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DIV. OF OIL, GAS & MINING



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

September 30, 2011

In Reply Refer To:
FWS/R6
ES/UT
2011-F-0209
6-UT-11-F-0010

Mr. Darron Haddock, Coal Program Manager
Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801

RE: Formal Consultation for the Kinney #2 Application, Carbon Resources, LLC;
Carbon County, Utah

Dear Mr. Haddock,

We received your letter, dated July 28, 2011, requesting consultation on the Kinney #2 Application (Project) in Carbon County, near Scofield, Utah. Your letter provided a determination that the proposed Project "may effect, and is likely to adversely affect" the four federally endangered fishes of the Upper Colorado River Basin. This determination is based solely on impacts from a net water depletion of 30.7 acre-feet per year from the Price River sub-basin, located in the Colorado River drainage. The depletion is necessary for coal mining operations associated with the Project, such as dust abatement.

Our analysis of the Project, explained below, is based on information provided in your letter, the Mining and Reclamation Permit Application (Application), communications between our offices and Project engineers, and other sources of information.

Your analysis concludes, and we agree, that the distance between the Project area and suitable habitat is too great to cause direct impacts to individual fish. While Colorado pikeminnow were documented in the Price River over the past 20 years, documentations occurred between Farnham Diversion (river-mile 88.5) and the confluence with the Green River (river-mile 0) (Chart *et al.* 2010, page 29). The presence of these fish demonstrates the Price River's importance as endangered species habitat. However, this Project occurs upstream of Scofield Reservoir, which is approximately 45 river-miles above the Farnham Diversion.

Regardless of the upstream river-mile distance, the Project may indirectly impact the fish species from water quality degradation and water depletions. Downstream water quality is an important potential impact from mining operations. According to the Application's Cumulative Hydrologic Impact Assessment (page 7-91), all surface water impacts will be effectively mitigated through proper management practices, such as drainage control measures and discharge effluent standards. We agree that the proposed management practices should reduce the potential for any downstream water quality impacts.

As the Application indicates, water depletion from the Colorado River Basin is another important impact from mining operations. Water used upstream from occupied habitat affects the endangered fish species in a myriad of ways - ecologically (allowing nonnative fish to outcompete native species), physically (reducing available habitat), and biologically (altering temperature and water quality).

The Application determines that a total of 61.4 acre-feet of non-potable water will be required for full operations at the Kinney #2 Mine (page 3-61 & 5-39). However, the State of Utah's depletive percentage for mining water use is 50% (page 3-61). This means that the State Engineer expects only half of the water used to be truly removed from the hydrologic system - the other half should eventually be available to the water table (and river flows) through percolation and runoff. Therefore, the true depletion calculation for the Project is 30.7 acre-feet (page 3-61). Scofield Town has agreed to provide the full 61.4 acre-feet of water for the Kinney #2 Mine under its existing water rights (Signed Agreement dated February 11, 2009).

As you indicated in your letter, applicant committed conservation measures for water depletion impacts are implemented through the Upper Colorado River Basin Endangered Fish Species Recovery Program (Recovery Program), as described below. Therefore, we determine that the Recovery Program and its actions adequately offset the effects to the species.

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Interagency Cooperation Regulations (50 CFR 402), this document transmits the Fish and Wildlife Service's (Service) biological opinion for the four fish species.

Endangered Colorado River Fishes

As you are aware, water depletions from the Upper Colorado River Basin are likely to adversely affect the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), bonytail (*Gila elegans*), razorback sucker (*Xyrauchen texanus*) and their designated critical habitat through multiple ecological stressors, such as habitat loss, competition from non-native fish, and degraded water quality. Because water depletions from the Upper Colorado River Basin are a major factor in the decline of the endangered fishes, the Service has historically determined that any depletion will jeopardize their continued existence and will likely contribute to the destruction or

adverse modification of their critical habitat (USDI, Fish and Wildlife Service, Region 6 Memorandum, dated July 8, 1997).

To address the ecological effects from depletions and aid in the recovery of the four species, the Department of the Interior, the states of Wyoming, Colorado, and Utah, and the Western Area Power Administration established the Recovery Program in 1988. In order to further define and clarify the process in the Recovery Program, the Recovery Program participants implemented a section 7 agreement (Agreement) on October 15, 1993. This Agreement established the Recovery Program and its activities as the Reasonable and Prudent Alternative (RPA) to avoid jeopardy for the endangered fishes from impacts caused by depletions from the Upper Colorado River Basin. Incorporated into this Agreement is a plan of action (Recovery Implementation Program Recovery Action Plan or RIPRAP) which identifies activities required to recover the endangered fishes that will be carried out by Recovery Program participants. Also incorporated into the Agreement is the requirement of a financial contribution to the Recovery Program (also known as a depletion fee) that would help fund recovery activities.

After many years of successful implementation of the Recovery Program, the Agreement, and the RIPRAP, federal action agencies now anticipate Recovery Program activities and payment of the depletion fee to serve as the RPA, avoiding jeopardy to the four listed species. Thus, the RPA has essentially become part of a proposed action. Because we now consider it part of a proposed action, the depletion fee and Recovery Program activities will now serve as conservation measures that minimize adverse effects to listed species or critical habitat. Therefore, we no longer consider depletions to jeopardize the continued existence of these species, but rather believe that depletions may affect and are likely to adversely affect the species.

As mentioned above, included in the Recovery Program was the requirement that a depletion fee would be paid to help support the Recovery Program. On July 8, 1997, the Service issued an intra-Service biological opinion determining that the depletion fee for average annual depletions of 100 acre-feet or less are no longer required. Because the Recovery Program has made sufficient progress to be the RPA to avoid jeopardy to the endangered fishes and to avoid destruction or adverse modification of their critical habitat, depletions of 100 acre-feet or less are now exempt from the depletion fee. The estimated water depletion for this Project is 30.7 acre-feet per year. Therefore, the depletion fee for this Project is waived.

Conclusion of Biological Opinion

We concur that the proposed Project may affect, and is likely to adversely affect the four federally endangered fishes of the Upper Colorado River Basin due solely to the associated 30.7 acre-feet per year water depletion. However, we conclude that the Recovery Program serves as an appropriate conservation measure and adequately addresses effects to the species. Therefore, no additional conservation measures are needed to reduce impacts from the proposed action.

We appreciate your commitment to the conservation of endangered species. If the Project changes or it is later determined that the Project affects listed species differently than identified above, it may become necessary to reinitiate section 7 consultation. If you require further assistance or have any questions, please contact Kevin McAbee, at (801) 975-3330 extension 143.

Sincerely,



 Larry Crist
Utah Field Supervisor

cc:

Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-3050

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OCT 05 2011

DIV. OF OIL, GAS & MINING

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re:

Chapter 11

CARBON RESOURCES LLC,
Debtor.

Case No. 10-16104-j11

**DEBTORS' MOTION FOR AUTHORITY TO SELL SUBSTANTIALLY ALL OF
CARBON RESOURCES, LLC'S ASSETS AND EXECUTE AGREEMENTS RELATED
THERE TO**

COMES NOW Debtor Carbon Resources, LLC ("Carbon Resources"), through its counsel of record Philip J. Montoya, hereby files this Motion for Authority to Sell Substantially All of Carbon Resources LLC's Debtor's Assets and Execute Agreements Related Thereto (the "Motion"). A motion identical to this Motion has been filed in the chapter 11 bankruptcy case of WRCC, LLC ("WRCC"), an affiliate of Carbon Resources (the "WRCC Sale Motion"). Additionally, this Motion is brought in conjunction with Debtor's Motion for Authority to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale of Assets, filed concurrently herewith and in WRCC's chapter 11 case (collectively, the "Assume/Assign/Reject Motions"), which motions seek court approval in both bankruptcy cases of Carbon Resource's and WRCC's assumption, assumption and assignment, or rejection, of various unexpired leases and executory contracts pursuant to the terms and conditions of that certain Asset Purchase Agreement, effective as of September 12, 2011, a true and complete copy of which is attached hereto as **Exhibit 1** (the "Purchase Agreement") for the Court's and interested parties' reference. Carbon Resources hereby respectfully requests this Court to consider this Motion, the WRCC Sale Motion and the Assume/Assign/Reject Motions at

the same time, because the completion of the transactions contemplated by the Purchase Agreement is expressly conditioned up the granting and approval of such motions by the Court.

This Motion is filed pursuant to 11 U.S.C. §§ 105(a), 363 and 1146, Fed. R. Bankr. P. 2002, 6004, 9006, 9007, and 9014, and Local Rule 6004-1. By this Motion, the Debtor respectfully requests this Court to enter an Order (i) authorizing the sale (the "Sale") of substantially all of Carbon Resources' assets, along with certain assets of its non-debtor affiliate Western Reserve Coal Company Incorporated, a Nevada corporation ("Western Reserve"), that will be transferred to Carbon Resources at or prior to Closing¹ after entry of a final order approving the Sale, free and clear of all liens, claims, interests and encumbrances except for Permitted Encumbrances and Assumed Liabilities (as hereinafter defined), the form of which shall comply with the requirements of Schedule 1.2 to the Purchase Agreement and the other requirements of the Purchase Agreement, and (ii) authorizing Carbon Resources and WRCC to execute and enter into each of the various agreements contemplated by the Purchase Agreement.

This Motion is supported by the following Memorandum of Points and Authorities, including the Purchase Agreement attached hereto as Exhibit 1 and the other exhibits submitted in support thereof, and the papers and pleadings on file in this Chapter 11 Case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION—THE NEED FOR A SALE OF THE ASSETS

1. Carbon Resources, WRCC and WRCC's Managing Member, Western Reserve, own certain real property, leasehold estates, water share rights, coal and mineral rights, permits, contracts and other improvements and rights in Carbon County, Utah that they originally had intended to utilize to develop a coal mine (the "Mine") pursuant to a mining permit known as the

¹ Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to such terms in the Purchase Agreement.

“Kinney #2 Mine, Carbon County near Scofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011” (the “Kinney Mine Permit”). In connection with such ownership and development, Carbon Resources and WRCC are parties to certain unexpired leases or executory contracts important to such ownership and development.

2. Carbon Resources filed its chapter 11 bankruptcy case (the “Carbon Resources Chapter 11 Case”) on December 10, 2010, intending to sell its assets related to the Mine and otherwise pay off its creditors in full through the chapter 11 reorganization process. On or about March 17, 2011, Carbon Resources and Delta Coal Fund PTY LTD ACN 149 580 085, an Australian proprietary limited liability company (“Delta”), entered into an Option Agreement (the “Option”), pursuant to which Carbon Resources granted Delta a purchase option on Carbon Resources’ interests in the assets, and Delta deposited \$500,000 in cash into escrow pursuant to an escrow agreement.

3. However, on May 17, 2011, PCM Venture II, LLC (“PCM”) filed its Motion for Termination of Automatic Stay (the “First Lift Stay Motion”), seeking to lift the automatic stay in order to foreclose on its security interest on a substantial portion of Carbon Resources’ assets in order to obtain repayment of a loan it had made to Carbon Resources (as further defined below, the “PCM Loan”). A final hearing on the First Lift Stay Motion is set for November 14, 2011.

4. As security for repayment of the PCM Loan, PCM further asserts that WRCC pledged its membership interest in Carbon Resources to PCM. On August 1, 2011, PCM gave notice of its intent to sell that membership interest at a public sale on August 17, 2011. On August 16, 2011, WRCC filed its own bankruptcy case under chapter 11 of the Bankruptcy Code (the “WRCC Chapter 11 Case”). PCM has filed a second “Motion for Relief from Stay as to

Shares of Carbon Resources LLC” (the “Second Lift Stay Motion”), which Motion is set for final hearing on November 14, 2011.

5. Carbon Resources and WRCC believe that moving forward with the Purchase Agreement is in the best interests of each estate and its creditors and equity interest holders. First, Carbon Resources has attempted to market its assets to a number of unrelated third parties and no sale agreement has come to fruition on more favorable terms than the Purchase Agreement. Marketing efforts were stepped-up approximately 18 months ago, and included unsolicited contact with regional, national and international coal mine operators, as well as internet advertising on MergerNetwork.com and Alibibi.com. The Purchaser was located through a contact made on MergerNetwork.com. During this time, over 100 non-disclosure agreements were signed by prospects interested in receiving marketing materials. Second, because of PCM’s continued pursuit of the First and Second Lift Stay Motions, the only way for Carbon Resource’s creditors other than PCM to receive a meaningful distribution on account of their claims² is for Carbon Resources to close a sale before PCM can lift the automatic stay and foreclose. Accordingly, Carbon Resources and WRCC respectfully request this Court to authorize the Sale pursuant to the terms and conditions of the Purchase Agreement.

II. SUMMARY OF RELEVANT FACTS

A. BACKGROUND.

6. On December 12, 2010, Carbon Resources filed its voluntary petition under chapter 11 of Title 11 of the United States Code, thereby commencing the Carbon Resources Chapter 11 Case. On August 16, 2011, WRCC filed its voluntary petition under chapter 11 of Title 11 of the United States Code, thereby commencing the WRCC Chapter 11 Case.

² According to Carbon Resources’ Schedule F, Carbon Resources has four non-insider unsecured creditors holding claims in excess of \$322,072 as of Carbon Resources’ petition date. [Carbon Resources’ Docket No. 18.]

7. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).

B. CARBON RESOURCES' AND WRCC'S ORGANIZATIONAL STRUCTURE

8. Carbon Resources is a Nevada limited liability company, whose company address is at P.O. Box 954, Sandia Park, New Mexico. WRCC is a Nevada limited liability company, whose company address is P.O. Box 954, Sandia Park, New Mexico. Carbon Resource's sole member is WRCC. Western Reserve is the Managing Member of WRCC, and owns 1% of WRCC's membership interests. J.H.W. Reeves is the Chief Executive Officer of Carbon Resources and the President of WRCC.

C. THE ASSETS BEING SOLD AND KNOWN INTERESTS ASSERTED IN SUCH ASSETS

9. The assets being sold in the Sale fall into two categories: the "Carbon Resources Assets" and the "Other Assets" (together, the "Assets"):

10. As further described in Section 1.1(a) of the Purchase Agreement, the "Carbon Resources Assets" consist of the following: (a) a leasehold interest arising under that certain Carbon Sublease Agreement between WRCC, as lessor, and Carbon Resources, as lessee, dated December 2, 2005, as thereafter amended on May 20, 2011, more fully described on Exhibit A to the Purchase Agreement (the "Carbon County Sublease"), together with all the improvements and fixtures now or hereafter erected or situated on the land covered by the Carbon County Sublease; (b) a fee simple interest to approximately 16.33 acres, together with all improvements and fixtures now or hereafter erected on such land, as more fully described on Exhibit A to the Purchase Agreement (the "16.33 Acre Parcel") (all of the foregoing interests shall be referred to collectively as the "Carbon Resources Real Estate"); and (c) all tangible and intangible assets

associated with the Carbon Resources Real Estate, including all "Carbon Resources Records," "Assumed Carbon Resources Contracts," "Carbon Resources Permits," "Carbon Resources Mining Materials" and "Carbon Resources Mining Tenements" (collectively, the "Carbon Resources Personal Property," and together with the Carbon Resources Real Estate, the "Carbon Resources Assets").

11. As further described in Section 1.1(b) of the Purchase Agreement, the "Other Assets" consist of the following: (a) a surface leasehold and easement estate created pursuant to the Lease and Easement Agreement between the Telonis Family, as lessor, and Western Reserve, as lessee, dated December 1, 2007 (the "Telonis Lease"), together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such lease; (b) a fee simple title owned by Western Reserve to the coal beneath certain real property, together with all rights, improvements, fixtures, water, easements, appurtenances, and tenements appurtenant thereto, as more fully described in Exhibit "B" to the Purchase Agreement (all of the foregoing interests shall be referred to collectively as the "Other Real Estate"); and (c) all tangible and intangible assets associated with the Other Real Estate, including all "Other Records," "Other Assumed Contracts," "Other Permits," "Other Mining Materials," "Other Mining Tenements," and two shares of water from Price River Water Users Association (the "Water Shares") (collectively, the "Other Personal Property"). Title to the Other Real Estate and the Other Personal Property (together, the "Other Assets") will be transferred by Western Reserve to Carbon Resources free and clear of all liens, claims, indebtedness and encumbrances except for "Permitted Encumbrances" (as such term is used in the Purchase Agreement, the "Permitted Encumbrances") prior and as a condition to closing, so that Carbon Resources may convey the Other Assets to the Purchaser (as defined in paragraph 18 below) free and clear of all Liens,

Claims, Indebtedness and encumbrances (collectively, the "Interests") except for Permitted Encumbrances and Assumed Liabilities at Closing.

12. Attached hereto as **Exhibit 2** is a map demonstrating the location of various of the Assets being sold for the Court's convenience and reference.

D. THE LIENS, CLAIMS AND INTERESTS ASSERTED IN THE ASSETS.

13. Attached hereto as **Exhibit 3** is a list of any easements or other interests in land that constitute "Permitted Encumbrances" on either the Carbon County Real Estate or the Other Real Estate within the meaning of the Purchase Agreement, and that will be accepted by the Purchaser before Closing.

14. Other than certain third parties whose interests are set forth on **Exhibit 3** as "Permitted Encumbrances," the other parties asserting a lien or other Interest in either the Carbon Resources Assets or the Other Assets are as follows: (a) PCM; (b) on information and belief, certain other parties that do hold or may assert an easement, encumbrance, right or other interest in the Carbon Resource Real Estate which are listed on **Exhibit 4** attached hereto (collectively, with any other creditor claiming an Interest in any of the Carbon Resources Assets, the "Other Carbon Resources Secured Creditors"); and (c), with respect to the Other Assets (or Assets owned by Western Reserve that will not be transferred to Carbon Resources) only, Michael Andrews and Michael Quick, each of whom filed UCC-1 Financing Statements asserting a security interest against such Other Assets (the "Other Assets Secured Creditors").

15. In the event and to the extent that PCM, any of the Other Carbon Resources Secured Creditors or the Other Assets Secured Creditors, object to the Sale, Carbon Resources and WRCC hereby request that (a) the Carbon Resources Assets be sold free and clear of all Interests except for (i) Permitted Encumbrances and Assumed Liabilities, (ii) the Interests of those Other Carbon Resources Secured Creditors listed on **Exhibit 4** whose Interests the

Purchaser agrees also shall constitute "Permitted Encumbrances" within the meaning of the Purchase Agreement, all as further described in Paragraphs 36-39 below, with certain of such Interests to attach to the net proceeds of the Sale to the same extent as such Interests had against the Carbon Resources Assets as of the petition date.

II. SALE OF THE ASSETS

16. Carbon Resources and WRCC request authority to sell the Carbon Resources Assets and the Other Assets, free and clear of all Interests other than Permitted Encumbrances and all Claims other than the Assumed Liabilities. As referenced above, Carbon Resources has undertaken to market the Carbon Resources Assets and the Other Assets for sale. Specifically, for more than 18 months, Carbon Resources has been actively soliciting bids for a possible sale of some or all of such assets. Carbon Resources' efforts in this regard have included the direct marketing of these assets and solicitation of purchase offers from regional, national and international coal mining operators.

17. Notwithstanding such efforts, Carbon Resources has been unable to secure a purchase contract for the Assets on terms more favorable than those proposed in the Purchase Agreement. However, as demonstrated below, the net proceeds from the Sale at Closing alone will be sufficient to pay PCM in full on account of its claim against both the Carbon Resources and WRCC estates, and the Sale will result in all other creditors against the Carbon Resources estate and WRCC estates³ receiving a full recovery on account of their claims. Moreover, the equity holders and insiders of both Carbon Resources and WRCC have consented to the proposed Sale in accordance with terms set forth in the Purchase Agreement. Accordingly, Carbon Resources and WRCC believe that the Sale of Assets proposed in the Motion, coupled

³ Upon information and belief and as set forth in the Schedules filed in connection with the WRCC Chapter 11 Case, WRCC has no creditors other than PCM.

with the other relief sought in the Assume/Assign/Reject Motions filed concurrently herewith, is in the best interests of all creditors and equity interest holders of both Carbon Resources and WRCC and accordingly should be approved by this Court.

B. TERMS OF THE SALE TO THE PURCHASER.

18. Subject to Court approval, and in the manner contemplated in the Purchase Agreement, Carbon Resources has agreed to sell the Carbon Resources Assets and the Other Assets to Delta or its assignee, Wasatch Natural Resources, LLC (“Wasatch”) (Delta, or its designee or designees, or Wasatch, as applicable, the “Purchaser”),⁴ and to take such other actions as may be required to effectuate the terms and conditions of the Purchase Agreement. The material terms of the Purchase Agreement are summarized below for the Court’s convenience and reference. However, unless expressly stated otherwise, to the extent there are any inconsistencies, the terms of the Purchase Agreement shall govern.

- (a) The purchase price for the Assets shall be US\$25,000,000 (the “Purchase Price”), to be paid by the Purchaser as follows: (i) \$500,000 in cash, already delivered as an earnest money deposit, which shall be applied against the Purchase Price at Closing; (ii) US\$6,500,000 in immediately available funds delivered at Closing; and (iii) US\$18,000,000 in the form of a Promissory Note, payable in two installments as further described in Section 2.1(a)(2) of the Purchase Agreement. The Promissory Note shall be secured by a deed of trust and security agreement in favor of Carbon Resources, encumbering the Real Estate and Personal Property. Among other things, the recourse first installment shall be US\$3,000,000, due six months after Closing (the “Part A Note Amount”). The non-recourse second installment shall be US\$15,000,000 (the “Part B Note Amount”), and shall be due and payable upon the occurrence of the *earlier* of the Purchaser’s completing a “Bankable Feasibility Study” on the proposed Mine that results in the Purchaser’s board of directors making a positive decision to mine to enable production to commence, or 36 months after the Closing Date. If a Bankable Feasibility Study on the Mine that results in a positive decision to mine by the Purchaser is not completed within 36 months of the Closing Date, and the Purchaser fails to timely pay the Part B Note Amount, then the Purchaser shall, among other things, deliver a special warranty deed conveying to Carbon Resources the Real Estate purchased pursuant to the Purchase Agreement. [See Purchase Agreement, § 2.1(a)(ii)]. The Purchaser also has the right, at any time, and the Promissory Note shall provide that, at the Purchaser’s election,

⁴ The Sale is further conditioned upon Delta closing on a sale of its equity interests to New Horizon Minerals Ltd CAN 143 921 110, an Australian limited liability company (“New Horizon”).

the Purchaser may convey the Real Estate and the other assets purchased as part of the Sale to Carbon Resources, which shall be full payment of the obligations by the Promissory Note. [See Purchase Agreement, § 2.1(a)(ii)(6).]

- (b) Additional consideration will be realized by Carbon Resources and WRCC by virtue of (i) the Purchaser's assumption of certain post-closing liabilities arising with respect to the subleases, leases, executory contracts and other agreements of which the Purchaser elects to take an assignment, all as further described in Section 1.2(c) of the Purchase Agreement or otherwise presented in the Assume/Assign/Reject Motions filed concurrently herewith. For the avoidance of doubt, the Purchaser is not assuming any post-closing obligations owed to any party asserting an Interest in the Other Assets, other than a Permitted Encumbrance, whether or not title to any of the Other Assets will be transferred.
- (c) Carbon Resources is required to remain validly existing and in good standing with the State of Nevada until such time as the Kinney Mine Permit is issued by the State of Nevada and transferred to the Purchaser. The Kinney Mine Permit shall remain property of Carbon Resources until such time as the Purchaser posts the reclamation bond necessary to obtain the Kinney Mine Permit and otherwise obtains the transfer of the Kinney Mine permit. The Purchaser shall have the exclusive right to take such actions within one year of Closing. [See Purchase Agreement, § 1.4.] All other Permits relating to the Carbon Resources Assets or the Other Assets also will be transferred to the Purchaser at Closing. [Sale Agreement, § 6.9.]
- (d) Western Reserve and WRCC must shall terminate a currently existing royalty deed in which WRCC agreed to pay Western Reserve certain royalties in connection with the production of coal (which WRCC in turn had required Carbon Resources to pay in the Carbon County Sublease). [See Purchase Agreement, § 1.5(a).] In return, the Purchaser will execute a new Royalty Deed and Agreement, requiring the Purchaser to pay Western Reserves directly certain royalty payments. [See Exhibit F to Purchase Agreement.]
- (e) Closing of the Sale must occur on or before December 1, 2011. [See Purchase Agreement, § 5.1.]
- (f) The Sale must be approved by final Order(s) in both bankruptcy cases (together, the "Sale Order"), which Sale Order must be in a form that complies with the Purchase Agreement and otherwise is in a form acceptable to the Purchaser, which Sale Orders shall not be amended, modified or otherwise affected in any way by the terms of any plan of reorganization or liquidation, or any Order of this Court confirming any such plan without the Purchaser's consent. [See Purchase Agreement, § 1.2(a).]
- (g) The assumption, assumption and assignment, and/or rejection of various subleases, contracts or other agreements, as required by the Purchase Agreement, must be approved by final Orders of the Bankruptcy Court in both bankruptcy cases, which Orders shall be in forms acceptable to the Purchaser, and filed with the Bankruptcy Court in each of the Chapter 11 Cases (as defined in the Purchase Agreement, the "Assume/Reject Orders"), which Assume/Reject Orders shall not be amended, modified or otherwise affected in any way by the terms of any plan of reorganization or liquidation, or any Order of this Court

confirming any such plan without the Purchaser's consent. [See Purchase Agreement, § 1.2(a).]

- (h) The Purchaser shall not be obligated to close the Sale in the event that (i) Carbon Resources is unable at Closing to deliver title to or a valid assignment or transfer of all of the Assets, free and clear of all Interests other than Permitted Encumbrances, (ii) this Court does not approve the assumption and assignment of the Agreements or the rejection of the Excluded Carbon Resources Contracts, or (iii) Carbon Resources is unable to obtain various consents and approvals from WRCC, Western Reserve and various other parties, all as further specified in the Purchase Agreement. [See Purchase Agreement, §§ 1.5, 8.2.]
- (i) Carbon Resources and the Purchaser each has agreed to give the other certain indemnification rights, as set forth in Article XIII of the Purchase Agreement.

19. The Purchase Agreement and all of the terms and conditions thereof, have been negotiated at arms-length, and in good faith, by Carbon Resources, WRCC, Western Reserve and Delta, and Carbon Resources hereby requests a finding that the Purchaser acted in good faith within the meaning of 11 U.S.C. § 363(m) and is consequently entitled to all of its protections. All payments to be made by the Purchaser to Carbon Resources, WRCC and/or Western Reserve in connection with the Sale have been disclosed in the Purchase Agreement.

III. AUTHORITY FOR REQUESTED RELIEF

A. SALES OUTSIDE THE ORDINARY COURSE OF BUSINESS

20. Section 363 of the Bankruptcy Code provides that Carbon Resources, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. § 363(b). Carbon Resources' power to sell also includes the power to obtain necessary assurances from such affiliates as may hold title to, or are parties to, any of the Assets to transfer or assign such Assets to Carbon Resources so that Carbon Resources may transfer such Assets to the Purchaser and otherwise satisfy the conditions of the Purchase Agreement.

21. To approve the use, sale or lease of property outside the ordinary course of business, this Court need only determine that Carbon Resources' decision is supported by "some

articulated business justification.” See, e.g., *Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Premier Concrete, LLC*, 2010 WL 1780046 (Bankr. D.N.M. May 4, 2010); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); see also *Stephens Ind., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Abbott Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Walter*, 83 B.R. 14, 16 (9th Cir. BAP 1988); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830 (Bankr. C.D. Cal. 1991).

22. Once Carbon Resources articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *In re QuVIS, Inc.*, 2009 WL 4262077 (Bankr. D. Kan. Nov. 23, 2009), quoting *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management decisions.”).

23. Indeed, when applying the “business judgment” rule, courts show great deference to a debtor’s decision-making. See *In re Psychrometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981); see also *In re C.W. Mining Co.*, 2010 WL 3123140 (Bankr. D. Utah 2010) (trustee demonstrated sufficient basis to sell assets by making “multiple and diligent attempts to locate parties willing to purchase the Mine Assets.”). Accordingly, this Court should grant the relief requested in this Motion if Carbon Resources demonstrates a sound business justification therefor. See *Schipper*, 933 F.2d at 515; *In re Lionel Corp.*, 722 F.2d at 1071; *In re Walter*, 83 B.R. at 16.

24. As explained above, Carbon Resources (and WRCC in its capacity as holder of 100% of Carbon Resources' membership interests) have a sound business justification for selling the Assets to the Purchaser at this time pursuant to the terms and conditions of the Purchase Agreement. After extensive marketing of the Assets, Carbon Resources determined that the purchase price and related transactions embodied in the Purchase Agreement constitutes the best and highest offer for the Assets. Moreover, in light of PCM's continued and aggressive pursuit of the First and Second Lift Stay Motions, the Purchase Agreement was the only offer that would timely yield sufficient net proceeds to enable the PCM Loan to be paid in full, allow other creditors to also receive payment in full on account of their claims against the estate, and enable WRCC to receive some residual recovery on account of its ownership of Carbon Resource's membership interests. Accordingly, Carbon Resources has determined, in the exercise of its considered business judgment, that the most viable option for maximizing the value of the Carbon Resources estate (and WRCC's ownership of its membership interests) is through the Purchase Agreement. The Debtor's request for approval of the Sale as requested herein should be granted accordingly.

B. SALES FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

25. Under § 363(f) of the Bankruptcy Code, a debtor-in-possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in a bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

26. Because Section 363(f) is drafted in the disjunctive, Carbon Resource's satisfaction of any one of its five requirements will be sufficient to permit the sale of the Carbon Resources Assets free and clear of the Interests (except for Permitted Encumbrances) and Claims (other than Assumed Liabilities).

i. Approval Of The Sale Of The Carbon Resources Assets Pursuant To Section 363(f)(2).

27. Carbon Resources anticipates that certain parties claiming an Interest in or a Claim against the Carbon Resources Assets, including the Carbon County Treasurer, will consent to the Sale, thus satisfying the requirements of Section 363(f)(2). *See also In re Shary*, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993); *C.W. Mining Co.*, 2010 WL 3123140; *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345-46 (E.D. Pa. 1988) (implied consent by secured creditor's failure to object to proposed sale of property is sufficient to authorize a sale under section 363(f)(2)).⁵

28. Any such Interests or Claims will be adequately protected by having them attach to the net sale proceeds ultimately attributable to the Carbon Resources Assets against or in which such Interests or Claims are asserted, subject to the terms of such Interests or Claims, with the same validity, force and effect, and in the same order of priority, which such Interests or Claims had against the Carbon Resources Assets or their proceeds as of the petition date, subject to any rights, claims or defenses the Debtor or WRCC and their respective estates, as applicable, may possess with respect thereto. Accordingly, the Interests or Claims of all consenting

⁵ The only taxing authority disclosed on Carbon Resources' Schedule E (Creditors Holding Unsecured Priority Claims) is the Carbon County Treasurer, with respect to a claim of \$376.00 for 2010 Property Taxes. [See Carbon Resources Docket No. 18.] Sections 4.3(c), 6.3 and 8.2 of the Purchase Agreement requires such Property Taxes to be paid in full at Closing.

creditors and Interest holders are adequately protected by the Purchase Agreement, and the Court may approve the Purchase Agreement pursuant to 11 U.S.C. § 363(f)(2).

29. In the event that PCM or any of the Other Carbon Resources Secured Creditors refuses to consent to the Sale, then Carbon Resources hereby requests that this Court approve the Sale of the Carbon Resources Assets in which such Creditor claims an Interest free of such Interest pursuant to Section 363(f)(3), (f)(4) and (f)(5), as follows.

ii. Carbon Resources May Sell The Carbon Resources Assets Free And Clear Of PCM's Interests Pursuant To Section 363(f)(3) And (f)(4).

30. A sale may be made free of liens if “the price at which the property is to be sold is greater than the aggregate value of all liens on such property.” 11 U.S.C. § 363(f)(3). “If the sale proceeds of the assets exceeds the aggregate value of Encumbrances that are not in bone fide dispute as required by Section 363(f)(3) and are adequately protected by having their Encumbrances, if any attach to the proceeds of the sale of Mine Assets, or the Encumbrances are in bone fide dispute and § 363(f)(4) is applicable.” *In re C.W. Mining*, 2010 WL 3123140; *see also In re EaglesPan Steel Structures, LLC*, 2010 WL 4519598 (Bankr. D. Colo. July 13, 2010) (“The senior lienholder, Vectra Bank of Colorado, N.A. holds a lien the value of which is less than the purchase price. Thus 11 U.S.C. § 363(f)(1-5) is satisfied.”).

31. In the instant case, other than Permitted Encumbrances and the Additional Encumbrances (as hereinafter defined), the primary party holding a security interest or lien is PCM, which originally extended credit to Carbon Resources in 2005 in the principal amount of \$3,000,000 (Debtor specifically reserved its right to dispute this amount and the timing of funding), pursuant to, among other agreements, a “Loan Agreement (Term Loan Secured by Leasehold Interest)” dated December 12, 2005, and a Secured Promissory Note of that same date (together, the “PCM Loan”). PCM asserts that the Loan is secured by (a) a contemporaneously executed “Leasehold Deed of Trust with Assignment of Rents, dated December 12, 2005) (the

“Leasehold Deed of Trust”), with respect to the Carbon County Sublease and certain Carbon County Personal Property, (b) a Pledge Agreement (Membership Agreement)” executed by WRCC, pledging to PCM 100% of Carbon Resources’ membership interests (the “Pledge Agreement”). PCM’s Interest does not encumber either the 16.33 Acre Parcel or any of the Other Assets.

32. PCM has yet to file a Proof of Claim in either the Carbon Resources or WRCC Chapter 11 Cases. However, according to the Second Lift Stay Motion, as of July 31, 2011, PCM asserts that the outstanding balance owed on the PCM Loan is \$5,497,104.76. [Second Lift Stay Motion, ¶ 6.] Under the terms of the Purchase Agreement, the initial amount being paid to Carbon Resources just at Closing is \$7,000,000, far in excess of the amount of the PCM Loan. Moreover, as a condition to Closing, the Purchase Agreement requires Carbon Resources to amend its disclosure statement and plan of reorganization to provide that all creditors shall be paid in full the allowed amount of their claims on the Effective Date of any plan confirmed by this Court, including Class 3, the class to which PCM’s claims have been assigned. Since the net proceeds from the Sale at Closing alone are sufficient to pay any Interest that PCM may be determined to hold in full, Section 363(f)(3) and (f)(4) are satisfied, and the Assets should be sold free and clear of PCM’s Interest.

33. Finally, the Debtor hereby requests that the Sale Order specifically provide that PCM’s Interest will attach to the net proceeds of the sale of Carbon Resources Assets (a) ultimately attributable to the Carbon Resources Assets against or in which such Interest is asserted, subject to the terms of such Interest, with the same validity, force and effect, and in the same order of priority, which such Interest had against the Carbon Resources Assets as of the respective petition dates of the Chapter 11 Cases, or their proceeds, subject to any rights, claims or defenses the Debtor or WRCC and their respective estates, as applicable, may possess with

respect thereto, and (b) in an amount equal to the amount of any Claim that may be allowed, either by agreement of the parties or as ordered by the Court. Accordingly, PCM's Interest in the Carbon Resources Assets shall be adequately protected, thereby entitling Carbon Resources to sell the Carbon Resources Assets free and clear of such Interest.

iii. PCM's Interest In Carbon Resource's Membership Interests Should Be Terminated.

34. Section 1.4(a) of the Purchase Agreement requires Seller to take a number of actions post-Closing, including remaining in good standing with the State of Nevada and otherwise cooperating with the Purchaser to carry out the acquisition and/or transfer of the Carbon Resources Permits, including the Kinney Mine Permit. In connection with the PCM Loan, however, WRCC executed the Pledge Agreement, granting PCM an Interest in its ownership of Carbon Resource's membership interests. PCM already has filed the Second Lift Stay Motion, seeking to lift the automatic stay in order to exercise its Article 9 rights and conduct a sale of such membership interests. To ensure that Carbon Resources remains fully able to carry out its post-Closing obligations under the Purchase Agreement, Schedule 1.2 to the Purchase Agreement requires the release of PCM's Interest in, to or against Carbon Resource's membership interests.

35. It is appropriate to terminate the Pledge Agreement and release or otherwise terminate PCM's security interest in such membership interests for the same reasons it is appropriate to allow the Carbon Resources Assets to be sold free and clear of such Interest—the proceeds of the Sale are more than sufficient to pay PCM's claim in full. PCM can only be paid once on account of the PCM Loan. Accordingly, PCM's Interest is adequately protected by the Sale Order, and such Interest and the Pledge should accordingly be terminated.

iv. **Disposition Of The Interests Of The Other Carbon Resources Secured Creditors on Exhibit 4.**

36. Because of the sheer size of the Carbon County Sublease (approximately 6,000 acres) and the complexity and numerosity of the Interests involved in the Sale (nearly 90 Interests in the Assets), the Purchase Agreement allows the Purchaser to conduct commercially reasonable due diligence and other pre-purchase, pre-transition/transfer and pre-closing investigations, inquiries and examinations of the Real Estate and various other Assets up until the time of Closing. [Purchase Agreement, §§ 4.1, 4.3.] Section 4.4 also provides for an objection period prior to Closing during which the Purchaser may raise "Objections" to the Interests of Other Carbon Resources Secured Creditors, and the parties are provided an opportunity to resolve them, either consensually with the holder of the Interest or the title company. If Carbon Resources is unsuccessful in addressing the Interest at issue, and the Purchaser does not waive the Objection and elect to proceed to Closing, then the Purchaser has no obligation to close the Sale. [Purchase Agreement, §§ 1.2(d), 4.3(c), 8.2(a), (c).]

37. Attached as **Exhibit 4** to this Motion is a list of Interests of all "Other Carbon Resources Secured Creditors" in the Carbon Resources Assets which the Purchaser has not yet agreed shall constitute "Permitted Encumbrances" within the meaning of the Purchase Agreement (collectively, the "Additional Encumbrances"). To the extent that the Purchaser determines that any such Additional Encumbrances shall constitute additional "Permitted Encumbrances" within the meaning of the Purchase Agreement, and until and including the Closing date, the Purchaser may amend **Exhibit 3** to add such Additional Encumbrance(s), each of which shall automatically be deemed to constitute an additional "Permitted Encumbrance" for all purposes of the Purchase Agreement and the Sale Order.

38. To the extent that the Purchaser and the Debtor continue to dispute any of the remaining Additional Encumbrances, then such disputed Additional Encumbrances may be

deemed a "Disputed Additional Encumbrance" by the Purchaser, and the Debtor and the Purchaser may seek a determination at or prior to Closing that, under 11 U.S.C. § 365(f) or otherwise, the Assets subject to such Disputed Additional Encumbrance may be sold free and clear of such Interest(s) (a "Free and Clear Determination"). To the extent that the Purchaser or the Debtor elects to seek such a determination, then and within thirteen (13) days after service of this Sale Motion, the Debtor or the Purchaser shall file and serve upon each Other Carbon Resources Secured Creditor counterparty to a Disputed Additional Encumbrance (each a "Disputed Additional Encumbrance Holder") a Notice of Disputed Additional Encumbrances (the "Notice of Disputed Additional Encumbrances") in the form attached hereto as **Exhibit 5**. If a Notice of Disputed Additional Encumbrances is filed and served, then any Disputed Additional Encumbrance Holder shall have thirteen (13) days in which to file an "Objection" within the meaning of Exhibit 5, and the Purchaser and the Debtor shall jointly seek a hearing at or prior to the Closing to consider such Objection(s). Notwithstanding the entry of any Sale Order in connection with this Sale Motion, the respective rights of the Purchaser, the Debtor and any Disputed Additional Encumbrance Holder with respect to any Disputed Additional Encumbrance are preserved until further resolution by the Court in accordance with the notice and objection procedures set forth herein.

39. Notwithstanding the foregoing, nothing in this Motion shall (a) obligate the Purchaser to use the procedures set forth in Paragraph 38 above to resolve a Disputed Additional Encumbrance, or (b) prohibit the Purchaser from adding encumbrances to the list of Additional Encumbrances to the extent that additional Interests are discovered prior to Closing, or otherwise engaging in the non-bankruptcy objection procedures with respect to, among other things, Additional Encumbrances set forth in Article IV of the Purchase Agreement, and each of the parties to the Purchase Agreement shall have all of the rights and obligations originally

contemplated under Article IV of the Purchase Agreement or otherwise with respect to such Additional Encumbrances and non-bankruptcy objection procedures, including, without limitation, the right to terminate the Purchase Agreement and obtain the return of one-half the Earnest Money Deposit under the terms and conditions set forth in the Purchase Agreement.

C. THE OTHER ASSETS MAY BE TRANSFERRED TO CARBON RESOURCES, AND FROM CARBON RESOURCES TO THE PURCHASER, FREE AND CLEAR OF ALL INTERESTS EXCEPT FOR PERMITTED ENCUMBRANCES.

40. The Purchase Agreement requires Western Reserve to transfer the Other Assets to Carbon Resources free and clear of all Interests except for Permitted Encumbrances at or prior to Closing, so that Carbon Resources may in turn transfer such Other Assets to the Purchaser free and clear of all Interests except for Permitted Encumbrances at Closing. [See Purchase Agreement, Recital B, §§ 1.1(b), 6.3, 8.2, 9.1(e), (f), (j), (l) and Exhibit H.] Pursuant to 11 U.S.C. § 541(a)(7), property of the estate includes “[a]ny interest in property that the estate acquires after the commencement of the case,” thereby giving this Court jurisdiction over the Other Assets.

41. Other than Permitted Encumbrances and Additional Encumbrances, Carbon Resources is informed and believes that the only parties holding any Interest in the Other Assets (or in other assets of Western Reserve) are Michael Andrews and Michael Quick, each of whom has filed UCC-1 Financing Statements against Western Reserve but who has agreed to file prior to Closing. Accordingly, all parties with Interests in the Other Assets will consent to the Sale, thus satisfying the requirements of Section 363(f)(2).

42. Based on all of the foregoing arguments, the Debtor believes that it may sell both the Carbon County Assets and the Other Assets free and clear of all Interests other than the Permitted Encumbrances, and requests that this Court so Order.

D. THE COURT SHOULD FIND THE PROPOSED SALE TO BE IN GOOD FAITH.

43. “[W]hen a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is required to make a finding with respect to the ‘good faith’ of the purchaser.” *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986). The purpose of such a finding is to facilitate the operation of section 363(m) of the Bankruptcy Code, which provides a safe harbor for a purchaser of a debtor’s property when the purchase is made in “good faith.” Specifically, section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m) (2011); *see Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 279-80 (9th Cir. 1992); *Irvin v. Lincoln Heritage Life Ins. Co. (In re Irvin)*, 950 F.2d 1318, 1323 (7th Cir. 1991). This provision serves the important purposes both of encouraging good faith transactions and of preserving the finality of the bankruptcy court’s orders unless stayed pending appeal. *Abbotts Dairies*, 788 F.2d at 147; *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 54-55 (7th Cir. 1983).

44. In this case, it is clear that the Purchaser is entitled to the safe harbor provided by section 363(m). The Reeves Declaration demonstrates that the negotiations between the Purchaser and Carbon Resources, WRCC and Western Reserve were at all times conducted at arms’ length and in good faith. In connection with the negotiation of the Sale of the Assets to the Purchaser, Carbon Resources and WRCC evaluated their strategic alternatives and acted with the intent of obtaining the best possible deal for their respective estates, both in terms of maximizing value and in completing a transaction that best comports with the interests of their respective

estates. The terms of the Purchase Agreement accomplish these appropriate objectives. Moreover, Carbon Resources, WRCC and Western Reserve, on the one hand, and the Purchaser, on the other, are not related parties and have not engaged in any collusion in relation to the Sale and the negotiation and documentation of the Purchase Agreement. For these reasons, Carbon Resources and WRCC respectfully request that the Court make a factual determination in the Sale Order that the Purchaser has purchased the Assets in good faith as defined in section 363(m) of the Bankruptcy Code.

IV. CARBON RESOURCES AND WRCC SHOULD BE AUTHORIZED TO ENTER INTO ANY AND ALL AGREEMENTS REQUIRED BY THE PURCHASE AGREEMENT

45. In addition to approving the Purchase Agreement, Carbon Resources and WRCC respectfully request this Court to approve or otherwise authorize the following in order to effectuate the Purchase Agreement. First, Carbon Resources requests this Court to approve its entry into the Option and the "Escrow Instructions (Earnest Money)" executed in connection therewith, *nunc pro tunc* as of March 17, 2011, as such documents evidence the granting of the Option and the circumstances under which the \$500,000 deposit was made. Delta further exercised such Option in the Purchase Agreement.

46. Second, Carbon Resources and WRCC should be authorized to execute all of the additional terminations, consents and other agreements required by Section 1.5 or otherwise in the Purchase Agreement. For example, Section 1.5(a) contemplates that both the Carbon County Sublease and its predecessor sublease, the WRCC Sublease Agreement between Western Reserve, as lessor, and WRCC, as lessee, dated December 2, 2005 (the "WRCC Sublease"), will be amended to delete any provision referencing a royalty deed that originally had been executed in connection therewith, in favor of a new royalty deed executed by the Purchaser. All of these actions will enable the Carbon Resources and WRCC estates to receive the benefits of the Sale

under the Purchase Agreement. Therefore, they should be approved under 11 U.S.C. § 363(b)(1).

V. ADDITIONAL DISCLOSURE REQUIRED BY LOCAL RULE 6004-1

i. Valuation Of The Assets.

47. Pursuant to Local Rule 6004-1(a)(3), there are no valuations of the Assets made within the 12-month period prior to the filing of the Motion. However, the interests of all creditors are fully protected because the Sale should provide sufficient funds to pay all creditors in full, either upon confirmation of a plan of reorganization or as otherwise may be allowed by the Court upon dismissal of the Chapter 11 cases. As a condition to Closing, Section 8.2(d) of the Purchase Agreement further obligates Carbon Resources to amend the Disclosure Statement and Plan to provide for the holders of all allowed Claims in Classes 1, 2, 3 and 4 to be paid in full on the Effective Date of any plan of reorganization confirmed by the Bankruptcy Court in the Carbon Resources Chapter 11 Case.

ii. Costs Of Sale/Personally Identifiable Information/Disposition Of Substantially All Assets of Carbon Resources.

48. Pursuant to Local Rule 6004-1(a)(4)-(5), no broker has been employed as part of the Sale. No personally identifiable information is being included in the Sale other than the identities of the parties to the contracts being assigned.

49. Finally, while the Assets do comprise a substantial part of Carbon Resources' estate, the interests of creditors will still be protected within the meaning of Local Rule 6004-1(a)(6). First, if the Sale is approved, all non-insider creditors should receive a full recovery on account of the allowed amount of their claims, and sufficient funds should remain to allow Carbon Resources to continue to operate. Second, the Purchaser's obligations under the Promissory Note are fully secured by a Deed of Trust against all Real Estate and all Personal Property, as further described in Section 2.1(a)(ii)(4). If the non-recourse portion of the

Promissory Note is paid, WRCC will receive a substantial return on its equity interest in Carbon Resources. If it is not paid, or upon election of the Purchaser, a "Reconveyance" may occur (as further described in Section 2.1(a)(ii)(3), (4) and (6)), wherein, among other things, the Carbon County Sublease will be reconveyed back to Carbon Resources or its designee free and clear of specific encumbrances. Accordingly, Local Rule 6004(a)(6) is satisfied.

VI. NOTICE OF THE SALE IS REASONABLE UNDER THE CIRCUMSTANCES

50. Notice of this Motion, the WRCC Sale Motion and both Motions to Assume/Assign/Reject and of the hearing thereon will be widely disseminated to parties in interest. The Notice of Motion and this Motion (including all exhibits) and all supporting declarations have been served by mail on all of the following parties: (a) all individuals or entities identified on the Schedules filed in either of the Chapter 11 Cases; (b) all individuals or entities that have filed Proofs of Claim in either of the Chapter 11 Cases as of the date of this Motion; (c) all employees of Carbon Resources and WRCC; (d) to the extent not already included in the preceding categories, all non-debtor parties to the leases, subleases, permits or other agreements identified on Exhibits "A," "B," "C-1," "C-2" and "D" to the Purchase Agreement; (e) all entities known or reasonably believed to have asserted any claims or interests against the Assets or the respective interests of Carbon Resources or WRCC in the Assets, and any other entities known to have recorded a lien, interest or encumbrance in or upon the Assets, to the extent that the addresses of such parties are reflected in documents recorded against such Assets in the official records of the Office of the Recorder of Carbon County or at the Secretary of State for Utah, New Mexico, Arizona or Nevada; (f) the Internal Revenue Service and governmental taxing authorities that have, or as a result of the Sale, may have claims, contingent or otherwise against Carbon Resources or WRCC; (g) all other interested governmental and environmental authorities or entities known by Carbon Resources or WRCC to assert jurisdiction

over Carbon Resources or WRCC and to have an interest in the sale of the Assets; (h) the Office of the U.S. Trustee for the District of New Mexico; (i) all persons who have filed a notice of appearance in either of the Chapter 11 Cases; and (l) the Purchaser. Accordingly, Carbon Resources and WRCC respectfully assert that adequate notice of the Motion and the hearing thereon have been and will be provided. *See In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 180 (Bankr. D.Del. 1991) (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

VII. THE COURT SHOULD PERMIT IMMEDIATE RELIEF

51. Carbon Resources and WRCC request that the Court waive Bankruptcy Rule 6004(h), which provides that an “order authorizing the use, sale, or lease of property . . . is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h) (2011). To the extent that the parties deem it necessary, a waiver of Bankruptcy Rule 6004(h) will permit Carbon Resources to immediately realize the value of the Assets for the benefit of both the Carbon Resource estate and the estate of WRCC (through its ownership interest in the Carbon Resources membership interests).

WHEREFORE, Carbon Resources and WRCC respectfully request that the Court grant the Motion and: (a) approve the Sale of the Assets free and clear of all Interests except for Permitted Encumbrances and Assumed Liabilities; (b) authorize Carbon Resources and WRCC to enter into and execute all of the agreements required of it to effectuate the transactions contemplated by the Purchase Agreement; (c) enter an Order that complies with the terms and conditions of the Purchase Agreement, including Schedule 1.2 thereto, which Sale Order shall be in a form acceptable to the Purchaser; and (d) grant such other and further relief as the Court may deem appropriate.

Dated: September 30, 2011

Respectfully submitted by:

/s/ submitted electronically

Philip J. Montoya
Counsel for Debtor Carbon Resources LLC
P.O. Box 159
Albuquerque, NM 87103-0159
(505) 244-1152 Fax: 242-2836

DMWEST #8470397 v15

EXHIBIT 1

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of the 12th day of September, 2011, by and between CARBON RESOURCES, LLC, a Nevada limited liability company ("Seller"), and DELTA COAL FUND PTY LTD ACN 149 580 085, an Australian proprietary limited liability company ("Buyer").

RECITALS

A. Seller owns those certain real property, leasehold estates, mineral rights (if any), improvements and fixtures and other appurtenances and tenements and rights that are described in Exhibit "A" below that is attached hereto and by this reference incorporated herein (collectively the "Carbon Resources Real Estate"), including, without limitation, the Carbon County Sublease (as such term is defined in Exhibit "A"), together with the Carbon Resources Personal Property (as that term is defined in Subsection 1.1(a) below), upon and with which Seller intends to develop a coal mine pursuant to the Kinney Mine Permit (as that term is defined in Section 1.4 below) (the "Mine"); and

B. Western Reserve Coal Company Incorporated, a Nevada corporation ("Western Reserve") owns those certain real property, leasehold estates, water share rights, coal rights, mineral rights (if any), improvements and fixtures and other appurtenances and tenements (if any) and rights that are described in Exhibit "B" below that is attached hereto and by this reference incorporated herein (collectively the "Other Real Estate"), including, without limitation, the Telonis Lease (as such term is defined in Exhibit "B"), together with the Other Personal Property (as that term is defined in Subsection 1.1(b) below), which Seller intends to be utilized to develop the Mine pursuant to the Kinney Mine Permit (the Carbon Resources Real Estate and the Other Real Estate are referred to herein as the "Real Estate") (the Carbon Resources Personal Property and the Other Personal Property are referred to herein as the "Personal Property"). Seller either owns or will have the right to purchase the Other Real Estate and the Other Personal Property at Closing (as defined below in Section 5.1), at which time Seller will transfer them to Buyer at Closing. It shall be a condition to Closing that the Other Real Estate and the Other Personal Property shall be transferred to Buyer at Closing (as defined below in Section 5.1) free and clear of all Claims, Liens and Indebtedness and encumbrances (as defined in Schedule 1.2 below) and encumbrances, except Assumed Liabilities (as defined below in Section 1.3) and Permitted Encumbrances (as defined below in Section 4.3), and otherwise in the condition required by this Agreement. Seller and Buyer acknowledge and agree that Western Reserve is not a party to this Agreement; and

C. On or about December 10, 2010, Seller filed a petition for relief under chapter 11, title 11, of the United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Mexico (the "Bankruptcy Court"), Case No. 10-16104-j11 ("Carbon Resources Chapter 11 Case"); and

D. On or about August 16, 2011, WRCC, LLC ("WRCC") filed a petition for relief under chapter 11, title 11, of the Bankruptcy Code in the Bankruptcy Court, Case No. 11-13700-j11 ("WRCC Chapter 11 Case"); and

DMWEST #8375045 v15

E. Seller and Buyer (which entity was incorrectly referred to in the below-mentioned Option Agreement as Delta Capital Coal Fund PTY LTD ACN 149 580 085), are parties to that certain Option Agreement dated March 17, 2011 (the "Option Agreement"), related to the Carbon Resources Real Estate and other related matters; and

F. Buyer proposes to assign its interest in the Option Agreement to Wasatch Natural Resources LLC, which will be a wholly owned subsidiary of Buyer ("Wasatch") pursuant to an Assignment of Option Agreement between Buyer and Wasatch (the "Assignment of Option Agreement"), Seller consents to the Assignment of Option Agreement, provided however, that the Assignment of Option Agreement does not affect Buyer's duties and obligations pursuant to the Option Agreement; and

G. Buyer will also assign to Wasatch Buyer's interest in the Escrow Agreement among Buyer, Escrow Agent (as defined below in Subsection 2.1(a)(ii)), and Seller dated March 23, 2011 pursuant to an Assignment of Escrow Agreement between Buyer and Wasatch (the "Assignment of Escrow Agreement"), as consented to by Seller and Escrow Agent, which Assignment of Escrow Agreement does not affect or impair Seller's rights thereunder, except as specifically modified herein; and

H. Buyer hereby exercises the option in the Option Agreement, and this Agreement thereafter supersedes the Option Agreement; and

I. New Horizon Minerals Ltd ACN 143 921 110, an Australian limited liability company, proposes to purchase Buyer, subject to the approval of its shareholders of this Agreement, in accordance with the Australian Stock Exchange listing rules and Corporations Act 2001 (Cth); and

J. Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, the Carbon Resources Real Estate and the Carbon Resources Personal Property free and clear of all Liens, Claims, and Indebtedness (as defined in Schedule 1.2) under sections 363(f) and 365 of the Bankruptcy Code) and encumbrances, except Assumed Liabilities (defined below in Section 1.2) and Permitted Encumbrances, notwithstanding any provisions herein or in any other agreement between Seller and Buyer to the contrary. In addition, Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, all of Seller's interest, when acquired by Seller, in the Other Real Estate and the Other Personal Property free and clear of all Claims, Liens and Indebtedness and encumbrances, except Assumed Liabilities (defined below in Section 1.3) and Permitted Encumbrances, and otherwise in the condition required by this Agreement.; and

K. Except Buyer's obligation to deliver \$250,000 of the Earnest Money Deposit (as defined below in Subsection 2.1(a)(i)) to Seller upon the full execution of this Agreement, the execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth in or otherwise contemplated by this Agreement are subject, among other things, to the entry of Final Orders (as defined in Schedule 1.2) of the Bankruptcy Court under, *inter alia*, sections 363 and 365 of the Bankruptcy Code in the Carbon Resources Chapter 11 Case and the WRCC Chapter 11 Case. The Carbon Resources Chapter 11 Case and the WRCC Chapter 11 Case shall hereinafter be referred to collectively, from time to time, as the "Chapter 11 Cases"; and

NOW, THEREFORE, in consideration of the foregoing, the benefits to be derived hereunder and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

ARTICLE I

PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets.

(a) Carbon Resources Assets. Subject to the terms and conditions of this Agreement, and except as otherwise indicated herein, and for the consideration set forth below, Seller hereby agrees to sell, convey, assign, transfer and deliver to Buyer, free and clear of all Claims, Liens and Indebtedness and encumbrances, except Assumed Liabilities and Permitted Encumbrances, as contemplated by section 363 of the Bankruptcy Code, and Buyer hereby, upon the terms and conditions of this Agreement, agrees to purchase and acquire from Seller, free and clear of all Claims, Liens and Indebtedness and encumbrances, except Assumed Liabilities and Permitted Encumbrances, as contemplated by section 363 of the Bankruptcy Code, all of Seller's right, title, and interest in and to the Carbon Resources Real Estate and the tangible and intangible assets associated with the Carbon Resources Real Estate, including the following:

(i) Any and all files containing inspection or survey reports from any applicable government regulatory, licensing or surveying agency or entity, held and/or maintained by Seller, related to or used in connection with the Carbon Resources Real Estate, the Carbon County Subleased Land (as such term is defined in Exhibit "A" below), the proposed Mine, or the Carbon Resources Personal Property, including any files or records maintained electronically (collectively, the "Carbon Resources Records");

(ii) All contracts, CR/WRCC Contracts (as such term is defined in Section 1.2(b) below), agreements, arrangements, CR/WRCC Leases (as such term is defined in Section 1.2(b) below), purchase orders, sale orders or commitments or other binding arrangements or understandings, whether written or oral, applicable to the Carbon Resources Real Estate, the Carbon County Subleased Land, the proposed Mine or the Carbon Resources Personal Property (collectively, the "Carbon Resources Contracts"), including those contracts, CR/WRCC Contracts, agreements, arrangements, CR/WRCC Leases, purchase orders, sale orders or commitments or other binding arrangements or understandings that Buyer elects to acquire and assume in connection herewith that are listed and identified on Exhibit "C-1" and any other Carbon Resources Contracts assumed and assigned by Seller to Buyer in accordance with this Agreement (the "Assumed Carbon Resources Contracts"), and all fees and payments made by Seller with respect to the Assumed Carbon Resources Contracts;

(iii) All licenses, permits and approvals issued by any federal, state, or local government, regulatory or administrative authority, agency, commission or any court tribunal or judicial body ("Governmental Authority") and held by Seller that are necessary for

the lawful ownership and operation of the Carbon Resources Real Estate, the Carbon County Subleased Land, the Carbon Resources Personal Property or the proposed Mine, including those licenses, permits or approvals set forth on Exhibit "D" (collectively the "**Carbon Resources Permits**") and all fees and payments made by Seller in connection with the Carbon Resources Permits;

(iv) All surveys, maps, plans, specifications, geophysical plots, and diagrams of the Carbon Resources Real Estate, the Carbon County Subleased Land, or the Mine area; all drill samples and cores, drilling locations, and logs from drilling conducted on the Carbon Resources Real Estate, the Carbon County Subleased Land, or the Mine area; all geological and geochemical samples, and geophysical logs and reports with respect to anomalous mineralization located within the Carbon Resources Real Estate, the Carbon County Subleased Land, or the Mine area and all other technical data and information prepared or assembled by Seller; all flora, fauna, hydro-geological and surface waters, ethnographic and archaeological surveys and environmental reports and audits; all mining, beneficiation, marketing, and feasibility studies related to the coal deposits on the Carbon Resources Real Estate, Carbon County Subleased Land or the Mine area and environmental surveys and reports; and all other documents or information relating specifically to the coal deposits contained within the Carbon Resources Real Estate, the Carbon County Subleased Land, or the Mine area, to work carried out or proposed to be carried out, or to the conduct in relation to coal contained within the Carbon Resources Real Estate, the Carbon County Subleased Land, or the proposed Mine (as the case may be) in the possession of, or owned by, Seller (collectively, the "**Carbon Resources Mining Materials**"); and

(v) Any other mining tenement that may be granted in lieu of or relate to the same ground as the Carbon Resources Real Estate or the Carbon County Subleased Land; to the extent Seller owns or has rights to convey the following rights: the exclusive right to explore, mine and treat any coal on the Carbon County Subleased Land or Mine area subject to the royalties that may be due for the same; full ownership of all coal mined, stockpiled or otherwise taken from the Carbon County Subleased Land or the Mine area; and all other rights associated with the Carbon Resources Real Estate, the Carbon County Subleased Land or the proposed Mine or Mine area and other privileges appurtenant to the Carbon Resources Real Estate, the Carbon County Subleased Land, or the proposed Mine or Mine area (collectively, "**Carbon Resources Mining Tenements**").

The items listed above in Subsections 1.1(a) (i) through (v), including the Carbon Resources Records, Assumed Carbon Resources Contracts, Carbon Resources Permits, Carbon Resources Mining Materials, and Carbon Resources Mining Tenements are also referred to herein collectively as the "**Carbon Resources Personal Property**". The Carbon Resources Real Estate and the Carbon Resources Personal Property are referred to herein as the "**Carbon Resources Assets**."

(b) Other Assets. Seller either owns or will own by Closing the Other Assets (defined below). For the consideration set forth below, Seller hereby agrees to sell, convey, assign, transfer and deliver to Buyer, free and clear of all Claims, Liens and Indebtedness and encumbrances, except Assumed Liabilities and Permitted Encumbrances, and Buyer hereby, upon the terms and conditions of this Agreement, agrees to purchase and acquire from Seller,

free and clear of all Claims, Liens and Indebtedness and encumbrances, except Assumed Liabilities and Permitted Encumbrances, all of Seller's right, title, and interest in and to the Other Real Estate and the tangible and intangible assets associated with the Other Real Estate, including, but not limited to, the following:

(i) Any and all files containing inspection or survey reports from any applicable government regulatory, licensing or surveying agency or entity, held and/or maintained by Western Reserve, related to or used in connection with the Other Real Estate, the Telonis Leased Land (as such term is defined in Exhibit "B" below), the proposed Mine, or the Other Personal Property, including any files or records maintained electronically (collectively, the "Other Records") (the Carbon Resources Records and the Other Records are referred to herein as the "Records") (the Telonis Leased Land and the Carbon County Subleased Land are referred to herein as the "Leased Land");

(ii) All contracts and agreements applicable to the Other Real Estate or Other Personal Property ("**Other Contracts**") that Buyer elects to acquire and assume in connection herewith (the "**Assumed Other Contracts**"), if any, including those listed in Exhibit "C-1", and all fees and payments made by Seller with respect to the Assumed Other Contracts. The Carbon Resources Contracts and the Other Contracts are referred to herein as the "**Contracts**." The Assumed Carbon Resources Contracts and the Assumed Other Contracts are referred to herein as the "**Assumed Contracts**."

(iii) All licenses, permits and approvals issued by Governmental Authority and held by Seller that are necessary for the lawful ownership and operation of the Other Real Estate, the Telonis Leased Land, the Other Personal Property, if any (collectively the "**Other Permits**") and all fees and payments made by Seller in connection with the Other Permits (the Carbon Resources Permits, including the Kinney Mine Permit (as defined below in Section 1.4), and the Other Permits are referred to herein as the "**Permits**");

(iv) All surveys, maps, plans, specifications, geophysical plots, and diagrams of the Other Real Estate, the Telonis Leased Land, or the Mine area; all drill samples and cores, drilling locations, and logs from drilling conducted on the Other Real Estate, the Telonis Leased Land, or the Mine area; all geological and geochemical samples, and geophysical logs and reports with respect to anomalous mineralization located within the Other Real Estate, the Telonis Leased Land, or the Mine area and all other technical data and information prepared or assembled by Western Reserve; all flora, fauna, hydro-geological and surface waters, ethnographic and archaeological surveys and environmental reports and audits; all mining, beneficiation, marketing, and feasibility studies related to the coal deposits on the Other Real Estate, Telonis Leased Land or the Mine area and environmental surveys and reports; and all other documents or information relating specifically to the coal deposits contained within the Other Real Estate, the Telonis Leased Land, or the Mine area, to work carried out or proposed to be carried out, or to the conduct in relation to coal contained within the Other Real Estate, the Telonis Leased Land, or the proposed Mine (as the case may be) in the possession of, or owned by, Seller at Closing (collectively, the "**Other Mining Materials**") (the Carbon Resources Mining Materials and the Other Mining Materials are referred to herein as the "**Mining Materials**");

(v) Any other mining tenement that may be granted in lieu of or relate to the same ground as the Other Real Estate or the Telonis Leased Land; to the extent Seller owns or has rights to convey the following rights: the exclusive right to explore, mine and treat any coal on the Other Real Estate or the Mine area subject to the royalties that may be due for the same; full ownership of all coal mined, stockpiled or otherwise taken from the Other Real Estate or the Mine area; and all other rights associated with the Other Real Estate, the Telonis Leased Land or the proposed Mine or Mine area and other privileges appurtenant to the Other Real Estate, the Telonis Leased Land, or the proposed Mine or Mine area (collectively, "**Other Mining Tenements**") (the Carbon Resources Mining Tenements and the Other Mining Tenements are referred to herein as the "**Mining Tenements**"); and

(vi) Two shares of water from Price River Water Users Association, a copy of the Water Shares is attached hereto as Exhibit "E" (the "**Water Shares**"). The Water Shares shall be conveyed by Buyer to Western Reserve if the Re-Conveyance (as defined in Section 2.1 below) occurs.

The items listed above in Subsections 1.1(b) (i) through (vi), including the Other Records, Assumed Other Contracts, Other Permits, Other Mining Materials, Other Mining Tenements and Water Shares are also referred to herein collectively as the "**Other Personal Property**". The Other Real Estate and the Other Personal Property are referred to herein as the "**Other Assets**." The Carbon Resources Assets and the Other Assets are referred to herein as the "**Assets**."

1.2 Seller's Debts, Liabilities and Obligations (Bankruptcy and Otherwise).

(a) Bankruptcy Sale Orders.

(i) In connection with each of the Chapter 11 Cases and the proposed (i) sale of the Carbon Resources Assets pursuant to Sections 363(b) and (f) of the Bankruptcy Code, (ii) assumption and assignment pursuant to Section 365 of the Bankruptcy Code to Buyer of the Assumed Carbon Resources Contracts and (iii) WRCC's assumption (and subsequent modification) of the WRCC Sublease and the Carbon County Sublease as further described in Sections 1.4 and 1.6 below (collectively, the "**Section 363 Sale**"), Seller covenants to use its best efforts to cause a Sale Motions or Sale Motions for the Section 363 Sale (such Sale Motions or motions, together with (1) the requested form of sale orders (together, the "**Requested Form of Sale Orders**"), which shall contain, among other things, provisions consistent with the requirements set forth on Schedule 1.2 attached hereto (the "**Sale Order Requirements**") and (2) this Agreement, collectively, the "**Sale Motions**") to be filed in a form acceptable to Buyer with the Bankruptcy Court in each of the Chapter 11 Cases on or before October 15, 2011, or such other date as may be agreed to by the parties.

(ii) On the Closing Date (as defined below in Section 5.1), Seller shall transfer the Carbon Resources Assets to Buyer, free and clear of any and all Claims, Liens and Indebtedness and encumbrances (except for the Permitted Encumbrances). Buyer shall not be under any obligation to consummate the Section 363 Sale or this Agreement if the final sale order or sale orders issued by the Bankruptcy Court in connection with the Section 363 Sale in each of the Chapter 11 Cases (together, the "**Sale Orders**") contain an amendment or

modification from the Requested Form of Sale Orders that has not been approved by Buyer. The Sale Orders further shall be in form and substance satisfactory to Buyer.

(iii) Seller agrees that, prior to the Closing Date, it will not accept any other offer to purchase the Assets unless and until this Agreement has terminated. Buyer acknowledges and agrees that the foregoing limitations shall not prevent Seller from marketing the Assets for sale to any other party in connection with the Chapter 11 Cases.

(iv) Except as required by applicable law, including the Bankruptcy Code and any order by the Bankruptcy Court, neither this Agreement, nor the exhibits or schedules annexed hereto, nor any other confidential or proprietary information of Buyer shall be disclosed to any other Person without the prior consent of Buyer.

(v) Except to the extent limited by any order of the Bankruptcy Court, notice of this Agreement and notice of the Sale Motions and the Requested Form of Sale Orders and the hearings therefor shall be duly and properly given in writing by Seller by actual notice to all known creditors and known parties in interest in each of the Chapter 11 Cases, including any known parties holding consensual or nonconsensual Liens on the Assets, the lessors on all CR/WRCC Leases, the Other Contracts and the Telonis Lease, the non-Seller parties to the Assumed Carbon Resources Contracts, the Other Contracts and the Water Shares being assumed pursuant to this Agreement or acquired at Closing, and all applicable taxing and Governmental Authorities (as such term is defined in Schedule 1.2), and any other parties which Buyer reasonably determines to be necessary, including providing notice by publication in any newspaper or other periodical to the extent Buyer determines necessary. Unless otherwise agreed to by Buyer, the Sale Motions further shall be filed on regular notice in accordance with all applicable Federal Rules of Bankruptcy Procedure and local court rules.

(vi) To the extent that Seller holds any interest in the Telonis Lease or the Telonis Leased Land, then such interests shall constitute "Carbon Resources Real Estate" within the meaning of Section 1.1(a) and otherwise of this Agreement, and shall be treated in the same manner and fashion as all other Carbon Resources Real Estate and Assumed Carbon Resources Contracts under this Agreement (for which there shall be \$0.00 "Cure Costs" (as defined in Subsection 1.2(b) below), and shall be sold to Buyer free and clear of all Claims, Liens and Indebtedness and encumbrances except Permitted Encumbrances and Assumed Liabilities pursuant to the terms and conditions set forth in Section 1.1 and 1.2 of this Agreement.

(vii) Capitalized terms not otherwise defined in this Section or elsewhere in this Agreement shall have the meanings ascribed to such terms in Schedule 1.2.

(b) Assignment and Assumption of Contracts, Leases and Permits.

(i) On or prior to the date of this Agreement, Seller and Buyer have attached to this Agreement, as Exhibit C-1, a list of (1) each agreement, arrangement, contract, lease, purchase order, sale order or commitment or other binding arrangement or understanding, whether written or oral (each a "CR/WRCC Contract") and (2) each lease, sublease, license or other agreements for real property, including all amendments, extensions, renewals, guaranties or

other agreements with respect thereto (each a "CR/WRCC Lease"), of Seller or WRCC that, as of the date of this Agreement, they intend to be assumed and assigned by Seller or WRCC to Buyer at the Closing, and the amount of any "Cure Costs" (as hereafter defined). Buyer, by written notice to Seller may amend or revise Exhibit C-1, at any time up to two (2) days prior to the Closing Date (the "**Designation Deadline**") in order to add any CR/WRCC Contract or CR/WRCC Lease to or eliminate any CR/WRCC Contract or CR/WRCC Lease from the Assumed Carbon Resources Contracts, or change the amount of any Cure Costs. Automatically upon the addition of any CR/WRCC Contract to Exhibit C-1, (x) it shall be an Assumed Carbon Resources Contract for all purposes of this Agreement, (y) Seller shall be responsible for the payment of all monetary defaults to the extent required by section 365(b) of the Bankruptcy Code (any such costs incurred to cure such defaults, "Cure Costs") of such CR/WRCC Contract or CR/WRCC Lease, and (z) all Liabilities arising at and after the Closing Date under such CR/WRCC Contract, if any, shall be Assumed Carbon Resource Liabilities for all purposes of this Agreement to the extent so provided herein. Automatically upon the deletion of any CR/WRCC Contract or CR/WRCC Lease from Exhibit C-1, it shall be an Excluded Carbon Resources/WRCC Contract (as defined below) for all purposes of this Agreement. If Buyer indicates in writing to Seller after the Closing Date that it wishes to acquire a CR/WRCC Contract or CR/WRCC Lease of Seller or WRCC that was not an Assumed Contract on the Closing Date, Seller will use its best efforts to assign or use best efforts to cause WRCC to assign such CR/WRCC Contract or CR/WRCC Lease to Buyer; provided, however, nothing herein shall be deemed or construed to obligate Seller or WRCC to retain, or refrain from rejecting or terminating any CR/WRCC Contract after the Designation Deadline that does not constitute an Assumed Carbon Resources Contract.

(ii) So long as an Excluded Carbon Resources/WRCC Contract has not been rejected by Seller or WRCC pursuant to section 365 of the Bankruptcy Code, Seller shall, or shall use best efforts to cause WRCC to, upon written request by Buyer, assume and assign such Excluded Carbon Resources/WRCC Contract to Buyer or its designee for no additional consideration; *provided, however*, that Seller and WRCC, as applicable, shall solely be responsible for the payment of all Cure Costs under any such Excluded Carbon Resources/WRCC Contract the assumption and assignment of which has been requested by Buyer, and all Liabilities arising at and after the Closing Date under any such Excluded Carbon Resources/WRCC Contract shall be Assumed Liabilities for all purposes of this Agreement to the extent so provided herein.

(iii) If at any time Seller becomes aware, on or before the Closing Date, of any Contract or Lease to which Seller or WRCC is a party or by which Seller or WRCC is bound that has not been previously provided or made available to Buyer, Seller shall promptly thereafter advise Buyer of the existence, and provide Buyer with a copy, of such CR/WRCC Contract or CR/WRCC Lease and Buyer thereupon shall have the right to request, by written notice to Seller or WRCC, as applicable, within five (5) days, that Seller and WRCC, as applicable, assume, assign and sell such CR/WRCC Contract or CR/WRCC Lease to Buyer, in which case Seller shall, or shall use best efforts to cause WRCC to, to assume, assign and sell such CR/WRCC Contract or CR/WRCC Lease to Buyer, as promptly as reasonably practicable, on the same terms and conditions as would be applicable under this Agreement to the Assumed Carbon Resources Contracts; *provided, however*, that Seller and WRCC, as applicable, shall solely be responsible for the payment of all Cure Costs under any such Excluded Carbon

Resources/WRCC Contract the assumption and assignment of which has been requested by Buyer, and all Liabilities arising at and after the Closing Date under any such Excluded Contract shall be Assumed Liabilities for all purposes of this Agreement to the extent so provided herein.

(iv) It shall be a condition precedent to the Closing that by the Sale Motions, and in such additional or subsequent motions as may be appropriate, Seller and WRCC shall seek authority to assign the Assumed Carbon Resources Contracts to Buyer (or Buyer's designee) in accordance with section 365 of the Bankruptcy Code. It shall be a further condition that at the Closing, subject to the order of the Bankruptcy Court approving the assumption and assignment of executory contracts and real property pursuant to section 365 of the Bankruptcy Code, Seller and WRCC, as applicable, shall assume and assign to Buyer the Assumed Carbon Resources Contracts as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Orders. In connection with such assumption and assignment, Seller and WRCC, as applicable at their own cost and expense shall pay all Cure Costs under the Assumed Contracts.

(v) If following the Closing, Seller receives or become aware that it holds any asset, property or right which constitutes a portion of the Assets, then Seller shall use its best efforts to transfer or cause WRCC to transfer such asset, property or right to Buyer as promptly as practicable for no additional consideration.

(vi) For all purposes of this Agreement, "Excluded Carbon Resources/WRCC Contracts" shall mean each and every CR/WRCC Contract or CR/WRCC Lease that is not an Assumed Carbon Resources Contract, including the CR/WRCC Contracts or CR/WRCC Leases set forth on Exhibit C-2.

(vii) For all purposes of this Agreement, "Assumed Carbon Resources Contracts" shall include the Carbon Resources Permits and the assumption and assignment of these Carbon Resources Permits shall be governed by this Subsection 1.2(b).

(viii) Buyer shall reasonably cooperate with Seller and WRCC in furnishing to the Bankruptcy Court, upon Seller's or WRCC's request, evidence of adequate assurance by Buyer of its future performance under the Assumed Carbon Resources Contracts, and to otherwise perform and discharge the Assumed Liabilities, and evidence, to the extent required by the Bankruptcy Code, that Buyer has the financial wherewithal to close the transactions contemplated by this Agreement.

(c) Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, at the Closing, as additional consideration to Seller for the sale of the Assets, Buyer assumes and agrees to pay, perform and discharge the following liabilities of Seller (collectively, the "Assumed Liabilities") by executing and delivering to Seller the Assignment and Assumption Agreement (defined in Section 9.1 below):

(i) the liabilities of Seller arising out of or related to the Assumed Contracts existing as of the Closing Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Closing Date in accordance with the terms of any such Assumed Contracts, and (B) do not arise from or relate to any breach by Seller of any provision of any Assumed Contracts;

(ii) the liabilities of Seller arising out of or related to the Carbon County Sublease, existing as of the Closing Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Closing Date in accordance with the terms of the Carbon County Sublease, and (B) do not arise from or relate to any breach by Seller of any provision of the Carbon County Sublease;

(iii) the liabilities of Seller arising out of or related to the Telonis Lease, existing as of the Closing Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Closing Date in accordance with the terms of the Telonis Lease, and (B) do not arise from or relate to any breach by Seller of any provision of the Telonis Lease; and

(iv) the liabilities incurred on or after the Closing by Buyer arising out of or related to Buyer's use or ownership of the Real Estate and the Personal Property.

(d) Excluded Liabilities. Except for the Assumed Liabilities, the parties hereby acknowledge and agree that all debts, claims, obligations and liabilities whatsoever of Seller, shall be the sole responsibility of Seller, and that Buyer is not assuming, and shall not be obligated or deemed to assume, any debt, claim or liability of Seller (the "Excluded Liabilities"). Seller shall remain liable for all Excluded Liabilities, including, but not limited to, any obligations arising out of Seller's ownership of the Real Estate and the Personal Property prior to the Closing Date.

(e) Survival. This Section 1.2 shall survive the Closing.

1.3 Intentionally Deleted.

1.4 Transfer of Permits.

(a) Seller shall remain validly existing and in good standing with the State of Nevada until such time as the Kinney #2 Mine, Carbon County near Scofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011 (the "Kinney Mine Permit") is issued and transferred to Buyer. Seller shall not grant any interest in the Kinney Mine Permit or any other Asset to anyone other than Buyer. Buyer shall have the exclusive right and the obligation to post the reclamation bond that is necessary to obtain the Kinney Mine Permit within one year of Closing (the "Reclamation Bond"). At Closing, Seller shall execute and deliver to Buyer the document(s) necessary to transfer the Kinney Mine Permit to Buyer, along with assurances acceptable to Buyer that all other parties who must consent to such transfer will consent (collectively, the "Kinney Mine Permit Assignment Documents"). When the Kinney Mine Permit is issued, the Kinney Mine Permit Assignment Documents shall be filed by Buyer with the State of Utah Department of Natural Resources, Division of Oil, Gas and Mining. Seller shall cooperate in good faith with Buyer and shall take all appropriate action and execute any documents, instruments, assignments, assumption or conveyances of any kind that may be reasonably necessary or advisable to carry out Buyer's acquisition and/or transfer of the Carbon Resources Permits, including the Kinney Mine Permit. Seller shall cooperate in good faith with Buyer and shall take all appropriate action and execute any documents, instruments, assignments, assumption or conveyances of any kind that may be reasonably necessary or

advisable to carry out Buyer's acquisition and/or transfer of the Other Permits. The provisions of this Section 1.4 shall survive the Closing.

1.5 Lease Matters.

(a) Upon Closing, the following conditions must be met: (i) any royalty deed given in connection with the Carbon County Sublease or the WRCC Sublease shall be terminated, (ii) consents of all applicable creditors that hold any interest in any such royalty deed have consented to such termination (if any), (iii) the WRCC Sublease and the Carbon County Sublease shall be amended to delete the provisions in such leases regarding such royalty deed, and (iv) Carbon County, Western Reserve, WRCC and Seller shall consent to such amendments to the WRCC Sublease and the Carbon County Sublease. In addition, upon Closing, Buyer shall deliver to Western Reserve a royalty deed and agreement in the form attached hereto as **Exhibit "F"** (the "Royalty Deed and Agreement"). A Sale Order in a form approved by Buyer obtained from the Bankruptcy Court approving a particular transaction may constitute a consent.

(b) Upon Closing, the following conditions must be met: (i) the Carbon County Lease, the WRCC Sublease, and the Carbon County Sublease are in full force and effect, (ii) Carbon County, Western Reserve, and WRCC shall have consented to the assignment of the Carbon County Sublease by Seller to Buyer, (iii) Carbon County shall have agreed that the royalties due under the Carbon County Lease shall not increase due to the Seller's assignment of the Carbon County Sublease to Buyer at Closing, (iv) Carbon County, Western Reserve, and WRCC shall have consented to the assignment of the Carbon County Sublease by Buyer to Seller in connection with the Re-conveyance (as defined below in Section 2.1(a)(ii)); (v) Carbon County, Western Reserve and WRCC shall have each executed and delivered an estoppel certificate to Buyer in a form and covering topics acceptable to Buyer, (vi) Carbon County and Western Reserve shall have each executed and delivered a recognition agreement with Buyer in a form and containing provisions acceptable to Buyer, and (vii) Buyer shall have received written evidence that the 1988 lease affecting the Carbon County Subleased Land between Carbon County and Western Reserve Coal, Inc., a Utah corporation, has been terminated. A Sale Order in a form approved by Buyer obtained from the Bankruptcy Court approving a particular transaction may constitute a consent.

(c) Upon Closing, the following conditions must be met: (i) the Telonis Lease is in full force and effect; (ii) the Telonis Lease shall have been assigned from Western Reserve to Seller, (iii) the Telonis Family shall have consented or otherwise acknowledged the assignment of the Telonis Lease by Western Reserve to Seller and the assignment of the Telonis Lease by Seller to Buyer pursuant to the terms of this Agreement, (iii) the Telonis Family shall have executed and delivered an estoppel certificate to Buyer in a form and covering topics acceptable to Buyer; and (iv) the Telonis Family shall have consented or otherwise acknowledged the assignment of the Telonis Lease by Buyer to Seller in connection with the Re-conveyance. A Sale Order in a form approved by Buyer obtained from the Bankruptcy Court approving a particular transaction may constitute a consent.

1.6 Disposition Of WRCC's Contracts, Leases, Liabilities And Obligations/Other Obligations Of WRCC Under This Agreement.

(a) Assumption of WRCC's Interests in the WRCC Sublease and the Carbon County Sublease.

(i) It shall be a condition precedent to the Closing that WRCC shall assume the WRCC Sublease and the Carbon County Sublease (each of which thereafter shall be modified as set forth in Section 1.4 of this Agreement), and shall be solely responsible for the payment of all monetary defaults to the extent required by section 365(b) of the Bankruptcy Code of the WRCC Sublease and the Carbon County Sublease, and all Liabilities arising at or after the Closing Date under the WRCC Sublease or under the Carbon County Sublease shall remain the obligation of WRCC. By the Sale Motions, and in such additional or subsequent motions as may be appropriate in either of the Chapter 11 Cases, WRCC shall seek authority from the Bankruptcy Court (i) approving the assumption of the WRCC Sublease and the Carbon County Sublease (as modified) as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Orders, and (ii) authorizing WRCC to sign this Agreement and take such other actions as may be necessary to implement the terms and conditions of this Agreement, including, without limitation, those actions contemplated by Section 1.4 above.

(ii) It shall be a condition precedent to the Closing that until the Closing Date, WRCC shall take all actions necessary in the WRCC Chapter 11 Case to extend the time to assume or reject the WRCC Sublease and the Carbon County Sublease (and all other WRCC Leases) pursuant to Section 365 of the Bankruptcy Code. Both before and after the Closing Date, WRCC shall perform all of its obligations under the WRCC Sublease and the Carbon County Sublease, and shall take all other actions in the WRCC Chapter 11 Case, or otherwise, to preserve, protect and maintain in existence the WRCC Sublease and the Carbon County Sublease, and shall take no action to reject the WRCC Sublease or the Carbon County Sublease in the WRCC Chapter 11 Case pursuant to Section 365 of the Bankruptcy Code.

(b) Assumption and Assignment of WRCC Contracts and Leases (Other Than the WRCC Sublease and the Carbon County Sublease). To the extent that (i) any agreement, arrangement, contract, lease, purchase order, sale order or commitment or other binding arrangement or understanding, whether written or oral, of WRCC (each a "WRCC Contract"), or (ii) any lease, sublease, license or other agreement for real property (other than the WRCC Sublease and the Carbon County Sublease), including all amendments, extensions, renewals, guaranties or other agreement with respect thereto (each a "WRCC Lease"), is intended by the parties to this Agreement to be assumed and assigned by WRCC to Buyer at the Closing, then such WRCC Contract or WRCC Lease shall be designated a CR/WRCC Contract or WRCC Lease, as applicable, in accordance with Section 1.2(b) above and shall be assumed and assigned to Buyer or otherwise rejected in accordance with the terms and conditions of Section 1.2(b) above.

(c) Benefits to WRCC Under This Agreement. Under the Sale Motions, the Liens, Claims and Indebtedness of PCM Venture II, LLC ("PCM") (if any) in or against the Carbon Resource Assets or in or against any assets of WRCC, including its membership interests in Seller, shall be satisfied or otherwise transferred or attach to the proceeds of the Section 363 Sale, all as further described in the Sale Motions. Additionally, WRCC shall be relieved of its Liabilities and Obligations to Western Reserve under the WRCC Sublease incurred as of the Closing Date, all as further described in Sections 1.5 and 1.6 above.

(d) The provisions of this Section 1.6 shall survive the Closing.

1.7 **Buyer Takes Assets "As-Is"**. Subject to Seller's representations, warranties and covenants specifically set forth in this Agreement, Buyer acknowledges and agrees that it shall purchase and take title to the Assets in their as-is, where-is, with-all-faults condition.

ARTICLE II

PURCHASE PRICE; VALUATION

2.1 **Purchase Price**. In exchange for the transfer to Buyer of the Assets Buyer shall deliver the following:

(a) **Purchase Price**. The purchase price for the Assets shall be US\$25,000,000 (the "Purchase Price") to be paid as follows:

(i) **Deposit**. As required by the Option Agreement, US\$500,000, as an earnest money deposit, non-refundable under the conditions hereinafter set forth (the "Earnest Money Deposit"), in cash or other immediately available funds, has already been deposited in an interest bearing account with South Eastern Utah Title Company located at 175 East 100 South in Price, Utah 84501, as the "Escrow Agent," to be applied to the Purchase Price at Closing unless otherwise paid or distributed in accordance with the terms of this Agreement. The parties hereby direct the Escrow Agent that such Earnest Money Deposit shall be held and disbursed in accordance with this Agreement rather than the Option Agreement. The parties shall further direct the Escrow Agent to disburse US\$250,000.00 (one-half of the Earnest Money Deposit) to Seller as the non-refundable portion of the Earnest Money Deposit upon the execution of this Agreement by both Buyer and Seller.

(ii) **Balance of Purchase Price**.

(1) At Closing, Buyer shall pay US\$6,500,000 toward the Purchase Price to Seller in immediately available funds. At Closing, Escrow Agent shall apply the US\$500,000 Earnest Money Deposit against the Purchase Price.

(2) Also at Closing, Buyer shall deliver a promissory note in the amount of US\$18,000,000 (the "Note Amount") in a form commercially acceptable to the parties (the "Note"). The Note Amount is to be paid in two installments, the recourse first installment shall be US\$3,000,000 (the "Part A Note Amount") due on or before that date that is six months after Closing, and the non-recourse second installment shall be US\$15,000,000 (the "Part B Note Amount"). The Part B Note Amount of US\$15,000,000 shall be due and payable upon the first to occur of:

1. Buyer's completing a Bankable Feasibility Study (defined below in Subsection 2.1(a)(iii)) on the proposed Mine that results in Buyer's board of directors making a positive decision to mine to enable production to commence, or

2. that date that is 36 months after the Closing Date.

The unpaid principal balance of the Note Amount will bear interest at an annual rate of 0.37% accruing daily on a simple interest basis (without compounding).

(3) Should a Bankable Feasibility Study on the Mine that results in a positive decision to mine by Buyer not be completed within 36 months of the Closing Date and if the Buyer fails to timely pay the second installment, the Part B Note Amount, then Buyer shall forthwith deliver to Seller: (i) a special warranty deed conveying to Seller the Real Estate purchased herein, (ii) an assignment of any application for federal leased coal and other real property and coal acquired by Buyer with respect to said proposed Mine, (iii) an assignment, bill of sale and all other documents necessary or convenient to re-convey and transfer to Seller the Kinney Mine Permit issued by the Utah Division of Oil Gas and Mining, the Personal Property, including, without limitation, the Mining Tenements, all data collected by Buyer concerning the proposed Mine, all reports and evaluations, all environmental monitoring information and reports, any feasibility studies and all permits relating to the Mine, but excluding the Water Shares which shall be transferred to Western Reserve under the terms of this Agreement, said conveyance and assignment shall be to Seller or Seller's designee free and clear of any liens or encumbrances other than the Permitted Encumbrances and the encumbrances against the federal leased coal and other real property and coal acquired by Buyer as payment in full of the obligation evidenced by the Note (such action shall be referred to herein as the "Re-conveyance"). As part of the Re-conveyance, Buyer shall transfer the Water Shares to Western Reserve. Effective as of the due date of the US\$15,000,000 Part B Note Amount payment and Buyer's failure to timely pay said US\$15,000,000 second installment after thirty days written notice to Buyer of such failed payment, as agreed liquidated damages and receipt of the Re-conveyance, Seller hereby releases Buyer from its obligation to pay Part B Note Amount and Seller releases and discharges any and all claims which for any reason, known or unknown, which Seller might have been entitled to assert against Buyer, its officers, agents, independent contractors and employees, and Buyer hereby releases and discharges any and all claims which for any reason, known or unknown, which Buyer might have been entitled to assert against Seller, its officers, agents, independent contractors and employees. A special warranty deed, a bill of sale, assignment and other suitable documents which re-convey to Seller all of said real property and coal rights, the Kinney Mine Permit, the personal property and all other assets purchased from Buyer hereunder, except the Water Shares that would be due to Western Reserve, together with real and personal property hereafter acquired by Buyer in with respect to said proposed coal Mine, together with all other documents, studies, reports and other Mining Tenements acquired by Buyer concerning said proposed Mine (collectively, the "Re-conveyance Documents") shall be deposited with an escrow agent acceptable to Seller and Buyer, with instructions to the escrow agent which require it to forthwith deliver said escrowed documents to Seller upon receipt of an affidavit from Seller that is acknowledged by Buyer to the effect that the due date of the US\$15,000,000 Part B Note Amount payment has passed without receipt of said payment after thirty days written notice to Buyer.

(4) The Note and the Note Amount shall be secured by a deed of trust and security agreement executed by Buyer, as trustor, in favor of Seller, as beneficiary, encumbering the Real Estate and the Personal Property, in a form commercially acceptable to the parties (the "Deed of Trust"). Seller may, at its option, elect to receive and utilize the special warranty deed, assignments and other Re-conveyance Documents without foreclosing the Deed of Trust, without waiving or impairing its rights thereunder should it thereafter elect to foreclose

the Deed of Trust. In the event Seller makes such election, Seller and Buyer express the intention that delivery and recordation (as applicable) of the Re-conveyance Documents to Seller shall not give effect to a merger of title and Seller reserves the right to conduct a foreclosure of the liens granted to Seller under the Deed of Trust.

(5) Buyer hereby consent to Seller filing a UCC-1 financing statement showing Buyer, as debtor, and Seller, as secured party encumbering the security interests granted by Buyer in the personal property and the property described in the Deed of Trust.

(6) Notwithstanding any provision to the contrary contained in this Agreement, and in addition to the provisions outlined in this Article above, at any time Buyer shall have the right, and the Note shall provide that, at Buyer's election, Buyer may deliver instructions to the escrow agent holding the Re-conveyance Documents instructing the escrow agent to record and/or file the Re-conveyance Documents, which shall be full payment of the obligation evidenced by the Note (such action shall also be referred to herein as the "Re-conveyance"). As part of the Re-conveyance, Buyer shall transfer the Water Shares to Western Reserve.

(iii) Bankable Feasibility Study. "Bankable Feasibility Study" as used herein is defined as an extensive and detailed evaluation on the commercial and technical feasibility of the mining and production of the relevant minerals in commercial quantities from the proposed Mine contemplated herein. The study shall include, in reasonable detail, an estimate with regards to the coal reserves, a description of the suggested methods of breakage, haulage and extraction, a description of proposed methods for processing and waste disposal, an economic evaluation that shall include an estimate of capital expenditure requirements and operating and taxation costs, an estimate of the operating levels, environmental costs, shutdown and reclamation costs related to the Mine and a study on the size of the market for the coal to be mined and estimated sales prices. In addition, the study must be prepared in accordance with the requirements of the Australasian Code for the Reporting of Exploration Results, Minerals Resources and Ore Reserves, 2004 Edition and be bankable. "Bankable" in this context shall mean that it must be credible and detailed enough, and to be prepared in such a manner and with all information that an independent financial institution reasonably requires to provide project financing for the Mine. Buyer shall within thirty (30) days after Closing start the process of obtaining the Bankable Feasibility Study. Buyer shall pursue the Bankable Feasibility Study in good faith until it is completed.

2.2 Closing Costs; Transfer Taxes. Seller shall be responsible for any sales, use, income, transfer or other taxes imposed on them by reason of the transfer of the Real Estate and the Personal Property and not otherwise exempted under the Sale Orders or by section 1146(c) of the Bankruptcy Code (collectively, "Transaction Taxes"), and Buyer shall pay all income taxes and other taxes imposed on Buyer as provided by applicable laws and regulations. Buyer and Seller shall cooperate to seek exemptions, if available, from sales tax and/or other taxes that may be applicable to the transfers contemplated hereby. Each party shall bear its own Closing costs, including without limitation attorneys' and accountants' fees and costs, where applicable.

ARTICLE III

INTENTIONALLY OMITTED

ARTICLE IV

INVESTIGATION PERIOD – OBLIGATIONS PRE-CLOSING

4.1 Investigation Cooperation.

(a) Seller covenants and agrees to fully cooperate with Buyer with respect to commercially reasonable due diligence and other pre-purchase, pre-transition/transfer and pre-closing investigations, inquiries and examinations of the Real Estate, the Leased Land, the Personal Property and the proposed Mine, and, to the extent reasonably necessary, with Buyer's efforts to examine and investigate the proposed Mine. Buyer and/or its consultants, representatives, agents and employees ("Buyer Parties") shall have the right, at reasonable times (during normal business hours and with the cooperation of Seller) to enter upon the Real Estate, Leased Land or into the proposed Mine area at its own risk to conduct such investigations, examinations, reviews and due diligence which are reasonable and appropriate, including any subsurface sampling of the soils and groundwater. Buyer shall be responsible to repair any physical damage and restore any disturbance of the Real Estate or Leased Land (including buildings and improvements) to pre-investigation status and condition, and Buyer hereby agrees to defend, indemnify, and hold Seller harmless from and against all claims, damages, costs, expenses and liabilities suffered or sustained which arise directly or indirectly from any damage caused directly by Buyer's entrance on and inspection of the Real Estate, Leased Land or the proposed Mine area. The immediately preceding repair, restoration and indemnity obligation of Buyer shall not apply pro-rata based on respective fault in instances in which the damage was occasioned by the negligent, contributory negligence or intentionally wrongful conduct, acts or omissions of the employees, agents, representatives, independent contractors or other appointees or designees of Seller ("Seller Parties"). Seller shall, provide reasonable access and cooperation to Buyer with respect to the conduct of its investigations and analysis hereunder. Buyer shall be given reasonable access to all relevant files of Seller, used with respect to or that are related in any material manner to the Real Estate, the Leased Land, to the Personal Property or the proposed Mine. Seller shall reasonably facilitate opportunities to meet with key management personnel of Seller, if any, who are responsible for the operation, administration and management of the proposed Mine to pursue due diligence investigations and inquiries. Both Seller and Buyer agree to act in good faith in connection with Buyer's analysis and investigation of the Real Estate, the Leased Land, the Personal Property and the proposed Mine.

(b) Seller agrees that, from and after the date hereof, Seller shall reasonably promptly ask its bankruptcy counsel to deliver to Buyer copies of future pleadings, motions or other document filed in connection with each of the Chapter 11 Cases, including, pleadings or other documents generated in connection with any of the motions of PCM to lift the automatic stay filed in the Chapter 11 Cases, and copies of all material correspondence, notices, documents, or instruments received or delivered by bankruptcy counsel for Seller or WRCC in respect of the

Assets or either of the Chapter 11 Cases, after the date hereof. Further, Seller shall ask its bankruptcy counsel to: (i) promptly notify Buyer as to any new material information it obtains in connection with any of the Chapter 11 Cases after the date hereof; provided, however, in no event shall the foregoing obligate Seller to obtain Buyer's consent with respect to any action taken or consented to by Seller or their bankruptcy counsel in the Chapter 11 Cases unless such action is in violation of the obligations of Seller under this Agreement; and (ii) provided that Buyer has not theretofore delivered a Termination Notice solicit the input of Buyer with respect to any motions and/or pleadings in connection therewith; provided, however, in no event shall the foregoing consultation right obligate Seller to obtain Buyer's consent with respect to any action taken or consented to by Seller in the Chapter 11 Cases, unless such action is in violation of the obligations of Seller under this Agreement.

4.2 Deliverables. At Closing or before, Seller shall deliver to Buyer the originals or copies of the following documents to the extent they are in possession of and/or reasonably available to Seller (the "Seller Initial Deliverables"):

- (a) a commitment of title insurance issued by First American Title Insurance Company, through its issuing agent, Escrow Agent ("Title Company"), in the exercise of its reasonable judgment, giving a current report of the status of the title of the Real Estate, accompanied by copies of all exception documents identified in the said commitment for title insurance. Seller shall bear the cost of said title commitment;
- (b) copies of all Records and Mining Materials;
- (c) copies of the Carbon County Lease, the WRCC Sublease, the Carbon County Sublease, the Telonis Lease, the assignment of the Telonis Lease from Western Reserve to Seller, and all consents given in connection with such leases;
- (d) copies of all Permits, including any pending permit applications;
- (e) copies of all records that pertain to the environmental and physical condition of the Real Estate, Leased Land, the Personal Property or the proposed Mine, including, but not limited to, any land subsidence reports or other data associated with the Real Estate, Leased Land, the Personal Property or the proposed Mine and surrounding environs, all Phase I and Phase II assessments, sampling results and data and all material correspondence with any Governmental Authority (collectively "Environmental Records"), if any;
- (f) copies of all Mine licensure oversight agency inspection, survey or deficiency reports or written statements relative to the Mine, if any;
- (g) copies of all insurance policies maintained by Seller in connection with the proposed operation of the Mine or the ownership, use and occupancy of the Real Estate, Leased Land, the proposed Mine or the Personal Property, including general liability insurance, if any;
- (h) copies of all evidence of the Water Shares, including any hydrologic reports or other hydro-geophysical data associated with the proposed Mine and surrounding environs, if any; and

(i) copies of all other agreements or other documents relating to the ownership, development or use of the Real Estate, Leased Land, the proposed Mine, excluding those described in the preliminary title report, or the Personal Property, including the Contracts.

Buyer may obtain a survey of the Real Estate at the cost and expense of Buyer. Buyer may obtain Phase I or II environmental surveys or reports for the Real Estate at the cost and expense of Buyer. If a current ALTA survey of the Real Estate (and improvements) or a Phase I or II environmental report are required by Buyer, Buyer shall promptly order the same. If, for any reason, the new survey or Phase I or II environmental report are not available before the end of the Investigation Period (as defined in Section 4.3 below), the Investigation Period shall be extended to allow Buyer five (5) calendar days after the actual receipt of, as applicable, the survey or the Phase I or II environmental report, but in no event shall the Investigation Period be extended beyond the current Closing Date.

4.3 Investigation Period and Due Diligence Investigation – Buyer Termination Right.

(a) Buyer shall have the period from after the date of execution of this Agreement until the Closing Date to conduct all investigations, analyses, evaluations, due diligence inquiries, including, but not limited to Phase I and Phase II investigations, under and pursuant to this Agreement (the “Investigation Period”).

(b) At any time prior to the expiration of the Investigation Period, Buyer may, in its sole and absolute discretion, terminate this Agreement and obtain the return of one-half of the Earnest Money Deposit. Upon such termination and return of one-half of the Earnest Money Deposit, this Agreement shall be of no further force or effect except those obligations that expressly survive termination of this Agreement. If (i) Buyer does not, for any reason, terminate this Agreement prior to the expiration of the Investigation Period; or (ii) Buyer gives written notice that it is satisfied with its inquiries and wishes to proceed under this Agreement to Closing, subject to satisfaction of any remaining conditions set forth herein, the remaining one-half of the Earnest Money Deposit shall immediately become non-refundable except for a material breach of this Agreement by Seller or a failure (not due to a breach by Buyer) of any condition precedent to Buyer’s obligations to close hereunder as set forth in this Agreement.

(c) “Permitted Encumbrances” as used herein shall mean, with respect to the Real Estate, all taxes and assessments against the Real Estate which are not yet due and payable as of the Closing Date, and all other matters affecting title to the Real Estate contained in Exhibit “G” and any other matters that are accepted by Buyer before Closing. Notwithstanding the foregoing, Seller shall be obligated to eliminate any deeds of trust, mortgages, judgment liens, mechanics’ liens, materialmen’s liens and other liens recorded against the Real Estate.

4.4 Buyer Objections.

(a) Objections. Notwithstanding the foregoing, instead of simply terminating this Agreement as allowed under Section 4.3 above, at any time prior to the expiration of the Investigation Period, Buyer may make written objection to Seller with respect to any aspect of the Real Estate, Leased Land, the proposed Mine, or the Personal Property (including, but not

limited to objections related to the status of the title of the Real Estate, survey issues, operational issues or matters related to the licensure of the proposed Mine or the standards required of Seller to maintain the licensure of the Mine current). Any such objection shall contain a reasonably detailed description of the objection and shall be given in a manner consistent with the notice provisions of this Agreement and each such objection shall be an "Objection" hereunder.

(b) Seller Response. Upon receipt of an Objection within the Investigation Period, Seller shall have a period of five (5) business days to provide a written response to Buyer regarding what Seller is or is not willing to do with respect to the resolution of the issues raised in each such Objection (the "Objection Response"). In the event that the Objection Response does not propose any resolution of the stated Objection, the Objection Response shall be known as a "Negative Response." In the event that the Objection Response proposes a way to resolve the stated Objection, the Objection Response shall be known as a "Resolution Response." A failure to provide a timely Objection Response shall be deemed to be the equivalent of a Negative Response.

(c) Buyer Response to Resolution Response and Negative Response. Upon receipt of Seller's Negative Responses and/or Resolution Responses, Buyer shall have five (5) business days to either: (i) as its sole and exclusive remedy, terminate this Agreement, and one-half of the Earnest Money Deposit shall be promptly paid to Buyer; or (ii) to waive any Objections and proceed to Closing otherwise in accordance with the terms of this Agreement. Buyer's failure to make said election shall be regarded as an election to proceed to Closing.

4.5 Pre-Closing Obligations of Seller. Upon execution of this Agreement, Seller shall continue in good faith and using best efforts, to maintain the Real Estate, Leased Land, Mine area, and the Personal Property in good condition, reasonable wear and tear excepted and to repair any damage to the same. Pending Closing, Seller shall not default under the respective obligations under the Leases, the Carbon Resources Contracts or the Other Contracts. Seller use reasonable efforts to cause the Permits to remain in full force and effect at all times. Seller shall reasonably comply with requirements, notices, orders, or directions given by any Governmental Authority and laws, including Environmental Laws, affecting the Mine area, the Real Estate, the Leased Land, or the Personal Property and shall notify Buyer of any requirement that is required to be undertaken by Seller to preserve the Mine area, the Real Estate, the Leased Land, or the Personal Property. Seller shall reasonably maintain adequate liability and otherwise maintain in place other insurance that is legally required with respect to the proposed Mine. Seller shall cooperate with Buyer, at Buyer's expense, to allow Buyer's to discuss Carbon Resources Chapter 11 Case with Seller's attorneys. Until the Closing, all risk of loss pending the Closing (other than the loss caused in whole or in part by Buyer, its agents or others acting under their direction) shall be the risk and loss of Seller. Seller also agree that any material adverse change in the financial condition of Seller (including, without limitation, the loss of any material portion of the Real Estate or the Personal Property due to a lifting of the automatic stay, and a completed foreclosure action by PCM in the Carbon Resources Chapter 11 Case or the WRCC Chapter 11 Case and loss of a material portion of the pledged property) at any time prior to the Closing, shall give rise to the right of Buyer to terminate this Agreement and obtain the return of one-half of the Earnest Money Deposit. Seller shall not, without the prior written consent of Buyer: (i) make any material acquisitions or dispositions; (ii) terminate, amend, modify or enter into any contracts or leases affecting the Real Estate, the Leased Land, the proposed Mine or Mine area,

or the Personal Property; (iii) enter into any new encumbrance affecting the Real Estate, the Leased Land, the proposed Mine or Mine area, or the Personal Property, unless the proceeds of such new encumbrances are first used to pay toward existing encumbrances; or (iv) sell, assign, transfer or in any other way dispose of or negatively impact any of its right, title and interest to or in the Real Estate, the Leased Land, the proposed Mine or Mine area, or the Personal Property. Seller shall notify Buyer of any litigation affecting the Real Estate, the Leased Land, the proposed Mine or Mine area, the Personal Property, or the ownership interests in Carbon Resources of property or property rights sold hereunder.

ARTICLE V

CLOSING DATE

5.1 Closing Date and Location. Subject to the satisfaction and/or waiver of the conditions precedent to Closing as set forth in Article VIII below and elsewhere in this Agreement, the closing of the transactions contemplated herein (the "Closing") shall be held on or before December 1, 2011, subject to adjustment in accordance with the terms of this Agreement or such other date as may be requested by Buyer and agreed between the parties to accommodate the receipt of the Sale Orders (the "Closing Date"), at the offices of Ballard Spahr, LLP in Salt Lake City, Utah, at such time as shall be reasonably determined by the parties to this Agreement. Such location may change by mutual agreement of the parties.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants for itself to Buyer that, to its knowledge, the following statements are true and correct as of the date hereof and on the Closing Date:

6.1 Organization, Standing and Power. Seller is a limited liability company, duly organized, validly existing and in good standing with the State of Nevada, and has full corporate power and authority to conduct its business in the places and in the manner now being conducted. Seller has full corporate power and authority to own and operate Carbon Resources Real Estate and Carbon Resources Personal Property and to purchase and sell the Other Real Estate and Other Personal Property it plans to acquire from Western Reserve in order to convey it to Buyer in accordance with the terms of this Agreement. At Closing Seller will not have any affiliates or subsidiaries that have assets or operations material to the proposed Mine.

6.2 Authorization and Effect of this Agreement.

(a) Subject to the approval of the Bankruptcy Court, Seller has all necessary power and authority, as a limited liability company, to execute and deliver this Agreement and the documents and agreements contemplated hereby, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder.

(b) Subject to the approval of the Bankruptcy Court, this Agreement has been duly and validly approved by all necessary action on the part of Seller, has been duly executed

and delivered by Seller and constitutes a valid and binding obligation of Seller, enforceable against it in accordance with its terms.

(c) Seller represents that, subject to the approval of the Bankruptcy Court, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not (a) result in any breach of any of the terms or conditions of, or constitute a default under, the articles of organization or incorporation or bylaws or operating agreement of Seller, or any material contract by which Seller is bound; (b) result in any violation of any governmental law, rule, regulation or order applicable to Seller, the Real Estate, the Leased Land, the Personal Property or the proposed Mine or Mine area; (c) cause Buyer to lose the benefit of any right or privilege included in any Assumed Contracts or leases that are assigned to and assumed by Buyer pursuant to this Agreement; (d) relieve any person of any obligation (whether contractual or otherwise) or enable any person to terminate any such obligation or any right or benefit enjoyed by Seller or to exercise any right under any agreement in respect of the Real Estate, the Leased Land, the Personal Property or the proposed Mine or Mine area; or (e) require notice to or the consent, authorization, approval or order of any person (except as may be required by a Governmental Authority as noted in this Agreement) except as may be hereafter identified and specifically set forth on Schedule 6.2.

6.3 Title to Assets. Seller has or will have at Closing good fee or leasehold title to all the Real Estate and the Personal Property, free of any Claim, Lien or Indebtedness or encumbrance except for the Permitted Encumbrances.

6.4 Consents and Approvals. Seller represents for itself that, subject to requisite Bankruptcy Court approval, except as identified on Schedule 6.2 hereto, to its knowledge, no consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority, or any person or entity, is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

6.5 Legal Proceedings. Seller represents that, with the exception of the claim asserted by PCM Venture II, LLC ("PCM") and claims of other creditors disclosed on Seller's schedules filed in Carbon Resources Chapter 11 Case as of the date of this Agreement, there are no claims, actions, suits or proceedings or arbitrations, either administrative or judicial, pending, or, to the knowledge of Seller, threatened against or affecting the Real Estate, the Leased Land, the proposed Mine or Mine area, Seller, or the Personal Property, or Seller's ability to consummate the transactions contemplated herein, at law or in equity or otherwise, before or by any court or governmental agency or body, domestic or foreign, or before an arbitrator or body of any kind. Seller has not, and to the knowledge of Seller, no director, officer or employee of Seller has been notified of any investigation or similar proceeding from any governmental body, nor has been sanctioned by any governmental with respect to the Real Estate, the Leased Land, or the proposed Mine or Mine area. To the best of Seller's knowledge, the Reports and Mining Materials properly claim and disclose all information and other items to be disclosed for the periods covered thereby. Seller has not been disciplined or sanctioned by any governmental body or other body, nor is Seller aware of any pending or threatened discipline, sanction, order, investigation or government action that may lead to such exclusion, fine or other remedy against Seller.

6.6 Taxes. Except as set forth in Schedule 6.6, and/or in the schedules provided in the Carbon Resources Chapter 11 Case, to its knowledge, Seller has, in respect of the Real Estate and the Personal Property owned by Seller, filed all tax returns that are required to be filed and has paid all taxes that have become due pursuant to such tax returns or pursuant to any assessment that has become payable or for which Buyer may otherwise have any transferee liability. All monies required to be withheld by Seller from its employees for income taxes and social security and other payroll taxes have been collected or withheld, and either paid to the respective governmental bodies or set aside in accounts for such purpose, except those disclosed on Seller's schedules disclosed in the Carbon Resources Chapter 11 Case as of the date of this Agreement.

6.7 Zoning Compliance. Seller represents that, to its knowledge, the proposed Mine, the Leased Land, the Real Estate, and the business operations and uses thereof or contemplated thereby are in compliance with all zoning classifications and regulations applicable thereto.

6.8 Environmental Representations.

For purposes of this Agreement, the term "Hazardous Materials" shall mean any petroleum, oil, flammable explosives, asbestos, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are designated, defined, or regulated as "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," "pollutants" or "contaminants under any Environmental Law.

The term "Environmental Law" shall mean any and all laws which pertain to public health, the environment and mining, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Surface Mining Control and Reclamation Act, 30 U.S.C. Section 1201 et. seq., the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Utah Coal Mining and Reclamation Act of 1979, UCA 40-10-1 et. seq., each of their federal, state and local counterparts, as each may be amended from time to time.

(a) Except as disclosed in Schedule 6.8, to the knowledge of Seller, the Real Estate, the Leased Land, the Personal Property and the Mine are not and have not been used by Seller or any third party for the generation, manufacture, storage, treatment, release, threatened release, discharge, or disposal of Hazardous Materials, except in compliance with all Environmental Laws.

(b) To the knowledge of Seller, the Real Estate, the Leased Land, the Personal Property and the Mine are in compliance with all Environmental Laws.

(c) Seller has not received any notice from any Governmental Authority revoking, canceling, rescinding, materially modifying, refusing to renew or investigating conduct under any Permit or providing written notice of violations under any Environmental Law.

(d) To its knowledge, except as disclosed on Schedule 6.8, Seller has not handled all Hazardous Materials at the Mine area. To its knowledge, except as disclosed on Schedule 6.8, Seller has not released any Hazardous Materials into the environment or onto, about or under the Real Estate, the Leased Land, the Personal Property or the Mine area. To its knowledge, Seller is not aware of any encumbrance with respect to environmental liabilities threatened or imposed against Seller or any of the Personal Property under any Environmental Law or other applicable Law, or any facts or circumstances that would give rise to the same. Further, except as disclosed on Schedule 6.8, to the best of Seller's knowledge, Seller (i) is not listed as a potentially responsible party with respect to the Real Estate, the Leased Land, the Personal Property or the proposed Mine or as a result of the ownership or operation of the Real Estate, the Leased Land, the Personal Property or the Mine under any Environmental Law or other applicable Law, (ii) has not received any verbal or written notice of such listing or potential listing, or (ii) to its knowledge, is unaware of any facts or circumstances which could give rise to such a listing.

(e) To Seller's knowledge, there are no disposal sites (including Hazardous Materials disposal sites) now or at any time during Seller's stewardship of the property utilized by Seller.

(f) Except as disclosed on Schedule 6.8, Seller represents that, to its knowledge, all underground or above-ground storage tanks, and piping associated with such tanks, containing Hazardous Materials, petroleum products or wastes or other hazardous substances regulated by 40 CFR 280 or other Environmental Law or other applicable law currently located on the Real Estate, the Leased Land, the Personal Property or the Mine area owned by Seller have been used and maintained in material compliance with all Environmental Laws or other applicable Laws. To its knowledge, all such underground and above ground storage tanks are listed on Schedule 6.8.

(g) Seller represents that it is not aware of any order by a Governmental Authority concerning any Environmental Law affecting Seller, the Real Estate, the Leased Land, the Personal Property or the Mine.

(h) To Seller's knowledge, Seller has provided Buyer with true, correct and complete copies of any and all documents in Seller's possession or under Seller's control that pertain to any physical or environmental condition of the Real Estate, the Leased Land, the Personal Property and the proposed Mine.

6.9 Permits. To the Sellers knowledge, except as specifically provided in Section 1.4 above and as disclosed on Schedule 6.9, Seller currently holds all Permits necessary for the use, occupancy and operation of Real Estate, the Leased Land, the Personal Property or the Mine (as a coal mine) and all such Permits are in full force and effect. To the best of Seller's knowledge, upon the posting of the Reclamation Bond with the Utah Department of Natural Resources, Division of Oil, Gas and Mining (UDOGM), completing the Carbon County Building Permit process, notifying MSHA of intent to activate the ID number, and continuing in compliance with ground and surface water monitoring and other ongoing commitments to UDOGM, the Mine shall be duly licensed as a coal mine with a permit to operate a coal mine upon the Real Estate and Leased Land. Seller believes that, except as is identified in Schedule

6.9, there are not current items of deficiency or non-compliance with respect to the physical condition, operations, administration, policies, procedures or staffing of the proposed Mine that have been identified by any governmental agency having oversight with respect to the subject Mine licenses or operations, including with respect to any and all relevant standards imposed under the said facilities licensing laws, rules and regulations.

6.10 Occupancy. Seller warrants that there are no parties in possession of any portion of the Real Estate or Leased Land or the Mine area other than Seller.

6.11 Access. Seller warrants that there is legal access to the Real Estate and Leased Land owned by Seller.

6.12 Water. Seller warrants that as of Closing, it will own the Water Shares, free and clear of all liens, and has the right to convey them to Buyer. Seller represents that any payments due to the Water Shares have been paid current or will be paid prior to or at the time of Closing.

6.13 Leases. Seller has delivered to Buyer the originals (if available) or copies of the Carbon County Lease, the WRCC Sublease, the Carbon County Sublease, and all consents given in connection with such leases, which documents have not been amended or modified except as contemplated by this Agreement. Seller represents that, to its knowledge, the Carbon County Lease, the WRCC Sublease, and the Carbon County Sublease are in full force and effect and that it is not aware of any default of any party to the foregoing. Seller has not made an assignment or transfer of any of its rights under the Carbon County Sublease, except collateral agreements to secured lenders that are to be released at or prior to the Closing. Seller has delivered to Buyer the original (if available) or copy of the Telonis Lease, which has not been amended or modified, and will deliver an original (if available) or a copy of the assignment of the Telonis Lease from Western Reserve to Seller, which has not been amended or modified. Seller represents that, to its knowledge, the Telonis Lease is in full force and effect and that it is not aware of any default of any party to the Telonis Lease. Seller has not made an assignment or transfer of any of its rights the Telonis Lease, except collateral agreements to secured lenders that are to be released at or prior to the Closing.

6.14 Contracts. To Seller's knowledge, true, correct and complete copies of all Assumed Contracts to which Seller is a party and all amendments thereto have been made available to Buyer by Seller. Except as permitted herein, to Seller's knowledge, none of the Assumed Contracts has been materially modified since such copies were made available to Buyer. To Seller's knowledge, except for defaults caused by the commencement of the Carbon Resource's Chapter 11 Case and payment defaults by Seller set forth on Schedule 6.14, each Assumed Contract is valid, binding upon Seller and in full force and effect in all material respects, and no material default or event of default by Seller or, to Seller's knowledge, any other party thereto, exists under any of the Assumed Contracts. To Seller's knowledge, no party to any of the Assumed Contracts has given notice of default or termination. Seller has not made an assignment or transfer of any of its rights under any of the Assumed Contracts, except collateral agreements to secured lenders that are to be released at or prior to the Closing.

6.15 Reports and Mineral Materials. Seller has provided Buyer with originals (if available) or copies of the Reports and Mineral Materials of Seller, which have not been amended or modified.

6.16 No Untrue Statement. Seller represents that none of the representations and warranties in this Article VI made by Seller contains any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, in order to make any such representation not misleading in any material respect.

6.17 Representations as of the Closing Date; Remedies. Seller represents that, to its knowledge, its representations and warranties set forth in this Agreement shall be true and correct in all material respects on the date of this Agreement and true and correct in all material respects as of the Closing Date, as though such representations and warranties were made on and as of such time.

6.18 Survival. Seller's representations and warranties contained in this Agreement will survive the Closing (i) until the effective date of the transfer of the Kinney Mine Permit to the Buyer.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the following statements are correct and complete in all material respects as of the date hereof:

7.1 Organization. Buyer is a proprietary limited liability company, organized, validly existing and in good standing with the Corporations Act 2001 (Cth).

7.2 Authorization. Buyer has all necessary company power and authority to execute and deliver this Agreement and the documents and agreements contemplated hereby on the part of Buyer, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. This Agreement has been duly and validly approved by all necessary company action on the part of Buyer, has been duly executed and delivered by each and constitutes a valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditor's rights generally or by equitable principles (whether considered in an action at law or in equity) and other customary limitations on enforceability.

7.3 No Untrue Statement. None of the representations and warranties in this Article VII contains any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, in order to make any such representation not misleading in any material respect.

ARTICLE VIII

CONDITIONS PRECEDENT

8.1 Seller Conditions to Closing. The obligations of Seller under this Agreement shall, at the option of Seller, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions: (a) there shall have been no material breach by Buyer in the performance of any of Buyer's covenants and agreements herein which shall not have been remedied or cured; (b) each of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Seller or any transaction contemplated in this Agreement; (c) this Agreement and the transactions contemplated under this Agreement have been approved by the Bankruptcy Court in connection with Carbon Resources Chapter 11 Case; and (d) all other material conditions set forth in this Agreement have been met. In addition, all of the actions, document signatures, fund deliveries and other matters required of Buyer in connection with the Closing shall have been satisfactorily completed.

8.2 Buyer's Conditions to Closing.

(a) In addition to the other conditions precedent to Buyer's obligations under this Agreement, the obligations of Buyer under this Agreement shall, at the option of Buyer, be subject to the satisfaction, on or prior to the Closing Date, of the following conditions: (a) Seller shall have delivered substantially all of the material documents or other information required to be delivered by Seller hereunder; (b) there shall have been no material breach by Seller in the performance of any of its material covenants and agreements herein which shall not have been remedied, cured or waived; (c) each of the material representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Buyer or any transaction contemplated in this Agreement; (d) there shall not have been a material adverse change in the financial condition of Seller, the Real Property, or the Personal Property (including, without limitation, the loss of any material portion of the Real Estate or the Personal Property due to a lifting of the automatic stay in Carbon Resources Chapter 11 Case and actual loss of the property through a trust deed foreclosure or otherwise); (e) the shareholder(s) of New Horizon Minerals Ltd. shall have approved the purchase of the Carbon Resources Real Estate, the Other Real Estate, and the Personal Property of Seller by Buyer and the purchase of Buyer by New Horizon Minerals Ltd. in accordance with the Australian Stock Exchange listing rules and Corporations Act (Cth); (f) Buyer shall have obtained a commitment, subject to conditions satisfactory to Buyer, that Title Company has agreed to issue to Buyer an ALTA standard coverage or equivalent owner's policy of title insurance, insuring fee simple or leasehold, as applicable, title, to the Real Estate in the aggregate amount of the Purchase Price, subject only to the Permitted Exceptions and containing such endorsements as Buyer shall have requested (the "Title Policy") (the basic cost of the Title Policy shall be paid by Seller and additional costs resulting from requests for additional information, document copies and related issues shall be paid by Buyer); (g) except as specifically provided in Section 1.4, the Permits shall be fully assignable to Buyer; (h) there shall not have occurred any change of control in Seller, including

the foreclosure of any material interest in any Seller; (i) there shall not have been a material adverse change on the Closing Date in the financial condition of WRCC or its interest in Seller (including, without limitation, the loss of any material portion of the its ownership or management interests in Seller due to a lifting of the automatic stay in WRCC Chapter 11 Case and actual loss of such interests through a UCC foreclosure or otherwise, or any event or condition that would, with the passage of time, reasonably be expected to constitute such an effect or change); (j) Buyer has completed its diligence review contemplated under Section 4.3 of this Agreement and is satisfied with such diligence review; and (k) all other conditions set forth in this Agreement have been met. If any of these conditions cannot be satisfied by Closing, then Buyer shall have the right to terminate this Agreement by written notice to Seller and Escrow Agent, in which case one-half of the Earnest Money Deposit shall be returned to Buyer unless otherwise specifically provided herein.

(b) It shall be a condition precedent (or concurrent) to the obligations of Buyer hereunder to proceed to Closing that the following occur: (i) except as provided in Section 1.4, the transfer of existing, or the acquisition of new, licenses, Permits or approvals requisite for the operation of the Mine, (ii) the transfer of Reports, Mining Materials and Mining Tenements, consistent with all applicable laws, rules and regulations that impose requirements with respect to such items; and (iii) completion of any and all other acts, filings, actions and matters necessary to an orderly and lawful transfer and transition of the operations of the proposed Mine from Seller to Buyer. Seller shall cooperate in good faith with Buyer and shall take all appropriate action and execute any documents, instruments, assignments, assumptions or conveyances of any kind which may reasonably be necessary or advisable to carry out Buyer's acquisition and/or transfer of the licenses, Permits, or approvals described herein, including, without limitation, with respect to Seller's obligations under Section 1.2(a) and (b) hereof. If any of these conditions cannot be satisfied by Closing, then Buyer shall have the right to terminate this Agreement by written notice to Seller and Escrow Agent, in which case one-half of the Earnest Money Deposit shall be returned to Buyer.

(c) The transactions contemplated under this Agreement shall have been approved by the Bankruptcy Court in the Carbon Resources Chapter 11 Case and the WRCC Chapter 11 Case, and the Bankruptcy Court shall have entered Sale Orders commercially satisfactory to Buyer, which Sale Orders shall contain provisions consistent with the requirements set forth on Schedule 1.2 and, among other things, grant the Sale Motions, and approve this Agreement, the sale of the Carbon Resources Assets by Seller to Buyer free and clear of all Liens, Claims and Indebtedness or encumbrances (other than Permitted Encumbrances), the assignment by Seller of the Assumed Carbon Resources Contracts to Buyer and the assumption by Buyer of Seller's obligations thereunder, the assumption by WRCC of the WRCC Sublease and the Carbon County Sublease, the removal of all Liens, Claims and Indebtedness of PCM from WRCC's assets, and authorize WRCC to take all actions necessary under the Agreement, and such orders shall have become Final Orders. If such Sale Orders have not been entered by the Bankruptcy Court by December 31, 2011, or such other date as agreed to by Buyer and Seller in writing, then one-half of the Earnest Money Deposit shall be immediately returned to Buyer and Buyer shall have no further obligation to proceed to the Closing.

(d) Seller shall have amended its Disclosure Statement Dated July 10, 2011 (the "**July 10 Disclosure Statement**") and the Amended Plan of Reorganization of Debtor-in-

Possession Dated: July 10, 2011 (the "July 10 Plan") attached thereto to provide for all holders of Claims in Class 1 (including Class 1(a) and Class 1(b)), Class 2, Class 3, Class 4 and Class 5 to be paid in full on the Effective Date (as each such capitalized term is defined in the July 10 Plan) of any plan of reorganization confirmed by the Bankruptcy Court in the Carbon Resources Chapter 11 Case.

ARTICLE IX

CLOSING DOCUMENTS AND ARRANGEMENTS

9.1 **Closing Documents.** To effect the transfers and transactions described above, the parties shall execute and deliver the following at or before the Closing Date:

(a) **Purchase Price.** Pursuant to Subsection 2.1(a), Buyer shall deliver the US\$6,500,000 remaining cash portion of the Purchase Price to the Escrow Agent in immediately available funds. The Escrow Agent shall apply the US\$500,000 Earnest Money Deposit to the Purchase Price. Upon the recordation of the Deed (defined below in Subsection 9.1(a)(j)), Escrow Agent shall deliver the remaining one-half of the Earnest Money Deposit and the US\$6,500,000 to Seller.

(b) **Note.** Buyer shall deliver either the Note in accordance with Subsection 2.1(a).

(c) **Deed of Trust.** Buyer shall deliver the Deed of Trust and the Re-Conveyance-related documents in accordance with Subsection 2.1(a).

(d) **Royalty Deed and Agreement.** Buyer and Western Reserve shall deliver the Royalty Deed and Agreement.

(e) **Bill of Sale.** Seller shall execute and deliver to Buyer a Bill of Sale in a form mutually acceptable to the parties, conveying to Buyer in the aggregate all of Seller's right, title and interest in and to the personal property located on the Real Estate or Leased Land and the Mining Tenements, if any.

(f) **Assignment and Assumption Agreement.** Seller and Buyer shall execute and deliver (with signatures acknowledged by a notary) an assignment and assumption agreement in the recordable form attached as **Exhibit "H"** to assign to Buyer the Carbon County Sublease, the Telonis Lease, the Records, the Mining Materials, the Mining Tenements, the Assumed Contracts, and the Permits (subject to Section 1.4 above) and assume the Assumed Liabilities (the "**Assignment and Assumption Agreement**").

(g) **Consents and Approvals.** In addition to the Bankruptcy Court approval required under this Agreement in connection with each of the Chapter 11 Cases, Seller shall provide to Buyer all of the consents, approvals or authorizations of, or declarations, filings or registrations with, any governmental or regulatory authority, or any person or entity, required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

(h) Kinney Mine Permit Assignment Documents. Seller shall execute and deliver the Kinney Mine Permit Assignment Documents.

(i) Lease Documents. Seller shall cause the documents required to be delivered under Section 1.5 above to be executed and delivered.

(j) Special Warranty Deed. Seller shall execute and deliver to Buyer a special warranty deed in the form attached hereto as Exhibit "I," conveying, transferring and granting to Buyer all of Seller's right, title and interest in and to the fee parcels of the Real Estate (the "Deed").

(k) FIRPTA Certificate. Seller shall execute and deliver a "FIRPTA" affidavit sworn to by Seller in a form specified by the IRS and which is mutually acceptable to the parties and made a part hereof. Buyer acknowledges and agrees that upon Seller's delivery of such affidavit, Buyer shall not withhold any portion of the applicable Purchase Price pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(l) Water. Seller shall execute and deliver assignments and such other instruments of conveyance and transfer, duly executed by Seller (as applicable) and otherwise in form reasonably acceptable to Buyer's counsel providing for the transfer to Buyer of all of Seller's right, title and interest in and to the Water Shares, and any Permit pertaining to Seller's Water Shares.

(m) Closing Certificates. At the Closing, Buyer and Seller shall have executed and delivered an appropriate certificate stating that, to its or their knowledge, the representations and warranties of such party contained in this Agreement are true, correct and complete in all respects and that the covenants and other agreements of Buyer or Seller, as applicable, required by this Agreement to be complied with, performed or satisfied have been complied with, performed or satisfied in all respects.

(n) Costs and Expenses of Closing – Settlement Statement. Seller shall pay one-half, and Buyer shall pay one-half, of the Escrow Agent's ordinary costs and expenses of closing. Seller and Buyer shall pay such other amounts as shall be provided for Seller and Buyer in a settlement statement prepared by the Escrow Agent and signed by Seller and Buyer. In this regard, the costs of a standard owners' policy of title insurance in favor of Buyer shall be the sole expense and responsibility of Seller. Each party shall bear their own attorneys' fees and other costs and expenses incurred in connection with this transaction and closing. Funds to cover pro-rations, as and to the extent necessary over and above Purchase Price proceeds, if any, shall also be deposited by the responsible party.

(o) Sales Orders. The Sales Orders required by Section 1.2(a) of this Agreement or otherwise must be delivered.

9.2 Further Assurances. Each party shall cooperate in good faith with the other and shall take all appropriate action and execute or obtain any documents, instruments, assignments, assumptions or conveyances of any kind which may reasonably be necessary or advisable to carry out any of the transactions contemplated hereunder. The parties shall cooperate in

providing such information as may be necessary to be in compliance with relevant sections of the Internal Revenue Code.

9.3 Costs and Prorations.

(a) As between Buyer and Seller, revenues and expenses (including any amount paid by Seller prior to the Closing Date for services to be rendered on and after the Closing Date), any charges for the billing period in which the Closing Date occurs, real and personal property taxes (except as otherwise provided herein), prepaid expenses (including, but not limited to, business licenses, the premiums for any flood insurance coverage which may be in effect with respect to the Real Estate or Leased Land and provide coverage for a period which extends beyond the Closing Date, and third-party vendor agreements) and other related items of revenue or expense attributable to the Real Estate, the Leased Land or the Personal Property, if any, shall be prorated between Buyer and Seller as of the Closing Date. Such prorations shall be made so that as between Buyer and Seller, Seller shall be reimbursed for prepaid expense items to the extent that the same are applied to expenses attributable to periods after the Closing Date and Seller shall be charged for unpaid expenses to the extent that the same are attributable to periods prior to the Closing Date. This provision shall be implemented by Seller remitting to Buyer copies of any invoices (or the applicable portion thereof in the case of invoices which cover periods both prior to and after the Closing Date) which describe goods or services provided to the Real Estate, Leased Land or the Personal Property before the Closing Date and by Buyer assuming responsibility for the payment of any invoices (or portions thereof) which describe goods or services provided to the Real Estate, the Leased Land or the Personal Property on and after the Closing Date; *provided, however*, that notwithstanding any provision of this Agreement to the contrary, any and all deposits paid by Seller with respect to the Real Estate, Leased Land or the Personal Property, including without limitation any and all utility deposits paid to, and/or cash or other collateral held by, any utility, insurance company or surety shall remain the sole and exclusive property of Seller and Buyer shall have no right or interest therein or thereto, subject to proration or reimbursement, if any, of said items are used or consumed by Buyer, and nothing in this Section 9.3(a) shall contradict the parties' rights and remedies under Sections 1.2(a) and (b) of this Agreement.

(b) All such prorations shall be made on the basis of actual days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available to Seller. Utility charges, if any, which are not metered and read on the Closing Date shall be estimated based on prior charges, and shall be re-prorated upon receipt of statements therefor as of the Closing Date. Insurance premiums and payments shall not be pro-rated and Buyer shall obtain its own insurance coverage covering all periods commencing on and after the Closing Date.

(c) All amounts which are expressly subject to proration under the terms of this Agreement and which require adjustment after the Closing Date shall be settled within ninety (90) days after the Closing Date or, in the event the information necessary for such adjustment is not available within said ninety (90) day period, then within thirty (30) business days of receipt of information by either party necessary to settle the amounts subject to proration.

ARTICLE X

RESTRICTIVE COVENANTS; POST CLOSING OBLIGATIONS

10.1 Confidentiality.

(a) Except as required by Applicable Law, including the Bankruptcy Code and any order by the Bankruptcy Court, from the execution of this Agreement through the Closing each party shall use all information that it obtains from the other pursuant to this Agreement solely for the effectuation of the transactions contemplated by this Agreement or for other purposes consistent with the intent of this Agreement and shall not use any of such information for any other purpose, including the competitive detriment of the other parties, except as required by applicable law. Each party may disclose such information to its respective affiliates, counsel, accountants, tax advisors and consultants as necessary to consummate this transaction. Nothing herein shall restrict or prevent Seller from disclosing information to prospective buyers of said Assets, except that unless required by applicable law, including the Bankruptcy Code and any order by the Bankruptcy Court, neither this Agreement, nor the exhibits or schedules annexed hereto, nor any other confidential or proprietary information of Buyer shall be disclosed to any other Person without the prior consent of Buyer. Additionally, the parties hereby agree that neither party shall make any announcement or press release regarding the nature or existence of this Agreement without the consent of the other party. This provision shall not prohibit the use or disclosure of confidential information pursuant to court order or which has otherwise become publicly available through no fault of the recipient party. Seller shall not use any of such information to the competitive detriment of Buyer.

(b) In addition to each party's obligations under Section 10.1(a) above, and except as required by Applicable Law, including the Bankruptcy Code and any order of the Bankruptcy Court, each of the parties agree that it and its agents and representatives shall keep confidential information it may have exchanged among themselves or otherwise received (either orally or in writing) from any Person (including the other parties), regarding this Agreement or any aspect thereof, including any and all drafts of this Agreement and any and all emails or other written communications regarding any aspect of this Agreement. Seller further agrees that to the extent that it may be asked or otherwise be required to respond to or otherwise participate in any requests for information, demand for a Bankruptcy Rule 2004 examination, notice of deposition, subpoena, interrogatories or request for production of documents, or to any other demand for discovery of any kind (each an "Information Demand"), it shall use reasonable efforts to (i) advise Buyer of the nature of such Information Demand, and (ii) promptly deliver to Buyer copies of the Information Demand and any pleadings, motions or other documents received or otherwise filed in connection with the Information Demand.

(c) If there is a breach of any of the provisions of this Article X, then the time periods set forth above will be extended by the length of time during which such breach of any such provision continues, and the parties reserve their rights to pursue all remedies at law and equity, including an injunction. This terms and provisions of this Article X shall survive the Closing.

ARTICLE XI

TERMINATION

11.1 Termination and Other Remedies. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to Closing: (a) by the mutual written consent of Buyer and Seller; (b) by Buyer or Seller in the event of a material breach by the other of any of Buyer or Seller's respective agreements, covenants, obligations, or warranties contained herein, provided, however, that upon discovery by Buyer or Seller of any material breach of warranty by the other party, the injured party shall give prompt written notice of such breach to the defaulting party; or (c) by either party if any governmental body shall have issued an order, decree or ruling restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated herein which is not resolved within a reasonable time.

11.2 Effects. Subject to the terms of Article XIII below, in the event that a party terminates this Agreement, such termination shall limit its rights and remedies in law to damages. However, Buyer shall not have the right to seek any remedy which would interfere with Seller's rights in and to the Real Estate or Leased Land, including acts by Buyer which may encumber title thereto, nor shall Buyer record or cause to be recorded any lien or lis pendens against the Real Estate or the Leased Land. If this Agreement is terminated, the parties shall return all documents given to the other.

11.3 Condemnation; Eminent Domain; Damage and Casualty. Buyer shall have the right to terminate this Agreement if before Closing (i) all or a material part of the Real Estate or Leased Land is destroyed without fault of Buyer, or (ii) a material part of the Real Estate or Leased Land is taken by eminent domain, foreclosure or otherwise no longer remains within the possession, custody or control of Seller or Western Reserve (with respect to the Other Assets that have yet to be transferred to Seller). Buyer shall give written notice of Buyer's election to terminate this Agreement under this paragraph within ten (10) business days after Buyer first learns of any damage to, condemnation, foreclosure or loss of possession, custody or control of the Real Estate or Leased Land, which entitles Buyer to terminate this Agreement. If Buyer does not give such notice, then this Agreement shall remain in full force and effect and there shall be no reduction in the Purchase Price. In the event of any termination pursuant to this Section 11.3, one-half of the Earnest Money Deposit shall be returned to Buyer.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Each of the parties to this Agreement shall pay its own legal, accounting and other costs and expenses incurred in connection with the execution and performance of this Agreement and the transactions contemplated hereunder. Buyer and Seller represent to one another that they have not employed any broker in connection with this transaction and if such warranty is not truthful, each party shall be responsible for paying any broker commissions payable as the result of such party's engagement or contract with a broker in connection with this transaction.

12.2 Notices. All notices, requests, consents and demands shall be given to or made upon the parties at their respective addresses set forth below, or at such other address as a party may designate in writing delivered to the other parties. Unless otherwise agreed in this Agreement, all notices, requests, consents and demands shall be given or made by personal delivery, by confirmed air courier, by facsimile transmission ("fax"), effective at the time of its actual receipt by the person to be notified, or by certified first class mail, return receipt requested, postage prepaid, to the party addressed as aforesaid effective at the time of actual receipt by the person to be notified. If sent by confirmed air courier, such notice shall be deemed to be given upon the earlier to occur of the date upon which it is actually received by the addressee or the business day upon which delivery is made at such address, as confirmed by the air courier (or if the date of such confirmed delivery is not a business day, the next succeeding business day). If mailed, such notice shall be deemed to be given upon the earlier to occur of the date upon which it is actually received by the addressee or the third business day following the date upon which it is deposited in a first-class postage-prepaid envelope in the United States mail addressed to such address. If given by fax, such notice shall be deemed to be given upon the date it is actually received by the addressee. No notice shall be effective until notice is also given to counsel for the respective parties as designated below or as changed from time to time by written notice

If to Seller:

William Reeves
Carbon Resources, LLC
34 Valle Hermosa
Sandia Park, NM 87047
Telephone: (505) 980-1842
Facsimile: (505) 286-7985

With a copy to:

Barker Law Office, LLC
2870 South State Street
Salt Lake City, Utah 84115
Telephone: (801) 486-9636
EMAIL: RCB@barkerlawoffice.com
Facsimile: (801) 486-5754

With a copy to:

Gregory L. Hunt
16577 Columbine Lane
Cedaredge, CO
email: geohuntllc@gmail.com
Telephone: (970) 856-9478
Cell: (970) 260-0448
Facsimile: (970) 856-9478

If to Buyer:

If to Buyer:

Carl Coward
Delta Coal Fund Pty Ltd
Level 3, BGC Centre, 28 The Esplanade
Perth WA 6000
Telephone: +61 8 9322 5944
Facsimile: +61 8 9226 0873

With a copy to:

Gary Steinepreis
New Horizon Minerals Ltd
Level 1, 33 Ord Street
West Perth WA 6005
Australia
Telephone: + 61 8 9420 9300
Facsimile: + 61 8 9420 9399

With a copy to:

Barbara Bagnasacco
Ballard Spahr LLP
201 South Main Street, Suite 800
Salt Lake City, UT 84111
Telephone:
Facsimile:

12.3 Assignment. Without the prior written consent of Seller, Buyer may assign its rights hereunder to any entity which controls, is controlled by or is under common control with Buyer or in which Buyer or any director or manager of Buyer directly or indirectly acts as a managing member, director or general partner, provided, however, that in such event, Buyer shall remain fully liable for the fulfillment of all such obligations and liabilities hereunder, in the same manner as if no assignment had been made, until such assignee assumes all obligations of Buyer under this Agreement. Prior to assignment by Buyer, unless such assignment is to Wasatch, Buyer shall furnish evidence to Seller that assignee is financially responsible and that it has assumed such obligations.

12.4 Choice of Law. This Agreement shall be construed in accordance with, and governed by the substantive and procedural laws, rules and regulations of, the State of Utah, without reference to principles governing choice or conflicts of laws.

12.5 Jurisdiction. Without limiting any party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (b) any and all Claims, actions, causes of action, suits and proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the

parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.2 hereof; provided, however, if the Carbon Resources Chapter 11 Case has closed and cannot be reopened, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Utah and any appellate court thereof, for the resolution of any such Claim or dispute.

12.7 Severability. In the event any one or more of the provisions contained in this Agreement other than those provisions specifically regarding termination or any part or provision thereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity of any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision were not contained herein, unless the Agreement as so modified fails to preserve the basic intent of the parties.

12.8 Captions. The captions used herein are for ease of reference only and shall not define or limit the provisions hereof.

12.9 Sale of Assets Only. This Agreement constitutes a sale of the Real Estate and the Personal Property only and is not a sale of any interest in Seller. Buyer is not assuming and shall not be responsible for the payment of any liabilities or obligations of Seller, except as expressly set forth herein.

12.10 Enforcement. In the event of a dispute between the parties arising under this Agreement, each party shall bear their own costs and attorney fees.

12.11 Entire Agreement; Amendments. This Agreement, and the exhibits and schedules attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than as set forth or referred to herein. This Agreement supersedes all prior agreements between the parties hereto relating to all or part of the subject matter herein, including the Option Agreement to the extent it is inconsistent with the terms of this Agreement. This Agreement may not be amended, modified or canceled except as provided herein or by written agreement of the parties signed by the party against whom enforcement is sought.

12.12 Counterparts. Any number of counterparts of this Agreement may be signed and delivered and each shall be considered an original and together they shall constitute one agreement. Signatures transmitted electronically, by fax or e-mail shall bind the party so signing, subject to proper authentication upon request.

12.13 Mutual Drafting. This Agreement is the mutual product of the parties. Each provision hereof has been subject to the mutual consultation, negotiation and agreement of each of the parties, and any ambiguity herein shall not be construed for or against any party hereto.

ARTICLE XIII

INDEMNIFICATION

13.1 Indemnity by Seller. Subject to Section 13.7, Seller shall, and hereby does, indemnify and agrees to defend Buyer (the "**Buyer Indemnified Party**") from and against penalties, demands, damages, losses, liabilities, suits, costs, costs of any settlement or judgment, any claims, refund obligations (including interest and penalties thereon) and remediation costs and expenses of or to Buyer Indemnified Party ("**Buyer Damages**"), which may now or in the future be paid, incurred or suffered by or asserted against Buyer Indemnified Party by any Person resulting or arising from or incurred in connection with Environmental Liability of Seller as specified. Seller's indemnification obligations shall be reduced to the extent that the subject matter of any Buyer's Claim (defined below) is covered by and paid to Buyer or the applicable Buyer Indemnified Party pursuant to a warranty or indemnification from a third party or third party insurance or similar reimbursement.

13.2 Notice of Claim by Buyer; Right of Seller to Conduct Defense of Buyer's Claim. Buyer agrees that upon its discovery of facts giving rise to a claim for indemnity under the provisions of this Agreement, including receipt by it, or of notice, of any demand, assertion, claim, action or proceeding, judicial or otherwise, by any Person with respect to any matter as to which any of Buyer Indemnified Party are entitled to indemnity under the provisions of this Agreement (such actions being collectively referred to herein as a "**Buyer's Claim**"), Buyer will, within fifteen (15) business days from the time when Buyer becomes aware of said actual or potential claim, give notice in writing to Seller of any Buyer's Claim together with a statement of such information respecting any of the foregoing as it shall then have together with copies of relevant documents; provided that any delay in giving or failure to give timely notice shall extinguish and terminate the rights of Buyer Indemnified Party to indemnity hereunder except if said failure is due to circumstances beyond Buyer's reasonable control or to the extent Seller is shown not to have been damaged by such delay or failure. In the event of a Buyer's Claim, Seller, at its option, may assume (with legal counsel selected by Seller who is reasonably acceptable to Buyer) the defense of any claim, demand, lawsuit or other proceeding in connection with Buyer's Claim, and may assert any defense of Buyer or Seller; provided that Buyer shall have the right at its own expense to participate jointly with Seller in the defense of any claim, demand, lawsuit or other proceeding in connection with Buyer's Claim, provided, however, that in the event of a conflict of interest, Buyer may obtain its own counsel to defend any such claim, demand, lawsuit or other proceeding at the cost and expense of Buyer, provided that Seller shall not be required to pay for more than one such counsel (plus any appropriate local counsel) for the Buyer Indemnified Party in connection with any Buyer Claim. Neither Buyer nor any Seller shall be entitled to settle any Buyer's Claim without the prior written consent of the other, which consent shall not unreasonably be withheld.

13.3 Indemnity by Buyer. Subject to Section 13.7, Buyer shall, and hereby does indemnify, hold harmless and agree to defend Seller and Seller's officers, directors, employees and affiliates (the "**Seller Indemnified Parties**") at all times from and after the Closing Date, from and against any and all penalties, demands, damages, losses, liabilities, suits, costs, costs of any settlement or judgment, any claims, refund obligations (including, without limitation, interest and penalties thereon), remediation costs and expenses of or to any of Seller Indemnified

Parties ("Seller Damages"), which may now or in the future be paid, incurred or suffered by or asserted against Seller Indemnified Parties by any Person resulting or arising from or incurred in connection with any liability or claim for liability (whether in contract, in tort or otherwise, and whether or not successful) which arose after the Closing Date against or in any way related to the Real Estate, the Personal Property or the Mine. Buyer's indemnification obligations shall be reduced to the extent that the subject matter of any Seller's Claim (defined below) is covered by and paid to any Seller or the applicable Seller Indemnified Party pursuant to a warranty or indemnification from a third party or third party insurance or similar reimbursement.

13.4 Notice of Claim by Seller; Right of Buyer to Conduct Defense of Seller's Claim. Seller agrees that upon its discovery of facts giving rise to a claim for indemnity under the provisions of this Agreement, including receipt by it, or of notice, of any demand, assertion, claim, action or proceeding, judicial or otherwise, by any Person with respect to any matter as to which any of Seller Indemnified Parties are entitled to indemnity under the provisions of this Agreement (such actions being collectively referred to herein as a "**Seller's Claim**"), Seller will, within fifteen (15) business days from the time when Seller becomes aware of said actual or potential claim, give notice in writing to Buyer of any Seller's Claim together with a statement of such information respecting any of the foregoing as it shall then have, together with copies of relevant documents; provided that any delay in giving or failure to give timely notice shall extinguish and terminate the rights of Seller Indemnified Parties to indemnity hereunder except if such failure is due to circumstances beyond Seller's reasonable control or to the extent that Buyer is shown to not have been damaged by such delay or failure. In the event of a Seller's Claim, Buyer, at its option, may assume (with legal counsel selected by Buyer and reasonably acceptable to Seller) the defense of any claim, demand, lawsuit or other proceeding in connection with Seller's Claim, and may assert any defense of Buyer or Seller; provided that Seller shall have the right at its own expense to participate jointly with Buyer in the defense of any claim, demand, lawsuit or other proceeding in connection with Seller's Claim, provided, however, that in the event of a conflict of interest, Seller may obtain its own counsel to defend any such claim, demand, lawsuit or other proceeding at the cost and expense of Buyer, provided that Buyer shall not be required to pay for more than one such counsel (plus any appropriate local counsel) for all Seller Indemnified Parties in connection with any Seller Claim. Neither Buyer nor any Seller shall be entitled to settle any Seller's Claim without the prior written consent of the other, which consent shall not unreasonably be withheld.

13.5 Environmental Liability of Seller. Seller shall indemnify and defend Buyer Indemnified Party, at all times from and after the date of this Agreement, from and against all meritorious claims (whether in contract, in tort or otherwise, and whether or not successful), fines, penalties, liabilities, damages and losses, including but not limited to remedial, removal, response, abatement, clean-up, investigation and monitoring costs and any other related costs and expenses incurred (whether any claims or causes of action relating thereto be asserted in common law or under statute and regardless of form including strict liability and negligence) (collectively referred to as "**Buyer Environmental Liabilities**") arising from (a) any disclosed or undisclosed violation of any provision of Environmental Law committed by Seller occurring or existing after 4 October 2007 when Seller acquired ownership of the premises through the Closing Date; (b) any disclosed or undisclosed acts, omissions, conditions, facts, or circumstances occurring or existing after 4 October 2007 when Seller acquired ownership of the premises through the Closing Date with respect to the Real Estate, the Leased Land, the Personal

Property, the Mine caused by the operations of Seller which give rise to an Environmental Claim (as hereinafter defined) before or after the Closing Date; and (c) any disclosed or undisclosed failure of Seller to obtain or maintain any Environmental Permit after 4 October 2007 when Seller acquired ownership of the premises through the Closing Date through Closing. For purposes of this Article XIII, the term "**Environmental Claim**" means any action, lawsuit, claim or proceeding by any Person relating to the Real Estate, the Personal Property or the Mine or the operations of the same that seeks to impose liability for noncompliance with any Requirement of Environmental Law. An Environmental Claim includes, without limitation, a proceeding to terminate a permit or license to the extent that such a proceeding attempts to redress violations of the applicable permit or license or any requirement of Environmental Law as alleged by any governmental authority which results from acts or omissions by Seller after 4 October 2007 when Seller acquired ownership of the premises through the Closing Date through Closing. For purposes of this Article XIII, the term "**Environmental Permit**" means any permit, license, approval or other authorization related to, used in connection with or necessary for the operation or use of the Real Estate, the Mine or the Personal Property, or the operations or the businesses of Seller under any applicable requirement of Hazardous Materials Law.

13.6 Environmental Liability of Buyer. Buyer shall be liable for, and Buyer shall indemnify, hold harmless and defend Seller Indemnified Parties, after Closing, from and against all claims (whether in contract, in tort or otherwise, and whether or not successful), fines, penalties, liabilities, damages and losses, including but not limited to remedial, removal, response, abatement, clean-up, investigation and monitoring costs and any other related costs and expenses incurred (whether any claims or causes of action relating thereto be asserted in common law or under statute and regardless of form including strict liability and negligence) (collectively referred to as "**Buyer Environmental Liabilities**") arising from (a) any violation of any provision of Environmental Law of Buyer occurring after the Closing Date and not arising from a prior act or acts of Seller or its predecessors; (b) any acts, omissions, conditions, facts, or circumstances occurring after the Closing Date with respect to the Real Estate, the Personal Property, the Mine or the operations of Buyer which give rise to an Environmental Claim after the Closing Date and not arising from a prior act or acts of Seller or its predecessors. Notwithstanding any provision to the contrary contained in this Agreement, if Seller liquidates or enters into Chapter 7 bankruptcy or is otherwise unable to pay amounts owed to Buyer under this Agreement, then Buyer shall have the right, but not the obligation, to offset any amount due from Seller to Buyer under this Article 13.6 from any amounts owed by Buyer to Seller under this Agreement or the Royalty Deed Agreement between Buyer and Western Reserve Coal Incorporated.

13.7 Limitations. For purposes of hereof, "**Losses**" means Buyer Damages or Seller Damages, as applicable; "**Indemnified Parties**" means Buyer Indemnified Party or Seller Indemnified Parties, as applicable; and "**Indemnifying Parties**" means Buyer or Seller, as applicable.

(a) Deductible and Cap.

(i) No amounts of indemnity shall be payable as a result of any claim arising under this Article XIII unless and until the Indemnified Parties have suffered, incurred, sustained or become subject to Losses in excess of US\$10,000 in the aggregate (the

"Deductible"), in which case the Indemnified Parties may bring a claim for the amount of the Losses (including the Deductible).

(ii) The maximum aggregate amount that the Indemnified Parties may recover from the Indemnifying Parties pursuant to Article XIII shall not exceed Ten Million United States Dollars (US\$ 10,000,000) (the "Maximum Indemnity Amount").

(iii) Notwithstanding anything in this Section 13.7 to the contrary, the limitations on liability contained in this Section 13.7 shall not apply to Losses arising out of any fraud.

(b) Calculation of Losses.

(i) Any Losses for which any Indemnified Party is entitled to indemnification under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement;

(ii) Under no circumstances shall any party be liable to any other party for any consequential, exemplary, special or punitive damages, other than as actually paid to third parties;

(iii) Notwithstanding any provision in this Agreement to the contrary, all Losses for which any Indemnified Party would otherwise be entitled to indemnification under this Article XIII shall be reduced by (i) the amount of insurance proceeds, indemnification payments and other third-party recoveries actually received by such Indemnified Party in respect of any Losses incurred by such Indemnified Party and (ii) calculated net of the Tax Benefit that could be realized by the Indemnified Party on account of such Losses during the Indemnified Party's taxable year in which the Losses accrued and during the immediately succeeding taxable year (as determined under U.S. federal income tax principles). For purposes hereof, "Tax Benefit" shall mean the amount of any refund of Taxes receivable or reduction in the amount of Taxes that otherwise would have been payable by the Indemnified Party during the taxable year in which the Losses accrued. In the event any Indemnified Party is entitled to any insurance proceeds, Tax Benefits, indemnity payments or any third-party recoveries in respect of any Losses for which such Indemnified Party is entitled to indemnification pursuant to this Article XIII, such Indemnified Party shall use commercially reasonable efforts to obtain, receive or realize such proceeds, benefits, payments or recoveries; provided, however, that the failure to obtain, receive or realize such proceeds, payments or recovery, after the use of commercially reasonable efforts, shall not constitute a defense to the obligations of the Indemnifying Party pursuant to this Article XIII. In the event that any such insurance proceeds, Tax Benefits, indemnity payments or other third-party recoveries are realized by an Indemnified Party subsequent to receipt by such Indemnified Party of any indemnification payment hereunder in respect of the claims to which such insurance proceeds, Tax Benefits, indemnity payments or other third-party recoveries relate, appropriate refunds shall be made promptly by the relevant indemnified parties of all or the relevant portion of such indemnification payment;

(iv) Each Indemnified Party shall use commercially reasonable efforts to mitigate any Losses for which that party seeks indemnification pursuant to this Agreement after becoming aware of any event which would reasonably be expected to give rise to any Losses; provided, however, that the foregoing shall in no event require any Indemnified Party to maintain any insurance policy, make a claim under any insurance policy or commence any proceeding against any person.

(c) Exclusive Remedy. Subject to the rights allowed and limitations imposed above, including but not limited to those in paragraphs 6.8 (a), (b) and (c), this Article XIII shall provide the remedy for Losses sustained or incurred by an Indemnified Party pursuant to this Agreement; provided, however, that nothing contained in this Section 13.7 shall prevent any party from filing a claim in tort or otherwise, or from seeking equitable remedies (including injunctive relief) in connection with such Losses, except that Buyer agrees that it will not attach a lien or file a *lis pendens* against the Real Estate, the Personal Property or the Mine in connection with such a claim.

(d) Treatment of Indemnification Payments. The parties agree to treat any indemnity payments under this Agreement as a business expense for all Tax purposes and shall take no position contrary thereto.

(e) Manner of Payment. Indemnification payments pursuant to this Article XIII shall be effected by wire transfer of immediately available funds to an account designated in writing by the Indemnified Party within ten (10) business days after the final determination thereof.

(f) Survival. The terms and provisions of this Article XIII shall survive the Closing and the representations and warranties and covenants of Seller and Buyer contained in this Agreement will survive the Closing until the effective date of the transfer of the Kinney Mine Permit to the Buyer; provided, however, that any representation or warranty that would otherwise terminate in accordance with the above will continue to survive if a notice of a claim shall have been given under this Article XIII on or prior to such the date on which it otherwise would terminate, until the related claim for indemnification has been satisfied or otherwise resolved as provided in this Article XIII; and provided further that no claim may be brought unless timely asserted prior to the Expiration Date in accordance with this Agreement or applicable statutes of limitations.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SELLER:

CARBON RESOURCES, LLC, a Nevada limited liability company

By: WRCC, LLC, a Nevada limited liability company, its Managing Member

By: Western Reserve Coal Company
Incorporated, a Nevada corporation, its
Managing Member

By: J.H.W. Reeves
Name: J.H.W. Reeves
Title: President

BUYER:

DELTA COAL FUND PTY LTD ACN 149 580 085, an Australian proprietary limited liability company

By: [Signature]
Name: Carl Coward
Title: Director

EXHIBIT "A"

Legal Description and Other Features of the Seller Real Estate

Parcel 1: Leasehold interest pursuant to that certain Lease and Agreement between Carbon County ("**Carbon County**"), as lessor, and Western Reserve (as successor in interest to Western Reserve Coal, Inc., a Utah corporation), as lessee, dated March 5, 1997 and recorded March 6, 1997 in Book 385 at Page 396, in the Office of the County Recorder of Carbon County, and that certain Amendment to Lease Agreement between Carbon County and Western Reserve, recorded January 29, 2003 in Book 523 at Page 433 (collectively, the "**Carbon County Lease**"), and that certain WRCC Sublease Agreement between Western Reserve, as lessor, and WRCC, LLC, a Nevada limited liability company ("**WRCC**"), as lessee, dated December 2, 2005 (the "**WRCC Sublease**"), as evidenced by that certain Memorandum of WRCC Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 768, and that certain Carbon Sublease Agreement between WRCC, as lessor, and Seller, lessee, dated December 2, 2005, as amended by that certain Agreement dated May 26, 2011 between WRCC and Seller (such sublease and amendment are collectively, the "**Carbon County Sublease**"), evidenced by that certain Memorandum of Carbon Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 771, together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such Carbon County Sublease (the "**Carbon County Subleased Land**") and all water, easements, appurtenances, tenements and rights appurtenant thereto. The Carbon County Subleased Land is described as follows:

TOWNSHIP 12 SOUTH, RANGE 7 EAST, SLB&M

Section 33: S 1/2 NW 1/4; SW 1/4 NE 1/4; N 1/2 S 1/2, S 1/2 SE 1/4; S 1/2 SW 1/4
Section 34: All
Section 35: All
Section 36: All

TOWNSHIP 13 SOUTH, RANGE 7 EAST, SLB&M

Section 3: NW 1/4
Section 4: ALL
Section 5: E 1/2 E 1/2
Section 9: N 1/2 NW 1/4
Section 16: SE 1/4 NW 1/4; E 1/2 SW 1/4; SW 1/4 NE 1/4; W 1/2 SE 1/4
Section 21: SE 1/4; E 1/2 SW 1/4
Section 28: E 1/2; E 1/2 W 1/2
Section 33: E 1/2 NE 1/4; SW 1/4 NE 1/4; NE 1/4 SE 1/4

Parcel 2: Fee simple title to the following real property, together with all the improvements and fixtures now or hereafter erected or situated such land and all water, easements, appurtenances, tenements and rights appurtenant thereto:

DMWEST #8376046 v15

A Parcel of land lying in the East ½ of Section 32, Township 12 South, Range 7 East, SLB&M, Carbon County, Utah, more particularly described as follows:

BEGINNING at a point which lies North, a distance of 1320.00 feet from the Southeast Corner of Section 32, T12S, R7E, SLB&M; thence South 89°59' 00" West a distance of 920.00 feet, more or less, to the intersection of the East Right of Way boundary of the State Road 96; thence in a Northerly direction along said East highway Right of Way boundary, a distance of 270.00 feet; thence in a Northeasterly direction along said highway boundary a distance of 317.10 feet; thence North 45°32' 00" East along said highway boundary a distance of 465.40 feet; thence in a Northeasterly direction along said highway boundary 733.00 feet, more or less, to the intersection of said highway boundary, and the East boundary of said Section 32; thence South a distance of 1475.00 feet, more or less, to the point of beginning and containing 16.33 acres, more or less.

LESS AND EXCEPTING therefrom a parcel of land more particularly described as follows:

Commencing at the Southeast corner of said Northeast 1/4 of the Southeast 1/4 of said Section 32, running thence North along the Section line 330 feet, more or less, to a point 50 feet North of the railway track of the Union Pacific Railway running across said land; thence in a Southwesterly direction parallel with and 50 feet distance from center line of said track, 412.5 feet, more or less, to the South line of said Northeast 1/4 of the SE 1/4; thence East 132 feet, more or less, to the point of beginning.

Tax Serial No. 1B-483-1

DMWEST #8375045 v16

EXHIBIT "B"

Legal Description and Other Features of the Other Real Estate

Parcel 3: Leasehold and easement estate created pursuant to that certain Lease and Easement Agreement between Fotini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis (collectively, the "Telonis Family"), by and through Nick Sampinos, their Attorney-in-Fact, as lessor, and Western Reserve, as lessee, dated December 1, 2007 (the "Telonis Lease"), as evidenced by that certain Short Form of Lease and Easement Agreement made and entered into on December 1, 2007, by and between Fotini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis, recorded February 15, 2008 in Book 666 at Page 106, and Western Reserve, together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such Telonis Lease (the "Telonis Leased Land") and all water, easements, appurtenances, tenements and rights appurtenant thereto. The Telonis Leased Land is described as follows:

Property located in Section 33, Township 12 South, Range 7 East, SLB&M, State of Utah, County of Carbon,

Beginning at a point on the East Right-of-way line of the Utah State Highway 96, said point being further described as being S00°14'01" E, 1652.62 feet along the west section line of section 33, Township 12 South, Range 7 East, SLB&M in Carbon County, Utah and N90°00'00" East 235.93 feet from said west line of Section 33; thence along said east right-of-way line the following three courses, N11°02'21" E, 75.98 feet; thence N 18°41'18" E, 180.40 feet; thence N10°47'24" E, 82.52 feet; thence along the Telonis north property line N90°00'00" E, 285.41 feet; thence S01°17'17" W, 175.81 feet; thence S26°57'44" W, 450.28 feet; thence S0°14'01" E, 1947.79 feet; thence S90°00'00" W, 400.00 feet to the west line of the Telonis Property, which is the west line of said Section 33, thence N0°14'01" W, 2200 feet along said Section line being also the west line of the Telonis property, thence N90°00'00" E, 235.93 feet to the point of beginning.

Parcel 4: Fee simple title to the coal beneath the following real property, together with all rights, improvements, fixtures, water, easements, appurtenances, and tenements appurtenant thereto:

Township 12 South, Range 7 East, SLB&M:

Section 28: The SE ¼ SW ¼; SW ¼ SE ¼

Section 33: NW ¼ NE ¼; NE ¼ NW ¼

Excepting from Section 33, the vein or seam of coal known as Seam "B", as conveyed to Carbon County in the Quit Claim Deed recorded on November 1, 1954 in Book 29 at Page 471.

DMWEST #8375045 v15

EXHIBIT "C-1"

Assumed Carbon Resources Contracts

1. Carbon Sublease Agreement between WRCC, as lessor, and Seller, lessee, dated December 2, 2005, as amended by that certain Agreement dated May 26, 2011 between WRCC and Seller (such sublease and amendment are collectively, the "Carbon County Sublease"), evidenced by that certain Memorandum of Carbon Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 771;
2. Kinney #2 Mine, Carbon County near Schofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011;
3. Mine Safety and Health Administration ID Number 42-02566;
4. UPDES Permit, water discharge permit UTG040028; June 15 2010;
5. Air Quality Permit N014118 0001: December 11, 2008;
6. UDOT Highway Access Permit; March 14, 2011;
7. Carbon County Conditional Use Permit; September 20, 2010;
8. Utah Division of Natural Resources, Division of Water Rights, Small Dam Permit (Negative Determination); August 31, 2010;
9. Dwelling within 300 feet of property boundary Waiver Letter, Jim Levanger; Feb 9, 2009;
10. Raptor Nest #1541 Permit with US Fish & Wildlife Service; April 26, 2011.
11. Option Agreement.
12. Escrow Agreement.

All Cure Costs are \$0.0

DMWEST #8375045 v15

EXHIBIT "C-2"

Excluded Carbon Resources/WRCC Contracts

1. Contract with Mt. Nebo Scientific to conduct a one day field visit and follow up report to evaluate the flora along Mud Creek that will be completed before Closing.

DMWEST #8375046 v15

EXHIBIT "D"

Carbon Resources Permits

1. Kinney #2 Mine, Carbon County near Schofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011;
2. Mine Safety and Health Administration ID Number 42-02566;
3. UPDES Permit, water discharge permit UTG040028; June 15 2010;
4. Air Quality Permit N014118 0001: December 11, 2008;
5. UDOT Highway Access Permit; March 14, 2011;
6. Carbon County Conditional Use Permit; September 20, 2010;
7. Utah Division of Natural Resources, Division of Water Rights, Small Dam Permit (Negative Determination); August 31, 2010;
8. Dwelling within 300 feet of property boundary Waiver Letter, Jim Levanger, Feb 9, 2009;
9. Raptor Nest #1541 Permit with US Fish & Wildlife Service; April 26, 2011.

DMWEST #8375045 v15

EXHIBIT "E"

Copy of Water Shares

[Attached]

DMWEST #8375045 v15

EXHIBIT "F"

Form of Royalty Deed and Agreement

[Attached]

DMWEST #8375045 v15

ROYALTY DEED AND AGREEMENT

THIS ROYALTY DEED AND AGREEMENT (this "Agreement"), is made and entered into effective as of _____, 2011, by and between WESTERN RESERVE COAL COMPANY INCORPORATED, a Nevada corporation ("Grantee" or "WRC"), 34 Valle Hermosa, P.O. Box 954, Sandia Park, New Mexico 87047, and WASATCH NATURAL RESOURCES LLC, a Delaware limited liability company ("Grantor").

Recitals

- A. In connection with the transactions contemplated by that certain Asset Purchase Agreement dated effective September 12, 2011 by and between Carbon Resources, LLC and Grantor (the "Purchase Agreement"), Grantor agreed to purchase certain real estate assets and personal property from Carbon Resources, LLC (the "Assets"); and
- B. The Assets include a leasehold interest pursuant to that certain Lease and Agreement between Carbon County ("Carbon County"), as lessor, and Western Reserve Coal Company Incorporated, a Nevada Corporation (as successor in interest to Western Reserve Coal, Inc., a Utah corporation), as lessee, dated March 5, 1997 and recorded March 6, 1997 in Book 385 at Page 396 through 401 as entry #00059018, in the Office of the County Recorder of Carbon County, and that certain Amendment to Lease Agreement between Carbon County and Western Reserve, dated December 31, 2002 and recorded January 29, 2003 in Book 523 at Page 433 through 436 as entry #096531 (collectively, the "Carbon County Lease"), and that certain WRCC Sublease Agreement between Western Reserve, as lessor, and WRCC, LLC, a Nevada limited liability company ("WRCC"), as lessee, dated December 2, 2005 (the "WRCC Sublease"), as evidenced by that certain Memorandum of WRCC Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 768, and that certain Carbon Sublease Agreement between WRCC, as lessor, and Carbon Resources, lessee, dated December 2, 2005, as amended by that certain Agreement dated May 26, 2011 between WRCC and Carbon Resources (such sublease and amendment are collectively, the "Carbon County Sublease"), evidenced by that certain Memorandum of Carbon Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 771, together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such Carbon County Sublease (the "Carbon County Subleased Land") and all water, easements, appurtenances, tenements and rights appurtenant thereto. The Carbon County Subleased Land is described as follows:

TOWNSHIP 12 SOUTH, RANGE 7 EAST, SLB&M

Section 33: S 1/2 NW 1/4; SW 1/4 NE 1/4; N 1/2 S 1/2, S 1/2 SE 1/4; S 1/2 SW 1/4
Section 34: All
Section 35: All
Section 36: All

DMWEST #8484378 v2

TOWNSHIP 13 SOUTH, RANGE 7 EAST, SLB&M

Section 3: NW 1/4
Section 4: ALL
Section 5: E 1/2 E 1/2
Section 9: N 1/2 NW 1/4
Section 16: SE 1/4 NW 1/4; E 1/2 SW 1/4; SW 1/4 NE 1/4; W 1/2 SE 1/4
Section 21: SE 1/4; E 1/2 SW 1/4
Section 28: E 1/2; E 1/2 W 1/2
Section 33: E 1/2 NE 1/4; SW 1/4 NE 1/4; NE 1/4 SE 1/4

Copies of the Carbon County Sublease and the Assignment Agreement assigning such Carbon County Sublease to Grantor are attached hereto as **Exhibit 1**.

- B. The Assets also include fee simple title to the coal beneath the following real property, together with all rights, improvements, fixtures, water, easements, appurtenances, and tenements appurtenant thereto: Township 12 South, Range 7 East, SLB&M, Carbon County, Utah:

Section 28: The SE 1/4 SW 1/4; SW 1/4 SE 1/4, and

Section 33: NW 1/4 NE 1/4; NE 1/4 NW 1/4, excepting from Section 33, the vein or seam of coal known as Seam "B", as conveyed to Carbon County in the Quit Claim Deed recorded on November 1, 1954 in Book 29 at Page 471 (the "Fee Coal Reserves") and as conveyed to Grantor pursuant to the Deed attached hereto as **Exhibit 2**.

- C. Grantor may acquire ownership or leases of certain additional fee or federal coal reserves in adjacent lands whereby coal, in addition to the Carbon County Sub Lease, may be mined in those adjacent lands and transported through the tunnels of the Carbon County Subleased Land (the "After-Acquired Coal Reserves", which together with the currently controlled Fee Coal Reserves, are collectively referred to herein as the "Kinney No. 2 Coal Mine").
- D. Pursuant to terms and conditions of the Purchase Agreement and as a condition to the closing of the transactions hereunder, Grantor agrees to grant to Grantee a royalty interest in the coal production, if any, of the Kinney Coal Mine No. 2 as described herein.
- E. By the terms of this Agreement, the parties seek to define the terms of the royalty interest due to Grantee and the method of payment of such royalty.

AGREEMENT

NOW, THEREFORE, in consideration for the payment of Ten Dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor and Grantee covenant and agree as follows:

1. **Royalty.** Grantor hereby grants and conveys to Grantee a royalty interest in favor of Grantee, its successors or assigns, in the coal mined or produced from the Kinney No. 2 Coal Mine. The royalty interest runs with the land and is binding upon anyone who acquires an interest in the Kinney No. 2 Coal Mine as follows:
 - (i) a royalty equal to four percent (4%) of gross revenues, FOB the Mine mouth, from Coal mined and sold from the Carbon County Sub Lease and the Fee Coal Reserves based on the value of an arms-length transaction; and
 - (ii) one percent (1%) Wheelage Royalty based on the value of an arms-length transaction with respect to any block of Coal on which the royalty paid by Grantor to the United States Government does not exceed five percent (5%), provided that Grantor shall use its best efforts to negotiate a royalty of five percent (5%) or less with the United States Government, in each case on the terms and subject to the conditions herein specified (collectively the "Royalty"); and
 - (iii) Subject to Grantee's Royalty, Grantor expressly reserves for itself, and its successors and assigns, Grantor's real property and personal property interests in the Western Reserve Assets and any After-Acquired Coal Reserves, including, Grantor's rights in, and access to, the coal, minerals, oil and gas.

2. **Definitions.** The defined terms used in this Agreement (as indicated by initial capitalization), shall have their common meanings as modified by the definitions specified in this Section 2.
 - (a) "After-Acquired Coal Reserves" shall have the meaning set forth in the Recitals and Section 1 hereto.
 - (b) "Agreement" shall have the meaning set forth in the preamble hereto.
 - (c) "Closing Date" shall mean the date of the closing of the transactions contemplated by the Purchase Agreement.
 - (d) "Coal" means only coal mined and removed from the Kinney No. 2 Coal Mine and excludes, without limitation, oil, gas, coal bed methane, any minerals other than coal, and tar sands.
 - (e) "Commercial Mining" when the Production from the Kinney No. 2 Coal Mine is equal to or greater than 200,000 tons in the aggregate during a period of three consecutive calendar months, Commercial Mining shall be deemed to have begun on the first day of the first calendar month of such three-month period.

- (f) "Fee Coal Reserves" shall have the meaning set forth in the Recitals hereto.
 - (g) "Kinney No. 2 Coal Mine" shall have the meaning set forth in the Recitals hereto.
 - (h) "Production" means the mining and removal of coal from the Kinney No. 2 Coal Mine for sale. "Minimum Production" shall have the meaning set forth in Section 6 hereto.
 - (i) "Quarter" means a period of three months commencing from 1 January, 1 April, 1 July or 1 October.
 - (j) "Ton" means 2,000 lbs.
 - (k) "Royalty" has the meaning set forth in Section 1, as calculated on the gross sales price for any Coal that is mined, removed and sold from the Kinney No. 2 Coal Mine F.O.B., any means of transportation, at the point of delivery at the mouth of the Kinney No. 2 Coal Mine, in an arm's length transaction to an unaffiliated user of such coal, less freight costs, if such freight costs are included in the gross selling price.
 - (l) "Wheelage Royalty" means the royalty or fee paid on each ton of coal mined from lands adjacent to the Carbon County Sub Lease, that may be currently held or acquired in the future, and transported through the Kinney No. 2 Coal Mine tunnels or workings and/or infrastructure of the Kinney No. 2 Coal Mine.
3. **Term.** This Agreement shall commence upon the Closing Date and shall continue until the earlier of:
- (i) the date on which the Coal reserves within the Kinney No. 2 Coal Mine, and the adjacent After-Acquired Coal Reserves, are exhausted and all Coal, Carbon County Sub Lease and the adjacent After-Acquired Coal Reserves, has been mined, removed and sold; and
 - (ii) the termination of the Carbon County Sublease, as herein assigned to Grantor.
4. **First Payment.** Royalty payments shall not begin until the earlier of: (i) The Quarter when Commercial Mining commences as defined in paragraph 2(e) above or (ii) three (3) years after the Closing Date.
5. **Payment of Royalty.** The Royalty shall be paid no later than thirty (30) days after the last day of the Quarter in which such Royalty accrues and shall be due with respect to all Coal mined and sold from the Kinney No. 2 Coal Mine during the Quarter from which payment is due. Grantor shall make all payments of the Royalty due pursuant to this Agreement by wire transfer of funds to a bank account specified in writing by Grantee or by such other method mutually agreed upon by the parties in writing.
6. **Minimum Production.** Minimum Production for the purpose of calculating the Royalty for any calendar year shall be:

- (i) The greater of \$200,000 or \$1 per ton of production; or
- (ii) In the event that Grantor sells or assigns its interest to an unrelated third party, 600,000 tons of coal ("**Minimum Production**"). Minimum Production payments shall not commence until the commencement of Commercial Mining activities as defined in paragraph 2(e) above. In the event that production at the Kinney No. 2 Coal Mine is less than the Minimum Production for any calendar year during the term of this Agreement, then that portion of the Royalty due on the Minimum Production which exceeds Royalty calculated on the actual Production, shall be applied as pre-paid Royalty to offset Royalty payments due in subsequent years on mine Production in excess of the Minimum Production. If there is no Production at the Kinney No. 2 Coal Mine for the purposes of calculating the Royalty, then the average price on the spot market for comparable coal from the same region as the Kinney No. 2 Coal Mine (Uinta Basin Coal District) during the calendar quarter in which the WRC Royalty accrues shall be used as the sales price. If there is Production at the Kinney No. 2 Coal Mine then the Royalty shall be calculated as a percentage of the gross revenue (dollars), FOB the Mine Mouth, of actual arms length sales of Coal from the Kinney No. 2 Coal Mine during the Quarter in which the Royalty accrues.

7. **Royalty Statements.** At the same time that the Royalty payments are due hereunder, Grantor shall deliver to Grantee a statement showing in reasonable detail the gross revenue (dollars) upon which the Royalty is calculated and transport costs, if any, deducted to achieve FOB Mine Mouth Price, by Grantor in calculating the Royalty.

The royalties on any sales of Coal not sold in an arms-length transaction, including but not limited to sales to an affiliate or a member of Grantor shall be based on the average sales price for all Coal sold at arm's length to third parties during the preceding twelve months, with the adjustments otherwise provided for above.

8. **Records and Inspections; Audits.** Grantee, its agents, employees and representatives, upon not less than ten (10) days' advance written notice to Grantor, shall have the right to inspect books and records maintained by Grantor in relation to the Kinney No. 2 Coal Mine for the purposes of determining and verifying the amount of the Royalty payable in accordance with this Agreement, provided that any such inspection does not unreasonably interfere with or delay Grantor's operations. Grantee's right to inspect Grantor's books and records with respect to any particular calendar year shall expire ninety (90) days after Grantor's delivery to Grantee of the last statement for that calendar year. Grantor shall maintain separate records of operations on the After-Acquired Coal Reserves, including the Fee Coal Reserves, sufficient to demonstrate compliance with the terms and conditions of this Agreement. Within ninety (90) days after the end of each calendar year during which there has been any production and removal of Coal from the Kinney No. 2 Coal Mine, Grantee may request that Grantor's accounts and records relating to the determination and calculation of the Royalty payments for the year just ended be audited by an independent certified public accountant mutually selected by Grantor and Grantee. If such audit determines that there has been a deficiency or an excess in the payment made to Grantee, such deficiency or excess shall be resolved by adjusting the next

quarterly Royalty payment due hereunder or at the option of Grantee by cash payment. Grantee shall pay all costs of the audit if no deficiency is determined or if the deficiency is less than or equal to five (5) percent of the total payment. Grantor shall pay all costs of the audit if the deficiency is greater than five (5) percent of the total payment. All Royalty payments shall be considered final and in full satisfaction of all obligations of Grantor with respect thereto, unless Grantee gives Grantor written notice describing and setting forth a specific objection to the calculation thereof within thirty (30) days after receipt by Grantee of the auditor's report provided for in this paragraph.

9. **Commingling of Production.** Grantor shall have the right to commingle any coal from the Kinney No. 2 Coal Mine with coal produced from any other properties, provided that such commingling is accomplished after such coal has been weighed or measured and sampled in accordance with sound mining practices. Any Royalty due hereunder shall be determined by equitable allocation between coal from the Kinney No. 2 Coal Mine (Carbon County Sub Lease and After Acquired Coal) and coal from other properties in accordance with sound surveying, accounting and mining practices, subject to Grantee's right to require controls and procedures it may reasonably designate from time to time.
10. **Default.** Should Grantor fail to make royalty payments when due to Grantee or otherwise default on any of the provisions of this Agreement, and said default not be cured within sixty (60) days of Grantee's giving notice of the default, then Grantor shall pay to Grantee interest at the rate of ten percent (10%) per annum on the amount of the Royalty unpaid by Grantor, until payment in full has been made or in the event that payment has not been made after six (6) months from the applicable due date, then the rate increases to eighteen percent (18%) per annum. For the avoidance of doubt, the royalty interest or any default interest runs with the land and is binding upon anyone who acquires an interest in the Kinney No. 2 Coal Mine.
11. **Force Majeure.** In the event a party is prevented from performing its obligations hereunder as a result of causes beyond its control including strikes, lockout, major changes in law or regulation, war or acts of war, earthquake, or acts of God, then and in that event the time for its performance shall be extended for a like time, not exceeding however a six (6) month period of time.
12. **Notices.** All notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed, postage prepaid, as follows:

IF TO GRANTEE:

34 Valle Hermosa
PO Box 950
Sandia Park, New Mexico 87047

with a copy to:
Ronald C. Barker
BARKER LAW OFFICE, LLC
2870 South State Street, Salt Lake City, Utah 84115

DMWEST #8484376 v2

with a copy to:
Gregory L. Hunt
16577 Columbine Lane, Cedaredge, Colorado 81413

IF TO GRANTOR:

with a copy to:

Barbara Bagnasacco
Ballard Spahr LLP
201 South Main Street, Suite 800
Salt Lake City, UT 84111

13. Governing Law.

(a) This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah. Any disputes arising under or in connection with this Agreement shall solely and exclusively be settled by an arbitration to be conducted by one arbitrator in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect, excepting those disputes requiring injunctive relief, which shall be governed by Section 12(b). If the parties are unable to agree on a single arbitrator, then such binding arbitration shall be conducted before a panel of three (3) arbitrators that shall be comprised of one (1) arbitrator designated by each party and a third arbitrator designated by the two (2) arbitrators selected by the parties. Unless the parties agree otherwise, the arbitration proceedings shall take place in Salt Lake City, Utah, and the arbitrator(s) shall apply the law of State of Utah, to all issues in dispute. The findings of the arbitrator(s) shall be final and binding on the parties. Judgment may be entered in any court of appropriate jurisdiction, or application may be made to that court for a judicial acceptance of the award and an order of enforcement, as the party seeking to enforce that award may elect.

(b) In the event of any breach by either party of any of the provisions of this Agreement, which would cause immediate and irreparable injury to the other party, the non-breaching party shall be entitled to seek injunctive relief and any or all other remedies applicable at law or in equity in any court of applicable jurisdiction.

14. Nature of Royalty Interest. Royalty interest granted herein, shall run with the Fee Coal Reserves, the Carbon County Sublease and the After-Acquired Coal Reserves. This

DMWEST #B484376 v2

Agreement shall be binding on and inure to the benefit of the successors and assigns of the Grantee and the Grantor.

15. **Entire Agreement.** Both parties recognize that the terms and conditions described in this Agreement constitute the entire agreement between the parties and that said Agreement cannot be changed or amended without prior written concurrence by both parties.
16. **No Waiver.** The failure of either Grantor or Grantee to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof, shall not constitute a waiver of any provision of this Agreement or limit either party's right thereafter to enforce any provision or exercise any right hereunder. A waiver of any provision of this Agreement shall not be effective unless in writing and signed by the party against whom it is to be enforced.
17. **Recording.** This Agreement may be recorded by either of the parties to give record notice of this Agreement.
18. **Invalid Provisions.** If any provision hereof is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom, unless such severance substantially changes the intent of the parties. In lieu of such illegal, invalid or unenforceable provision, there shall be added upon agreement of the parties as a part hereof a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable, so long as it does not change the parties' intent.
19. **Execution.** Grantor hereby confirms that the agent who signs this Agreement on behalf of Grantor is authorized to sign this Agreement. Grantee hereby confirms that the agent who signs this Agreement on behalf of Grantee is authorized to sign this Agreement.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed effective as of the date first written above.

WASATCH NATURAL RESOURCES LLC

Its:

By:
Title:

WESTERN RESERVE COAL COMPANY
INCORPORATED

By: John H. W. Reeves
Title: President

DMWEST #8484376 v2

STATE OF)
 : ss
COUNTY OF)

On the ____ day of _____, 2011, personally appeared before me _____ who duly acknowledged to me that he signed the foregoing instrument as the duly authorized _____ of Wasatch Natural Resources LLC, a Delaware limited liability company.

Notary Public

STATE OF)
 : ss
COUNTY OF)

On the ____ day of _____, 2011, personally appeared before me John H. W. Reeves who duly acknowledged to me that he signed the foregoing instrument as the duly authorized and acting president of WESTERN RESERVE COAL COMPANY INCORPORATED, a Nevada corporation.

Notary Public

DMWEST #8484376 v2

EXHIBIT 1
CARBON COUNTY SUBLEASE
AND
ASSIGNMENT AGREEMENT

DMWEST #8484376 v2

EXHIBIT 2
FEE COAL RESERVES DEED

DMWEST #8484376 v2

EXHIBIT "G"

Permitted Encumbrances

To be provided by Buyer before Closing

DMWEST #8375045 v15

EXHIBIT "H"

Form of Assignment and Assumption Agreement

[Attached]

DMWEST #8375045 v15

WHEN RECORDED, RETURN TO:

Parcel ID # _____

**ASSIGNMENT AND ASSUMPTION AGREEMENT
OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS ("**Agreement**") is made and entered into as of the ____ day of _____ 2011 ("**Effective Date**"), by and between CARBON RESOURCES LLC, a Nevada limited liability company ("**Assignor**"), as assignor, and [NEWCO LLC, a Delaware limited liability company] ("**Assignee**"), as assignee.

RECITALS

A. Assignor and Assignee are parties to that certain Asset Purchase Agreement ("**APA**") dated _____, 2011, whereby Assignee has agreed to purchase, and Assignor has agreed to sell, certain real property, leasehold estates, water shares, mineral rights improvements and fixtures and other appurtenances and tenements and rights as described therein.

B. Assignor and Assignee are entering into this Agreement to provide for the assignment of Assignor's rights and the delegation of its duties under the leases, records, materials, contracts, and permits described herein, and to provide for Assignee's acceptance of Assignor's rights and assumption of Assignor's duties and liabilities under the same.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises contained below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

AGREEMENT

1. Recitals and Capitalized Terms. The above recitals are an integral part of the agreement and understanding of Assignor and Assignee, and are incorporated by reference in this Agreement. All capitalized terms used herein and not otherwise defined shall have the meaning described in the APA.

2. Assignment. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title, and interest as lessee in, and delegates to Assignee all of Assignor's duties, obligations and liabilities in connection with, the following (collectively, the "**Assignment**"):

2.1. the Carbon County Sublease (as such lease and premises are defined and described in Exhibit A attached hereto);

2.2. the Telonis Lease (as such lease and premises are defined and described in Exhibit B attached hereto);

2.3. the Records;

2.4. the Mining Materials;

2.5. the Assumed Contracts and Permits listed in Exhibit C; and

2.6. the Mining Tenements.

3. Assumed Liabilities. "Assumed Liabilities" shall mean: (i) the liabilities of Assignor arising out of or related to the Assumed Contracts existing as of the Effective Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Effective Date in accordance with the terms of any such Assumed Contracts, and (B) do not arise from or relate to any breach by Assignor of any provision of any Assumed Contracts; (ii) the liabilities of Assignor arising out of or related to the Carbon County Sublease, existing as of the Effective Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Effective Date in accordance with the terms of the Carbon County Sublease, and (B) do not arise from or relate to any breach by Assignor of any provision of the Carbon County Sublease; (iii) the liabilities of Assignor arising out of or related to the Telonis Lease, existing as of the Effective Date, but only to the extent such liabilities both (A) arise and are required to be performed on or after the Effective Date in accordance with the terms of the Telonis Lease, and (B) do not arise from or relate to any breach by Assignor of any provision of the Telonis Lease; and (iv) the liabilities incurred on or after the Effective Date by Assignee arising out of or related to Assignee's use or ownership of the Real Estate and the Personal Property.

4. Acceptance and Assumption. Assignee hereby accepts the Assignment and assumes the Assumed Liabilities, whether such obligations and liabilities have accrued before or will accrue after the Effective Date.

5. Excluded Liabilities. Except for the Assumed Liabilities, the parties hereby acknowledge and agree that all debts, claims, obligations and liabilities whatsoever of Assignor, shall be the sole responsibility of Assignor, and that Assignee is not assuming, and shall not be obligated or deemed to assume, any debt, claim or liability of Assignor (the "Excluded Liabilities"). Assignor shall remain liable for all Excluded Liabilities, including, but not limited to, any obligations arising out of Assignor's ownership of the Real Estate and the Personal Property prior to the Effective Date.

6. Re-Assignment. If Assignee assigns or conveys the Assets to Assignor in accordance with the APA, then Assignor shall accept such Assets.

7. Assignor Representations and Warranties. Assignor warrants, represents and covenants that to its knowledge Assignor has full right to assign the items described in Section 2

above, that to Assignor's knowledge the Carbon County Sublease, the Telonis Lease, the Assumed Contracts and Permits listed in Exhibit C are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Assignee in writing and that to Assignor's knowledge there are no material defaults under such agreements.

8. Further Assurances. Assignor and Assignee each agree to execute and deliver to the other, upon demand, such further documents, instruments and conveyances, and shall take such further actions, as are necessary or desirable to effectuate this Assignment.

9. Recording. This Agreement shall be recorded in Carbon County, Utah against the property subject to the Carbon County Sublease, as more particularly described in Exhibit A, and the Telonis Lease, as more particularly described in Exhibit B attached hereto and incorporated herein by reference.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

11. Entire Understanding. This Agreement represents the entire understanding of the parties hereto with respect to the Assignment and supersedes all prior written or oral agreements or representations, if any, relative to the subject matter.

12. Governing Law. This Agreement shall be construed under the laws of the State of Utah, without giving effect to its conflict of laws principles.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same instrument.

14. Section Headings. The section headings used in this Agreement are for reference only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS as of the Effective Date.

ASSIGNOR:

CARBON RESOURCES LLC,
a Nevada limited liability company

By: _____
Name: _____
Its: _____

ASSIGNEE:

NEWCO LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Carbon Resources LLC, a Nevada limited liability company.

Notary Public
Residing at: _____

My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Newco LLC, a Delaware limited liability company.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

WESTERN RESERVE COAL COMPANY, a _____ corporation

By: _____

Name: _____

Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Western Reserve Coal Company, a _____ corporation.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

CARBON COUNTY

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of Carbon County.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

WRCC, LLC, a _____ limited liability company

By: _____

Name: _____

Its: _____

STATE OF UTAH)

: ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of WRCC, LLC, a _____ limited liability company.

Notary Public

Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

Fotini Telonis

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Fotini Telonis.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

Angelo G. Telonis

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Angelo G. Telonis.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

Thomas G. Telonis

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Thomas G. Telonis.

Notary Public
Residing at: _____

My Commission Expires:

CONSENT:

By signing below, the following party consents to the ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASES, RECORDS, MATERIALS, CONTRACTS, AND PERMITS.

John G. Telonis

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by John G. Telonis.

Notary Public
Residing at: _____

My Commission Expires:

Exhibit A

Description of Carbon County Sublease

Leasehold interest pursuant to that certain Lease and Agreement between Carbon County ("Carbon County"), as lessor, and Western Reserve (as successor in interest to Western Reserve Coal, Inc., a Utah corporation), as lessee, dated March 5, 1997 and recorded March 6, 1997 in Book 385 at Page 396, in the Office of the County Recorder of Carbon County, and that certain Amendment to Lease Agreement between Carbon County and Western Reserve, recorded January 29, 2003 in Book 523 at Page 433 (collectively, the "Carbon County Lease"), and that certain WRCC Sublease Agreement between Western Reserve, as lessor, and WRCC, LLC, a Nevada limited liability company ("WRCC"), as lessee, dated December 2, 2005 (the "WRCC Sublease"), as evidenced by that certain Memorandum of WRCC Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 768, and that certain Carbon Sublease Agreement between WRCC, as lessor, and Assignor, lessee, dated December 2, 2005, as amended by that certain Agreement dated May 26, 2011 between WRCC and Assignor (such sublease and amendment are collectively, the "Carbon County Sublease"), evidenced by that certain Memorandum of Carbon Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 771.

This leased land is described as follows:

TOWNSHIP 12 SOUTH, RANGE 7 EAST, SLB&M

Section 33: S 1/2 NW 1/4; SW 1/4 NE 1/4; N 1/2 S 1/2, S 1/2 SE 1/4; S 1/2 SW 1/4
Section 34: All
Section 35: All
Section 36: All

TOWNSHIP 13 SOUTH, RANGE 7 EAST, SLB&M

Section 3: NW 1/4
Section 4: ALL
Section 5: E 1/2 E 1/2
Section 9: N 1/2 NW 1/4
Section 16: SE 1/4 NW 1/4; E 1/2 SW 1/4; SW 1/4 NE 1/4; W 1/2 SE 1/4
Section 21: SE 1/4; E 1/2 SW 1/4
Section 28: E 1/2; E 1/2 W 1/2
Section 33: E 1/2 NE 1/4; SW 1/4 NE 1/4; NE 1/4 SE 1/4

Exhibit B

Description of Telonis Lease

Leasehold and easement estate created pursuant to that certain Lease and Easement Agreement between Fotini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis (collectively, the "Telonis Family"), by and through Nick Sampinos, their Attorney-in-Fact, as lessor, and Western Reserve, as lessee, dated December 1, 2007 (the "Telonis Lease"), as evidenced by that certain Short Form of Lease and Easement Agreement made and entered into on December 1, 2007, by and between Fotini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis, recorded February 15, 2008 in Book 666 at Page 106, and Western Reserve, as assigned to Assignor pursuant to that certain _____ dated _____ among Western Reserve, as assignor, and Assignor, as assignee and recorded _____ in Book ____ at Page _____.

The leased land is described as follows:

Property located in Section 33, Township 12 South, Range 7 East, SLB&M, State of Utah, County of Carbon,

Beginning at a point on the East Right-of-way line of the Utah State Highway 96, said point being further described as being S00°14'01" E, 1652.62 feet along the west section line of section 33, Township 12 South, Range 7 East, SLB&M in Carbon County, Utah and N90°00'00" East 235.93 feet from said west line of Section 33; thence along said east right-of-way line the following three courses, N11°02'21" E, 75.98 feet; thence N 18°41'18" E, 180.40 feet; thence N10°47'24" E, 82.52 feet; thence along the Telonis north property line N90°00'00" E, 285.41 feet; thence S01°17'17" W, 175.81 feet; thence S26°57'44" W, 450.28 feet; thence S0°14'01" E, 1947.79 feet; thence S90°00'00" W, 400.00 feet to the west line of the Telonis Property, which is the west line of said Section 33, thence N0°14'01" W, 2200 feet along said Section line being also the west line of the Telonis property, thence N90°00'00" E, 235.93 feet to the point of beginning.

Exhibit C

Assumed Contracts and Permits

EXHIBIT "I"

Form of Deed

[Attached]

DMWEST #8375046 v15

WHEN RECORDED, MAIL TO:

SPECIAL WARRANTY DEED

CARBON RESOURCES, LLC, a Nevada limited liability company ("Grantor") does hereby convey and warrant against all claiming by, through or under it to [Newco, LLC, a Delaware limited liability company], whose address is [] ("Grantee"), for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all of Grantor's right, title and interest in and to the following described real property ("Property") in Carbon County, Utah:

See Exhibit A attached hereto and incorporated herein by reference.

TOGETHER WITH all and singular the tenements, rights-of-way, easements, hereditaments, appurtenances, water, and benefits running with or thereunto belonging or in any wise appertaining to the Property, including, without limitation, all improvements located on, and all of Grantor's right, title and interest in any land lying in any street, road or avenue in front of or adjoining, such Property, and oil, gas, sand, gravel, geothermal and mineral rights of any kind whatsoever related or appurtenant to such Property.

SUBJECT ONLY TO those certain exceptions and encumbrances specifically listed on Exhibit B attached hereto and incorporated herein by this reference.

[Signatures on Following Page]

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed by its duly authorized representative this _____ day of _____ 2011.

CARBON RESOURCES, LLC, a Nevada limited liability company

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 :ss.
COUNTY OF _____)

The foregoing Special Warranty Deed was acknowledged before me on this _____ day of _____, 20____, by _____, the _____ of Carbon Resources, LLC, a Nevada limited liability company.

NOTARY PUBLIC
Residing at: _____
My Commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

Parcel 2: Fee simple title to the following real property, together with all the improvements and fixtures now or hereafter erected or situated such land and all water, easements, appurtenances, tenements and rights appurtenant thereto:

A Parcel of land lying in the East ½ of Section 32, Township 12 South, Range 7 East, SLB&M, Carbon County, Utah, more particularly described as follows:

BEGINNING at a point which lies North, a distance of 1320.00 feet from the Southeast Corner of Section 32, T12S, R7E, SLB&M; thence South 89°59' 00" West a distance of 920.00 feet, more or less, to the intersection of the East Right of Way boundary of the State Road 96; thence in a Northerly direction along said East highway Right of Way boundary, a distance of 270.00 feet; thence in a Northeasterly direction along said highway boundary a distance of 317.10 feet; thence North 45°32' 00" East along said highway boundary a distance of 465.40 feet; thence in a Northeasterly direction along said highway boundary 733.00 feet, more or less, to the intersection of said highway boundary, and the East boundary of said Section 32; thence South a distance of 1475.00 feet, more or less, to the point of beginning and containing 16.33 acres, more or less.

LESS AND EXCEPTING therefrom a parcel of land more particularly described as follows:

Commencing at the Southeast corner of said Northeast 1/4 of the Southeast 1/4 of said Section 32, running thence North along the Section line 330 feet, more or less, to a point 50 feet North of the railway track of the Union Pacific Railway running across said land; thence in a Southwesterly direction parallel with and 50 feet distance from center line of said track, 412.5 feet, more or less, to the South line of said Northeast 1/4 of the SE 1/4; thence East 132 feet, more or less, to the point of beginning.

Tax Serial No. 1B-483-1

Parcel 4: Fee simple title to the coal beneath the following real property, together with all rights, improvements, fixtures, water, easements, appurtenances, and tenements appurtenant thereto:

Township 12 South, Range 7 East, SLB&M:

Section 28: The SE ¼ SW ¼; SW ¼ SE ¼

Section 33: NW ¼ NE ¼; NE ¼ NW ¼

Excepting from Section 33, the vein or seam of coal known as Seam "B", as conveyed to Carbon County in the Quit Claim Deed recorded on November 1, 1954 in Book 29 at Page 471.

EXHIBIT B
PERMITTED EXCEPTIONS
[to be inserted prior to Closing]

Schedule 1.2

Sale Order Requirements

[Attached]

DMWEST #8375045 v15

SCHEDULE "1.2"

REQUIREMENTS OF SALE ORDERS

- (i) Approval, pursuant to Sections 363(b) and (f) of the Bankruptcy Code, of this Agreement and the sale of the Carbon Resources Assets to Buyer free and clear of all Liens, Claims, or Indebtedness (as such terms are defined below) other than Permitted Encumbrances, and the release of PCM's Liens, Claims and Indebtedness in, to or against WRCC's assets, including, without limitation, the membership interests of Carbon County;
- (ii) Authorization and approval pursuant to Section 365 of the Bankruptcy Code for the assumption and assignment to Buyer of (A) those contracts, agreements or leases described in Exhibit "C-1", and all other leases, contracts or agreements which Buyer reasonably determines to be necessary to the operation and maintenance of the Carbon Resources Assets or the Mine provided that Buyer gives Seller notice of such additional leases, contracts or agreements in accordance with Section 1.2(b) of this Agreement, with any cure costs to be paid by Seller, and for the rejection of those contracts designated by Buyer pursuant to Section 1.2(b) of this Agreement;
- (iii) Authorization and approval pursuant to Section 365 of the Bankruptcy Code for the assumption by WRCC of (A) the WRCC Sublease, and (B) the Carbon County Sublease, in accordance with Section 1.6(a) of this Agreement;
- (iv) Specific holdings that Buyer acted in good faith and is a good faith buyer within the meaning of Section 363(m) of the Bankruptcy Code, that any objections timely filed with respect to the sale transaction are withdrawn, without merit or have been otherwise overruled, satisfied or adequately provided for by the Bankruptcy Court, that the purchase price for the Carbon Resources Assets is the highest and best offer for such property and that the Section 363 Sale is in the best interests of the Carbon Resources' and the WRCC estates and its creditors. Additionally, Carbon Resources and Western Resources will use reasonable good faith efforts to cause to be obtained specific holdings that the purchase price otherwise submitted or paid by Buyer, as applicable, for the Carbon Resources Assets represents the fair value of the Carbon Resources Assets and that the Section 363 Sale does not constitute a preferential transfer or fraudulent conveyance;
- (v) A specific holding that Buyer shall not be liable for any obligations or liabilities of, or claims against, Carbon Resources, WRCC or any other party except those arising post-closing under the Assumed Carbon Resources Contracts, and that all creditors of Carbon Resources and WRCC are permanently enjoined from asserting against Buyer any liability of or claim against Buyer except such liabilities or claims, if any, expressly assumed by Buyer;
- (vi) A specific provision holding that the order shall be binding upon and inure to the benefit of (a) Buyer and its successors and assigns, (b) Carbon Resources, WRCC and each of their respective estates, (c) all creditors, statutory and unofficial committees and any other parties in interest in Carbon Resource's bankruptcy case, WRCC's bankruptcy case, or any subsequent

bankruptcy case of either Carbon Resources or WRCC or any of their respective successors, (d) any chapter 7 trustee, chapter 11 trustee, liquidating trustee or other estate fiduciary in Carbon Resource's or WRCC's respective bankruptcy cases or any subsequent bankruptcy case of Carbon Resources or WRCC or any of their respective successors, and (e) any other successor to Carbon Resources or WRCC or any of their respective estates, including, without limitation, Carbon Resources as reorganized after consummation of a chapter 11 plan, and WRCC as reorganized after consummation of a chapter 11 plan;

(vii) A specific provision requiring each such order to become a Final Order (as hereinafter defined); and

(viii) For the purposes of this Agreement, including this Schedule 1.2, the following terms shall have the meanings set forth below:

(a) "**Claim(s)**" shall mean a claim against Carbon Resources or its property, or WRCC or its property, as such term is defined in section 101(5) of the Bankruptcy Code.

(b) "**Final Order**" or "**Final Orders**" shall mean (1) an order or orders of the Bankruptcy Court as to which the time to appeal, petition for certiorari or motion for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings or motion for reargument or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, motion for reargument or rehearing thereof has been filed or sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or motion for reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or motion for reargument or rehearing shall have expired.

(c) "**Indebtedness**" with respect to any Person shall mean any obligation of such Person for borrowed money, but in any event shall include (1) any obligation or liabilities incurred for all or any purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, whether such Person has assumed or become liable for the payment of such obligation, whether accrued, absolute, contingent, unliquidated or otherwise, known or unknown, whether due or to become due, and whether or not secured by a Lien; (2) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (3) capitalized lease obligations; and (iv) all guarantees of such Person of obligations of other Persons of the type referred to in clauses (1) through (3) above.

(d) "**Lien(s)**" shall mean any (i) security interest, lien, mortgage, pledge, hypothecation, encumbrance, Claim, easement, charge, restriction on transfer or otherwise, or interest of another person of any kind or nature, including any conditional sale or other title retention Contract or Lease in the nature thereof, or any other ownership or participation interests, (ii) any filing or agreement to file a financing statement as debtor under the applicable Uniform Commercial Code or any similar statute and (iii) any subordination arrangement in favor of another Person.

(e) "Person(s)" shall mean any individual, company, corporation, association, partnership, limited liability company, firm, joint venture, trust, Governmental Authority, or other entity.

(f) "Governmental Authority" shall mean any national, federal, state, provincial, local or foreign government, or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof, or any federal, state, provincial, local or foreign court, tribunal, or arbitrator, including the Bankruptcy Court.

Schedule 6.2

**Disclosures Regarding Consents, Authorizations, Approvals, and Orders Necessary to
Consummate Transaction**

Except as set forth in this Agreement, none.

DMWEST #8375046 v15

Schedule 6.6

Disclosures Regarding Unpaid Taxes

To our knowledge, the only unpaid taxes are:

- **Payroll taxes in the approximate amount of \$7,800 .00**
- **2010 real estate taxes on the owned surface of \$376.00**
- **Plus accrued penalty and interest on both**

**These are both listed on schedule E in the bankruptcy schedules.
They will both be paid from the proceeds of the sale.**

DMWEST #8375045 v15

Schedule 6.8

**Disclosures Regarding Hazardous Materials, Environmental Issues, Underground Storage
Tanks**

Refer to:

State of Utah

Abandoned Mine Reclamation Program

Division of Oil Gas and Mining

Scofield Project Contract AMR/007/904

Available on Carbon Resources FTP File Server

SCHEDULE 6.8

Manufacture of Hazardous Materials

NONE

SCHEDULE 6.8

Handling of Hazardous Materials

NONE

SCHEDULE 6.8

Above Ground and Underground Storage Tanks

NONE

DMWEST #8375045 v15

Schedule 6.9

Disclosures Regarding Permits

1. UPDES Permit - Approved; notification of change in ownership needed, no fees due now.
2. Air Quality Permit - Approved; notification to UDAQ of change in ownership or name. Other ongoing requirements as noted in Approval Order. No fees due now.
3. UDOT Highway Intersection - Approved; needs a PE stamp on design before construction starts. No fees due now.
4. MSHA Approval of Plans needed before mining; No Permit & No known Fees.
 - Mine plan
 - Roof control plan
 - Ventilation plan
 - Possibly, special plan in case of encountering old workings during mains development
5. Carbon County Conditional Use Permit - Approved April 6, 2011, however;
 - Permit fee of 0.2% of an engineer's estimate of the total cost of the project (construction cost). Must be paid before project starts.
 - Permit approval requires UDOT Highway Intersection must be in place prior to commencement of the project.
6. Carbon County Building Permit - Has not been applied for yet, not required for coal handling structures (conveyors, stacking tubes, transfers etc. but for bath-house, shop etc.; will require fee which is calculated as 75% of the buildings cost as basis per following:
 - \$5,000 for the first \$1,000,000 of buildings cost + \$2.75/\$1,000 of remainder of building cost. Example:
\$3,500,000 total buildings cost X 75% = \$2,625,000
\$2,625,000 - \$1,000,000 = \$1,625,000
Fee = (\$5,000 for the first \$1,000,000) + ((\$1,625,000/\$1,000)*\$2.75) = \$9,468.75
7. Scofield Town Building Permit - Has not been applied for yet; small fee will be required.
8. DOGM Mining and Reclamation permit - Approved, however for the permit to be issued requires;
 - Signing Reclamation Agreement
 - Posting Reclamation Bond

DMWEST #8375045 v15

Schedule 6.14

Disclosures Regarding Payment Defaults

None.

DMWEST #8375045 v15

EXHIBIT 2

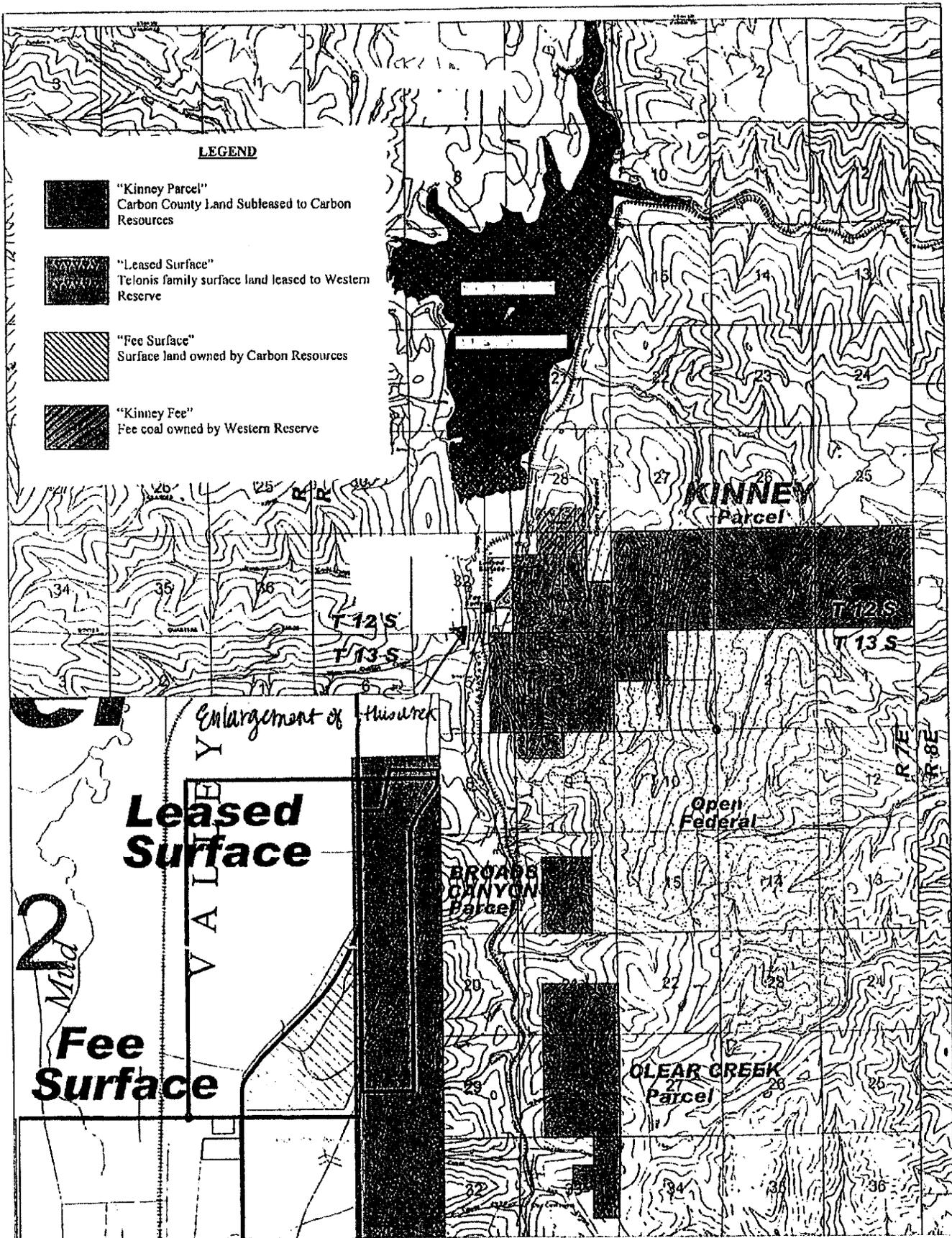


EXHIBIT 3

EXHIBIT 3—PERMITTED ENCUMBRANCES

A. General Exceptions (Pertaining To Both The Carbon Resources Assets And The Other Assets)

1. The lien of real estate taxes or assessments imposed on the title by a governmental authority that are not shown as existing liens in the records of any taxing authority that levies taxes or assessments on real property or in the public records.
2. Any facts, rights, interests, or claims that are not shown in the public records but that could be ascertained by an inspection of the land or by making inquiry of persons in possession of the land.
3. Easements, claims or easement or encumbrances that are not shown in the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. Any lien, or right to alien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the public records.
6. Taxes for Real and/or Personal Property for lands described in the Leasehold, Easement or Coal Estates. General and Real Property Taxes for the year 2011, accumulating not yet due.

THE CARBON COUNTY ASSETS

B. The Carbon County Sublease:

7. Said land is located within the boundaries of Scofield City District and Scofield Special Service District and may be subject to taxes or assessments levied by said (City or District).
8. Any rights associated with the Railroad Rights of Way.
9. Terms and conditions as contained in the Lease and Agreement dated March 5, 1997 and recorded March 6, 1997 in Book 385 at Page 396. executed by Carbon County in favor of Western Reserve Coal. Inc. for the purpose of exploring, developing, mining, and producing coal.

Terms and conditions contained in the Amendment to Lease Agreement, recorded January 29, 2003 in Book 523 at Page 433.

Terms and conditions contained in the Memorandum of WRCC Sublease Agreement recorded by and between Western Reserve Coal Company, Inc. and WRCC, LLC, recorded December 12, 2005 in Book 607 at page 768, Entry No 114846.

Terms and conditions contained in the Memorandum of Carbon Sublease Agreement by and between WRCC, LLC, a Nevada limited liability company and Carbon Resources, LLC, a Nevada limited liability company, recorded December 12, 2005 in Book 607 at page 771, Entry No 114847.

Terms and conditions as contained in the actual unrecorded full Lease Agreements to the above interests.

C. The 16.33 Acre Parcel (also commonly referred to as the Surface Estate):

10. Said land is located within the boundaries of Scofield City District and Scofield Special Service District and may be subject to taxes or assessments levied by said (City or District).

11. Any rights associated with Railroad Rights of Way.

12. Terms and conditions as contained in the Pole Line Easement executed by Della Madsen in favor of Utah Power & Light Company, recorded August 10, 1956 in Book 41 at Page 293, conveying a perpetual easement and right of way for the erection and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits and necessary attachments over a right of way in the SE1/4 NE1/4 of Section 32, 12S, 7E, together with rights of ingress and egress for said easement.

THE OTHER ASSETS

D. The Telonis Leased Land:

13. Said land is located within the boundaries of Scofield City District and Scofield Special Service District and may be subject to taxes or assessments levied by said (City or District).

14. Roll-back taxes under green belt amendment (Section 59-2-506, UCA Amended 2003), which may be imposed on the property if the property is not used for the agricultural purposes set forth in the application on file in the County Recorder's Office. (Only affects the surface owner).

15. Any rights associated with grazing as disclosed by the Short Form Lease and Easement Agreement from Fontini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis (Telonis Family) by and through Nick Sampinos, their Attorney in fact, whose address is 190 North Carbon Avenue, Price Utah 84501 and Western Reserve Coal

Company Incorporated, a Nevada corporation recorded February 15, 2008, in Book 666 at Page 106.

16. Any rights associated with hunting as disclosed by the Short Form Lease and Easement Agreement from Fontini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis (Telonis Family) by and through Nick Sampinos, their Attorney in fact, whose address is 190 North Carbon Avenue, Price Utah 84501 and Western Reserve Coal Company Incorporated, a Nevada corporation recorded February 15, 2008, in Book 666 at Page 106.

17. Terms and conditions as contained in the Lease and Agreement dated March 5, 1997 and recorded March 6, 1997 in Book 385 at Page 396. executed by Carbon County in favor of Western Reserve Coal. Inc.. for the purpose of exploring, developing, mining, and producing coal.

Terms and conditions contained in the Amendment to Lease Agreement, recorded January 29, 2003 in Book 523 at Page 433.

Terms and conditions contained in the Memorandum of WRCC Sublease Agreement recorded by and between Western Reserve Coal Company, Inc. and WRCC. LLC, recorded December 12, 2005 in Book 607 at page 768, Entry No 114846.

Terms and conditions contained in the Memorandum of Carbon Sublease Agreement by and between WRCC, LLC, a Nevada limited liability company and Carbon Resources, LLC, a Nevada limited liability company, recorded December 12, 2005 in Book 607 at page 771, Entry No 114847.

Terms and conditions as contained in the actual unrecorded full Lease Agreements to the above interests.

18. Terms and provisions as contained in the Lease and Easement Agreement, recorded February 15, 2008 in Book 666 at Page 106, by and between Fotini Telonis, Angelo G. Telonis, Thomas G. Telonis and John G. Telonis, by and through Nick Sampinos, their Attorney in fact, as (Lessors) and Western Reserve Coal Company Inc.. a Nevada Corp., as (Lessee).

19. Any rights associated with Railroad Rights of Way.

E. The Fee Coal Estate (Fee Coal Property):

20. Said land is located within the boundaries of Scofield City District and Scofield Special Service District and may be subject to taxes or assessments levied by said (City or District).

EXHIBIT 4

EXHIBIT 4—ADDITIONAL ENCUMBRANCES

A. General Exceptions (Pertaining To Both The Carbon Resources Assets And The Other Assets)

1. All requirements currently shown in Schedule B-Section 1 of the Title Commitment which are as follows:

- (a) Payment of the necessary consideration for the estate or interest to be insured.
- (b) Pay all premiums, fees and charges for the policy.
- (c) Documents creating the estate to be insured must be properly executed, delivered and recorded.
- (d) You must tell in writing the names of anyone not referred to in this commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Release(s) or Reconveyance(s) of item(s):
- (f) You must give us the following information:
 - 1. Any off record leases, surveys, etc.
 - 2. Statement(s) of identity, as to all parties, and to include providing the Title Company with proper company papers to identify the members/managers/president, etc who has the authority to sign for buyers and sellers. Also, provide Title Company with verification that each company is active and in good standing, and able to do business or act and sign documents in the State of Utah. USA.
 - 3. The owner and any previous owners within the last 6 months are required to sign a statement that no recent construction has taken place. A physical inspection may also be required. if recent construction has taken place, additional requirements may be added.
 - 4. Title Company will require a Statement of Affidavit as to the following:
 - A. That no conveyances have been made regarding the coal interests.
 - B. That no leases, royalties, or assignments have been made regarding the coal interests.
 - C. That no challenges have been made to the coal interests.
 - D. That there are no additional encumbrances affecting the coal interests.
 - E. That there are no rights or claims of others to the coal interests.

5. A Termination Agreement between Carbon County and Carbon Resources to release the Lease recorded in 1988 and amended in 1991, as Book 285 at Page 311.
 6. Approval and written consent by Carbon County to Assign the Coal Lease to Buyer.
 7. Approval and written consent by the Telonis's to Assign the Easement Estate to Buyer. Additionally, provide the Title Company with a copy of the actual unrecorded Lease.
 8. Title Company will need complete Escrow Instructions by both parties.
 9. Title Company will require an "Order from the Bankruptcy Court" to sale or transfer subject property.
2. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; claim, right, title or interest to water or water rights whether or not shown by public records.
 3. Taxes for the surface estate of lands described in 3c are DELINQUENT as follows:
Tax Parcel No IB-483-1
2009 in the amount of \$412.08, (to 7-6-2011) plus interest and penalty
2010 in the amount of \$399.98, (to 7-6-2011) plus interest and penalty
 4. Subject to Bankruptcy Proceedings by Carbon Resources, LLC filed in the State of New Mexico, as case number 10-16104-11.
 5. Subject to review of the Articles of Organization or comparable company documents as required by Australian Authority along with verification that the company is active and in good standing, as to the Buyers, Delta Capital Coal Fund Pty Ltd.
 6. Subject to review of the Articles of Organization and Corporate Resolution/By-Laws along with verification that the company is active and in good standing, as to the Sellers, Western Reserve Coal Company, Inc. and Carbon Resources, LLC.
 7. Lack of right of access.
 8. Matters that would be disclosed by a survey of the lands..
 9. Any rights associated with Railroad Rights of Ways.

THE CARBON COUNTY ASSETS

B. The Carbon County Sublease:

10. Lack of right of access.

11. Terms, conditions, provisions, reservations and conveyances as contained in the Quit Claim Deed, recorded November 1, 1954 in Book 29 at Page 471, executed by George Telonis, Marl and Bessie Gibson and Henry and Clara Ruggeri in favor of Carbon County, conveying to Grantee Coal Seam "B" to a portion of said lands, with the condition that the system of mining known as "strip mining", may not be used. Additionally, the Grantors reserve specific rights, set forth in said document, for the purpose of carrying on oil and gas drilling and other mining operations not conveyed herein..

12. Terms and conditions as contained in the Lease and Agreement dated December 30, 1988 and recorded December 30, 1988 in Book 285 at Page 311, executed by Carbon County in favor of Western Reserve Coal, Inc., for the purpose of exploring, developing, mining, and producing coal.

Terms and conditions contained in the Amendment to Lease and Agreement, recorded August 15, 1991 in Book 308 at Page 809. to correct errors in the legal descriptions.

13. A Leasehold Deed of Trust with Assignment of Rents, given to secure a Promissory Note bearing even date thereof, with interest thereon, as therein provided:

Dated: December 12, 2005

Amount: \$3,000,000.00

Trustor: Carbon Resources. LLC, a Nevada limited liability company

Trustee: South Eastern Utah Title Company

Beneficiary: PCM Venture II. LLC, an Arizona limited liability company
whose address is 5685 N. Scottsdale Road, Suite E-100, Scottsdale,
Arizona 85250

Recorded: December 12, 2005 in Book 607 at Page 774

Entry No.: 114848

14. A UCC Financing Statement, recorded July 2, 2010. in Book 725, at Page 268, wherein Western Reserve Coal Company, Incorporated appears as debtor and Michael L. Quick whose address is Number 10 Dressage Land, Little Rock, Arkansas 72223, is the secured party.

B. The 16.33 Acre Parcel (also commonly referred to as the Surface Estate):

15. Subject rights of various oil and gas interest owners and their assigns, to explore and produce oil and gasses, and the right to enter upon said lands and to explore for, develop, mine, produce, remove by any process, and to build such roads, pipelines, power or telephone lines, structures of facilities upon, over or across said lands, as may be necessary for or convenient, to the mining, producing, exploring for, removal or

processing of any of the foregoing and above mentioned minerals, as disclosed in various documents in the chain of title. Several Oil and Gas Leases were found of record.

16. Terms and conditions as set forth in the Warranty Deed executed by Della L. Madsen in favor of the State Road Commission of Utah, recorded March 16, 1956 in Book 38 at Page 491, wherein said highway herein conveyed lies adjacent to and West of said lands described on Schedule A. Additionally, Grantors grant to Grantee, permission to locate and construct within Grantors land and outside the limits of the highway, all irrigation and/or waste water ditches made necessary by the construction of said project..

17. Reservation of an undivided 50% interest to all the oil, gas, coal, minerals, and other hydrocarbons, and specifically excluding from said reservation all rights of surface entry to said minerals, as reserved in the Warranty Deed executed by Della L. Madsen and Hilda M. Hammond. recorded October 8, 1982 in Book 221 at Page 534.

18. Terms and conditions as contained in the Notice of Coal Lease Agreement executed by Della L. Madsen and Robert and Hilda Hammond (address by deed 2912 Redwood Avenue, Costa Mesa, California 92626), Lessors, in favor of Bishopgate Coal Corporation (address by deed P.O. Box 3357 Park City, Utah 84060), Lessee, recorded November 3, 1982 in Book 222 at Page 458, for a term of 40 years if kept in effect. (Affects the interest of that portion of the severed coal estate only) (note: Title Company can not determine if said Lease is still in effect).

19. Terms and conditions as contained in the Notice of Coal Lease Agreement executed by Lucille L. Davis, Lessor in favor of Pleasant Valley Coal Partners, by Bishopgate Coal Corporation, Lessee, recorded November 3, 1982 in Book 222 at Page 465, for a term of 40 years if kept in effect. (Affects the interest of that portion of the severed coal estate only)

20. Terms and conditions as contained in the Access and Haulage Rights License Agreement, executed by Bishopgate Coal Corporation, Licensor and Southern Pacific Land Company, Licensee, recorded October 21, 1985 in Book 254 at Page 142.

Assignment recorded October 7, 1991 in Book 310 at Page 206, wherein Catellus Development Corporation, (as successor in interest to Southern Pacific Land Company), assigns all their right, title and interest to SFP Minerals Corporation, a Delaware Corporation.

Assignment and Assumption recorded October 7, 1993, in Book 335 at Page 49, wherein Santa Fe Pacific Minerals Corporation, (as successor in interest to SFP Minerals), assigns all their right, title and interest to Hanson Natural Resources Company.

All right, title and interest of Access and Haulage Rights License Agreement conveyed to Carbon Resources, LLC in the Special Warranty Deed recorded October 5, 2007 in Book 657 at Page 128.

21. Terms and conditions as contained in an apparent Loading Site License Agreement, dated October 11, 1985, by and between Southern Pacific Land Company (Licensor) (predecessor in interest to Catellus Development Corporation) and Bishopgate Coal Corporation (Licensee).

Assignment and Assumption, recorded September 27, 1993 in Book 334 at Page 440 wherein Santa Fe Pacific Minerals Corporation (successor in interest to SFP Minerals Corporation), assigns all their right, title and interest to Hanson Natural Resources Company.

All right title and interest of Loading Site License Agreement conveyed to Carbon resources, LLC in the Special Warranty Deed recorded October 5, 2007 in Book 657 at Page 128.

22. Terms and conditions as contained in the Special Warranty Deed, executed by Santa Fe Pacific Minerals Corporation in favor of Hanson Natural Resources Company, a Delaware General Partnership, recorded July 1, 1993 in Book 330 at Page 648, including but not limited to a conveyance of only a 50% interest of the Grantor's interest in and to any and all minerals, including gold, coal, silver, precious metals, base metals, oil and gas, and to the extent considered minerals under law, said, gravel, stone and geothermal steam, and right appurtenant thereto.

23. Terms, provisions, limitations, restrictions, reservations, covenants, and agreements. as contained in the Special Warranty Deed recorded on October 5, 2007, in Book 657 at Page 128, wherein Hanson Natural Resources nka Peabody Natural Resources conveys to Carbon Resources, LLC.

24. Reservation of all minerals including coal, oil, gas, coal bed methane and other minerals by Peabody Natural Resources, as contained in the Special Warranty Deed recorded on October 5, 2007, in Book 657 at Page 128.

THE OTHER ASSETS

C. The Telonis Leased Land:

25. Any rights, title or interests in minerals of any kind, together with any associated rights to mine or remove said minerals. Title Company does not purport to disclose documents of record pertaining to the above referenced rights. Various documents of record which affect the mineral estate, including but not limited to oil and gas leases.

26. Subject rights of various oil and gas interest owners and their assigns, to explore and produce oil and gasses, and the right to enter upon said lands and to explore for, develop, mine, produce, remove by any process, and to build such roads, pipelines, power or telephone lines, structures of facilities upon, over or across said lands, as may be necessary for or convenient, to the mining, producing, exploring for, removal or

processing of any of the foregoing and above mentioned minerals, as disclosed in various documents in the chain of title. Several Oil and Gas Leases were found of record.

27. Subject to the rights of the surface owners and parties holding various easement estates and leasehold estates, as disclosed in various documents in the chain of title.

28. A conveyance of a 1/6 interest to Henry Ruggeri and a 1/6 interest to Marl D. Gibson in and to all minerals, mineral interests, fissionable materials, coals, oils, gases, clays, spars, potash, sand, gravel, asphalt, commercial rock, veins, lodes and deposits of every kind and nature whatsoever, and rights associated therewith, as disclosed in the Warranty Deed executed by George Telonis and recorded September 23, 1954 in Book 29 at Page 79.

29. Terms, conditions, provisions, reservations and conveyances as contained in the Quit Claim Deed, recorded November 1, 1954 in Book 29 at Page 471, executed by George Telonis, Marl and Bessie Gibson and Henry and Clara Ruggeri in favor of Carbon County, conveying to Grantee Coal Seam "B" to a portion of said lands, with the condition that the system of mining known as "strip mining", may not be used. Additionally, the Grantors reserve specific rights set forth in said document, for the purpose of carrying on oil and gas drilling and other mining operations not conveyed herein.

30. Terms, conditions and provisions as contained in the Quit Claim Deed wherein George Telonis grants to the State Road Commission of Utah, recorded May 27, 1963 in Book 85 at Page 10.

31. A reservation by George Telonis in and to all oil and gas, as disclosed in the Quit Claim Deed recorded on July 15, 1963, in Book 85, at Page 411, due to coal only being conveyed.

32. Terms and conditions as contained in the Lease and Agreement dated December 30, 1988 and recorded December 30, 1988 in Book 285 at Page 311, executed by Carbon County in favor of Western Reserve Coal, Inc., for the purpose of exploring, developing, mining, and producing coal.

Terms and conditions contained in the Amendment to Lease and Agreement, recorded August 15, 1991 in Book 308 at Page 809. to correct errors in the legal descriptions.

33. Terms and conditions as contained in the Access and Haulage Rights License Agreement, executed by Bishopsgate Coal Corporation, Licensor and Southern Pacific Land Company, Licensee, recorded October 21, 1985 in Book 254 at Page 142.

Assignment recorded October 7, 1991 in Book 310 at Page 206, wherein Catellus Development Corporation, (as successor in interest to Southern Pacific Land Company),

assigns all their right, title and interest to SFP Minerals Corporation, a Delaware Corporation.

Assignment and Assumption recorded October 7, 1993, in Book 335 at Page 49, wherein Santa Fe Pacific Minerals Corporation, (as successor in interest to SFP Minerals), assigns all their right, title and interest to Hanson Natural Resources Company.

All right, title and interest of Access and Haulage Rights License Agreement conveyed to Carbon Resources, LLC in the Special Warranty Deed recorded October 5, 2007 in Book 657 at Page 128.

34. Terms and conditions as contained in an apparent Loading Site License Agreement, dated October 11, 1985, by and between Southern Pacific Land Company (Licensor) (predecessor in interest to Catellus Development Corporation) and Bishopgate Coal Corporation (Licensee).

Assignment and Assumption, recorded September 27, 1993 in Book 334 at Page 440 wherein Santa Fe Pacific Minerals Corporation (successor in interest to SFP Minerals Corporation), assigns all their right, title and interest to Hanson Natural Resources Company.

All right title and interest of Loading Site License Agreement conveyed to Carbon resources, LLC in the Special Warranty Deed recorded October 5, 2007 in Book 657 at Page 128.

35. A UCC Financing Statement, recorded July 2, 2010. in Book 725, at Page 268, wherein Western Reserve Coal Company, Incorporated appears as debtor and Michael L. Quick, is the secured party.

E. The Fee Coal Estate (Fee Coal Property):

36. Lack of right of Access

37. Reservation to all oil, gas and other minerals as reserved in the Deed executed by Kimball Holding Company in favor of John B. Jones, recorded April 17, 1948 in Book 12 at Page 260. (Section 28, T12S, R7E)

38. Terms, conditions, provisions, reservations and conveyances as contained in the Quit Claim Deed, recorded November 1, 1954 in Book 29 at Page 471, executed by George Telonis, Marl and Bessie Gibson and Henry and Clara Ruggeri in favor of Carbon County, conveying to Grantee Coal Seam "B" to a portion of said lands, with the condition that the system of mining known as "strip mining", may not be used. Additionally, the Grantors reserve specific rights set forth in said document, for the purpose of carrying on oil and gas drilling and other mining operations not conveyed herein.

39. Reservation of a 1/6 interest in all oil and gas and other substances as disclosed in the Quit Claim Deed executed by Henry and Clara Ruggeri in favor of George Telonis, recorded July 15, 1963 in Book 85 at Page 407. (Section 33. T12S, R7E)

40. Reservation of a 1/6 interest in all oil and gas and other substances as disclosed in the Quit Claim Deed executed by Marl and Bessie Gibson in favor of George Telonis, recorded July 15, 1963 in Book 85 at Page 409. (Section 33. T12S, R7E)

41. Reservation of all remaining oil and gas and other substances as disclosed in the Quit Claim Deed executed by George Telonis in favor of F.V. Columbo, recorded July 15, 1963 in Book 85 at Page 411. Said deed conveys coal only to F.V. Columbo. (Section 33. T12S, R7E).

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:
CARBON RESOURCES LLC,
Debtor(s)

No. 10-16104-j11

NOTICE OF DISPUTED ADDITIONAL ENCUMBRANCE

PLEASE TAKE NOTICE that on October ____, 2011, the above-captioned debtor and debtor in possession ("Carbon Resources" or the "Debtor"), filed the Debtor's Motion for Authority to Sell Substantially All of Carbon Resources, LLC's Assets and Execute Agreements Related Thereto (Docket No. []) (the "Sale Motion") in the above-captioned case, by which motion the Debtor seeks entry of an order authorizing the Debtor to (i) sell (the "Sale") substantially all of the assets of Carbon Resources, along with certain assets of its non-debtor affiliate that will be transferred to Carbon Resources at or prior to closing after entry of a final order approving the Sale, free and clear of all liens, claims, interests and encumbrances except as provided in the Sale Motion; and (ii) authorizing Carbon Resources and its affiliated debtor, WRCC, LLC ("WRCC") to execute and enter into each of the various agreements contemplated by that certain Asset Purchase Agreement, entered into on September 12, 2011 (the "Purchase Agreement"). The Sale Motion was filed in conjunction with the Debtor's Motion to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale Of Assets (Docket No. []), the approval of which motion also is necessary to effectuate the transactions contemplated by the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that by this Notice of Disputed Additional Encumbrance (the "Notice") the Purchaser¹ hereby asserts that the following Additional Encumbrance is a Disputed Additional Encumbrance pursuant to Article B(iv) of the Sale Motion, and that your Interest, if any, in such Disputed Additional Encumbrance may be affected by the relief sought in the Sale Motion with respect to such Disputed Additional Encumbrance:

1. Title of Disputed Additional Encumbrance:
2. Non-Debtor Party to Disputed Additional Encumbrance:
3. Nature of Dispute:
4. Grounds On Which Carbon Resources Asserts May Be Sold Free and Clear Of Disputed Additional Encumbrance:

IF YOU OBJECT to Carbon Resources selling the Assets free and clear of all Interests, including any Interests in the foregoing Disputed Additional Encumbrance, you must raise an objection to such treatment (the "Objection") by filing a written objection thereto with the Clerk of United States Bankruptcy Court, Dennis Chavez Federal Building and United States Courthouse, 10th Floor, 500 Gold Avenue SW, PO Box 546, Albuquerque, NM 87103-0546 (the "Clerk"), **within 13 (thirteen) days** of the filing of this Notice. If you are an attorney, you must electronically file the Objection. You must also

¹ All capitalized terms not otherwise defined in this Notice shall have the meanings ascribed to such terms in the Purchase Agreement.

serve the Objection upon: (a) Philip J. Montoya, P.O. Box 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152, Attorneys for Debtor; and (b) Rebecca J. Winthrop, Ballard Spahr LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067, (424) 204-4330, and Paul M. Fish, Modrall Sperling Roehl Harris & Sisk, P.A., 500 4th Street NW, Suite 1000, Albuquerque, NM 87102, (505) 848-1871, Attorneys for Purchaser.

This Notice further can be viewed for a per page fee via the PACER (Public Access to Electronic Court Records) system. Log on to PACER at ecf.nmb.uscourts.gov/cgi-bin/login.pl. For registration and use instructions, see pacer.psc.uscourts.gov/index.html. If you are an attorney and have an account to use New Mexico's local electronic filing system (CMECF), you may access this document one time at no charge via your email confirmation. You may also view this document from a computer at the clerk's office between 8:30 am and 4:30 pm, Monday through Friday, at no charge.

If an Objection is timely filed, a hearing to consider the Objection will be sought before the Honorable Robert H. Jacobvitz in the United States Bankruptcy Court, 13th Floor, Dennis Chavez Federal Building and United States Courthouse, 500 Gold Avenue SW, Albuquerque, New Mexico on shortened notice to Philip J. Montoya, Rebecca J. Winthrop and Paul M. Fish, and any objecting party.

If no Objections are timely filed, the Court may consider entry of an order granting the Sale Motion and approving the Sale of the Assets free and clear of all Interests, including, without limitation, the Disputed Additional Encumbrance that is the subject of this Notice.

Filed electronically _____
Paul M. Fish, Esq.
Counsel for the Purchaser
Modrall Sperling Roehl Harris & Sisk, P.A.
500 4th St. NW, Suite 1000
Albuquerque, New Mexico 87102
Tel: 505-848-1871; Fax: (505) 848-9710

I certify that I mailed a copy of this notice, via first class mail to the Debtor(s), and all creditors and parties of interest included on the mailing matrix. A copy of the mailing matrix is attached to the original of this notice.

Filed electronically
Paul M. Fish

Date of Mailing: _____

Note: Inquiries regarding this hearing should be directed to Paul M. Fish, Attorney for the Purchaser, Modrall Sperling Roehl Harris & Sisk, P.A., 500 4th Street, NW, Suite 1000, Albuquerque, New Mexico 87102; Tel: 505-848-1871; Fax: (505) 848-9710.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

No. 10-16104-j11

In re:
CARBON RESOURCES LLC,
Debtor(s)

**NOTICE OF DEADLINE FOR FILING OBJECTIONS TO DEBTOR'S MOTION FOR
AUTHORITY TO SELL SUBSTANTIALLY ALL OF CARBON RESOURCES, LLC'S ASSETS
AND EXECUTE AGREEMENTS RELATED THERETO**

Please take notice that on September 30, 2011, the Debtor, through the undersigned counsel, forwarded to the Court for filing, Debtor's Motion for Authority to Sell Substantially All of Carbon Resources, LLC's Assets and Execute Agreements Related Thereto (the "Sale Motion"), in which he asks the Court for its Order authorizing Debtor to (i) sell (the "Sale") substantially of Carbon Resources, LLC's assets, along with certain assets of its affiliate that will be transferred to Carbon Resources, LLC prior to closing after entry of a final order approving the Sale, free and clear of all liens, claims, interests and encumbrances except as provided in the Sale Motion, and (ii) authorizing Carbon Resources, LLC and its other affiliate, WRCC, LLC ("WRCC"), to execute and enter into each of the various agreements contemplated by that certain Asset Purchase Agreement, entered into on September 12, 2011 (the "Purchase Agreement"). The Sale Motion is brought in conjunction with the Debtor's Motion to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale Of Assets filed concurrently herewith (the "Assume/Assign/Reject Motion"), which also is necessary to effectuate the transactions contemplated by the Purchase Agreement. **A copy of the Sale Motion is on file with the Bankruptcy Court Clerk and is available for public inspection.**

IF YOU OBJECT to the Sale Motion, and pursuant to the Court's order shortening time, you must file an objection with the Clerk of United States Bankruptcy Court, Dennis Chavez Federal Building and United States Courthouse, 10th Floor, 500 Gold Avenue SW, PO Box 546, Albuquerque, NM 87103-0546, within **10 DAYS** of the date of service of this notice. If you are an attorney, just electronically file your objection. You must serve your objection to: (a) Philip J. Montoya, 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152, Attorneys for Debtor; and (b) Winthrop, Ballard Spahr LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90024-4330, and Paul M. Fish, Modrall Sperling Roehl Harris & Sisk, P.A., 500 4th Street NE, Albuquerque, NM 87102, (505) 848-1871, Attorneys for Purchaser.

The document can be viewed for a per page fee via the PACER (Public Access to Court Records) system. Log on to PACER at ecf.nmb.uscourts.gov/cgi-bin/login.pl. For use instructions, see pacer.psc.uscourts.gov/index.html. If you are an attorney and have New Mexico's local electronic filing system (CMECF), you may access this document free of charge via your email confirmation. You may also view this document from a court office between 8:30 am and 4:30 pm, Monday through Friday, at no charge.

Objections are timely filed, a hearing to consider them will be had before the United States Bankruptcy Court, 13th Floor, Dennis Chavez Federal Building, 500 Gold Avenue SW, Albuquerque, New Mexico 87103-0546, and any objecting party.

Holland and
60 East South
Ste 2000
Salt Lake City,
Utah 84111
CM Venture II
102 E Doubletree Ran
e 150
Tucson, AZ 85258-21
of Scofield
ld, UT 84526
k, NM 87047-0950

The following recipients may be

, LLC

If no objections are timely filed, the Court may consider
Motion that has been presented to the Court.

10

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:
CARBON RESOURCES LLC,
Debtor(s)

No. 10-16104-j11

**NOTICE OF DEADLINE FOR FILING OBJECTIONS TO DEBTOR'S MOTION FOR
AUTHORITY TO SELL SUBSTANTIALLY ALL OF CARBON RESOURCES, LLC'S ASSETS
AND EXECUTE AGREEMENTS RELATED THERETO**

Please take notice that on September 30, 2011, the Debtor, through the undersigned counsel, forwarded to the Court for filing, Debtor's Motion for Authority to Sell Substantially All of Carbon Resources, LLC's Assets and Execute Agreements Related Thereto (the "Sale Motion"), in which he asks the Court for its Order authorizing Debtor to (i) sell (the "Sale") substantially of Carbon Resources, LLC's assets, along with certain assets of its affiliate that will be transferred to Carbon Resources at or prior to closing after entry of a final order approving the Sale, free and clear of all liens, claims, interests and encumbrances except as provided in the Sale Motion, and (ii) authorizing Carbon Resources, LLC and its other affiliate, WRCC, LLC ("WRCC"), to execute and enter into each of the various agreements contemplated by that certain Asset Purchase Agreement, entered into on September 12, 2011 (the "Purchase Agreement"). The Sale Motion is brought in conjunction with the Debtor's Motion to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale Of Assets filed concurrently herewith (the "Assume/Assign/Reject Motion"), which also is necessary to effectuate the transactions contemplated by the Purchase Agreement. **A copy of the Sale Motion is on file with the Bankruptcy Court Clerk and is available for public inspection.**

IF YOU OBJECT to the Sale Motion, and pursuant to the Court's order shortening time, you must file an objection with the Clerk of United States Bankruptcy Court, Dennis Chavez Federal Building and United States Courthouse, 10th Floor, 500 Gold Avenue SW, PO Box 546, Albuquerque, NM 87103-0546, within **10 DAYS** of the date of service of this notice. If you are an attorney, you must electronically file your objection. You must serve your objection to: (a) Philip J. Montoya, P.O. Box 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152, Attorneys for Debtor; and (b) Rebecca J. Winthrop, Ballard Spahr LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067, (424) 204-4330, and Paul M. Fish, Modrall Sperlberg Roehl Harris & Sisk, P.A., 500 4th Street NW, Suite 1000, Albuquerque, NM 87102, (505) 848-1871, Attorneys for Purchaser.

The document can be viewed for a per page fee via the PACER (Public Access to Electronic Court Records) system. Log on to PACER at ecf.nmb.uscourts.gov/cgi-bin/login.pl. For registration and use instructions, see pacer.psc.uscourts.gov/index.html. If you are an attorney and have an account to use New Mexico's local electronic filing system (CMECF), you may access this document one time at no charge via your email confirmation. You may also view this document from a computer at the clerk's office between 8:30 am and 4:30 pm, Monday through Friday, at no charge.

If objections are timely filed, a hearing to consider them will be had before the Honorable Robert H. Jacobvitz in the United States Bankruptcy Court, 13th Floor, Dennis Chavez Federal Building and United States Courthouse, 500 Gold Avenue SW, Albuquerque, New Mexico on short notice to Philip J. Montoya, Rebecca J. Winthrop and Paul M. Fish, and any objecting party.

If no objections are timely filed, the Court may consider entry of an Order granting the Sale Motion that has been presented to the Court.

Filed electronically
Philip J. Montoya
Counsel for Debtor
PO Box 159
Albuquerque, NM 87103
Tel: (505) 244-1152; Fax: (505) 242-2836

I certify that I mailed a copy of this notice, via first class mail to the Debtor(s), and all creditors and parties of interest included on the mailing matrix and a supplemental mailing list. A copy of the mailing matrix and supplemental mailing list is attached to the original of this notice.

Filed electronically
Philip J. Montoya

Date of Mailing: 9/30/11

Note: Inquiries regarding this hearing should be directed to Philip J. Montoya, Attorney for Debtor(s), P.O. Box 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152.

Label Matrix for local noticing
1084-1
Case 10-16104-j11
New Mexico
Albuquerque
Fri Sep 30 17:45:16 MDT 2011
United States Bankruptcy Court
500 Gold Avenue SW, 10th Floor
PO Box 546
Albuquerque, NM 87103-0546

Carbon Resources LLC
PO Box 954
Sandia Park, NM 87047-0954

Taxation and Revenue Department of the State
PO Box 8575
Albuquerque, NM 87198-8575

Ben Grimes
795 W. Twin Peaks Road
Elmo, UT 84521-5035

Geo Hunt Consulting
16577 Columbine Ln.
Cedaredge, CO 81413-8208

Holland and Hart
60 East South Temple
Ste 2000
Salt Lake City, UT 84111-1031

Internal Revenue Service
5338 Montgomery Blvd. NE
Albuquerque, NM 87109-1338

New Mexico Taxation & Revenue Department
PO Box 8575
Albuquerque NM 87198-8575

PCM Venture II
7702 E Doubletree Ranch Road
Ste 150
Scottsdale, AZ 85258-2130

Rock Logic
PO Box 544
Cedaredge, CO 81413-0544

Ronald C Barker
Barker Law Offices
2870 S. State Street
Salt Lake City, UT 84115-3692

Town of Scofield
Scofield, UT 84526

United States Trustee
PO Box 608
Albuquerque, NM 87103-0608

Western Reserve Coal Company
PO Box 954
Sandia Park, NM 87047-0954

Wisco, LLC
PO Box 950
Sandia Park, NM 87047-0950

Daniel J Behles
Moore, Berkson & Gandarilla, P.C.
P.O. Box 7459
Albuquerque, NM 87194-7459

Philip J Montoya
PO Box 159
Albuquerque, NM 87103-0159

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) PCM Venture II, LLC

End of Label Matrix	
Mailable recipients	17
Bypassed recipients	1
Total	18

SERVICE LIST

(A) PERMITTED ENCUMBRANCES/ADDITIONAL ENCUMBRANCES

Fotini Telonis
Othos, Thermopylon #7
Lamia, Greece

Evangelos George Telonis
Othos, Thermopylon #7
Lamia, Greece

Thomas George Telonis
Othos, Thermopylon #7
Lamia, Greece

John George Telonis
Othos, Thermopylon #7
Lamia, Greece

Attorney for Telonis Family
Nick Sampinos, Esq.
190 North Carbon Avenue
Price, Utah 84501

Jerrold L. Gibson
P.O. Box 20553
Billings, Montana 59104

Marlene G. Robinson
3439 Honeycut Road
Salt Lake City, Utah 84106

Susan G. Bradley
7624 South 3400 East
Salt Lake City, Utah 84121

Robert H. Ruggeri
3314 Music Lane
Grand Junction, Colorado 81506

Kimball Blair
974 Dale Street
Pasadena, California 91106

PCM Venture II. LLC, an Arizona
limited liability company
5685 N. Scottsdale Road
Suite E-100
Scottsdale, Arizona 85250

PCM Venture II. LLC, an Arizona
limited liability company
5685 N. Scottsdale Road
Suite E-100
Scottsdale, Arizona 85250

Carbon County
Court House Building
Price, Utah 84501
Attn: County Clerk

Western Reserve Coal, Inc.
3430 El Serrito Drive
Salt Lake City, Utah 84109
Attn: F.A. Fornelius

Western Reserve Coal Company
Incorporated
34 Vale Hermosa
Sandia Park, New Mexico 87047

WRCC, LLC
c/o Western Reserve Coal Co. Inc.
P.O. Box 11789
Albuquerque, New Mexico 87192

Carbon Resources, LLC
34 Valle Hermosa
Sandia Park, NM 87047
Attn: William Reeves

Hilda Hammond
2912 Redwood Avenue
Costa Mesa, California 92626

Pleasant Valley Coal Partners
P.O. Box 3357
Park City, Utah 84060

Bishops Gate Coal Corporation
c/o Delbert Quigley
601 California Street, Suite 301
San Francisco, California 94108

Catellus Development Corporation
201 Mission Street
San Francisco, California 94105

SPF Minerals Corporation
6200 Uptown Blvd. N.E. Suite 400
Albuquerque, New Mexico 87110

Hanson Natural Resources
99 Wood Avenue South
Iselin, New Jersey 08830

Utah Department of Transportation
4501 South 2700 West
Salt Lake City, Utah 84114

Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, Utah 84111

Scotfield Special Service District
120 East Main Street
Price, Utah 84501

SERVICE LIST

(B) UCC-1 FINANCING STATEMENTS

Mike Andrews
20415 North 53rd Avenue
Glendale, AZ 85308

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:
CARBON RESOURCES LLC,
Debtor(s)

No. 10-16104-j11

**NOTICE OF DEADLINE FOR FILING OBJECTIONS TO DEBTOR'S MOTION FOR
AUTHORITY TO ASSUME, ASSUME AND ASSIGN, OR REJECT, CERTAIN UNEXPIRED
LEASES AND EXECUTORY CONTRACTS IN CONJUNCTION WITH SALE OF ASSETS**

Please take notice that on September 30, 2011, the Debtor, through the undersigned counsel, forwarded to the Court for filing, Debtor's Motion for Authority to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale Of Assets (the "Assume/Assign/Reject Motion"), in which he asks the Court for its Order authorizing Debtor to assume and assign, or reject, as requested therein, various unexpired leases and/or executory contracts in connection with a sale (the "Sale") of substantially all of its assets pursuant to the terms and conditions of that certain Asset Purchase Agreement, entered into as of September 12, 2011. Court approval of the Sale has been sought pursuant to Debtor's Motion for Authority to Sell Substantially All of Carbon Resources, LLC's Assets and Execute Agreements Related Thereto filed concurrently herewith. **A copy of the Assume/Assign/Reject Motion is on file with the Bankruptcy Court Clerk and is available for public inspection.**

IF YOU OBJECT to the Assume/Assign/Reject Motion, you must file an objection with the Clerk of United States Bankruptcy Court, Dennis Chavez Federal Building and United States Courthouse, 10th Floor, 500 Gold Avenue SW, PO Box 546, Albuquerque, NM 87103-0546, within **10 DAYS** of the date of service of this notice. If you are an attorney, you must electronically file your objection. You must serve your objection to: (a) Philip J. Montoya, P.O. Box 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152, Attorneys for Debtor; and (b) Rebecca J. Winthrop, Ballard Spahr LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067, (424) 204-4330, and Paul M. Fish, Modrall Sperling Roehl Harris & Sisk, P.A., 500 4th Street NW, Suite 1000, Albuquerque, NM 87102, (505) 848-1871, Attorneys for Purchaser.

The document can be viewed for a per page fee via the PACER (Public Access to Electronic Court Records) system. Log on to PACER at ecf.nmb.uscourts.gov/cgi-bin/login.pl. For registration and use instructions, see pacer.psc.uscourts.gov/index.html. If you are an attorney and have an account to use New Mexico's local electronic filing system (CMECF), you may access this document one time at no charge via your email confirmation. You may also view this document from a computer at the clerk's office between 8:30 am and 4:30 pm, Monday through Friday, at no charge.

If objections are timely filed, a hearing to consider them will be had before the Honorable Robert H. Jacobvitz in the United States Bankruptcy Court, 13th Floor, Dennis Chavez Federal Building and United States Courthouse, 500 Gold Avenue SW, Albuquerque, New Mexico on short notice to Philip J. Montoya, Rebecca J. Winthrop and Paul M. Fish, and any objecting party.

If no objections are timely filed, the Court may consider entry of an Order granting the Assume/Assign/Reject Motion that has been presented to the Court.

Filed electronically
Philip J. Montoya
Counsel for Debtor
PO Box 159
Albuquerque, NM 87103
Tel: (505) 244-1152; Fax: (505) 242-2836

I certify that I mailed a copy of this notice, via first class mail to the Debtor(s), and all creditors and parties of interest included on the mailing matrix and supplemental mailing list. A copy of the mailing matrix and supplemental mailing list is attached to the original of this notice.

Filed electronically
Philip J. Montoya

Date of Mailing: 9/30/11

Note: Inquiries regarding this hearing should be directed to Philip J. Montoya, Attorney for Debtor(s), P.O. Box 159, Albuquerque, New Mexico 87103-0159, (505) 244-1152.

Label Matrix for local noticing
1084-1
Case 10-16104-j11
New Mexico
Albuquerque
Fri Sep 30 17:45:16 MDT 2011
United States Bankruptcy Court
500 Gold Avenue SW, 10th Floor
PO Box 546
Albuquerque, NM 87103-0546

Carbon Resources LLC
PO Box 954
Sandia Park, NM 87047-0954

Taxation and Revenue Department of the State
PO Box 8575
Albuquerque, NM 87198-8575

Holland and Hart
60 East South Temple
Ste 2000
Salt Lake City, UT 84111-1031

Ben Grimes
795 W. Twin Peaks Road
Elmo, UT 84521-5035

Geo Hunt Consulting
16577 Columbine Ln.
Cedaredge, CO 81413-8208

PCM Venture II
7702 E Doubletree Ranch Road
Ste 150
Scottsdale, AZ 85258-2130

Internal Revenue Service
5338 Montgomery Blvd. NE
Albuquerque, NM 87109-1338

New Mexico Taxation & Revenue Department
PO Box 8575
Albuquerque NM 87198-8575

Town of Scofield
Scofield, UT 84526

Rock Logic
PO Box 544
Cedaredge, CO 81413-0544

Ronald C Barker
Barker Law Offices
2870 S. State Street
Salt Lake City, UT 84115-3692

Wisco, LLC
PO Box 950
Sandia Park, NM 87047-0950

United States Trustee
PO Box 608
Albuquerque, NM 87103-0608

Western Reserve Coal Company
PO Box 954
Sandia Park, NM 87047-0954

(u)PCM Venture II, LLC

Daniel J Behles
Moore, Berkson & Gandarilla, P.C.
P.O. Box 7459
Albuquerque, NM 87194-7459

Philip J Montoya
PO Box 159
Albuquerque, NM 87103-0159

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

End of Label Matrix	
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Bypassed recipients	1
Total	18

SERVICE LIST

(A) PERMITTED ENCUMBRANCES/ADDITIONAL ENCUMBRANCES

Fotini Telonis
Othos, Thermopylon #7
Lamia, Greece

Evangelos George Telonis
Othos, Thermopylon #7
Lamia, Greece

Thomas George Telonis
Othos, Thermopylon #7
Lamia, Greece

John George Telonis
Othos, Thermopylon #7
Lamia, Greece

Attorney for Telonis Family
Nick Sampinos, Esq.
190 North Carbon Avenue
Price, Utah 84501

Jerrold L. Gibson
P.O. Box 20553
Billings, Montana 59104

Marlene G. Robinson
3439 Honeycut Road
Salt Lake City, Utah 84106

Susan G. Bradley
7624 South 3400 East
Salt Lake City, Utah 84121

Robert H. Ruggeri
3314 Music Lane
Grand Junction, Colorado 81506

Kimball Blair
974 Dale Street
Pasadena, California 91106

PCM Venture II. LLC, an Arizona
limited liability company
5685 N. Scottsdale Road
Suite E-100
Scottsdale, Arizona 85250

PCM Venture II. LLC, an Arizona
limited liability company
5685 N. Scottsdale Road
Suite E-100
Scottsdale, Arizona 85250

Carbon County
Court House Building
Price, Utah 84501
Attn: County Clerk

Western Reserve Coal, Inc.
3430 El Serrito Drive
Salt Lake City, Utah 84109
Attn: F.A. Fornelius

Western Reserve Coal Company
Incorporated
34 Vale Hermosa
Sandia Park, New Mexico 87047

WRCC, LLC
c/o Western Reserve Coal Co. Inc.
P.O. Box 11789
Albuquerque, New Mexico 87192

Carbon Resources, LLC
34 Valle Hermosa
Sandia Park, NM 87047
Attn: William Reeves

Hilda Hammond
2912 Redwood Avenue
Costa Mesa, California 92626

Pleasant Valley Coal Partners
P.O. Box 3357
Park City, Utah 84060

Bishops Gate Coal Corporation
c/o Delbert Quigley
601 California Street, Suite 301
San Francisco, California 94108

Catellus Development Corporation
201 Mission Street
San Francisco, California 94105

SPF Minerals Corporation
6200 Uptown Blvd. N.E. Suite 400
Albuquerque, New Mexico 87110

Hanson Natural Resources
99 Wood Avenue South
Iselin, New Jersey 08830

Utah Department of Transportation
4501 South 2700 West
Salt Lake City, Utah 84114

Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, Utah 84111

Scotfield Special Service District
120 East Main Street
Price, Utah 84501

SERVICE LIST

(B) UCC-1 FINANCING STATEMENTS

Mike Andrews
20415 North 53rd Avenue
Glendale, AZ 85308

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

Chapter 11

CARBON RESOURCES LLC,
Debtor.

Case No. 10-16104-j11

**DEBTOR'S MOTION FOR AUTHORITY TO ASSUME, ASSUME AND ASSIGN, OR
REJECT, CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS IN
CONJUNCTION WITH SALE OF ASSETS**

COMES NOW Debtor Carbon Resources, LLC ("Carbon Resources"), through its counsel of record Philip J. Montoya, hereby files this Motion for Authority to Assume, Assume and Assign, or Reject, Certain Unexpired Leases and Executory Contracts in Conjunction with Sale of Assets (the "Motion"). A motion identical to this Motion has been filed in the chapter 11 bankruptcy case of WRCC, LLC ("WRCC"), an affiliate of Carbon Resources (the "WRCC Assume/Assign/Reject Motion"). Additionally, this Motion is brought in conjunction with Debtor's "Motion for Authority to Sell Substantially All of Carbon Resources' Assets and Execute Agreements Related Thereto" filed concurrently herewith and in WRCC's chapter 11 case (collectively, the "Sale Motions"), which seek court approval in both bankruptcy cases of the sale of the "Carbon Resources Assets" and the "Other Assets" (together, the "Assets") to the Purchaser¹ pursuant to the terms and conditions of the Purchase Agreement (attached as Exhibit 1 to each Sale Motion), free and clear of all Liens,² Claims, Indebtedness and encumbrances

¹ The Purchaser is Delta Coal Fund PTY LTD CAN 149 580 085, an Australian proprietary limited liability company ("Delta"), or its assignee, Wasatch Natural Resources, LLC ("Wasatch"). Delta, or its designee or designees, or Wasatch, as applicable, shall hereinafter be referred to as the "Purchaser."

² Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to such terms in the Purchase Agreement.

(together, the "Interests") other than Permitted Encumbrances and Assumed Liabilities. Carbon Resources hereby respectfully requests this Court to consider this Motion, the WRCC Assume/Assign/Reject Motion and each of the Sale Motions at the same time, because such motions must be granted and otherwise approved by the Court for the parties to complete the transactions contemplated by the Purchase Agreement.

This Motion is filed pursuant to 11 U.S.C. §§ 105(a), 365, Fed. R. Bankr. P. 2002, 6006, 9006, 9007, and 9014, and Local Rule 6006-1, and respectfully requests this Court to enter an Order authorizing the assumption, assumption and assignment or rejection, by WRCC or Carbon Resources, as applicable, of various unexpired leases and/or executory contracts, all as set forth below and in the Purchase Agreement. This Motion is supported by the following Memorandum of Points and Authorities, the Sale Motions, the terms of which are incorporated herein by this reference, and the papers and pleadings on file in this Case and in the WRCC bankruptcy case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION—THE NEED FOR ASSUMPTION, ASSIGNMENT OR REJECTION OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS

1. As set forth in detail in the Sale Motion, Carbon Resources, WRCC and WRCC's Managing Member, Western Reserve Coal Company Incorporated, a Nevada corporation ("Western Reserve"), own certain real property, leasehold estates, water share rights, coal and mineral rights, permits, contracts and other improvements and rights in Carbon County, Utah (collectively, the "Assets"), that they originally had intended to utilize to develop a coal mine (the "Mine") pursuant to a mining permit known as the "Kinney #2 Mine, Carbon County near Scofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011" (the "Kinney Mine Permit"). In connection with such ownership and development, Carbon Resources and WRCC are parties to certain unexpired leases, executory contracts and permits important to such ownership and development.

2. Concurrently with this Motion, Carbon Resources and WRCC have filed the Sale Motion, seeking approval of the sale of Assets to the Purchaser pursuant to the terms and conditions of the Purchase Agreement. Among the obligations and requirements set forth in the Purchase Agreement, the sale of Assets (the "Sale") requires (a) the assumption and assignment to the Purchaser of certain unexpired leases, executory contracts and permits to which Carbon Resources is a party, including those listed on Exhibit C-1 to the Purchase Agreement, that the Purchaser elects to assume or as may otherwise be permitted by the Purchase Agreement (the "Assumed Carbon Resources Agreements"), (b) the assumption by WRCC of certain subleases, all as further described in Section 1.6 of the Purchase Agreement; and (c) the rejection of various leases, subleases or executory contracts to which Carbon Resources or WRCC may be a party, as listed on Exhibit "C-2" to the Purchase Agreement or as may otherwise be permitted by the Purchase Agreement (the "Excluded Carbon Resources/WRCC Contracts").³

3. Since the execution of the Purchase Agreement, the Purchaser's due diligence has progressed, thereby causing the Purchaser to amend the lists of Assumed Carbon Resources Agreements and Excluded Carbon Resources/WRCC Contracts to those that are attached as Exhibits to this Motion. Such Exhibits amend and replace Exhibits C-1 and C-2 to the Purchase Agreement, and shall constitute Exhibit "C-1" and "C-2," respectively, for all purposes under the Purchase Agreement.⁴

³ The Sale further requires the assignment, among other things, to the Purchaser of various "Other Contracts" and "Other Permits" to which Western Reserve is a party (the "Western Reserve Agreements"). Such assignments shall be accomplished separate and apart from this Motion.

⁴ For the purposes of clarity, Carbon Resource's contracts or agreements, if any, with the following individuals or entities shall not be addressed in this Motion: Ben Grimes, Rock Logic, Barker Law Offices and Holland Hart. Carbon Resources hereby reserves all rights to address such contracts or agreements, if any, in a future motion or other pleading. Any obligations of Carbon Resources to such individuals or entities shall constitute Excluded Liabilities within the meaning of the Purchase Agreement.

II. GENERAL BACKGROUND AND JURISDICTION

4. Statements establishing the jurisdiction of the Court to consider this motion, the authority of Carbon Resources and WRCC to seek relief from this Court and the general facts supporting the need for the filing of the Chapter 11 Cases, the need for the Sale, and the benefit being realized by each Chapter 11 Case are set forth in the Sale Motion and are incorporated herein by this reference.

III. THE AGREEMENTS AT ISSUE

i. The WRCC Sublease, The Carbon County Sublease And The Telonis Lease.

5. One of the principal Carbon Resources Assets is a leasehold interest arising as a result of the following chain of leases and subleases. In 1997, Western Reserve entered into a "Lease and Agreement" between Carbon County ("Carbon County"), as lessor, and Western Reserve, dated March 5, 1997 (collectively, with that certain "Amendment to Lease Agreement" between Carbon County and Western Reserve recorded on January 29, 2003, the "Carbon County Lease"), pursuant to which Carbon County granted Western Reserve an exclusive lease (for the sole purpose of exploring, developing, mining and producing any coal), together with the right to remove and sell any coal located therein and the right to use the surface, of certain land located in Scofield, Utah.

6. In 2005, Western Reserve, as lessor, and with the consent of Carbon County, entered into the "WRCC Sublease Agreement," dated December 2, 2005, with WRCC, as lessee (the "WRCC Sublease"), pursuant to which Western Reserve granted WRCC a sublease of the underlying Carbon County Lease in return for an agreement that WRCC would diligently develop the coal reserves and pay Western Reserve a stream of royalty payments in connection therewith. Additionally, and with the consent of Carbon County, WRCC as sublessor entered into the "Carbon Sublease Agreement," also dated December 2, 2005, with Carbon Resources, as

sublessee, pursuant to which Carbon Resources assumed all of the obligations of WRCC under the WRCC Sublease.

7. After the filing of Carbon Resources' bankruptcy, allegations were made by PCM that Carbon Resources had failed to extend the time to assume or reject non-residential real property leases within the 120 day period set forth in 11 U.S.C. § 365(d)(4). On May 26, 2011, Carbon Resources entered into an Agreement with WRCC, pursuant to which WRCC agreed that the Carbon Sublease Agreement dated December 2, 2005 was fully in effect, and if it had been rejected under the Bankruptcy Code, "it is hereby reinstated" (the "2011 Reinstatement Agreement"). The Carbon Sublease Agreement dated December 2, 2005, as amended by the 2011 Reinstatement Agreement, shall hereinafter be referred to collectively as the "Carbon County Sublease". A copy of each of these agreements is attached as Exhibits B, C, D and E to Carbon Resource's Disclosure Statement Dated July 10, 2011 (Docket No. 59) (the "July 10 Disclosure Statement").

8. Because each of these leases and subleases is vital to the development of the Mine, Section 1.2(b) of the Purchase Agreement requires Carbon Resources, as sublessee, to assume the Carbon County Sublease and assign it to the Purchaser (and otherwise make certain amendments thereto required by the Purchase Agreement). The parties also agreed that the WRCC Sublease would remain in place. Accordingly, the Purchase Agreement requires WRCC to both assume the WRCC Sublease, as lessee, and assume the Carbon County Sublease, as lessor. [Purchase Agreement, § 1.6(a).].

9. The Sale Motion further contemplates the transfer of a surface leasehold and easement estate created pursuant to the Lease and Easement Agreement between the Telonis Family, as lessor, and Western Reserve, dated December 1, 2007, together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such lease

(the "Telonis Lease"), which is needed to complete the development of the Mine. Pursuant to a letter agreement dated September 23, 2011, the Telonis Family also has agreed that the Telonis Lease remains in full force and effect. To the extent that Carbon Resources holds any interest in the Telonis Lease, then the Purchase Agreement provides that any such interest shall be treated in the same manner and fashion as all other Assumed Carbon Resources Contracts under the Purchase Agreement and assigned and otherwise transferred to the Purchaser. [Purchase Agreement, § 1.2(a)(iv).]

ii. The Carbon Resources Permits.

10. The sale of Assets (the "Sale") also contemplates the transfer to the Purchaser of all licenses, permits and approvals issued by any Governmental Authority and held by Carbon Resources that are necessary for the lawful ownership and operation of the Carbon Resources Assts, including those licenses, permits or approvals set forth on Exhibit D to the Purchase Agreement (collectively, the Carbon Resources Permits"). [Purchase Agreement, § 1.1(a)(iii).] The Carbon Resources Permits essentially fall into two categories: (a) the Kinney Mine Permit and (b) Carbon Resources' interests in other Permits identified as Nos. 2-9 on Exhibit "D" to the Purchase Agreement and further listed on revised Exhibit C-1 attached hereto (the "Additional Permits"). The Kinney Mine Permit and the Additional Permits also are included in the definition of "Assumed Carbon Resources Contracts" to be assumed and assigned to the Purchaser. [Purchase Agreement, § 1.1(b)(vii).] However, as explained in Section 1.4 of the Purchase Agreement, the Kinney Mine Permit will not be transferred immediately. Instead, as set forth in detail in Section 1.4, it is only being conditionally transferred, and shall remain in escrow as property of Carbon Resources until such time as the Purchaser posts the reclamation bond necessary to obtain the Kinney Mine Permit and otherwise complies with the other regulations necessary to obtain the transfer of the Kinney Mine Permit, which actions the

Purchaser has the exclusive right to take up to one year of Closing. All other Carbon Resources Permits will be transferred at Closing.

iii. The “CR/WRCC Contracts” To Be Rejected.

11. While Carbon Resources did not have significant ongoing business operations prepetition, it did enter into certain contracts and other agreements. In an abundance of caution and to the extent that any such contracts may be considered executory contracts, Schedule C-2 to the Purchase Agreement has been amended to include all such agreements as Excluded Carbon Resources Agreements that will be deemed rejected.

iv. Additional “CR/WRCC Contracts” To Be Assumed Or Rejected.

12. At the time of the filing of this Motion, Carbon Resources and WRCC know of no other CR/WRCC Contract that shall constitute an “Assumed Carbon Resources Contract” or “Excluded Carbon Resources Agreements” within the meaning of Sections 1.1(ii), 1.2(b) and 1.6 of the Purchase Agreement. However, the Purchaser reserves the right to amend Exhibit C-1 and Exhibit C-2 to designate additional Assumed Carbon Resources Contracts and additional Excluded Carbon Resources Agreements the extent permitted under Section 1.2(b) and 1.6 of the Purchase Agreement.⁵

IV. LEGAL ARGUMENT

A. The Carbon County Sublease May Be Assumed Under Section 365 Of The Bankruptcy Code.

13. Much has been made in this case over whether the Carbon County Sublease is capable of assumption given that no order currently exists extending the 120 deadline to assume or reject non-residential real property leases pursuant to 11 U.S.C. § 365(d)(4). For example,

⁵ As set forth in Section 1.1(b) of the Purchase Agreement, the other “Other Contracts” and “Other Permits” that Carbon Resources will acquire from Western Reserve at or prior to Closing that Carbon Resources will in turn transfer to the Purchaser. Such transfers, however, will be accomplished by agreements among the applicable parties as further specified in the Purchase Agreement. Nothing in this Motion shall effectuate such transfers.

PCM claimed in its Objection to Carbon Resource's original disclosure statement that the Carbon County Sublease was rejected by operation of law under Section 365(d)(4) as of April 11, 2011, which rejection is "incurable." [Docket No. 48, ¶ 3.]

14. PCM's arguments must fail for the simple reason that WRCC has waived any rejection that may have occurred by operation of law in the 2011 Ratification Agreement. As set forth above, such Agreement expressly acknowledges that allegations have been made that Carbon Resources has rejected the Carbon County Sublease, and then state unequivocally that the "Sublease is fully in effect, and that if it was rejected, it is hereby reinstated." Finally, the 2011 Agreement expressly and unequivocally provides that "[a]ll provision of the [Carbon County Sublease] remain the (*sic*) in full force and effect." Accordingly, WRCC has waived any deemed rejection that may have occurred with respect to the Carbon County Lease.

15. Bankruptcy courts, including in New Mexico, have recognized that non-debtor parties to contracts "deemed rejected" by operation of law may still waive such rejection and affirmatively consent to accepting performance thereunder, thereby enabling them to be assumed. In *In re Priestley*, 93 B.R. 253 (Bankr. D.N.M. 1988), for example, a New Mexico Court examined the issue of waiver in the context of executory contracts deemed rejected under Section 365(d)(1). While the *Priestley* court did not find that a waiver had actually occurred in the case before it, the Court refused to rule that the debtor "may not do so under any circumstances. If the [non-debtor parties] were to waive rejection of the executory contracts, [citations omitted], and affirmatively consent to substituted performance . . . , a future motion might be successfully presented to the Court." *Id.* at 261 (emphasis added).

16. The *Priestley* court further cited with approval a number of New York cases that similarly acknowledged that a landlord may waive and reinstate non-residential real property leases deemed rejected under Section 365(d)(4), including *In re Fosko Markets, Inc.*, 74 B.R.

384 (Bankr. S.D.N.Y. 1987). As the *Fosko Markets* court reasoned, “[s]ubsections (d)(3) and (4) of section 365 were enacted to protect landlords; we see no reason why those protections may not be waived by a landlord or why a landlord may not be estopped from enforcing (d)(4) on equitable grounds.” *Id.* at 388.

17. In the instant case, this Court is presented with the exact situation that the *Priestly* Court agreed could occur. WRCC (the non-Carbon Resource debtor party to the sublease) has expressly both agreed to waive rejection of the Carbon County Sublease, and affirmatively consented to its reinstatement. As the *Priestly* court acknowledged, the Carbon County Sublease thus may remain in effect and be assumed and assigned to the Purchaser so long as Carbon Resources satisfies the balance of Sections 365(a) and (b).

B. The Decision To Assume The Carbon County Sublease And The Telonis Lease Satisfies The Business Judgment Rule And Adequate Assurance Of Future Performance Is Provided.

18. As a debtor-in-possession, Carbon Resources has the right, subject to Court approval, to assume or reject any executory contracts or unexpired leases. *See* 11 U.S.C. § 365(a). The assumption or rejection of an executory contract or unexpired lease by a debtor-in-possession is subject to review under the business judgment standard. If such business judgment has been reasonably exercised, the Court should approve the assumption or rejection. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. National Fuel Gas Distribution*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re Lady of Baltimore Foods, Inc.*, 2004 WL 2192374 (Bankr. D. Kan. Aug. 13, 2004).

19. As further demonstrated in the Sale Motion, the assumption and assignment of the Carbon County Sublease, Carbon Resources’ interest in the Telonis Lease, if any, and the Carbon Resources Permits, the assumption of the WRCC Sublease and the rejection of the Excluded Carbon County Contracts are an integral part of the proposed sale of Assets and

required by the Purchase Agreement. Accordingly, sound business judgment has been reasonably exercised and Section 365(a) has been satisfied.

20. Section 365(b) of the Bankruptcy Code further provides that a debtor may assume (or assume and assign) an executory contract or unexpired lease on which there has been a default, if the debtor (a) cures the default or provides adequate assurance that the default will be promptly cured, (b) compensates or provides adequate assurance that the debtor will compensate the other party to the contract for any pecuniary loss to the party resulting from the default, and (c) provides adequate assurance of future performance under the contract. 11 U.S.C. § 365(b)(1). Here, there are no outstanding defaults under either the WRCC Sublease or the Carbon County Sublease; therefore, there is nothing remaining to be cured.

21. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *See, e.g., EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

22. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

23. In the instant case, the Purchaser has the financial wherewithal to close the Sale, as well as significant experience in the mining industry to be able to develop the Mine and otherwise perform under the Carbon County Sublease to be assumed and assigned. Additionally, the head of the Purchaser's Utah based management team for the Mine has over 20 years experience in developing and operating coal handling, processing and loadout facilities. Accordingly, and to the extent this issue becomes disputed, evidence will be provided the Court and other interested parties at any sale hearing set so that all parties have ample opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of future performance of the Carbon County Sublease and the Telonis Lease. The Court therefore should have a sufficient basis to authorize Carbon Resources to assume and assign the Carbon County Sublease and any interests of Carbon Resources in the Telonis Lease to the Purchaser.

ii. WRCC Should Be Authorized To Assume The WRCC Sublease, As Lessee, And The Carbon County Sublease As Lessor.

24. As set forth above, the parties agreed that the WRCC Sublease would remain in existence (with certain amendments required by the Purchase Agreement), thereby requiring WRCC (as a debtor in possession) to both assume the WRCC Sublease, as lessee, and assume the Carbon County Sublease, as lessor. WRCC should be authorized to go forward with the required assumptions for all the same reasons that justify Carbon County's own assumption of the Carbon County Sublease. The Purchaser has both the financial wherewithal and the business acumen to close the Sale and, if appropriate, develop the Mine as originally contemplated by all of the parties involved. Accordingly, good cause exists for WRCC to assume the WRCC Sublease, as lessee, and the Carbon County Sublease, as lessor.

iii. The Carbon Resources Permits May Be Assumed And Assigned To The Purchaser.

25. Carbon Resources similarly can satisfy the requirements of Section 365(a) and (b) with respect to the transfer of its interests in the Carbon Resources Permits to the Purchaser. With respect to the Kinney Mine Permit, the transfer will not occur unless and until the Purchaser posts the reclamation bond and otherwise complies with the requirements of the Kinney Mine Permit with the time period specified in the Purchase Agreement. [Purchase Agreement, § 1.4.] With respect to the Additional Permits, as set forth in the first sentence to Section 6.9 of the Purchase Agreement and in more detail in Schedules C-1 and 6.9 thereto, there are no monetary defaults outstanding at this time, and the only current items of deficiency or non-compliance are set forth on Schedule 6.9. Pursuant to Section 1.2(c)(i) and (ii) of the Purchase Agreement, on and after Closing, the Purchaser has agreed to perform and discharge Carbon Resources' performance obligations under the Assumed Carbon Resources Contracts to the extent such liabilities arise and are required to be performed on or after the Closing Date in accordance with the terms of any such Assumed Carbon Resources Contracts. Accordingly, and for all of the reasons set forth in Section IV(B) above, Carbon Resources has provided all non-debtor parties to the Additional Permits adequate assurances of future performance within the meaning of Section 365(b)(1), and should be permitted to assume and assign the Additional Permits to the Purchaser.

V. CONCLUSION

26. For all of the foregoing reasons, WRCC and Carbon County respectfully request this Court to enter an order, substantially in the form attached hereto, granting this Motion and authorizing the following, all in conjunction with the Sale Motions: (a) Carbon Resources' assumption of the Carbon County Sublease, any interests it holds in the Telonis Lease and the Carbon Resources Permits and assignment of same to the Purchaser, with no cure obligations;

(b) Carbon Resources' rejection of those contracts listed on Exhibit "B" hereto, (c) WRCC's assumption of the WRCC Sublease as sublessee, and assumption of the Carbon Sublease as sublessor, also with no cure obligations; and (d) granting such other and further relief as the Court may deem appropriate.

Dated: September 30, 2011

Respectfully submitted by:

/s/ submitted electronically

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DMWEST #8498377 v4

REVISED EXHIBIT C-1¹

Agreements of Carbon Resources Being Assumed By Carbon Resources and Assigned to the Purchaser

1. Carbon Sublease Agreement between WRCC, as lessor, and Seller, lessee, dated December 2, 2005, as amended by that certain Agreement dated May 26, 2011 between WRCC and Seller (such sublease and amendment are collectively, the "Carbon County Sublease"), evidenced by that certain Memorandum of Carbon Sublease Agreement, recorded December 12, 2005 in Book 607 at Page 771;
2. Kinney #2 Mine, Carbon County near Scofield, Utah, USA, Utah Division of Oil, Gas and Mining Permit Number C0070047, Approved 30 June 2011;
3. Mine Safety and Health Administration ID Number 42-02566;
4. UPDES Permit, water discharge permit UTG040028; June 15 2010;
5. Air Quality Permit N014118 0001: December 11, 2008;
6. UDOT Highway Access Permit; March 14, 2011;
7. Carbon County Conditional Use Permit; September 20, 2010;
8. Utah Division of Natural Resources, Division of Water Rights, Small Dam Permit (Negative Determination); August 31, 2010;
9. Dwelling within 300 feet of property boundary Waiver Letter, Jim Levanger; Feb 9, 2009;
10. Raptor Nest #1541 Permit with US Fish & Wildlife Service; April 26, 2011.
11. Any interest of Carbon Resources in the Lease and Easement Agreement between the Telonis Family, as lessor, and Western Reserve, dated December 1, 2007, together with all the improvements and fixtures now or hereafter erected or situated on the land covered by such lease.

Cure Costs: All Cure Costs are \$0.0.

¹ Any and all references in this Revised Exhibit C-1 to "contract," "lease," "sublease," "agreement," "letter" or "permit" shall include any and all contracts, leases, subleases, agreements, permits, schedules, addendums, appendixes, modifications, additions, memoranda, letters and any other amendments related thereto.

REVISED EXHIBIT C-2

Agreements Of Carbon Resources Being Rejected²

1. Contract with Mt. Nebo Scientific to conduct a one day field visit and follow up report to evaluate the flora along Mud Creek.

² Any and all references in this Revised Exhibit C-2 to "contract," or "agreement" shall include any and all contracts, leases, subleases, agreements, permits, schedules, addendums, appendixes, modifications, additions, memoranda, letters and any other amendments related thereto