

# PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Bankruptcy Court Order approving assignment free of security interests
CONVEYING PARTY DATA	
Name	Execution Date
UBS AG	09/30/2004
RECEIVING PARTY DATA	
Name:	Bluegrass Coal Development Company
Street Address:	2000 Ashland Drive
City:	Ashland
State/Country:	KENTUCKY
Postal Code:	41101
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	4750913
Patent Number:	4793656
CORRESPONDENCE DATA	
Fax Number:	(212)755-7306
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	212-326-3939
Email:	aevieta@jonesday.com
Correspondent Name:	Amy Vieta
Address Line 1:	222 East 41st Street
Address Line 4:	New York, NEW YORK 10017
NAME OF SUBMITTER:	Amy Vieta
<p>Total Attachments: 44</p> <p>source=attachments.bankruptcy.APA#page1.tif</p> <p>source=attachments.bankruptcy.APA#page2.tif</p> <p>source=attachments.bankruptcy.APA#page3.tif</p> <p>source=attachments.bankruptcy.APA#page4.tif</p> <p>source=attachments.bankruptcy.APA#page5.tif</p>	

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION

IN RE:

HORIZON NATURAL RESOURCES  
COMPANY, et al.,<sup>1</sup>

DEBTORS.

CHAPTER 11

CASE NO. 02-14261

JOINTLY ADMINISTERED

JUDGE WILLIAM S. HOWARD

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ORDER PURSUANT TO 11 U.S.C. §§ 105(A), 362, 363, 365, 1123 AND 1146(C) AND  
FED. R. BANKR. P. 2002, 6004, 6006 AND 9014: (A) APPROVING ASSET PURCHASE  
AGREEMENTS, (B) AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS FREE  
AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND OTHER  
ENCUMBRANCES, AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF  
CERTAIN AGREEMENTS

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THIS MATTER is before the Court on the THIRD AMENDED JOINT PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (the  
"Reorganization Plan") and the THIRD AMENDED JOINT LIQUIDATING PLAN UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE (the "Liquidating Plan" and, together with the

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<sup>1</sup> The Debtors are the following entities: 17 West Mining, Inc., Aceco, Inc., Americoal Development Company, Appalachian Realty Company, Ayrshire Land Company, Bassco Valley, LLC, Beech Coal Company, Bentley Coal Company, Bluegrass Coal Development Company, Bowie Resources Limited, Cannelton Inc., Cannelton Industries, Inc., Cannelton Land Company, Cannelton Sales Company, CC Coal Company, Coal Ventures Holding Company, Inc., Dunn Coal & Dock Company, East Kentucky Energy Corporation, Employee Benefits Management, Inc., Employee Claims Administration, LLC, EnerZ Corporation, Evergreen Mining Company, Fairview Land Company, Flanary Branch Coal Co., Inc., Franklin Coal Sales Company, G.E.C., Inc., Grassy Cove Coal Mining Company, Hayman Holdings, Inc., Heritage Mining Company, Highland Coal, Inc., HNR Mining, Inc., Horizon Blue Creek Coal Company, Horizon Finance Corp., Horizon Natural Resources Company, Horizon Natural Resources Holding Company, LLC, Horizon Natural Resources Sales Company, Horizon NR, LLC, Ikerd-Bandy Co., Inc., Kanawha Corporation, Kentucky Prince Mining Company, Kermit Coal Company, Kindill Holding, Inc., Kindill Mining, Inc., Leslie Resources Management, Inc., Leslie Resources, Inc., McCoy Coal Company, Meadowlark, Inc., Mega Minerals, Inc., Mid-Vol Leasing, Inc., Midwest Coal Company, Midwest Coal Sales Company, Mining Technologies, Inc., Mountain Coals Corporation, Mountain-Clay Incorporated, Mountaineer Coal Development Company, Old Ben Coal Company, Phoenix Land Company, Premium Processing, Inc., Princess Beverly Coal Company, Princess Beverly Coal Holding Company, Inc., Pro-Land, Inc., Red Ridge Mining, Inc., River Coal Company, Inc., Roaring Creek Coal Company, RP Terminal, LLC, Shipyard River Coal Terminal Company, Skyline Coal Company, Straight Creek Coal Resources Company, Sunny Ridge Enterprises, Inc., Sunny Ridge Mining Company, Inc., Tennessee Mining, Inc., Tucker Mining Company, Turris Coal Company, West Virginia-Indiana Coal Holding Company, Inc., Wyoming Coal Technology, Inc., Zeigler Coal Holding Company and Zeigler Environmental Services Company.

Reorganization Plan, the "Plans"), each filed on July 11, 2004 by the debtors and debtors in possession in the above captioned cases (collectively, the "Debtors") and each of which constitutes a motion (collectively, the "Sale Motion"), seeking, inter alia, entry of an order pursuant to sections 105(a), 362, 363, 365, 1123 and 1146(c) of chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), (a) approving (x) that certain Amended and Restated Asset Purchase Agreement, dated June 2, 2004, by and between certain of the Debtors and Newcoal, LLC ("Newcoal") (as such has been or may be amended and including all exhibits, schedules and related agreements executed in connection therewith, the "Newcoal Agreement"), (y) that certain Asset Purchase Agreement, dated August 17, 2004, by and between certain of the Debtors and Oldcoal, LLC ("Oldcoal") (as such has been or may be amended and including all exhibits, schedules and related agreements executed in connection therewith, the "Oldcoal Agreement"), and (z) that certain Asset Purchase Agreement, dated August 17, 2004, by and between certain of the Debtors and A.T. Massey Coal Company, Inc. ("Massey," and together with Newcoal and Oldcoal, the "Purchasers") (as such has been or may be amended, including all exhibits, schedules and related agreements executed in connection therewith, the "Massey Agreement" and, together with the Newcoal Agreement and the Oldcoal Agreement, the "Agreements"), (b) authorizing the sale to the Purchasers of substantially all of the assets of the Debtors as specified in each Agreement (the "Purchased Assets"), and (c) authorizing the assumption by the relevant Debtors and the assignment to the applicable Purchaser of certain executory contracts and unexpired leases of the Debtors specified in the Agreements (the "Assumed Agreements"); and the Sale Motion having been served upon all creditors and other parties in interest in these cases, including, without limitation, (i) the Office of the United States Trustee for the Eastern District of Kentucky; (ii) counsel for the Debtors'

DIP financing lenders; (iii) the agent and counsel for the holders of the Second Lien Notes; (iv) the indenture trustee and counsel for the holders of the Third Lien Notes; (v) counsel for the Official Committee of Unsecured Creditors; (vi) counsel to the Purchasers; (vii) all persons or entities with a lien on, or security interest in, any of the Purchased Assets known to the Debtors; (viii) the counterparty to each of the Assumed Agreements; (ix) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (x) all entities that have previously expressed serious interest in acquiring all or a portion of the Purchased Assets; (xi) the United States Environmental Protection Agency; (xii) the State Environmental Agencies in the jurisdictions where the Purchased Assets are located; (xiii) the United States Securities and Exchange Commission; (xiv) Attorneys General in the States where the Purchased Assets are located; and (xv) those parties requesting notice in these chapter 11 cases; and it appearing that proper and adequate notice of the Sale Motion has been given and that no other or further notice is required; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**NOW, THEREFORE, THE COURT HEREBY FINDS THAT:**

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Notice of the Sale Motion having been given as described above, is proper, timely, adequate, sufficient and proper under the circumstances.
- C. The Debtors and their investment bankers, Miller Buckfire Lewis Ying & Co., LLC ("MBLY"), diligently and in good faith marketed the Purchased Assets to secure the

highest and best offer therefor by, inter alia, delivering offering materials to potential purchasers, inviting the potential purchasers to meet with the Debtors' management, MBL, and other of the Debtors' professionals, providing each of them with the opportunity to conduct extensive due diligence, and conducting an auction where each potential purchaser had an opportunity to bid for all or any portion of the Purchased Assets in accordance with the bidding procedures approved by the Court. In addition, the Debtors delivered the Bidding Procedures Order<sup>2</sup> and the Sale Motion to each of the entities that had previously expressed an interest in the Purchased Assets. The terms and conditions set forth in each Agreement, and the transactions contemplated thereby, represent fair and reasonable terms and conditions, including the amount of the purchase price, and constitute the highest and best offer obtainable for the Purchased Assets and are fair and adequate.

D. Proper, timely, adequate and sufficient notice of the Bidding Procedures, the Auction, the Sale Motion, and the hearing on the foregoing has been provided in accordance with sections 105(a), 362, 363 and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004 and 6006, and no other or further notice is required.

E. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, and the rights of third parties to submit higher or otherwise better offers for all or any portion of the Purchased Assets in accordance with the bidding procedures approved by this Court, has been afforded to all interested persons and entities.

F. The Bidding Procedures afforded a full, fair and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets.

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<sup>2</sup> All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Sale Motion or the applicable Agreement.

G. The Debtors and the Purchasers have complied with the Bidding Procedures in all respects. The auction process and sales were non-collusive, fair and reasonable, conducted in good faith and resulted in the Debtors' obtaining the highest value for the Purchased Assets.

H. The Debtors have reasonably exercised their sound business judgment in determining to enter into each Agreement, to sell and transfer the respective Purchased Assets, and to assume and assign the respective Assumed Agreements, to the applicable Purchaser. The relief requested in the Sale Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest.

I. Each Agreement was negotiated, proposed and entered into by the applicable Debtors and the applicable Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither any of the Debtors nor any of the Purchasers have engaged in any conduct that would cause or permit the Agreements to be avoided under § 363(n) of the Bankruptcy Code. None of the Purchasers is an "insider" or "affiliate" of the Debtors (as such terms are defined in the Bankruptcy Code). Each Purchaser is a good faith purchaser under § 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby in consummating the transactions contemplated by the applicable Agreement. The Purchasers will be acting in good faith within the meaning of § 363(m) of the Bankruptcy Code in Closing the transactions contemplated by the applicable Agreement at all times after the entry of this Order.

J. The consideration to be provided by each Purchaser for the applicable Purchased Assets pursuant to the applicable Agreement (i) is fair and reasonable, (ii) represents the highest and best offer for the applicable Purchased Assets, and (iii) constitutes reasonably equivalent

value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

K. The Debtors have full corporate power and authority to execute and deliver the Agreements and all other documents contemplated thereby; and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the Agreements, except as otherwise set forth in the Agreements.

L. With respect to any and all entities asserting any options, pledges, security interests, Claims, equities, reservations, third party rights, voting trusts or similar arrangements, Liens, charges or other encumbrances or restrictions on or conditions to transfer or assignment of any kind (including, without limitation to the generality of the foregoing, restrictions or conditions on or to the transfer, assignment or renewal of licenses, permits registrations and authorizations or approvals of or with respect to governmental units and instrumentalities), whether direct or indirect, absolute or contingent, matured or unmatured, liquidated or unliquidated on or against the Purchased Assets (collectively, the "Encumbrances"), either (i) such entity has consented to the sale and transfer, license and assignment, as applicable, free and clear of its Encumbrance, with such Encumbrance to attach to the proceeds of such sale and transfer, license and assignment, as applicable, respectively, (ii) applicable nonbankruptcy law permits sale of the assets free and clear of such Encumbrance, (iii) such Encumbrance is in bona fide dispute, or (iv) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance, so that the conditions of section 363(f) of the Bankruptcy Code have been met.

M. Upon the Closing of each Agreement, the sale and transfer of the relevant Purchased Assets to the applicable Purchaser shall be a legal, valid and effective transfer of such



Purchased Assets to such Purchaser, and shall vest in such Purchaser all right, title and interest in the applicable Purchased Assets in accordance with the terms and conditions of the relevant Agreement free and clear of any Encumbrances, under sections 105(a), 363(f) and 365 of the Bankruptcy Code.

N. Except as expressly set forth in Section 2.3 of each Agreement, none of the Purchasers shall have any liability for any (i) obligation of the Debtors, or (ii) any Claim against the Debtors related to the applicable Purchased Assets by reason of the transfer of such Purchased Assets to such Purchaser. None of the Purchasers shall be deemed, as a result of any action taken in connection with the purchase of the applicable Purchased Assets or otherwise, to: (1) be a successor to the Debtors (other than with respect to the applicable Assumed Liabilities and any obligations arising under the relevant Assumed Agreements from and after the applicable Closing); or (2) have, de facto or otherwise, merged with or into the Debtors. None of the Purchasers is acquiring or assuming any liability, warranty or other obligation of the Debtors, except as expressly set forth in the relevant Agreement and any of the relevant Assumed Agreements.

O. The Purchasers would not have entered into their respective Agreements and would not consummate the transactions contemplated thereby if the sale of the relevant Purchased Assets to the Purchasers or their respective assignees, the assumption, assignment and sale of the applicable Assumed Agreements to the Purchasers or their respective assignees, and the assumption of the applicable Assumed Liabilities by the Purchasers or their respective assignees were not, except as otherwise provided in the relevant Agreement with respect to the applicable Assumed Liabilities and Permitted Liens, free and clear of all Encumbrances of any kind or nature whatsoever, or if any of the Purchasers would, or in the future could (except and

only to the extent expressly provided in Section 2.3 of the relevant Agreement and with respect to the relevant Assumed Liabilities), be liable for any of such Encumbrances or other liabilities (such other liabilities or obligations being referred to collectively as the "Successor Liabilities"), including, but not limited to, Encumbrances or Successor Liabilities in respect of the following (the following being referred to collectively as the "Successor Liability Documents, Statutes and Claims"): (1) any employment or labor agreements; (2) all deeds of trust and security interests; (3) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (4) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related Claim, including, without limitation, Claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) the Jones Act, (k) the Longshoremen's and Harbor Workers' Compensation Act, (l) the Coal Industry Retiree Health Benefit Act of 1992, (m) state discrimination laws, (n) state unemployment compensation laws or any other similar state laws, or (o) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors; (5) any products liability or similar Claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related Claims; (6) reclamation, environmental or other Claims or Liens arising from conditions first existing on or prior to the applicable Closing (including, without limitation, the

presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statute; (7) any bulk sales or similar law; (8) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (9) any theories of successor liability.

P. The Debtors may assume the Assumed Agreements and assign each of them to the relevant Purchaser pursuant to section 365 of the Bankruptcy Code free and clear of all Encumbrances. The assumption and assignment of the applicable Assumed Agreements pursuant to the terms of this Order is integral to each Agreement and is in the best interests of the Debtors and the Debtors' estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

Q. The respective amounts set forth on Exhibit A hereto are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all undisputed monetary defaults and pay all undisputed actual pecuniary losses under the Assumed Agreements (the "Undisputed Cure Amounts"). Exhibit B, or the stipulations of parties filed with the Court, list each cure amount that has been timely disputed by the applicable counterparty and that remains unliquidated as of the date hereof (the "Disputed Cure Amounts"). **The Court will conduct a hearing at the United States Bankruptcy Court, 100 East Vine Street, 3<sup>rd</sup> Floor Courtroom, Lexington, Kentucky 40507, on September 27, 2004, at 2:00 p.m. with respect to the Disputed Cure Amounts.** The Undisputed Cure Amounts, collectively with the ultimately liquidated Disputed Cure Amounts, shall be referred to as the "Cure Amounts."

R. Upon the payment of the applicable Cure Amount, if any, and subject to the terms of the stipulation of the parties to any Assumed Agreement filed with the Court, if any, (a) each Assumed Agreement shall constitute a valid and existing interest in the property subject to such Assumed Agreement, (b) none of the Debtors' rights will have been released or waived under any such Assumed Agreement, (c) the Assumed Agreements shall remain in full force and effect, and (d) no default shall exist under the Assumed Agreements, nor shall there exist any event or condition which, with the passage of time or the giving of notice, or both, would constitute such a default.

S. Each Purchaser has provided adequate assurance of its future performance under the relevant Assumed Agreements within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

T. The sale and transfer of the Purchased Assets is being effected under the Plans confirmed by the Court by orders entered on or about the date hereof, (the "Confirmation Orders") and, accordingly, constitute transfers pursuant to § 1146(c) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

U. All findings of fact and conclusions of law announced by the Court at the hearing in relation to the Sale Motion are hereby incorporated herein.

V. Newcoal, Oldcoal, American Specialty Lines Insurance Company and the Insurance Company of the State of Pennsylvania (collectively, "AIG"), Travelers Casualty and Surety Company of America (together with its affiliates and subsidiaries, "Travelers") and certain of the governmental entities listed on Exhibit K to the Disclosure Statement have entered into certain Reclamation Agreements (as such term is defined in the Confirmation Orders) relating to reclamation duties with respect to the permits of the Debtors that are to be transferred

to either Newcoal or Oldcoal. The Reclamation Agreements are incorporated herein by reference. The actions contemplated by the Plans and the Reclamation Agreements entered into in connection therewith will satisfy the Debtors' reclamation obligations associated with the mining permits and interests constituting Designated Assets and the Additional APA Assets under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and its state law counterparts by providing for the transfer of the mining permits and interests constituting Designated Assets and Additional APA Assets, respectively, to Newcoal (as to the Designated Assets), Oldcoal (as to the Additional APA Assets transferred under the Oldcoal Agreement), and Massey (as to the Additional APA Assets transferred under the Massey Agreement), each a qualified operator that will, in accordance with the Newcoal Agreement, the Oldcoal Agreement and the Massey Agreement, as applicable, take transfer of the permits and assume the reclamation and other liabilities associated with such permits under SMCRA, its state law counterparts and other applicable laws.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
THAT:

1. The Sale Motion is granted on the terms set forth herein.
2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Sale Motion or by stipulation filed with the Court, and all reservations of rights included therein, are, except as provided in other orders of the Court, hereby overruled on the merits for the reasons set forth by the Court on the record of the hearing on the Sale Motion. The objections to the Sale Motion by Wells Fargo Bank, National Association, in its capacity as indenture trustee for the Third-Tier Senior Notes, and the Informal Committee of Third-Tier Senior Note Holders (as such term is

defined in the Plans, as modified) shall be resolved on the terms announced to the Court (including the reservation of rights announced to the Court) at the hearing on the Sale Motion.

3. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to the Purchasers in accordance with the terms of the Agreements and this Order; provided, however, that any application of this paragraph to the transfer of surety bonds issued by AIG or Travelers is conditioned upon the satisfaction of the requirements of the bonding term sheets (the "Bonding Term Sheets"), which were entered into among Newcoal, Oldcoal, AIG and Travelers, and the Reclamation Agreements.

4. Each Agreement is hereby approved in all respects, and shall be deemed in full force and effect, binding and benefiting the Debtors and the Purchasers.

5. The Debtors are authorized, empowered and directed to implement and consummate all of the transactions contemplated by each Agreement (each, collectively, a "Sale"), including, without limitation, to sell the applicable Purchased Assets to the applicable Purchaser and to assume and assign to the applicable Purchaser the applicable Assumed Agreements, all on the terms of the applicable Agreement, for the purchase price set forth in, and determined in accordance with, such Agreement. The Debtors are authorized, empowered and hereby directed to deliver special warranty deeds, bills of sale, assignments and other such documentation that may be necessary or requested by each Purchaser in accordance with the terms of the relevant Agreement to evidence the transfers required by such Agreement.

6. Upon the Closing of each Sale, the applicable Purchaser shall take title to and possession of the relevant Purchased Assets subject only to the applicable Permitted Liens. With the exception of such Permitted Liens, the transfer of title to the Purchased Assets and the

Assumed Agreements shall be free and clear of any and all Encumbrances, including, without limitation, any Claims pursuant to any successor or successor-in-interest liability theory; provided, however, that each Purchaser shall not be relieved of liability with respect to the applicable Assumed Liabilities, including any obligations accruing under the applicable Assumed Agreements from and after the Closing of the relevant Sale. All Encumbrances shall attach solely to the proceeds of such Sale with the same validity and priority as they attached to the applicable Purchased Assets.

7. None of the Purchasers constitutes a successor to the Debtors because:
  - (i) Except as otherwise set forth in the applicable Agreement, none of the Purchasers is expressly or impliedly agreeing to assume any of the Debtors' liabilities;
  - (ii) The transactions contemplated by the Agreements do not amount to a consolidation, merger or a de facto merger of the Debtors and any Purchaser;
  - (iii) None of the Purchasers is merely a continuation of the Debtors; and
  - (iv) The transactions contemplated by the Agreements are not being entered into fraudulently or in order to escape liability from the Debtors' debts.

8. This Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, any Debtor (whether known or unknown), any holders of Encumbrances on the Purchased Assets, all non-Debtor parties to the Assumed Agreements, all successors and assigns of each Purchaser, each Debtor and their affiliates and subsidiaries, the Purchased Assets and any trustees, if any, subsequently appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of

the Debtors' cases. This Order and the Agreements shall inure to the benefit of the Debtors, their estates, their creditors, the Purchasers and their respective successors and assigns. None of the Agreements shall be subject to rejection.

9. Effective upon the applicable Closing Date and except as otherwise provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the relevant Purchaser, its successors and assigns, or the relevant Purchased Assets, with respect to any (a) Encumbrance arising under, out of, in connection with or in any way relating to the Debtors, the applicable Purchased Assets, the operation of such Purchased Assets prior to the Closing of the sale of such Purchased Assets, or (b) Successor Liability, including, without limitation, the following actions:

- (i) Commencing or continuing in any manner any action or other proceeding against the relevant Purchaser, its successors, assets or properties;
- (ii) Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the relevant Purchaser, its successors, assets or properties;
- (iii) Creating, perfecting or enforcing any Lien or other Encumbrance against the relevant Purchaser, its successors, assets or properties;
- (iv) Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the relevant Purchaser or its successors;
- (v) Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other



orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or

- (vi) Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the relevant Purchased Assets or conduct any of the businesses operated with such Purchased Assets.

10. Without limiting the generality of the foregoing, except as otherwise specifically set forth in each Agreement, none of the Purchasers shall assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations and liabilities of the Debtors arising pursuant to state law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination or other incidents, acts or injuries prior to the relevant Closing Date, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or reopenings of those Claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

11. In addition, without limiting the generality of the foregoing, except as otherwise specifically set forth in each Agreement, none of the Purchasers shall assume or be obligated to pay, perform or otherwise discharge any debts, obligations and liabilities of the Debtors arising pursuant to the Debtors' ownership or operation of their facilities prior to the date of the

applicable Closing, including, but not limited to, any Successor Liabilities in respect of the Successor Liability Documents, Statutes and Claims or otherwise.

12. Any amounts that become payable by the Debtors to each Purchaser pursuant to the applicable Agreement (and related agreements executed in connection therewith) as of the applicable Closing Date (a) shall constitute allowed administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) shall be paid by the Debtors in the time and manner provided for in such Agreement.

13. All entities that are in possession of some or all of the Purchased Assets on the relevant Closing Date are directed to surrender possession of such Purchased Assets to the relevant Purchaser or its assignee at the applicable Closing.

14. Except for the applicable Assumed Liabilities or as otherwise expressly provided for in this Order or the relevant Agreement, none of the Purchasers shall have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the relevant Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the applicable Agreement, the Purchasers shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Purchasers shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity, whether known or unknown as of the applicable Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the applicable Closing, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the applicable Purchased Assets prior

to the applicable Closing. Each Purchaser has given substantial consideration under the applicable Agreement for the benefit of the holders of Encumbrances. The consideration given by each Purchaser shall constitute valid and valuable consideration for the releases of any potential Claims of successor liability of such Purchaser, which releases shall be deemed to have been given in favor of each Purchaser by all holders of Encumbrances against the Debtors or the applicable Purchased Assets.

15. Upon the Closing of each Sale and the payment of the applicable Undisputed Cure Amounts and reserving for the applicable Disputed Cure Amounts, the Debtors are authorized to assume and assign each Assumed Agreement to the relevant Purchaser free and clear of all Encumbrances. Such payments (if any) shall (a) effect a cure of all defaults existing thereunder as of the applicable Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Agreements by the applicable Purchaser, constitute adequate assurance of future performance thereof. Each Purchaser shall then have assumed the applicable Assumed Agreements and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Assumed Agreements shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors nor the Purchasers shall have any further liabilities to the non-Debtor parties to the relevant Assumed Agreements other than the relevant Purchaser's obligations under the applicable Assumed Agreements that become due and payable on or after the applicable Closing Date.

16. Any provisions in any Assumed Agreement that prohibit or condition the assignment of such Assumed Agreement or allow the party to such Assumed Agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term

or condition upon the assignment of such Assumed Agreement, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to each Purchaser of the applicable Assumed Agreement have been satisfied. Upon the applicable Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, each Purchaser shall be fully and irrevocably vested with all rights, title and interest of the relevant Debtor under the applicable Assumed Agreement. Any provisions of any lease of real property constituting an Assumed Agreement that purports to permit the landlords thereunder to cancel the remaining term of such lease if the Debtors discontinue their use or operation of the leased real property is void and of no force and effect, and shall not be enforceable against the applicable Purchaser and any sublessees thereof, and the landlord under such lease shall not have the right to cancel or otherwise modify such lease or increase the rent, assert any Claim or impose any penalty by reason of such discontinuation, the Debtors' cessation of operations, the assignment of such lease to such Purchaser or its assignee or the interruption of business activities at any of the leased premises.

17. Upon the Closing of each Sale and the payment of the relevant Undisputed Cure Amounts and reserving for the relevant Disputed Cure Amounts by the applicable Purchaser, such Purchaser shall be deemed to be substituted for each relevant Debtor as a party to the applicable Assumed Agreements and the Debtors shall be relieved from all liability on such Assumed Agreements arising after the relevant Closing.

18. Each Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

19. Pursuant to Rules 6004(g) and 6006(g) of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry.

20. A Certified Copy of this Order may be filed with the appropriate Clerk and/or recorded with the Recorder to act to cancel the Liens and other Encumbrances of record except the applicable Permitted Liens.

21. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of notes, equity securities, or other securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plans, including, without limitation, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plans and the transfer of the Purchased Assets and the execution and delivery of any instrument of transfer in connection with the Agreements, shall not be taxed under any law imposing or subject to any stamp tax, real estate tax or other transfer tax, personal property transfer tax, mortgage tax, recording tax, sales tax, use tax, or other similar tax. All sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, or by the Liquidating Trust after the Effective Date, including, without limitation, the transfers of the Designated Assets and the Additional APA Assets under the APA or any Additional APA, as applicable, and the assumption and assignment of the Assigned Contracts and Leases under the APA or any Additional APA, as applicable, shall be deemed to have been made under, in furtherance of, or in connection with the Plans and, thus, shall not be subject to any stamp tax, real estate tax or other transfer tax, personal property transfer tax,

mortgage tax, recording tax, sales tax, use tax, or other similar tax. The Debtors, the Liquidating Trust, the Liquidating Trustee, Newcoal and each Additional Purchaser are hereby authorized to deliver a notice or short form of this Order, substantially in the form attached as Exhibit B to the Confirmation Orders (the "Notice"), to any state or local recording officer, and such officer must accept for filing such documents or instruments without charging any stamp tax, real estate tax or other transfer tax, personal property transfer tax, mortgage tax, recording tax, sales tax, use tax, or other similar tax. The Notice (i) shall have the effect of an Order of this Court, (ii) shall constitute sufficient notice of the entry of the Confirmation Order to such filing and recording officers, and (iii) shall be a recordable instrument notwithstanding any contrary provision of non-bankruptcy law. The Court specifically retains jurisdiction to enforce the foregoing direction, by contempt or otherwise.

22. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Agreements and the provisions of this Order.

23. Notwithstanding any provision of this Order, upon the Effective Date of the Plans, the Reclamation Agreements shall control matters relating to reclamation duties with respect to the permits transferred to the Purchasers, and the terms of the Reclamation Agreements, including the releases contained therein, shall be binding and enforceable upon the parties thereto in accordance with the terms thereof. Reclamation Claims will be governed by applicable non-bankruptcy law and the Reclamation Agreements. Nothing in this Order shall deprive any agency, court, or tribunal of any jurisdiction that it would otherwise have over any matter relating to reclamation duties of Newcoal or any Additional Purchaser after the Effective Date with respect to permits assumed under the Newcoal Agreement, the Oldcoal Agreement, or the

Massey Agreement, as applicable. In no event will any of Newcoal (as to the Designated Assets), Oldcoal (as to the Additional APA Assets transferred under the Oldcoal Agreement) or Massey (as to the Additional APA Assets transferred under the Massey Agreement) have liability related to property or permits not owned or operated by each of them, respectively, so long as, after the Effective Date of the Plan, it is neither an owner or operator of such property or permit nor arranges for the disposal of hazardous substances on such property.

24. Notwithstanding anything in this Order to the contrary, nothing in this Order releases, waives or nullifies any liability obligation or duty that Newcoal (as to the Designated Assets), Oldcoal (as to the Additional APA Assets transferred under the Oldcoal Agreement) or Massey (as to the Additional APA Assets transferred under the Massey Agreement) or their respective successors may have under reclamation or environmental laws to a governmental entity by virtue of being an owner or operator of property or permits after the Effective Date; and in no event will (i) any of Newcoal (as to the Designated Assets), Oldcoal (as to the Additional APA Assets transferred under the Oldcoal Agreement) or Massey (as to the Additional APA Assets transferred under the Massey Agreement) have liability related to property or permits not owned or operated by each of them, respectively, so long as, after the Effective Date, it is neither an owner or operator of such property or permit and does not arrange for the disposal of hazardous substances on such property, and (ii) any of them have liability arising from events or circumstances occurring prior to the Effective Date and related to property or permits owned or operated by it or its successors after the Effective Date, except to the extent that any such liability arises by virtue of being an owner or operator of property or permits after the Effective Date, or as provided in the Newcoal Agreement, the Oldcoal Agreement or the Massey Agreement, as applicable.

25. Notwithstanding any provision of this Order, including paragraphs L through S and ordered paragraphs 3, 6, 7, 9, 11 and 14 through 17, the terms of the Reclamation Agreements and applicable nonbankruptcy law shall govern, solely as to the Reclamation Claimants and the Environmental Protection Agency ("EPA") and state agencies enforcing the Clean Water Act ("CWA") and/or the Tennessee Water Quality Control Act ("TWQCA") (collectively, the "Government Agencies"), reclamation, CWA and/or TWQCA duties related to the Debtors' permits and the enforcement of such duties by the Government Agencies. This paragraph shall apply solely to the Government Agencies and shall not apply to any other party.

26. Subject to each Purchaser's compliance with the Reclamation Agreements and the Bonding Term Sheets, such Purchaser shall be authorized, as of the applicable Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the relevant Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are directed to be transferred to such Purchaser as of the applicable Closing Date, except to the extent otherwise provided in the relevant Agreement.

27. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and



instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

28. This Order constitutes authorization under all applicable jurisdictions' versions of the Uniform Commercial Code for each Purchaser to file UCC termination statements with respect to all security interests in or liens on the applicable Purchased Assets.

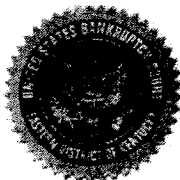
29. The failure specifically to include any particular provision of any Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that each Agreement be authorized and approved in its entirety.

30. Each Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or any effect on Environmental Claims or the Purchasers' compliance with the Reclamation Agreements.

31. This Court shall retain jurisdiction over the transactions contemplated in the Agreements for purposes of enforcing the provisions of this Order and the Agreements.

32. Pursuant to Local Rule 9022-1(c), counsel to the Debtors shall serve this Order on the parties entitled to receive this Order, and shall file with the Court a certificate of service within ten (10) days hereof.

***~~~~~  
The affixing of this Court's electronic seal below is proof this document  
has been signed by the Judge and electronically entered by the Clerk in the  
official record of this case.***



**Signed By:**  
**William S. Howard**  
**Bankruptcy Judge**  
**Dated: Thursday, September 16, 2004**  
**(wsh)**

**PATENT**

**REEL: 015242 FRAME: 0325**

**Selected Excerpts from New Coal Agreement  
(as defined in Bankruptcy Court Order)**

## AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This is an Amended and Restated Asset Purchase Agreement (this "Agreement"), dated as of June 2, 2004, among (i) Newcoal, LLC (the "Buyer"); (ii) the entities set forth on Schedule A (each, a "Complete Seller" and, collectively, the "Complete Sellers"); (iii) the entities set forth on Schedule B (each, a "Partial Seller" and, collectively, the "Partial Sellers"); (iv) HNR Mining, Inc., Mountaineer Coal Development Company, and Mountain Coals Corporation (each, a "Coal Inventory Seller" and, collectively, the "Coal Inventory Sellers"); and (v) Horizon Natural Resources Company, a Delaware corporation ("Parent"). Parent and each Complete Seller, Partial Seller, and Coal Inventory Seller is referred to herein individually as a "Seller," and Parent and all the Complete Sellers, the Partial Sellers, and the Coal Inventory Sellers are referred to herein, collectively, as the "Sellers."

### RECITALS

A. On November 13, 2002 and November 14, 2002 (collectively, the "Petition Date"), Parent and its subsidiaries commenced voluntary cases for reorganization, Case Nos. 02-14261 through 02-14337 (jointly administered) (the "Bankruptcy Cases") under chapter 11 of title 11 of the United States Code, U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Kentucky, Ashland Division, or the United States District Court for the Eastern District of Kentucky, to the extent exercising jurisdiction over the Bankruptcy Cases or any portion thereof (the "Bankruptcy Court").

B. Each Seller is a debtor and debtor-in-possession pursuant to the Bankruptcy Cases and is operating its business and managing its properties pursuant to Section 1108 of the Bankruptcy Code.

C. The Sellers are engaged in the Business.

D. Each Seller has determined that it is in the best interest of such Seller and its bankruptcy estate to sell to the Buyer all right, title and interest of such Seller in and to the Purchased Assets of such Seller, in exchange for consideration that includes cash of up to Two Hundred Fifty-Five Million Dollars (\$255,000,000), upon the terms and conditions hereinafter set forth.

E. The Buyer desires to purchase the Purchased Assets and assume the Assumed Liabilities from the Sellers, and the Sellers desire to sell, convey, assign and transfer to the Buyer, the Purchased Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363, 365 and 1123 and other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

F. The Purchased Assets are assets of the respective Sellers, which are to be purchased and assumed by the Buyer, free and clear of all Liens, Claims and encumbrances, except as otherwise provided herein, pursuant to the Sale Order.

G. The Agreement amends and restates in its entirety that Asset Purchase Agreement, dated as of May 13, 2004, among the Buyer and the Sellers.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth herein and of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Seller and the Buyer agree as follows:

#### ARTICLE 1 - DEFINITIONS

1.1 Definitions. As used herein, the following terms have the meanings set forth below:

"Accounts Receivable" means, with respect to a Person, all accounts receivable and right to payment from customers of such Person and the full benefit of all security for such accounts or debts, consisting of all accounts receivable in respect of goods shipped or products sold or services rendered to customers, and any other miscellaneous accounts receivable arising in the ordinary course of business, the amounts of which will be reduced by adequate reserves under GAAP for purposes of calculating Current Assets.

"Affiliate" means, with respect to a specific Person, any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract or otherwise.

"Assigned Claims" means all rights, Claims, credits, allowances, rebates, refunds, causes of action or rights of set-off arising from or related to the Purchased Assets, including but not limited to the items listed on Schedule C to this Agreement, other than any such items that are included in the Excluded Assets described in Sections 2.2(a)(iii), 2.2(a)(iv) and 2.2(a)(vi) of this Agreement.

"Assignment of Contracts and Other Rights" means an Assignment of Contracts and Other Rights substantially in the form attached hereto as Exhibit A.

"Assignment of Real Property Agreements" means an Assignment of Real Property Agreements substantially in the form attached hereto as Exhibit B.

"Assumption Agreement" means an Assumption Agreement substantially in the form attached hereto as Exhibit C.

"Bill of Sale" means the Bill of Sale substantially in the form attached hereto as Exhibit D.

"Black Lung Liabilities" means any Liability or benefit obligations related to black lung claims and benefits under the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901, et seq., the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (1978), the Black Lung Benefits

Amendments of 1981, Pub. L. No. 97-119, Title 11, 95 Stat. 1643, in each case as amended, if applicable, and occupational pneumoconiosis, silicosis or other lung disease liabilities and benefits arising under federal or state Law.

"Business" means the business operated by the Sellers of producing and marketing coal to electric utility and other industrial companies operated by the Complete Sellers and the similar activities conducted by the Partial Sellers at the Partial Sellers' Facilities, which on a combined basis generated approximately Four Hundred Eighty Three Million Nine Hundred Thousand Dollars (\$483,900,000) in total revenue and approximately Fifty Eight Million Five Hundred Thousand Dollars (\$58,500,000) in EBITDA in 2003 and, taking into account the Additional Coal Inventory as it existed at September 30, 2003, had at that date approximately 855.0 million tons of proven and probable reserves and an additional 296.8 million tons of coal resources on an aggregate of approximately 170,000 acres of land in ten locations in Illinois, Indiana, Kentucky and West Virginia.

"Business Days" means any day other than a Saturday, Sunday or other day on which national or state banking associations are required or permitted by law to be closed in Kentucky or New York.

"Buyer Material Adverse Effect" means a material adverse effect on the ability of the Buyer to fulfill its obligations under this Agreement or any of the Related Agreements.

"Claim" means any written action, suit, Proceeding, hearing, investigation, litigation, charge, complaint, claim or demand.

"Closing Working Capital" means Net Working Capital as determined hereunder as of the close of business on the last Business Day immediately prior to the Closing Date.

"Company" means, collectively, Parent and all of its direct and indirect subsidiaries that are or were engaged in the Business.

"Contracts" means the agreements, contracts and other commitments related to the Business (other than any Excluded Assets).

"Current Assets" means, for purposes of Section 7.2(g) hereof, the cash, Accounts Receivable and inventory (stockpile, pit and parts) included in the Purchased Assets and realizable within 12 months after the close of business on the Business Day immediately prior to the Closing Date, reduced by adequate reserves in accordance with GAAP, to the extent properly includible in a consolidated balance sheet for the Business as of the close of business on the last Business Day immediately preceding the Closing Date prepared in accordance with GAAP.

"Current Liabilities" means, for purposes of Section 7.2(g) hereof, all Assumed Liabilities due within 12 months after the close of business on the last Business Day prior to the Closing Date, including without limitation all such liabilities that would properly be included in a consolidated balance sheet for the Business as of such date prepared in accordance with GAAP as accounts payable, accrued expenses, current employee benefits, current reclamation liabilities and all liabilities for Ordinary Course Administrative Expense Claims.

(i) This Agreement is the result of negotiations among, and has been reviewed by, the parties hereto. Accordingly, this Agreement shall be deemed to be the product of all parties, and no ambiguity shall be construed in favor of or against any party.

## ARTICLE 2 - PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions contained in this Agreement and the Related Agreements and subject to the approval of the Bankruptcy Court pursuant to Sections 105, 363, 365, 1123 and 1146(c) of the Bankruptcy Code, at the Closing, the Sellers shall sell, assign, transfer and convey to the Buyer, and the Buyer shall purchase, acquire and accept from the Sellers, each Seller's entire right, title and interest in or to the following (the "Purchased Assets"):

(a) all of the right, title, and interest of the Complete Sellers in and to all of their respective assets, properties and rights of any nature, whether real or personal, tangible or intangible, other than the Excluded Assets, free and clear of all Liens except Permitted Liens, pursuant to Sections 363, 365, 1123 and 1146(c) of the Bankruptcy Code, including, without limitation, the following:

(i) the owned or leased real property used or usable in the operation of the Business (the "Complete Sellers' Businesses"), and identified on Schedule 2.1(a)(i), together with (A) all preparation facilities, buildings, structures, fixtures and improvements erected thereon, (B) all leases and leaseholds, farm leases, oil and gas leases, coal bed methane leases, timber leases, timber sales contracts, landowner waivers and any similar appurtenant rights, (C) all land and interests in land, coal, coal reserves, mining, surface and mineral rights, including those within and under the boundaries of such real property or covered by the applicable Permits and (D) all other rights, privileges, easements and other appurtenances relating thereto (together with the owned or leased real property set forth or required to be set forth or described on Schedule 2.1(b), the "Real Property");

(ii) the machinery, equipment, furniture, fixtures, vehicles, tools, supplies, improvements and other tangible personal property wherever located and however titled which are owned or leased and are used or held for use in the conduct of the Complete Sellers' Businesses, including those identified on Schedule 2.1(a)(ii) (together with the machinery, equipment, furniture, fixtures, vehicles, tools, supplies, improvements and other tangible personal property set forth or described on Schedule 2.1(b), the "Personal Property"), and, to the extent transferable, all rights of the Complete Sellers to warranties, express or implied, and licenses received from manufacturers and sellers of the Personal Property;

(iii) all books, records, files and other documentation and written materials, whether in hard copy or computer format, relating to the Purchased Assets or the Assumed Liabilities;

(iv) all of the Complete Sellers' permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of or filings or registrations with or issued by any Governmental Authority which have been issued or granted to or are owned, used or held by the Complete Sellers or any Affiliates of the Complete Sellers

primarily for use in or by, or for the benefit of, the Complete Sellers' Businesses, and all pending applications therefor (together with the permits, approvals, orders, authorizations, consents, licenses, certificates, franchise and related items listed or identified in Section 2.1(b), the "Permits"), to the extent transfer is permitted by Law, and including those owned by the Complete Sellers and listed on Schedule 2.1(a)(iv);

(v) all Intellectual Property used, owned or licensed by any Complete Seller (including the right to use the name "Horizon Natural Resources" and all variations of such name) for use in the conduct of the Complete Sellers' Businesses;

(vi) except as provided in Section 2.2(a)(viii), all rights and interests of each Complete Seller in, to and under the Contracts and the Leases, in each case, which are executory and unexpired as of the Closing Date, and which are listed or identified on Schedule 2.1(a)(vi) hereto (together with the Leases and Contracts set forth on Schedule 2.1(b) which are executory and unexpired as of the Closing Date, the "Executory Contracts");

(vii) all rights and interests of each Complete Seller in, to and under the Contracts and the Leases, in each case which are either not executory or are expired as of the Closing Date, and which are assignable to the Buyer and are listed or identified on Schedule 2.1(a)(vii) hereto (together with the Leases and Contracts set forth on Schedule 2.1(b) which are either not executory or are expired as of the Closing Date and which are assignable to the Buyer, the "Non-Executory Contracts");

(viii) any and all leasehold improvements made by the Complete Sellers under the Executory Contracts or the Non-Executory Contracts;

(ix) all of the Complete Sellers' severed coal inventory, wherever located, as of the Closing;

(x) all prepaid expenses relating to the Complete Sellers' Businesses, including but not limited to the items listed or identified on Schedule 2.1(a)(x);

(xi) all Accounts Receivable of the Complete Sellers except those excluded pursuant to Section 2.2(a)(i);

(xii) except as set forth in Section 2.2(a)(xiv) of this Agreement, all cash and cash equivalents of the Sellers as of the Closing Date; and

(xiii) all of the Assigned Claims.

(b) All right, title and interest of the Partial Sellers in (i) any assets to be transferred by the Complete Sellers pursuant to Section 2.1(a) hereof, (ii) any assets or rights, whether tangible or intangible, of the Partial Sellers used primarily in, or for the benefit of, the Business, including, without limitation, the assets set forth on Schedule 2.1(b), and (iii) the Permits of the Partial Sellers listed on Schedule 2.1(a)(iv), as well as the Partial Sellers' surface and mineral rights within the boundaries covered by the Permits transferred by the Partial Sellers under this Agreement (clauses (i), (ii) and (iii), collectively, the "Specifically Identified Assets").

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the Buyer and the Sellers on the date first above written.

BUYER

NEWCOAL, LLC

By: CONTRARIAN CAPITAL  
MANAGEMENT, INC., as member

By: Jon Bauer  
Name: Jon Bauer  
Title: Managing Member

By: GREENLIGHT CAPITAL, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: STARK EVENT TRADING, LTD.,  
as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: VÄRDE PARTNERS, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: WLR RECOVERY FUND II L.P., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the Buyer and the Sellers on the date first above written.

BUYER

NEWCOAL, LLC

By: CONTRARIAN CAPITAL  
MANAGEMENT, INC., as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: GREENLIGHT CAPITAL, INC., as  
member

By: David Einhorn  
Name: DAVID EINHORN  
Title: PRESIDENT

By: STARK EVENT TRADING, LTD.,  
as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: VÄRDE PARTNERS, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: WLR RECOVERY FUND II L.P., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

11111111

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the Buyer and the Sellers on the date first above written.

BUYER

NEWCOAL, LLC


By: CONTRARIAN CAPITAL  
MANAGEMENT, INC., as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: GREENLIGHT CAPITAL, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: STARK EVENT TRADING, LTD.,  
as member

By:   
Name: Colin M. Lancaster  
Title: General Counsel

By: VÄRDE PARTNERS, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: WLR RECOVERY FUND II L.P., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the Buyer and the Sellers on the date first above written.

BUYER

NEWCOAL, LLC

By: CONTRARIAN CAPITAL  
MANAGEMENT, INC., as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

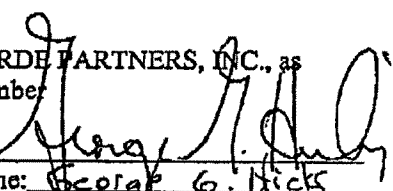
By: GREENLIGHT CAPITAL, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: STARK EVENT TRADING, LTD.,  
as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: VÄRDE PARTNERS, INC., as  
member

By:   
Name: George G. Hicks  
Title: Managing Partner

By: WLR RECOVERY FUND II L.P., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

11/11/2011

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**BUYER:**

NEWCOAL, LLC

By: CONTRARIAN CAPITAL  
MANAGEMENT, INC., as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: GREENLIGHT CAPITAL, INC., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: STARK EVENT TRADING, LTD., as  
member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: VÄRDE PARTNERS, INC., as member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: WLR COAL HOLDINGS LLC, as member

By: William L. Ross, Jr.  
Name: William L. Ross, Jr.  
Title: Chairman

**SELLERS:**

**APPALACHIAN REALTY COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**AYRSHIRE LAND COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**BLUEGRASS COAL DEVELOPMENT  
COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**EVERGREEN MINING COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**FAIRVIEW LAND COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**HORIZON NATURAL RESOURCES  
SALES COMPANY**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

**HORIZON NR LLC**

By: Marc Merritt  
Name: Marc Merritt  
Title: Treasurer

LESLIE RESOURCES, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

LESLIE RESOURCES MANAGEMENT, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

ACECO, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

PRO-LAND, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

RIVER COAL COMPANY, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

HIGHLAND COAL, INC.

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

MOUNTAIN-CLAY, INCORPORATED

By: Marc McCreary  
Name: Marc McCreary  
Title: Treasurer

SUNNY RIDGE ENTERPRISES, INC.

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

SUNNY RIDGE MINING COMPANY, INC.

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

TURRIS COAL COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

IKERD-BANDY CO.

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

SHIPYARD RIVER COAL TERMINAL  
COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

FRANKLIN COAL SALES COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

KENTUCKY PRINCE MINING COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

RP TERMINAL LECT

By: [Signature]  
Name: D. STICKLER  
Title: Secretary

MINING TECHNOLOGIES, INC.

By: [Signature]  
Name: W. M. Mearns  
Title: Treasurer

EAST KENTUCKY ENERGY CORPORATION

By: [Signature]  
Name: W. M. Mearns  
Title: Treasurer

CC COAL COMPANY

By: [Signature]  
Name: W. M. Mearns  
Title: Treasurer

MEADOWLARK, INC.

By: [Signature]  
Name: W. M. Mearns  
Title: Treasurer

OLD BEN COAL COMPANY

By: [Signature]  
Name: Secretary  
Title: D. STICKLER

ZIGLER COAL HOLDING COMPANY

By: [Signature]  
Name: W. M. Mearns  
Title: Sr. V.P.



HNR MINING INC.

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

MOUNTAINEER COAL DEVELOPMENT  
COMPANY

By: Dan Stickler  
Name: DAN STICKLER  
Title: SECRETARY

KERMIT COAL COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

HORIZON NATURAL RESOURCES COMPANY

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

17 WEST MINING, INC.

By: Marc Stewart  
Name: Marc Stewart  
Title: Treasurer

PRINCESS BEVERLY COAL COMPANY

By: Dan Stickler  
Name: DAN STICKLER  
Title: SECRETARY

MOUNTAIN COALS CORPORATION

By: Dan Stickler  
Name: DAN STICKLER  
Title: SECRETARY

BEECH COAL COMPANY

By: [Signature]  
Name: DAN STICKLER  
Title: SECRETARY

CANNELTON INDUSTRIES, INC.

By: [Signature]  
Name: DAN STICKLER  
Title: SECRETARY

MID-VAL, LEASING, INC.

By: [Signature]  
Name: Wanda Roberts  
Title: Manager

WEST VIRGINIA-INDIANA COAL HOLDING  
COMPANY, INC.

By: [Signature]  
Name: DAN STICKLER  
Title: SECRETARY

KINDILL MINING, INC.

By: [Signature]  
Name: DAN STICKLER  
Title: SECRETARY

HORIZON NATURAL RESOURCES HOLDING  
COMPANY

By: [Signature]  
Name: Wanda Roberts  
Title: Manager

## **Schedule A**

### **Complete Sellers**

Appalachian Realty Company  
Ayrshire Land Company  
Bluegrass Coal Development Company  
Evergreen Mining Company  
Fairview Land Company, LLC  
Horizon Natural Resources Sales Company  
Horizon NR LLC  
Leslie Resources, Inc.  
Leslie Resources Management, Inc.  
-Aceco, Inc.  
-Pro-Land, Inc. d/b/a Kem Coal Company  
--River Coal Company, Inc.  
-Highland Coal, Inc.  
-Mountain-Clay, Incorporated d/b/a Mountain Clay, Inc.  
Sunny Ridge Enterprises, Inc.  
Sunny Ridge Mining Company, Inc.  
Turris Coal Company  
Ikerd-Bandy Co.  
Shipyard River Coal Terminal Company d/b/a Pike County Coal Corporation, Clark Elkhorn  
Coal Company, Utility Coals Company, Knott County Mining Company, Matrix Coal  
Company, Henry Clay Mining Company, Redbone Coal Company, Inc. and Sunset Coal  
Company  
Franklin Coal Sales Company  
Kentucky Prince Mining Company  
RP Terminal LLC  
Mining Technologies, Inc.

**Schedule B**

**Partial Sellers**

East Kentucky Energy Corporation  
CC Coal Company  
Meadowlark, Inc.  
Old Ben Coal Company  
Zeigler Coal Holding Company  
HNR Mining Inc.  
Mountaineer Coal Development Company  
Kermit Coal Company  
Horizon Natural Resources Company  
17 West Mining, Inc.  
Princess Beverly Coal Company  
Mountain Coals Corporation  
Cannelton Industries, Inc.  
Mid-Vol Leasing, Inc.  
West Virginia-Indiana Coal Holding Company, Inc.  
Kindill Mining, Inc.  
Horizon Natural Resources Holding Company

**Schedule 2.1(b)**

**Specifically Identified Assets**

Intellectual Property

*Patents*

<b>Owner</b>	<b>Patent Number</b>	<b>Issue Date</b>	<b>Country</b>	<b>Description</b>
Mountaineer Coal Development Company	5,039,315	08/13/91	U.S.	Method and Apparatus for Separating Particulates from a Gas Stream
Mountaineer Coal Development Company	5,064,022	11/12/91	U.S.	Ladder Apparatus and Method for Large Mobile Equipment
Zeigler Coal Holding Company	5,145,236	09/08/92	U.S.	Method and Apparatus for Controlling Dust Produced by a Continuous Miner
Zeigler Coal Holding Company	92/06721	03/30/94	S. Africa	Method and Apparatus for Controlling Dust Produced by a Continuous Miner
Zeigler Coal Holding Company	5,242,470	09/07/93	U.S.	Pelletizing Coal on Coke with Starch Particles
Zeigler Coal Holding Company	5,364,421	11/15/94	U.S.	Coal Blends Having Improved Ash Viscosity
Zeigler Coal Holding Company	5,219,208	06/15/93	U.S.	Scrubber for Dispersing Dust Generated by Longwall Shearers
Zeigler Coal Holding Company	5,547,548	08/20/96	U.S.	Pyrolysis Process Water Utilization

Owner	Patent Number	Issue Date	Country	Description
Zeigler Coal Holding Company	5,730,069	03/24/98	U.S.	Lean Fuel Combustion Control Method
Zeigler Coal Holding Company	4,725,991	02/16/88	U.S.	Method for Controlling Blasting Operations
Zeigler Coal Holding Company	1,314,608	03/16/93	Canada	Method for Predicting and Controlling Blasting Vibrations