term and conditions; and

NOW, THEREFORE, for and in consideration of the performance of the covenants and obligations contained herein, and other good and valuable consideration, the receipt, sufficiency and mutuality of all of which are hereby acknowledged, the parties agree as follows:

1. Upon execution of this AMENDMENT, LESSEE shall pay LESSOR an advance minimum royalty payment of Fifty Thousand Dollars (\$50,000) for the current lease year beginning January 1, 2015 and ending December 31, 2015. Lessee shall have the right to recoup said payment against tonnage royalty, as defined in Section 4 of the LEASE, from June 1, 2015 until the end of the current lease year ending December 31, 2015.
2. LESSOR waives LESSEE's required eight (8th) and ninth (9th) Monthly Minimum Royalty payments as defined in the Second Amendment to the Coal Mining Lease effective March 31, 2014, and Letter Agreement dated March 8, 2015.
3. The first paragraph on page 6 in SECTION 4. ROYALTIES. of the LEASE shall be deleted and replaced with the following:

Lessee shall pay to Lessor, WESTERN POCAHONTAS PROPERTIES L.P.; P. O. Box 785333; Philadelphia, PA 19178-5333, or at such other places as Lessor may from time to time designate in writing, during the term of this Lease, a tonnage royalty for the coal mined from the Leased Premises during each calendar month of the term hereof, to be received by Lessor within twenty (20) days from the end of the month to which payment applies, as follows:

June 1, 2015 to December 31, 2015

The greater of either Two Dollars and Forty Cents (\$2.40) per ton or five percent (5%) of the gross selling price of the coal, as hereinafter defined; and

January 1, 2016 and hereafter

The greater of either Two Dollars and Forty Cents (\$2.40) per ton or six percent (6%) of the gross selling price of the coal, as hereinafter defined;

4. The second and third paragraphs on page 7 in SECTION 4. ROYALTIES. of the LEASE shall be deleted and replaced with the following:

In addition to the tonnage royalty payments specified for the coal mined, Lessee covenants and agrees to pay Lessor in advance during the term of this Lease an annual minimum royalty as follows:

The amount of the annual minimums will be Fifty Thousand Dollars (\$50,000) for the sixth (6th) lease year, beginning on January 1, 2016 and ending on December 31, 2016, and One Hundred Thousand Dollars (\$100,000) for the seventh (7th) lease year and each lease year thereafter. Such annual minimum royalty payments shall be applied as a credit against tonnage royalties, as defined in Section 4, and wheelage charges on foreign coal, as defined in Section 15, due hereunder, and if for any lease year the total of tonnage royalty and wheelage charges equals or exceeds the applicable annual minimum royalties specified herein, the Lessee shall have the right to withhold tonnage royalty payments otherwise payable for coal mined and wheeled during the balance of such lease year until the amount withheld equals any unrecouped annual minimum royalties paid with respect to the two (2) preceding lease years, such recoupment to be made on a first-paid, first-recouped basis. No tonnage royalty payment or wheelage charge for coal mined in any lease year shall be credited to the payment of minimum royalty due for any succeeding lease year or years.

5. Pursuant to Section 6. of the LEASE, LESSOR must consent to the use of contractors or agents to conduct LESSEE's operations pursuant to the LEASE. LESSOR hereby consents to allow LESSEE to the engagement and use of ERC Mining Indiana Corp. and their respective employees, agents, representatives, or contractors to perform mining operations or other obligations under the LEASE, however LESSEE shall remain sole obligated to LESSOR for compliance of the terms and conditions in the LEASE.

6. Except as amended herein, said LEASE shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures as of the day and year first above written.

**WESTERN POCAHONTAS PROPERTIES
LIMITED PARTNERSHIP**

By Western Pocahontas Corporation
Its General Partner

By: [Signature]
Gregory F. Wooten
Its: Vice President & Chief Engineer

LC ENERGY HOLDINGS, LLC,
a Delaware limited liability company

By: [Signature]
Name: David Levy
Its: CO - CIO

STATE OF WEST VIRGINIA

COUNTY OF LOGAN, SS:

The foregoing instrument was acknowledged before me this 20th day of July, 2015, by Gregory F. Wooten, VP & Chief Engineer of WESTERN POCAHONTAS CORPORATION, general partner of WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, on behalf of WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership.

My commission expires August 5, 2019.

[Signature]
Notary Public



STATE OF New York,

COUNTY OF New York, TO-WIT:

The foregoing instrument was acknowledged, subscribed and sworn to before me this 17 day of July, 2015, by David Levy, as CO-CEO of LC ENERGY HOLDINGS, LLC, a Delaware limited liability company.

My commission expires: November 2, 2017.

Michael A. Kimelman
NOTARY PUBLIC

[SEAL]

MICHAEL A. KIMELMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01K16213031
Qualified in New York County
My Commission Expires November 02, 2017

EXHIBIT C



Western Pocahontas Properties

Limited Partnership

5260 Irwin Road
Huntington, WV 25705-3247
304-522-5757 • Fax 304-522-5401

February 20, 2019
File No.: 58-01 (Lease 1235)

Mr. Curtis G. Solsvig III
Managing Director of Goldin Associates
On Behalf of Melanie L. Cyganowski as Receiver
LC Energy Holdings, LLC a subsidiary of,
Platinum Partners Credit Opportunities Master Fund, LP ("PPCO")
230 Park Avenue, 30th Floor
New York, NY 10169

Re: Letter Agreement for Modifications of the 2019 Advance Annual Minimum Royalty Payment for Coal Mining Lease between Western Pocahontas Properties L.P. (WPP) and LC Energy Holdings, LLC (LCEH), Successor In Interest to Lily Group, Inc., dated January 1, 2011 (the "Lease")

Dear Mr. Solsvig:

As you know WPP sent a letter, dated January 8, 2019, informing LCEH that the 2019 annual minimum payment was in arrears. Goldin Associates, working on behalf of the Receiver for PPCO, has requested WPP 1) allow the 2019 Advance Annual Minimum Payment to be paid in four (4) equal payments and 2) agree to allow an assignment of the Lease during the first half of the 2019 Lease Year.

WPP is willing to: 1) allow LCEH to pay the 2019 advance minimum royalty payment, which was due as of January 1, 2019 per Section 4 of the Lease as Amended by the Third Amendment dated July 14, 2015, in four (4) equal installments; and 2) agree to allow an assignment of the Lease during the first half of the 2019 Lease Year; both of which are based on the terms and conditions as follows:

1. WPP is willing to allow LCEH to pay the 2019 advance minimum royalty payment of One Hundred Thousand Dollars (\$100,000), as described in Section 4 of the Lease as Amended, in four (4) equal payments of Twenty-Five Thousand Dollars (\$25,000) due on or before February 25, 2019, April 1, 2019, July 1, 2019, and October 1, 2019. LCEH shall make said payments to WPP by wire transfer at:

Wells Fargo
Roanoke, VA
Account No.: 2000014201385
Routing Transit No. 121000248
2. WPP acknowledges that LCEH's potential default as described in the letter from WPP to LCEH dated January 8, 2019 shall be cured upon WPP receiving from LCEH the 1) initial portion of the 2019 annual minimum payment of Twenty-Five Thousand Dollars (\$25,000) and 2) a copy of this Letter Agreement acknowledged by LCEH in space provided below; both of which shall be completed on or before February 25, 2019.
3. WPP shall allow LCEH a one (1) time assignment of the Lease to a Reputable and Prudent Coal Mining Company (defined below) based on the follow terms and conditions:
 - i. The assignment to a Reputable and Prudent Coal Mining Company must occur on or before June 30, 2019. A Reputable and Prudent Coal Mining Company is defined as an entity that over the last three calendar years (2016, 2017 and 2018) (a) has produced not less than 500,000 tons of coal per year whether directly and/or indirectly through its wholly owned subsidiaries or contract miners on an annualized basis, (b) has not been blocked by any governmental authority from holding any necessary permits, (c) is not

Page 2 of 2
Mr. Curtis G. Solvig III
Managing Director of Goldin Associates
Letter Agreement

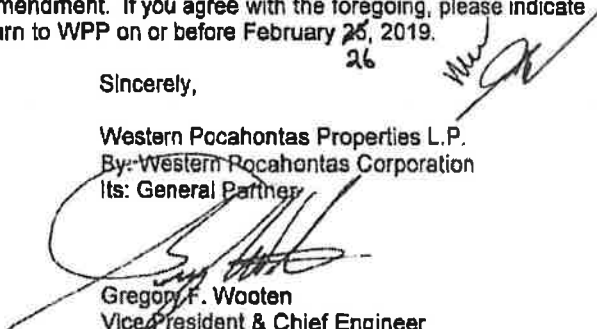
known to have forfeited any leases for coal reserves as a result of uncured defaults under such leases, and (d) has assets of \$20,000,000 or more on a consolidated basis. Any Transfer to an exchange traded public company is a Permitted Transfer.

- ii. In the event LCEH assigns the Lease to a Reputable and Prudent Coal Mining Company, LCEH shall pay WPP, on or before the date of the assignment of the Lease, a transfer fee of two percent (2%) of the total payments or other compensation received by LCEH or received by a third party for the account of, or on behalf of, LCEH (the "Transfer Fee"). Such Transfer Fee for such assignment shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).
- iii. LCEH shall provide WPP a 30-day advance written notice for WPP's approval of LCEH's intent to assign the Lease. Such notice shall i) name the Reputable and Prudent Coal Mining Company and ii) provide documentation that the Reputable and Prudent Coal Mining Company meets the assignment requirements as defined hereinabove.
- iv. LCEH shall provide WPP a copy of the Purchase and Sale Agreement between LCEH and the Reputable Coal Mining Company, substantially in the form to be executed, 15-days prior to assignment of the Lease.
- v. Upon assignment of the Lease, LCEH and the Reputable Coal Mining Company shall provide WPP with a written Assumption Agreement as to when the obligations under the Lease are transferred from the LCEH to the Reputable Coal Mining Company. Additionally, the Reputable Coal Mining Company shall also provide WPP with a certificate of insurance as required in Section 5 in the Lease.

Except as proposed in this Letter Agreement, all other terms and conditions of the Lease shall remain in full force and effect, without modification or amendment. If you agree with the foregoing, please indicate by signing in the space provided below and return to WPP on or before February 26, 2019.

Sincerely,

Western Pocahontas Properties L.P.
By: Western Pocahontas Corporation
Its: General Partner


Gregory F. Wooten
Vice President & Chief Engineer

AGREED to the above terms and conditions:

LC ENERGY HOLDINGS, LLC

BY:  as Kellawell

ITS: Kellawell

DATE: 2-26-19

EXHIBIT D



Western Pocahontas Properties

Limited Partnership

5260 Irwin Road
Huntington, WV 25705-3247
304-522-5757 • Fax 304-522-5401

Copy

INVOICE

May 7, 2018

Ms. Melanie L. Cyganowski
Otterbourg P. C
Receiver for Platinum Partners
230 Park Avenue, 30th Floor
New York, NY 10169

Dear Ms. Cyganowski:

Please find enclosed a schedule of the 2018 Greene and Sullivan County, Indiana property taxes for reimbursement in accordance with the terms of the Coal Mining Lease dated January 1, 2011.

Please remit to: Western Pocahontas Properties
P. O. Box 8500-55333
Philadelphia, PA 19178-5333

Total amount due.....\$1,919.51

Regina Sacre
Accountant

Enclosure

WPPLP
LC Energy Holdings, LLC 1235
2018 PROPERTY TAX BILLING

Page 1

COUNTY: GREENE
DESCRIPTION: GILMOUR TRACT 1336.04 A MIN ONLY
DESCRIPTION
PARCEL ID: 28-05-17-999-309.000-022
TAXABLE VALUE \$80,200
TAX PAYMENT: \$1,484.42
LESSEE PAYMENT \$1,484.42

COUNTY: SULLIVAN
DESCRIPTION: 384.39 ACRES GILMOUR TRACT
DESCRIPTION
PARCEL ID: 77-09-40-000-004.800-001
TAXABLE VALUE \$23,100
TAX PAYMENT: \$435.09
LESSEE PAYMENT \$435.09

TOTAL TAX: \$1,919.51

EXHIBIT E

**COAL MINING LEASE AGREEMENT
 BETWEEN WESTERN POCAHONTAS PROPERTIES L.P. AND LC ENERGY HOLDING, LLC
 DATED JANUARY 1, 2011 (the "LEASE")**

PAST DUE & FUTURE AMOUNTS DUE DURING THE CURRENT TERM OF THE LEASE ENDING 12-31-2020

	Date	Past Due Amount	Future Amounts		Total
			Due	Due	
1) Unpaid Property Tax Invoice	5/7/2018	\$1,919.51			\$1,919.51
2) 4th payment for the 2019 Advance Annual Minimums per the terms of the Letter Agreement dated 2/20/2019 to the LEASE.	10/1/2019		\$25,000.00		\$25,000.00
3) Advance Annual Minimum per the terms of the 3rd Amendment dated 7/14/15 to the LEASE	1/1/2020		\$100,000.00		\$100,000.00

TOTAL \$1,919.51 \$125,000.00 **\$126,919.51**

EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	:	
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
PLATINUM CREDIT MANAGEMENT, L.P.;	:	
MARK NORDLICHT;	:	
DAVID LEVY;	:	
DANIEL SMALL;	:	
URI LANDESMAN;	:	
JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
	:	
Defendants.	:	
-----X	:	

**[PROPOSED] ORDER APPROVING THE SALE OF THE ASSETS OF
LC ENERGY HOLDINGS LLC AND LC ENERGY OPERATIONS LLC FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

Upon the (1) motion (Docket No. 422) of Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, (collectively, the “*Receivership Entities*”), for entry of an order (I) (a) authorizing the Receiver to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Holdings, LC Energy Operations LLC and/ or their assets (collectively, “*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b)

authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “**Bidding Procedures**”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “**Sale Motion**”) and the accompanying Receiver’s Memorandum of Law in Support of the Sale Motion and the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Sale Motion, (2) the Receiver’s Reply Brief in Further Support of the Sale Motion (Docket No. 436), (3) the Declaration of Trey Rogers in Support of the Sale Motion (Docket No. 441), (4) the *Order (A) Authorizing the Receiver to Sell the Receivership’s Rights in and to LC Energy Operations LLC Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Procedures for the Filing of Claims Against LC Energy and/ or its Assets and the Resolution thereof and (C) Granting Certain Related Relief* (the “**Procedures Order**”) (Docket No. 444), (5) the Notice of Successful Bidder For LC Energy Holdings LLC, LC Energy Operations LLC and their Respective Assets (Docket No. 487) and (6) the affidavit of the Receiver in further support of the Sale (the “**Cyganowski Affidavit**”) (Docket No. 487); and it appearing that the substantive relief requested in the Sale Motion is in the best interests of the Receiver, the Receivership Entities and their stakeholders; and this Court having jurisdiction to consider the relief requested in the Sale Motion pursuant to, *inter alia*, the October 16, 2017 *Second Amended Order Appointing Receiver*; and notice of the Sale Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:¹

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Sale Motion, the Cyganowski Affidavit or the APA, as applicable.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Compliance with Bidding Procedures. As established by the Cyganowski Affidavit in support of the Sale, LC Energy, through the Receiver, sufficiently and actively marketed its assets and conducted the sale process in compliance with the Procedures Order and afforded interested purchasers a full and fair opportunity to make higher and better offers consistent with the Procedures Order. In accordance with the Procedures Order, the Receiver determined that ERC Mining Indiana Corp. (“**Purchaser**”) is the Successful Bidder (as defined in the Procedures Order). The Receiver’s determination that the Successful Bidder submitted the highest or otherwise best offer for the LC Energy Assets constitutes a valid and sound exercise of the Receiver’s business judgment.

B. Notice. As evidenced by the pleadings filed in support of the Sale Motion, (i) proper, timely, adequate and sufficient notice of the Sale Motion was provided. Publication solely in Greene and Sullivan Counties, Indiana was sufficient and proper, and (ii) no other or further notice of the Sale Motion is or shall be required.

C. Opportunity to Object. A fair and reasonable opportunity to object and to be heard with respect to the Sale was given to all interested persons and entities, including those entities listed on the LC Energy Service List. The only response to the proposed Sale was filed by Western Pocahontas Properties Limited Partnership (“**WPP**”). In its response, WPP does not oppose the Sale, but rather asserts certain claims against LC Energy (the “**WPP Claims**”).

D. Sale in Best Interest. Under the circumstances, the sale of the LC Energy assets to Purchaser and Purchaser’s assumption of LC Energy’s liabilities (the “**Sale Transaction**”) is in the best interests of Seller, the Receivership Entities and their estate (the “**Receivership Estate**”). Entry into the APA and the consummation of the transactions contemplated therein constitutes the

Receiver's exercise of sound business judgment, and such acts are in the best interests of Seller, the Receivership Entities and the Receivership Estate. The Court finds that the Receiver has articulated good and sufficient business reasons justifying the Sale Transaction.

E. Arms-Length Sale. The APA was negotiated and accepted by Seller and Purchaser without collusion, in good faith, and from arm's length bargaining positions.

F. Free and Clear. Seller may sell the LC Energy assets free and clear of all Encumbrances.

G. Prompt Consummation. The sale of LC Energy's assets must be approved and consummated promptly in order to preserve the value of the LC Energy assets. Therefore, time is of the essence in consummating the Sale Transaction, and Seller and Purchaser intend to close the Sale Transaction as soon as reasonably practicable (the "**Closing Date**"). The Receiver has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction.

H. Consideration Fair and Reasonable. The consideration provided by Purchaser for the LC Energy assets and the assumption of all liabilities (i) is fair and reasonable and (ii) is the highest or otherwise best offer for LC Energy.

I. Legal Valid Transfer. The transfer of LC Energy's assets to Purchaser will be a legal, valid, and effective transfer of the assets and will vest Purchaser with all right, title and interest of Seller to LC Energy's assets free and clear of all Encumbrances as set forth in the APA.

J. Legal and Factual Basis. The findings of fact in this Order shall be construed as conclusions of law, and the conclusions of law in this Order shall be construed as findings of fact, to the fullest extent of the law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The substantive relief requested in the Sale Motion is GRANTED as provided herein.

2. All objections to the relief provided for herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

3. WPP's right to assert the WPP Claims are hereby reserved and the Receiver's right to oppose the WPP Claims on all grounds, including, but not limited to, timeliness are hereby reserved. WPP shall file a proof of claim within thirty (30) days of entry of this Order with Platinum's claims agent in accordance with previously approved procedures for filing proofs of claim, which claim shall be adjudicated in accordance with any claims adjudication process used in this case.

4. The Sale Transaction is hereby approved and the Receiver is authorized to close under the APA.

5. The transfer of LC Energy's assets to Purchaser shall be, and hereby is, free and clear of all Encumbrances.

6. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of assets set forth in the APA (the "*LC Energy Assets*") transferring good and marketable title in such LC Energy Assets to Purchaser. All federal, state, and local governmental agencies or departments are hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction.

7. All entities that are presently, or on the Closing Date may be, in possession of

some or all of the LC Energy Assets are hereby directed to surrender possession of the LC Energy Assets to Purchaser on the Closing Date.

8. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of LC Energy and/ or the Receiver to transfer the LC Energy Assets to Purchaser in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

9. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Quest and Purchaser, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Purchaser Releasors**”) fully release and discharge Credit Funding LLC, Seller, the Receiver and the Receivership Entities and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Receiver Releasees**”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Receiver Releasees, the Purchaser Releasors ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Purchaser Releasors acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Purchaser Releasors expressly

waive and relinquish any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

10. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Credit Funding LLC, Seller, the Receiver and the Receivership Entities, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Receiver Releasors**”) hereby fully release and discharge Purchaser and Quest, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Purchaser Releasees**”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Purchaser Releasees, the Receiver Releasors ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Receiver Releasors acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Receiver Releasors expressly waive and relinquish any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

11. Effective upon Closing, the claims filed against LC Energy that were to be adjudicated in accordance with the Procedures Order, are moot in light of the lack of proceeds from the sale of LC Energy, and as such, are dismissed.

12. The consideration provided by Purchaser for the LC Energy Assets shall be deemed to constitute reasonably equivalent value and fair consideration under the laws of the United States, any state, territory, possession, or the District of Columbia.

13. The Receiver shall cooperate with Purchaser and Purchaser shall cooperate with the Receiver, in each case to ensure that the Sale Transaction is consummated and the Receiver is hereby authorized to make such modifications or supplements to any bill of sale or other document executed in connection with the APA to facilitate its consummation as contemplated by the APA.

14. The terms and provisions of the Procedures Orders and this Order shall be binding in all respects upon and shall inure to the benefit of the Receiver and the Receivership Estate, and Purchaser, and their respective successors and assigns, and any affected third parties.

15. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Receivership Estate.

16. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

17. Other than any contracts, agreements and/ or leases (collectively, “*Agreements*”) by and between any contract counterparty and LC Energy assigned to the Purchaser under the

APA, all Agreements by and between any contract counterparty and LC Energy are hereby deemed terminated and of no further force or effect. Any property leased to LC Energy under such Agreements is hereby deemed to revert to its lawful owner without the need for any further documentation.

18. The provisions of this Order are nonseverable and mutually dependent.

19. This Order shall be effective immediately upon its entry and the Receiver is authorized to close the sale immediately upon entry of this Order.

20. The Receiver is authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

21. This Court shall retain jurisdiction to enforce and implement the terms and provisions of this Order, the APA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects.

Dated: _____, 2019
Brooklyn, New York

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK