

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11  
Case No. 12-51502-659  
(Jointly Administered)**

**NOTICE OF FILING OF AMENDED PLAN SUPPLEMENTS**

PLEASE TAKE NOTICE that on December 16, 2013, Patriot Coal Corporation and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), in accordance with and pursuant to the Debtors’ Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “**Plan**”),<sup>2</sup> caused to be filed with the United States Bankruptcy Court for the Eastern District of Missouri amended versions of:

- (i) a form of the New Certificate of Incorporation of Reorganized Patriot Coal, along with a comparison against the initial draft version filed on December 5, 2013 (attached hereto as Exhibit 2);
- (ii) a form of the New Bylaws of Reorganized Patriot Coal, along with a comparison against the amended version filed on December 16, 2013 (attached hereto as Exhibit 3);
- (iii) a form of the Rights Offering Warrant Agreement, along with a comparison against the amended version filed on December 15, 2013 (attached hereto as Exhibit 5); and

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Plan.

- (iv) a form of the New Stockholders Agreement, along with a comparison against the amended version filed on December 15, 2013 (attached hereto as Exhibit 6).

PLEASE TAKE FURTHER NOTICE that, the Debtors reserve the right to alter, amend, modify, or supplement any Plan Supplement as provided by the Plan; provided that if any Plan Supplement is altered, amended, modified, or supplemented in any material respect, the Debtors will file a blackline of such document with the Bankruptcy Court.

Dated: December 16, 2013  
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

*/s/ Michelle M. McGreal*

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Marshall S. Huebner  
Brian M. Resnick  
Michelle M. McGreal  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 607-7983

*Counsel to the Debtors  
and Debtors in Possession*

-and-

BRYAN CAVE LLP  
Lloyd A. Palans, #22650MO  
Brian C. Walsh, #58091MO  
Laura Uberti Hughes, #60732MO  
One Metropolitan Square  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102  
Telephone: (314) 259-2000  
Facsimile: (314) 259-2020

*Local Counsel to the Debtors  
and Debtors in Possession*

**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brody Mining, LLC
11. Brook Trout Coal, LLC
12. Catenary Coal Company, LLC
13. Central States Coal Reserves of Kentucky, LLC
14. Charles Coal Company, LLC
15. Cleaton Coal Company
16. Coal Clean LLC
17. Coal Properties, LLC
18. Coal Reserve Holding Limited Liability Company No. 2
19. Colony Bay Coal Company
20. Cook Mountain Coal Company, LLC
21. Corydon Resources LLC
22. Coventry Mining Services, LLC
23. Coyote Coal Company LLC
24. Cub Branch Coal Company LLC
25. Dakota LLC
26. Day LLC
27. Dixon Mining Company, LLC
28. Dodge Hill Holding JV, LLC
29. Dodge Hill Mining Company, LLC
30. Dodge Hill of Kentucky, LLC
31. EACC Camps, Inc.
32. Eastern Associated Coal, LLC
33. Eastern Coal Company, LLC
34. Eastern Royalty, LLC
35. Emerald Processing, L.L.C.
36. Gateway Eagle Coal Company, LLC
37. Grand Eagle Mining, LLC
38. Heritage Coal Company LLC
39. Highland Mining Company, LLC
40. Hillside Mining Company
41. Hobet Mining, LLC
42. Indian Hill Company LLC
43. Infinity Coal Sales, LLC
44. Interior Holdings, LLC
45. IO Coal LLC
46. Jarrell's Branch Coal Company
47. Jupiter Holdings LLC
48. Kanawha Eagle Coal, LLC
49. Kanawha River Ventures I, LLC
50. Kanawha River Ventures II, LLC
51. Kanawha River Ventures III, LLC
52. KE Ventures LLC
53. Little Creek LLC
54. Logan Fork Coal Company
55. Magnum Coal Company LLC
56. Magnum Coal Sales LLC
57. Martinka Coal Company, LLC
58. Midland Trail Energy LLC
59. Midwest Coal Resources II, LLC
60. Mountain View Coal Company, LLC
61. New Trout Coal Holdings II, LLC
62. Newtown Energy, Inc.
63. North Page Coal Corp.
64. Ohio County Coal Company, LLC
65. Panther LLC
66. Patriot Beaver Dam Holdings, LLC
67. Patriot Coal Company, L.P.
68. Patriot Coal Corporation
69. Patriot Coal Sales LLC
70. Patriot Coal Services LLC
71. Patriot Leasing Company LLC
72. Patriot Midwest Holdings, LLC
73. Patriot Reserve Holdings, LLC
74. Patriot Trading LLC
75. Patriot Ventures LLC
76. PCX Enterprises, Inc.
77. Pine Ridge Coal Company, LLC
78. Pond Creek Land Resources, LLC
79. Pond Fork Processing LLC
80. Remington Holdings LLC
81. Remington II LLC
82. Remington LLC
83. Rivers Edge Mining, Inc.
84. Robin Land Company, LLC
85. Sentry Mining, LLC
86. Snowberry Land Company
87. Speed Mining LLC
88. Sterling Smokeless Coal Company, LLC
89. TC Sales Company, LLC
90. The Presidents Energy Company LLC
91. Thunderhill Coal LLC
92. Trout Coal Holdings, LLC
93. Union County Coal Co., LLC
94. Viper LLC
95. Weatherby Processing LLC
96. Wildcat Energy LLC
97. Wildcat, LLC
98. Will Scarlet Properties LLC
99. Winchester LLC
100. Winifrede Dock Limited Liability Company
101. Yankeetown Dock, LLC

## **Exhibit 2**

**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
PATRIOT COAL CORPORATION**

PATRIOT COAL CORPORATION (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, DOES HEREBY CERTIFY:

1. The name of the corporation is Patriot Coal Corporation. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 25, 2006 under the name of Eastern Coal Holding Company, Inc.; the date of the filing of its Certificate of Amendment with the Secretary of State of the State of Delaware, changing the Corporation's name to Patriot Coal Corporation, was May 10, 2007; and the date of the filing of its first Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was October 19, 2007.

2. A petition for reorganization under Chapter 11 of 11 U.S.C. §§ 101 et seq. (the "**Bankruptcy Code**") for the Corporation having been filed on July 9, 2012 in the United States Bankruptcy Court for the Southern District of New York, In re: Patriot Coal Corporation, et al., Case No. 12-51502-659, and under the Debtors' Fourth Amended Joint Plan of Reorganization dated December 15, 2013, as the same may be amended or modified, from time to time (the "**Plan**"), and inter alia, Sections 1123 and 1129 of the Bankruptcy Code, 11 U.S.C. §§ 1123 and 1129, pursuant to the order of the United States Bankruptcy Court for the Eastern District of Missouri dated December [17], 2013, the text of the Corporation's Certificate of Incorporation, as amended, is amended and restated to read as set forth in EXHIBIT A (the "Amended and Restated Certificate of Incorporation") attached hereto.

3. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 245 and 303 of the General Corporation Law of the State of Delaware.

4. This Amended and Restated Certificate of Incorporation will become effective at [8]:00 a.m., Eastern Time, on [December 18], 2013.

EXHIBIT A

FIRST: The name of the corporation is Patriot Coal Corporation.

SECOND: The registered office and registered agent of the Corporation in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

THIRD: The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: (1) The total number of shares of all classes of stock that the Corporation shall have the authority to issue is [100,000,000] shares, consisting of (i) [●] shares of Class A Common Stock, par value \$0.00001 per share (the "**Class A Common Stock**"), (ii) [●] shares of Class B Common Stock, par value \$0.00001 per share (the "**Class B Common Stock**") and (iii) [●] shares of Class C Common Stock, par value \$0.00001 per share (the "**Class C Common**

**Stock**” and together with the Class A Common Stock and the Class B Common Stock, the “**Common Stock**”). The number of authorized shares of any of the Common Stock may be increased or decreased (but not below (y) the number of shares thereof then outstanding, plus (z) the number of shares of Common Stock issuable upon the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Common Stock) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware (or any successor provision thereto), and no vote of the holders of any of the Common Stock voting separately as a class shall be required therefor.

(2) Holders of Class A Common Stock or Class B Common Stock, as the case may be, shall be entitled to vote as a separate class on any amendment or modification of any rights or privileges (by merger, reclassification or otherwise) of the Class A Common Stock or Class B Common Stock, as the case may be, that does not equally affect the Class B Common Stock or Class A Common Stock, as the case may be.

(3) (a) Each holder of Class A Common Stock, as such, shall be entitled to one (1) vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Each holder of Class B Common Stock, as such, shall be entitled to one hundred (100) votes for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as required by applicable law, shares of Class C Common Stock shall have no voting power and the holders thereof, as such, shall not be entitled to vote on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

(b) Subject to applicable law, dividends may be declared and paid on the Common Stock at such times and in such amounts as the board of directors of the Corporation (the “**Board of Directors**”) in its discretion shall determine.

(c) Upon the dissolution, liquidation or winding up of the Corporation, the holders of the Common Stock, as such, shall be entitled to receive, after payment or provision for payment of the debts and other liabilities of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

(d) Except in relation to voting and conversion as set forth in this Article FOURTH, the rights of holders of Class A Common Stock, the rights of holders of Class B Common Stock and the rights of holders of Class C Common Stock shall be identical in all respects, including, without limitation, with respect to dividends and rights with respect to any Distribution; *provided, however*, that in the event a Distribution is paid in the form of a specific class of Common Stock (or such Common Stock Equivalents), then holders of each other class of Common Stock shall receive such Distribution in the form of shares of the class of Common Stock that they hold (or such Common Stock Equivalents, as the case may be).

(e) If the Corporation in any manner subdivides or combines the outstanding shares of Class A Common Stock, Class B Common Stock or Class C Common Stock, the outstanding shares of each of the other such classes will be subdivided or combined in the same proportion and manner.

(f) Each one (1) share of Class B Common Stock shall automatically, without any further action, convert into one (1) fully paid and non-assessable share of Class A Common Stock (i) upon the Transfer of such share from the Qualified Voting Trust to a Person that is not a Qualified Voting Trust, (ii) upon the consummation of an IPO, (iii) immediately prior to any consolidation, merger, combination, recapitalization, reorganization, reclassification or other event as a result of which the shares of Class A Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, and the holders of Class A Common Stock and Class B Common Stock shall as a result of such conversion receive the same kind and amount of stock, security, cash and/or other property distributed in such transaction, or (iv) if Warrants representing 55% or more of the total number of shares of Class A Common Stock underlying the Warrants, excluding any Warrants or any other warrants issued in connection with any management compensation, equity incentive or employee benefit plan approved by the Board of Directors, have been exercised in accordance with their terms. Each one (1) share of Class C Common Stock shall automatically, without any further action, convert into one (1) fully paid and non-assessable share of Class A Common Stock upon any sale or transfer thereof to any Person that is not a Backstop Party or an affiliate of a Backstop Party. The Corporation may, from time to time, establish such policies and procedures relating to the conversion of the Class B Common Stock and Class C Common Stock to Class A Common Stock and the general administration of this multiple class stock structure, solely in accordance with the provisions of this Amended and Restated Certificate of Incorporation, and may from time to time request that holders of shares of Class B Common Stock and Class C Common Stock furnish such certifications, affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock or Class C Common Stock, as applicable, and to confirm that a conversion to Class A Common Stock has not occurred. A determination by the Secretary of the Corporation that a Transfer results in a conversion to Class A Common Stock shall be conclusive and binding. Upon conversion of Class B Common Stock or Class C Common Stock to Class A Common Stock, such converted shares of Class B Common Stock or Class C Common Stock, as applicable, shall be deemed to be no longer outstanding and shall resume the status of authorized and unissued shares in accordance with Section 243(b) of the General Corporation Law of the State of Delaware.

(g) At any time on or after the dissolution, liquidation or winding up of the Qualified Voting Trust, including, but not limited to, any termination thereof pursuant to Section 3.1(c) of the Voting Trust Agreement, a majority of the disinterested members of the Board of Directors shall have the right to cause each share of Class B Common Stock held by any holder to automatically convert into one (1) fully paid and non-assessable share of Class A Common Stock.

(h) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock and Class C Common Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock and Class C Common Stock into shares of Class A Common Stock.

(4) Notwithstanding any other provision contained herein to the contrary, no Transfer of Common Stock or Common Stock Equivalents to a Third Party shall be permitted, and any such Transfer shall be null and void ab initio, if, after giving effect to such Transfer, the Corporation



would be required to become a reporting company under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”); provided, however, that such restriction shall no longer be applicable upon the earlier of (i) the Corporation’s registration of any class of its equity securities within the meaning of the Exchange Act and (ii) the Corporation’s listing of any class of its securities on a national securities exchange.

(5) Prior to issuing any equity securities of the Corporation or any of its subsidiaries (collectively, “**Additional Stock**”) to any Person or Persons, the Corporation shall first make an offering of such Additional Stock to such Backstop Parties or their affiliates, in each case, that are Qualified Holders in accordance with the following provisions:

(a) At least 20 calendar days prior to issuing any Additional Stock, the Corporation shall deliver a notice to each Backstop Party, which notice shall state that (i) the Corporation intends to make a proposal pursuant this Section (5) to each Qualified Holder and (ii) only Qualified Holders who return a written certification (in a form to be provided by the Corporation together with such notice) of their status as Qualified Holders to the Corporation, within 10 calendar days from the date such notice is sent, will be eligible to receive such proposal (each Qualified Holder of Common Stock that returns such written certification to the Corporation within the required time period, an “**Eligible Holder**”). For purposes of this Article FOURTH, Section 5, notice to a Backstop Party provided in accordance with the immediately preceding sentence shall be deemed to constitute notice to such Backstop Party’s affiliates, and no separate notice by the Corporation to such affiliates shall be required. At least 10 calendar days prior to selling any Additional Stock, the Corporation shall deliver a notice (a “**Notice of Preemptive Rights**”) to each Eligible Holder stating (i) its bona fide intention to offer such Additional Stock, (ii) the number of such shares or units of Additional Stock to be offered and (iii) the price and terms upon which it proposes to offer such Additional Stock.

(b) Within 10 calendar days after receipt of any Notice of Preemptive Rights, each Eligible Holder may elect to purchase or obtain (each such electing Eligible Holder, a “**Subscribing Holder**”), at the price and on the terms specified in the Notice of Preemptive Rights, up to that number of shares or units of such Additional Stock which is equal to (i) the total number of shares or units of such Additional Stock to be offered, as specified in the Notice of Preemptive Rights, multiplied by (ii) a fraction, the numerator of which is the number of shares of Common Stock, after giving effect to the exercise, conversion or exchange of Common Stock Equivalents, in each case, held by such Subscribing Holder and the denominator of which is the total number of shares of Common Stock then outstanding after giving effect to the exercise, conversion or exchange of all Common Stock Equivalents then outstanding (other than such Common Stock Equivalents issued pursuant to any management compensation, equity incentive or employee benefit plan approved by the Board of Directors) (a “**Pro Rata Share**”). Notwithstanding the foregoing, in the event that the equity securities of the Company or its subsidiaries that entitle Eligible Holders to exercise preemptive rights are voting securities, each Subscribing Holder may, at its option, elect to receive in lieu of its Pro Rata Share of Additional Stock equity securities of the Corporation or the relevant subsidiary thereof that (x) have no voting rights, (y) mandatorily and automatically convert into shares of Additional Stock upon any sale or transfer thereof to any Person that is not a Backstop Party or an affiliate of a Backstop Party and (z) are sold at a price that is identical to, and otherwise have terms that are in all respects identical to, the price and terms of the Additional Stock (the “**Alternate Additional Stock**”).

(c) If all shares of Additional Stock which an Eligible Holder is entitled to obtain pursuant to Section (5)(b) are not elected to be obtained as provided, then the Corporation may, during the 60 day period following the expiration of the period provided in Section (5)(b), offer the remaining unsubscribed portion of such Additional Stock to any Person or Persons (including any Subscribing Holder, whether or not such Subscribing Holder has previously elected to purchase its entire Pro Rata Share) at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice of Preemptive Rights. If the Corporation does not enter into an agreement for the sale of the Additional Stock within such period, or if such agreement is not consummated within 30 days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Additional Stock shall not be sold unless first reoffered to the holders of Common Stock in accordance herewith. Subject to Section (5)(e), the Corporation may not make any sale of Additional Stock unless, prior to or simultaneously therewith, all Subscribing Holders obtain their Pro Rata Share on the terms set forth in the applicable Notice of Preemptive Rights. For purposes of this Section (5)(c), references to Additional Stock shall be deemed to include any Alternate Additional Stock purchased by a Subscribing Holder pursuant to an election made in accordance with Section (5)(b).

(d) The preemptive rights in this Section (5) shall not be transferrable and as to any Backstop Party and its affiliates that is a Qualified Holder, collectively, shall terminate and be of no further force and effect at such time as such Backstop Party and such affiliates, collectively, no longer hold any Common Stock or Common Stock Equivalents.

(e) The preemptive rights in this Section (5) shall not apply to the offer or sale of Excluded Stock and shall terminate, such that this Section (5) shall have no further force or effect, immediately following an IPO.

(f) Notwithstanding any of the foregoing to the contrary, the Corporation shall have no obligation to comply with any provision of this Section (5) if, in the reasonable opinion of counsel to the Corporation, such compliance would violate the Securities Act of 1933, as amended (the “**Securities Act**”) or the Exchange Act, or the rules and regulations promulgated thereunder.

FIFTH: The Board of Directors shall be authorized to make, amend, alter, change, add to or repeal the By-Laws of the Corporation in any manner not inconsistent with the laws of the State of Delaware, subject to the power of the stockholders to amend, alter, change, add to or repeal the By-Laws made by the Board of Directors.

SIXTH: This Charter may not be altered, amended or repealed, in whole or in part, nor shall a new Charter be adopted by the stockholders without obtaining the approval of at least 55 percent of the voting power of all of the then issued and outstanding shares of the Corporation’s Common Stock, voting together as a single class.

SEVENTH: To the fullest extent permitted by the laws of the State of Delaware:

(1) The Corporation shall indemnify any person (and such person’s heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or

informal, including appeals, by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. The Corporation shall promptly pay expenses incurred by any person described in the first sentence of this Section (1) in defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation. Notwithstanding the preceding sentences, the Corporation shall be required to indemnify a person described in such sentences who was not a director or officer of the Corporation as of December 18, 2013, only to the extent that the events precipitating any action, suit or proceeding occurred after July 9, 2012, and the Corporation shall be required to indemnify a person described in such sentences in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board of Directors of the Corporation.

(2) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents, or with respect to an event occurring on or before July 9, 2012 to such of the former directors or officers, of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the laws of the State of Delaware; *provided that*, for each such former director or officer or current or former employee or agent, the Corporation may indemnify such persons only to the extent of available coverage under an applicable insurance policy (and payable from the proceeds of such insurance policy), unless otherwise required by the laws of the State of Delaware.

(3) The Corporation may purchase and maintain insurance on behalf of any person described in Section (1) or Section (2) of this Article SEVENTH against any liability asserted against such person, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article SEVENTH or otherwise.

(4) The provisions of this Article SEVENTH shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article SEVENTH shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article SEVENTH and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article SEVENTH shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article SEVENTH shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, this Amended and Restated Certificate of Incorporation, vote of stockholders or directors or otherwise, or as a

matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office.

(5) For purposes of this Article SEVENTH, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

(6) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

EIGHTH: (1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors.

(2) The number of directors which shall constitute the Board of Directors shall initially be five (5) and, thereafter, shall be fixed exclusively by one or more resolutions adopted from time to time by the affirmative vote of a majority of the Board of Directors in accordance with the By-Laws of the Corporation. The following individuals are hereby appointed as the directors of the Corporation to hold office until the next annual meeting of stockholders or until their successors are elected and qualified: Timothy J. Bernlohr, Charles H. Cremens, Eugene I. Davis, Bennett K. Hatfield and Daniel D. Smith.

(3) Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of the directors of the Corporation need not be by written ballot. There shall be no cumulative voting in the election of directors.

NINTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated by the Board of Directors or in the By-Laws of the Corporation.

TENTH: The shares of the Corporation shall be uncertificated shares, provided that the Board of Directors may provide by resolution or resolutions that some or all classes or series of the Corporation's stock shall be certificated shares.

ELEVENTH: To the extent required by Section 1123(a)(6) of the Bankruptcy Code, the Corporation shall not issue nonvoting equity securities. This provision shall have no further force and effect beyond that required by Section 1123(a)(6) of the Bankruptcy Code and is applicable only for so long as such Section is in effect and applicable to the Corporation.

TWELFTH: The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

THIRTEENTH: The following terms, where capitalized in this Amended and Restated Certificate, shall have the meanings ascribed to them in this Article THIRTEENTH:

“**Backstop Party**” means any of the entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees set forth on the signature pages to that certain Backstop Rights Purchase Agreement, dated November 4, 2013, and any person executing a joinder to the Backstop Rights Purchase Agreement in substantially the form attached thereto as Exhibit A.

“**Distribution**” means (i) any dividend or distribution of cash, property or shares of the Corporation’s capital stock; and (ii) any distribution following or in connection with any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary.

“**Common Stock Equivalents**” means any warrants, rights call options or other securities exchangeable or exercisable for, or convertible into, Common Stock.

“**Effective Date**” means the Business Day selected by the Corporation that is (i) on or after the date that the Bankruptcy Court enters an order confirming the Plan and on which date no stay of such order is in effect and (ii) on or after the date on which the conditions to effectiveness of the Plan specified in section 12.1 of the Plan have been either satisfied or waived as set forth therein.

“**Excluded Stock**” means (i) Additional Stock issued or issuable directly in consideration for the acquisition of another business from one or more unaffiliated third parties approved by the Board of Directors by the Corporation by merger, purchase of all or substantially all of the assets or other reorganization, (ii) Additional Stock sold by the Corporation in an IPO, (iii) Additional Stock issued or issuable in connection with any debt financing from or with one or more unaffiliated third parties approved by the Board of Directors, (iv) Additional Stock issued or issuable pursuant to any management compensation, equity incentive or employee benefit plan approved by the Board of Directors, (v) shares of Common Stock issued or issuable pursuant to Common Stock Equivalents outstanding as of the date hereof, (vi) shares of Common Stock issuable upon the conversion of shares of Class B Common Stock into Class A Common Stock, (vii) shares of Common Stock issued by the Corporation as a stock dividend payable in shares of Common Stock, or upon any subdivision or split of the outstanding shares of Common Stock or (viii) Additional Stock issued to the Corporation or one or more of its subsidiaries.

“**IPO**” means the Corporation’s bona fide initial public offering of any class of its equity securities pursuant to an effective registration statement filed with the Securities and Exchange Commission under the Securities Act.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or any agency or political subdivision thereof.

“**Qualified Holder**” means a holder of Common Stock or Common Stock Equivalents who is a Backstop Party or an affiliate of a Backstop Party and is (i) a “qualified

institutional buyer” as defined in Rule 144A under the Securities Act or (ii) an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act.

“**Qualified Voting Trust**” means that certain voting trust created by the Voting Trust Agreement.

“**Third Party**” means any Person which is not deemed to be an owner of record of Common Stock or Common Stock Equivalents pursuant to Rule 12g5-1 under the Exchange Act.

“**Transfer**” means to sell, hypothecate, give, convey, bequeath, transfer, assign, pledge or in any other way whatsoever encumber or dispose.

“**Voting Trust Agreement**” means the voting trust agreement, made as of December [ ], 2013, by and between the Corporation and Torque Point PCX LLC.

“**Warrants**” means the warrants to acquire New Class A Common Stock issued on the Effective Date.

\* \* \*

IN WITNESS WHEREOF, the undersigned has executed this Second Amended and Restated Certificate of Incorporation this 18th day of December, 2013.

PATRIOT COAL CORPORATION

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

## **Comparison**



**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
PATRIOT COAL CORPORATION**

PATRIOT COAL CORPORATION (the “Corporation”), a corporation organized and existing under the laws of the State of Delaware, DOES HEREBY CERTIFY:

1. The name of the corporation is Patriot Coal Corporation. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 25, 2006 under the name of Eastern Coal Holding Company, Inc.; the date of the filing of its Certificate of Amendment with the Secretary of State of the State of Delaware, changing the Corporation’s name to Patriot Coal Corporation, was May 10, 2007; and the date of the filing of its first Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was October 19, 2007.

2. A petition for reorganization under Chapter 11 of 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”) for the Corporation having been filed on July 9, 2012 in the United States Bankruptcy Court for the Southern District of New York, In re: Patriot Coal Corporation, et al., Case No. 12-51502-659, and under the Debtors’ [~~Third~~Fourth Amended] Joint Plan of Reorganization dated [~~November 4~~December 15], 2013, as the same may be amended or modified, from time to time (the “**Plan**”), and inter alia, Sections 1123 and 1129 of the Bankruptcy Code, 11 U.S.C. §§ 1123 and 1129, pursuant to the order of the United States Bankruptcy Court for the Eastern District of Missouri dated December [~~17~~], 2013, the text of the Corporation’s Certificate of Incorporation, as amended, is amended and restated to read as set forth in EXHIBIT A (the “Amended and Restated Certificate of Incorporation”) attached hereto.

3. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 245 and 303 of the General Corporation Law of the State of Delaware.

4. This Amended and Restated Certificate of Incorporation will become effective at [~~8~~]:00 a.m., Eastern Time, on [~~December 18~~], 2013.

EXHIBIT A

FIRST: The name of the corporation is Patriot Coal Corporation.

SECOND: The registered office and registered agent of the Corporation in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

THIRD: The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: (1) The total number of shares of all classes of stock that the Corporation shall have the authority to issue is [~~100,000,000~~] shares, consisting of (i) [●] shares of Class A Common Stock, par value \$0.00001 per share (the “**Class A Common Stock**”)-~~and~~, (ii) [●] shares of Class B Common Stock, par value \$0.00001 per share (the “**Class B Common Stock**”) and (iii) [●] shares of Class C Common Stock, par value \$0.00001 per share (the “**Class C Common Stock**”) and together with the Class A Common Stock and the Class B Common Stock, the “**Common Stock**”). The number of authorized shares of any of the Common Stock may be increased or decreased (but not below (y) the number of shares thereof then outstanding, plus (z) the number of shares of Common Stock issuable upon the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Common Stock) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware (or any successor provision thereto), and no vote of the holders of any of the Common Stock voting separately as a class shall be required therefor.

(2) Holders of Class A Common Stock or Class B Common Stock, as the case may be, shall be entitled to vote as a separate class on any amendment or modification of any rights or privileges (by merger, reclassification or otherwise) of the Class A Common Stock or Class B Common Stock, as the case may be, that does not equally affect the Class B Common Stock or Class A Common Stock, as the case may be.

(3) (a) Each holder of Class A Common Stock, as such, shall be entitled to one (1) vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, ~~and each~~. Each holder of Class B Common Stock, as such, shall be entitled to one hundred (100) votes for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as required by applicable law, shares of Class C Common Stock shall have no voting power and the holders thereof, as such, shall not be entitled to vote on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

(b) Subject to applicable law, dividends may be declared and paid on the Common Stock at such times and in such amounts as the board of directors of the Corporation (the “**Board of Directors**”) in its discretion shall determine.

(c) Upon the dissolution, liquidation or winding up of the Corporation, the holders of the Common Stock, as such, shall be entitled to receive, after payment or provision for payment of the debts and other liabilities of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

(d) Except in relation to voting and conversion as set forth in this Article FOURTH, the rights of holders of Class A Common Stock ~~and~~, the rights of holders of Class B Common Stock and the rights of holders of Class C Common Stock shall be identical in all respects, including, without limitation, with respect to dividends and rights with respect to any Distribution; *provided, however*, that in the event a Distribution is paid in the form of ~~Class A Common Stock or Class B~~ a specific class of Common Stock (or such Common Stock Equivalents), then holders of ~~Class A~~ each other class of Common Stock shall receive ~~Class A~~ such Distribution in the form of shares of the class of Common Stock that they hold (or such Common Stock Equivalents, as the case may be) ~~and holders of Class B Common Stock shall receive Class B Common Stock (or such Common Stock Equivalents, as the case may be).~~

(e) If the Corporation in any manner subdivides or combines the outstanding shares of Class A Common Stock ~~or~~, Class B Common Stock or Class C Common Stock, the outstanding shares of each of the other such ~~class~~ classes will be subdivided or combined in the same proportion and manner.

(f) Each one (1) share of Class B Common Stock shall automatically, without any further action, convert into one (1) fully paid and non-assessable share of Class A Common Stock (i) upon the Transfer of such share from the Qualified Voting Trust to a Person that is not a Qualified Voting Trust, (ii) upon the consummation of an IPO, (iii) immediately prior to any consolidation, merger, combination, recapitalization, reorganization, reclassification or other event as a result of which the shares of Class A Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, and the holders of Class A Common Stock and Class B Common Stock shall as a result of such conversion receive the same kind and amount of stock, security, cash and/or other property distributed in such transaction, or (iv) if Warrants representing ~~two-third~~ 55% or more of the total number of shares of Class A Common Stock underlying the Warrants, excluding any Warrants or any other warrants issued in connection with any management compensation, equity incentive or employee benefit plan approved by the Board of Directors, have been exercised in accordance with their terms. Each one (1) share of Class C Common Stock shall automatically, without any further action, convert into one (1) fully paid and non-assessable share of Class A Common Stock upon any sale or transfer thereof to any Person that is not a Backstop Party or an affiliate of a Backstop Party. The Corporation may, from time to time, establish such policies and procedures relating to the conversion of the Class B Common Stock and Class C Common Stock to Class A Common Stock and the general administration of this ~~dual~~ multiple class stock structure, solely in accordance with the provisions of this Amended and Restated Certificate of Incorporation, and may from time to time request that holders of shares of Class B Common Stock and Class C Common Stock furnish such certifications, affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock or Class C Common Stock, as applicable, and to confirm that a conversion to Class A Common Stock has not occurred. A determination by the

Secretary of the Corporation that a Transfer results in a conversion to Class A Common Stock shall be conclusive and binding. Upon conversion of Class B Common Stock or Class C Common Stock to Class A Common Stock, such converted shares of Class B Common Stock or Class C Common Stock, as applicable, shall be deemed to be no longer outstanding and shall resume the status of authorized and unissued shares in accordance with Section 243(b) of the General Corporation Law of the State of Delaware.

(g) ~~{At any time on or after the earlier of (i) the dissolution, liquidation or winding up of the Qualified Voting Trust, including, but not limited to, any termination thereof pursuant to Section 3.1(c) of the Voting Trust Agreement, or (ii) [●], 2018, a majority of the disinterested members of the Board of Directors shall have the right, subject to, to cause each share of Class B Common Stock held by any holder to automatically convert into one (1) fully paid and non-assessable share of Class A Common Stock.}~~

(h) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock and Class C Common Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock and Class C Common Stock into shares of Class A Common Stock.

(4) Notwithstanding any other provision contained herein to the contrary, no Transfer of Common Stock or Common Stock Equivalents to a Third Party shall be permitted, and any such Transfer shall be null and void ab initio, if, after giving effect to such Transfer, the Corporation would be required to become a reporting company under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”); provided, however, that such restriction shall no longer be applicable upon the earlier of (i) the Corporation’s registration of any class of its equity securities within the meaning of the Exchange Act and (ii) the Corporation’s listing of any class of its securities on a national securities exchange.

(5) Prior to issuing any equity securities of the Corporation or any of its subsidiaries (collectively, “**Additional Stock**”) to any Person or Persons, the Corporation shall first make an offering of such Additional Stock to ~~{the such Backstop Parties}~~ or their affiliates, in each case, that are Qualified Holders in accordance with the following provisions:

(a) At least 20 calendar days prior to issuing any Additional Stock, the Corporation shall deliver a notice to each Backstop Party, which notice shall state that (i) the Corporation intends to make a proposal pursuant this Section (5) to each Qualified Holder and (ii) only Qualified Holders who return a written certification (in a form to be provided by the Corporation together with such notice) of their status as Qualified Holders to the Corporation, within 10 calendar days from the date such notice is sent, will be eligible to receive such proposal (each Qualified Holder of Common Stock that returns such written certification to the Corporation within the required time period, an “**Eligible Holder**”). For purposes of this Article FOURTH, Section 5, notice to a Backstop Party provided in accordance with the immediately preceding sentence shall be deemed to constitute notice to such Backstop Party’s affiliates, and no separate notice by the Corporation to such affiliates shall be required. At least 10 calendar days prior to selling any Additional Stock, the Corporation shall deliver a notice (a “**Notice of Preemptive Rights**”) to each Eligible Holder stating (i) its bona fide

intention to offer such Additional Stock, (ii) the number of such shares or units of Additional Stock to be offered and (iii) the price and terms upon which it proposes to offer such Additional Stock.

(b) Within 10 calendar days after receipt of any Notice of Preemptive Rights, each Eligible Holder may elect to purchase or obtain (each such electing Eligible Holder, a “**Subscribing Holder**”), at the price and on the terms specified in the Notice of Preemptive Rights, up to that number of shares or units of such Additional Stock which is equal to (i) the total number of shares or units of such Additional Stock to be offered, as specified in the Notice of Preemptive Rights, multiplied by (ii) a fraction, the numerator of which is the number of shares of Common Stock, after giving effect to the exercise, conversion or exchange of Common Stock Equivalents, in each case, held by such Subscribing Holder and the denominator of which is the total number of shares of Common Stock then outstanding after giving effect to the exercise, conversion or exchange of all Common Stock Equivalents then outstanding (other than such Common Stock Equivalents issued pursuant to any management compensation, equity incentive or employee benefit plan approved by the Board of Directors) (a “**Pro Rata Share**”). Notwithstanding the foregoing, in the event that the equity securities of the Company or its subsidiaries that entitle Eligible Holders to exercise preemptive rights are voting securities, each Subscribing Holder may, at its option, elect to receive in lieu of its Pro Rata Share of Additional Stock equity securities of the Corporation or the relevant subsidiary thereof that (x) have no voting rights, (y) mandatorily and automatically convert into shares of Additional Stock upon any sale or transfer thereof to any Person that is not a Backstop Party or an affiliate of a Backstop Party and (z) are sold at a price that is identical to, and otherwise have terms that are in all respects identical to, the price and terms of the Additional Stock (the “**Alternate Additional Stock**”).

(c) If all shares of Additional Stock which an Eligible Holder is entitled to obtain pursuant to Section (5)(b) are not elected to be obtained as provided, then the Corporation may, during the 60 day period following the expiration of the period provided in Section (5)(b), offer the remaining unsubscribed portion of such Additional Stock to any Person or Persons (including any Subscribing Holder, whether or not such Subscribing Holder has previously elected to purchase its entire Pro Rata Share) at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice of Preemptive Rights. If the Corporation does not enter into an agreement for the sale of the Additional Stock within such period, or if such agreement is not consummated within 30 days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Additional Stock shall not be sold unless first reoffered to the holders of Common Stock in accordance herewith. Subject to Section (5)(e), the Corporation may not make any sale of Additional Stock unless, prior to or simultaneously therewith, all Subscribing Holders obtain their Pro Rata Share on the terms set forth in the applicable Notice of Preemptive Rights. For purposes of this Section (5)(c), references to Additional Stock shall be deemed to include any Alternate Additional Stock purchased by a Subscribing Holder pursuant to an election made in accordance with Section (5)(b).

(d) The preemptive rights in this Section (5) shall not be transferrable and as to any Backstop Party and its affiliates that is a Qualified Holder, collectively, shall terminate

and be of no further force and effect at such time as such Backstop Party and ~~its~~such affiliates, collectively, no longer hold any Common Stock or Common Stock Equivalents.

(e) The preemptive rights in this Section (5) shall not apply to the offer or sale of Excluded Stock and shall terminate, such that this Section (5) shall have no further force or effect, immediately following an IPO.

(f) Notwithstanding any of the foregoing to the contrary, the Corporation shall have no obligation to comply with any provision of this Section (5) if, in the reasonable opinion of counsel to the Corporation, such compliance would violate the Securities Act of 1933, as amended (the “**Securities Act**”) or the Exchange Act, or the rules and regulations promulgated thereunder.

FIFTH: The Board of Directors shall be authorized to make, amend, alter, change, add to or repeal the By-Laws of the Corporation in any manner not inconsistent with the laws of the State of Delaware, subject to the power of the stockholders to amend, alter, change, add to or repeal the By-Laws made by the Board of Directors.

SIXTH: This Charter may not be altered, amended or repealed, in whole or in part, nor shall a new Charter be adopted by the stockholders without obtaining the approval of at least ~~66-2/3~~55 percent of the voting power of all of the then issued and outstanding shares of the Corporation’s Common Stock, voting together as a single class.

SEVENTH: To the fullest extent permitted by the laws of the State of Delaware:

(1) The Corporation shall indemnify any person (and such person’s heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. The Corporation shall promptly pay expenses incurred by any person described in the first sentence of this Section (1) in defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation. Notwithstanding the preceding sentences, the Corporation shall be required to indemnify a person described in such sentences who was not a director or officer of the Corporation as of December ~~{18}~~, 2013, only to the extent that the events precipitating any action, suit or proceeding occurred after July 9, 2012, and the Corporation shall be required to indemnify a person described in such sentences in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board of Directors of the Corporation.

(2) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents, or with respect to an event occurring on or before July 9, 2012 to such of the former directors or officers, of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the laws of the State of Delaware; *provided that*, for each such former director or officer or current or former employee or agent, the Corporation may indemnify such persons only to the extent of available coverage under an applicable insurance policy (and payable from the proceeds of such insurance policy), unless otherwise required by the laws of the State of Delaware.

(3) The Corporation may purchase and maintain insurance on behalf of any person described in Section (1) or Section (2) of this Article SEVENTH against any liability asserted against such person, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article SEVENTH or otherwise.

(4) The provisions of this Article SEVENTH shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article SEVENTH shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article SEVENTH and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article SEVENTH shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article SEVENTH shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, this Amended and Restated Certificate of Incorporation, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office.

(5) For purposes of this Article SEVENTH, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

(6) A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

EIGHTH: (1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors.

(2) The number of directors which shall constitute the Board of Directors shall initially be five (5) and, thereafter, shall be fixed exclusively by one or more resolutions adopted from time to time by the affirmative vote of a majority of the Board of Directors in accordance with the By-Laws of the Corporation. ~~¶~~The following individuals are hereby appointed as the directors of the Corporation to hold office until the next annual meeting of stockholders or until their successors are elected and qualified: ~~¶~~Timothy J. Bernlohr, Charles H. Cremens, Eugene I. Davis, Bennett K. Hatfield and Daniel D. Smith.

(3) Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of the directors of the Corporation need not be by written ballot. There shall be no cumulative voting in the election of directors.

NINTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated by the Board of Directors or in the By-Laws of the Corporation.

TENTH: The shares of the Corporation shall be uncertificated shares, provided that the Board of Directors may provide by resolution or resolutions that some or all classes or series of the Corporation's stock shall be certificated shares.

ELEVENTH: To the extent required by Section 1123(a)(6) of the Bankruptcy Code, the Corporation shall not issue nonvoting equity securities. This provision shall have no further force and effect beyond that required by Section 1123(a)(6) of the Bankruptcy Code and is applicable only for so long as such Section is in effect and applicable to the Corporation.

TWELFTH: The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

THIRTEENTH: The following terms, where capitalized in this Amended and Restated Certificate, shall have the meanings ascribed to them in this Article THIRTEENTH:

**“Backstop Party”** means any of ~~[List Backstop Parties] and any of their respective affiliates;~~ the entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees set forth on the signature pages to that certain Backstop Rights Purchase Agreement, dated November 4, 2013, and any person executing a joinder to the Backstop Rights Purchase Agreement in substantially the form attached thereto as Exhibit A.

**“Distribution”** means (i) any dividend or distribution of cash, property or shares of the Corporation's capital stock; and (ii) any distribution following or in connection with any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary.



“**Common Stock Equivalents**” means any warrants, rights call options or other securities exchangeable or exercisable for, or convertible into, Common Stock.

“**Effective Date**” means the Business Day selected by the Corporation that is (i) on or after the date that the Bankruptcy Court enters an order confirming the Plan and on which date no stay of such order is in effect and (ii) on or after the date on which the conditions to effectiveness of the Plan specified in section 12.1 of the Plan have been either satisfied or waived as set forth therein.

“**Excluded Stock**” means (i) Additional Stock issued or issuable directly in consideration for the acquisition of another business from one or more unaffiliated third parties approved by the Board of Directors by the Corporation by merger, purchase of all or substantially all of the assets or other reorganization, (ii) Additional Stock sold by the Corporation in an IPO, (iii) Additional Stock issued or issuable in connection with any debt financing from or with one or more unaffiliated third parties approved by the Board of Directors, (iv) Additional Stock issued or issuable pursuant to any management compensation, equity incentive or employee benefit plan approved by the Board of Directors, (v) shares of Common Stock issued or issuable pursuant to Common Stock Equivalents outstanding as of the date hereof, (vi) shares of Common Stock issuable upon the conversion of shares of Class B Common Stock into Class A Common Stock, (vii) shares of Common Stock issued by the Corporation as a stock dividend payable in shares of Common Stock, or upon any subdivision or split of the outstanding shares of Common Stock or (viii) Additional Stock issued to the Corporation or one or more of its subsidiaries.

“**IPO**” means the Corporation’s bona fide initial public offering of any class of its equity securities pursuant to an effective registration statement filed with the Securities and Exchange Commission under the Securities Act.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or any agency or political subdivision thereof.

“**Qualified Holder**” means a holder of Common Stock or Common Stock Equivalents who is [a Backstop Party or an affiliate of](#) a Backstop Party and is (i) a “qualified institutional buyer” as defined in Rule 144A under the Securities Act or (ii) an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act.

“**Qualified Voting Trust**” means that certain voting trust created by the Voting Trust Agreement.

“**Third Party**” means any Person which is not deemed to be an owner of record of Common Stock or Common Stock Equivalents pursuant to Rule 12g5-1 under the Exchange Act.

“**Transfer**” means to sell, hypothecate, give, convey, bequeath, transfer, assign, pledge or in any other way whatsoever encumber or dispose.

“**Voting Trust Agreement**” means the voting trust agreement, made as of December  
[                    ], 2013, by and ~~among~~between the Corporation and Torque Point  
~~Advisors, PCX~~ LLC.

“**Warrants**” means the warrants to acquire New Class A Common Stock issued on the  
Effective Date.

\* \* \*

IN WITNESS WHEREOF, the undersigned has executed this Second Amended and Restated Certificate of Incorporation this 18th day of December, 2013.

PATRIOT COAL CORPORATION

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

# **Exhibit 3**

**SECOND AMENDED AND RESTATED  
BY-LAWS  
OF  
PATRIOT COAL CORPORATION  
(As adopted and in effect on December 18, 2013)**

ARTICLE I

MEETING OF STOCKHOLDERS

Section 1.1. Place of Meeting. Meetings of the stockholders of the Corporation shall be held at such place either within or without the State of Delaware as the Board of Directors may determine.

Section 1.2. Annual Meetings. (A) Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”), an annual meeting of stockholders, commencing with the year 2014, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. Stockholders may, unless the Corporation’s Second Amended and Restated Certificate of Incorporation (as amended and restated from time to time, the “**Charter**”) otherwise provides, act by written consent to elect directors; *provided, however*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 1.3. Special Meetings. Special meetings of stockholders may be called by the Chief Executive Officer, the Chairman of the Board or by the board of directors of the Corporation (the “**Board of Directors**”) pursuant to a resolution approved by a majority of the then authorized number of directors and shall be called by the Secretary at the request in writing of holders of record of a majority of the outstanding voting power of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 1.4. Notice of Meetings and Adjourned Meetings; Waivers of Notice. (A) Except as otherwise required by law, whenever stockholders are required or permitted to take any action at a meeting of stockholders, whether an annual meeting or a special meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 40 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these By-laws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at

the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(B) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.5. Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 1.5, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice and delivery procedures set forth in this Section 1.5. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.5. Such stockholder's notice shall set forth

(A) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is or would be required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (and such person's written consent to being named as a nominee and to serving as a director if elected); and

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination.

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require, including the completion of any questionnaires, to determine the eligibility of such proposed nominee to serve as a director of the Corporation and the impact that such service would have on the ability of the Corporation to satisfy the requirements of laws, rules, regulations and listing standards applicable to the Corporation or its directors.

Section 1.6. Notice of Business. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 1.6, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.6. For business to be properly brought before a stockholder meeting by a stockholder, the business must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.6. A stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the meeting

(A) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend the By-laws of the Corporation, the text of the proposed amendment), and the reasons for conducting such business at the meeting and any material interest in such business of such stockholder;

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business.

The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed in accordance with the procedures set forth in these Section 1.5 and Section 1.6, and if any proposed nomination or business is not in compliance with these Sections as applicable, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of these Section 1.5 and Section 1.6, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted,

notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of these Section 1.5 and Section 1.6, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 1.7. Quorum. At any meeting of stockholders, the holders of record, present in person or by proxy, of a majority of the voting power of the Corporation's issued and outstanding capital stock and entitled to vote thereat shall constitute a quorum for the transaction of business, except as otherwise provided by applicable law. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum, any officer entitled to preside at or to act as secretary of the meeting shall have the power to adjourn the meeting from time to time until a quorum is present.

Section 1.8. Voting. Except as otherwise provided by applicable law, these By-laws or by the Charter, (a) all matters submitted to a meeting of stockholders, other than the election of directors, shall be decided by vote of the holders of record of a majority of the voting power of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the matter, (b) directors shall be elected by a plurality of the votes of the shares of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the election of directors and (c) each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three (3) years from its date, unless said proxy provides for a longer period.

Section 1.9 Action by Consent. (A) Unless otherwise provided in the Charter, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to



take the action were delivered to the Corporation as provided in subparagraph (B) of this Section 1.9.

(B) Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section 1.9 and by applicable law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 1.10. General. (A) Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these By-Laws. Except as otherwise provided by law, the Charter or these By-Laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in these By-Laws and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

(B) For purposes of these By-Laws, no adjournment nor notice of adjournment of any meeting shall be deemed to constitute a new notice of such meeting for purposes of this Article I, and in order for any notification required to be delivered by a stockholder pursuant to this Article I to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting. Subject to applicable law, the Board of Directors may elect to postpone any previously scheduled meeting of stockholders.

Section 1.11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible

electronic network, and the information required to access such list shall be provided with the notice of the meeting.

## ARTICLE II

### DIRECTORS

Section 2.1. Number, Election and Removal of Directors. The number of Directors that shall constitute the Board of Directors shall initially be five (5). Thereafter, within the limits specified in the Charter, the number of Directors shall be determined by the Board of Directors or by the stockholders. The Directors shall be elected by the stockholders at their annual meeting in the manner set forth in the Charter, except as provided in Section 1.2 and Section 2.9 herein, and each director so elected shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors may be removed with or without cause, at any time by the affirmative vote of at least 55 percent in voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting as a single class and vacancies thus created may be filled in accordance with Section 2.9 herein.

Section 2.2. Regular Meetings. After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

Section 2.3 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President and shall be called by the Chairman of the Board, President or Secretary on the written request of three directors. Notice of special meetings of the Board of Directors shall be given to each director at least three days before the date of the meeting in such manner as is determined by the Board of Directors. A meeting of the Board of Directors may be held without notice immediately after the annual meeting of the stockholders.

Section 2.4. Quorum. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board of Directors, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until such a quorum is present. Except as otherwise provided by applicable law, the Charter, these By-Laws or any contract or agreement to which the Corporation is a party, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

Section 2.5. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the entire Board, designate one or more committees, including without limitation an Executive Committee, to have and exercise such power and authority as the Board of Directors shall specify. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member.

Section 2.6. Actions without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or a committee thereof may be taken without a meeting if all the members of the board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the board or of such committee. Such consent shall be treated for all purposes as the act of the board or of such committee, as the case may be.

Section 2.7. Participation in Meetings by Conference Telephone. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of such board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other or by any other means permitted by law. Such participation shall constitute presence in person at such meeting.

Section 2.8. Resignation. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective

Section 2.9. Vacancies. Unless otherwise required by law or provided in the Charter, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all the stockholders having the right to vote as a single class may be filled by (i) a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or (ii) by the affirmative vote or written consent of the holders of a majority of voting power of the outstanding capital stock of the Corporation then entitled to vote at any election of directors. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Charter, vacancies and newly created directorships of such class or classes or series may be filled by a majority of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with the law. Unless otherwise provided in the Charter, when one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies.

Section 2.10. Compensation. In the discretion of the Board of Directors, each director may be paid such fees for his or her services as director (including as a member of one or more committees of the Board of Directors) and be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties as director as the board of directors from time to time may determine. Nothing contained in this Section 2.10 shall be construed to preclude any director from serving the Corporation in any other capacity and receiving reasonable compensation therefor.

Section 2.11. Reliance Upon Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers, employees, agents, committees, or by any other person as to matters the member reasonably believes are within such other person's or persons' professional or expert competence, and who has been selected with reasonable care by or on behalf of the Corporation.

### ARTICLE III

#### CHAIRMAN OF THE BOARD AND OFFICERS

Section 3.1. Chairman of the Board. The Board of Directors shall elect from time to time one of its own members as the Chairman of the Board of Directors (the "Chairman"). The Chairman may also be the Chief Executive Officer or other officer of the Corporation. The Chairman shall preside at the meetings of the Board and may call meetings of the Board and any committee thereof, whenever he deems necessary, and he shall call to order and preside at all meetings of the stockholders of the Corporation. In addition, he shall have such other powers and duties as the Board shall designate from time to time.

Section 3.2. Principal Officers. The principal officers of the Corporation shall consist of a Chief Executive Officer, a President, one or more Executive Vice Presidents, a Secretary, a Treasurer and such other additional officers with such titles (including, without limitation, a Chief Operating Officer and a Chief Financial Officer) as the Board of Directors shall from time to time determine, all of whom shall be elected by and shall serve at the pleasure of the Board of Directors. Subject to applicable law, an officer may hold more than one office, if so elected by the Board of Directors. Such officers shall have the usual powers and shall perform all the usual duties incident to their respective offices. Such officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors. All officers shall be subject to the supervision and direction of the Board of Directors. The Board of Directors may from time to time elect, or the Chief Executive Officer or President may appoint, such other officers (including one or more Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers, and Assistant Controllers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as may be prescribed by the Board of Directors or by the Chief Executive Officer or President, as the case may be. The officers of the Corporation need not be stockholders of the Corporation nor need such officers be directors of the Corporation.

Section 3.3. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after the annual meeting of stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time as provided in Section 3.4.

Section 3.4. Removal. Any officer elected, or agent appointed, by the Board of Directors may be removed by resolution adopted by the Board of Directors whenever, in their judgment, the best interests of the Corporation would be served thereby. Any officer or agent appointed by the Chief Executive Officer or the President may be removed by the Chief Executive Officer or the President, as the case may be, whenever, in such officer's judgment, the best interests of the Corporation would be served thereby. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed; *provided* that no elected officer shall have any contractual rights against the Corporation for compensation beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

Section 3.5. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors. Any vacancy in an office appointed by the Chief Executive Officer or the President because of death, resignation, or removal may be filled by the Chief Executive Officer or the President.

#### ARTICLE IV

#### INDEMNIFICATION

Section 4.1. Mandatory Indemnification. The Corporation shall indemnify any person (and such person's heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. The Corporation shall promptly pay expenses incurred by any person described in this Section 4.1 in defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation. Notwithstanding the preceding sentences, the Corporation shall be required to indemnify a person described in such sentences who was not a director or officer of the Corporation as of December 18, 2013 only to the extent that the events precipitating any action, suit or proceeding occurred after July 9, 2012, and the Corporation shall be required to indemnify a person described in such sentences in connection with any action, suit or proceeding (or part thereof) commenced by such person

only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board of Directors of the Corporation.

Section 4.2. Permissive Indemnification. The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents, or with respect to an event occurring on or before July 9, 2012 to such of the former directors or officers, of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the laws of the State of Delaware; *provided* that, for each such former director or officer or current or former employee or agent, the Corporation may indemnify such persons only to the extent of available coverage under an applicable insurance policy (and payable from the proceeds of such insurance policy), unless otherwise required by the laws of the State of Delaware.

Section 4.3. General. The provisions of this Article IV shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article IV shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article IV and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article IV shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article IV shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, these By-laws, the Charter, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office. For purposes of this Article IV references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

## ARTICLE V

### GENERAL PROVISIONS

Section 5.1. Fixing the Record Date. (A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for

determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided* that the Board of Directors may fix a new record date for the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by Delaware Law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by Delaware Law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(C) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.2. Dividends. Subject to limitations contained in applicable law and the Charter, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 5.3. Notices. Whenever any statute, the Charter or these By-Laws require notice to be given to any Director or stockholder, such notice may be given in writing by mail, addressed to such Director or stockholder at his address as it appears on the records of the Corporation, with postage thereon prepaid. Such notice shall be deemed to have been given when it is deposited in the United States mail. Notice to Directors may also be given by telefax or e-mail.

Section 5.4. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board of Directors.

Section 5.5. Amendment. Except as otherwise provided in the Charter, these By-Laws may be adopted, amended or repealed by resolution of the Board of Directors or by vote of 55 percent of the voting power of the stock outstanding and entitled to vote, voting as a single class.



## **Comparison**

**SECOND AMENDED AND RESTATED  
BY-LAWS  
OF  
PATRIOT COAL CORPORATION  
(As adopted and in effect on December 18, 2013)**

ARTICLE I

MEETING OF STOCKHOLDERS

Section 1.1. Place of Meeting. Meetings of the stockholders of the Corporation shall be held at such place either within or without the State of Delaware as the Board of Directors may determine.

Section 1.2. Annual Meetings. (A) Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”), an annual meeting of stockholders, commencing with the year 2014, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. Stockholders may, unless the Corporation’s Second Amended and Restated Certificate of Incorporation (as amended and restated from time to time, the “Charter”) otherwise provides, act by written consent to elect directors; *provided, however*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 1.3. Special Meetings. Special meetings of stockholders may be called by the Chief Executive Officer, the Chairman of the Board or by the board of directors of the Corporation (the “Board of Directors”) pursuant to a resolution approved by a majority of the then authorized number of directors and shall be called by the Secretary at the request in writing of holders of record of a majority of the outstanding voting power of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 1.4. Notice of Meetings and Adjourned Meetings; Waivers of Notice. (A) Except as otherwise required by law, whenever stockholders are required or permitted to take any action at a meeting of stockholders, whether an annual meeting or a special meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 40 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these By-laws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are

announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(B) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.5. Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 1.5, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice and delivery procedures set forth in this Section 1.5. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.5. Such stockholder's notice shall set forth

(A) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is or would be required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (and such person's written consent to being named as a nominee and to serving as a director if elected); and

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the

Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination.

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require, including the completion of any questionnaires, to determine the eligibility of such proposed nominee to serve as a director of the Corporation and the impact that such service would have on the ability of the Corporation to satisfy the requirements of laws, rules, regulations and listing standards applicable to the Corporation or its directors.

Section 1.6. Notice of Business. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 1.6, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.6. For business to be properly brought before a stockholder meeting by a stockholder, the business must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.6. A stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the meeting

(A) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend the By-laws of the Corporation, the text of the proposed amendment), and the reasons for conducting such business at the meeting and any material interest in such business of such stockholder;

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business.

The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed in accordance with the procedures set forth in these Section 1.5 and Section 1.6, and if any proposed nomination or business is not in compliance with these Sections as applicable, to

declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of these Section 1.5 and Section 1.6, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of these Section 1.5 and Section 1.6, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 1.7. Quorum. At any meeting of stockholders, the holders of record, present in person or by proxy, of a majority of the voting power of the Corporation's issued and outstanding capital stock and entitled to vote thereat shall constitute a quorum for the transaction of business, except as otherwise provided by applicable law. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum, any officer entitled to preside at or to act as secretary of the meeting shall have the power to adjourn the meeting from time to time until a quorum is present.

Section 1.8. Voting. Except as otherwise provided by applicable law, these By-laws or by the Charter, (a) all matters submitted to a meeting of stockholders, other than the election of directors, shall be decided by vote of the holders of record of a majority of the voting power of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the matter, (b) directors shall be elected by a plurality of the votes of the shares of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the election of directors and (c) each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three (3) years from its date, unless said proxy provides for a longer period.

Section 1.9 Action by Consent. (A) Unless otherwise provided in the Charter, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its

principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in subparagraph (B) of this Section 1.9.

(B) Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section 1.9 and by applicable law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 1.10. General. (A) Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these By-Laws. Except as otherwise provided by law, the Charter or these By-Laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in these By-Laws and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

(B) For purposes of these By-Laws, no adjournment nor notice of adjournment of any meeting shall be deemed to constitute a new notice of such meeting for purposes of this Article I, and in order for any notification required to be delivered by a stockholder pursuant to this Article I to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting. Subject to applicable law, the Board of Directors may elect to postpone any previously scheduled meeting of stockholders.

Section 1.11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation

determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

## ARTICLE II

### DIRECTORS

Section 2.1. Number, Election and Removal of Directors. The number of Directors that shall constitute the Board of Directors shall initially be five (5). Thereafter, within the limits specified in the Charter, the number of Directors shall be determined by the Board of Directors or by the stockholders. The Directors shall be elected by the stockholders at their annual meeting in the manner set forth in the Charter, except as provided in Section 1.2 and Section 2.9 herein, and each director so elected shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors may be removed with or without cause, at any time by the affirmative vote of at least ~~66~~ 2/3 percent in voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting as a single class and vacancies thus created may be filled in accordance with Section 2.9 herein.

Section 2.2. Regular Meetings. After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

Section 2.3 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President and shall be called by the Chairman of the Board, President or Secretary on the written request of three directors. Notice of special meetings of the Board of Directors shall be given to each director at least three days before the date of the meeting in such manner as is determined by the Board of Directors. A meeting of the Board of Directors may be held without notice immediately after the annual meeting of the stockholders.

Section 2.4. Quorum. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board of Directors, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until such a quorum is present. Except as otherwise provided by applicable law, the Charter, these By-Laws or any contract or agreement to which the Corporation is a party, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

Section 2.5. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the entire Board, designate one or more committees, including

without limitation an Executive Committee, to have and exercise such power and authority as the Board of Directors shall specify. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member.

Section 2.6. Actions without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or a committee thereof may be taken without a meeting if all the members of the board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the board or of such committee. Such consent shall be treated for all purposes as the act of the board or of such committee, as the case may be.

Section 2.7. Participation in Meetings by Conference Telephone. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of such board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other or by any other means permitted by law. Such participation shall constitute presence in person at such meeting.

Section 2.8. Resignation. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective

Section 2.9. Vacancies. Unless otherwise required by law or provided in the Charter, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all the stockholders having the right to vote as a single class may be filled by (i) a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or (ii) by the affirmative vote or written consent of the holders of a majority of voting power of the outstanding capital stock of the Corporation then entitled to vote at any election of directors. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Charter, vacancies and newly created directorships of such class or classes or series may be filled by a majority of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with the law. Unless otherwise provided in the Charter, when one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies.

Section 2.10. Compensation. In the discretion of the Board of Directors, each director may be paid such fees for his or her services as director (including as a member of one or



more committees of the Board of Directors) and be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties as director as the board of directors from time to time may determine. Nothing contained in this Section 2.10 shall be construed to preclude any director from serving the Corporation in any other capacity and receiving reasonable compensation therefor.

Section 2.11. Reliance Upon Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers, employees, agents, committees, or by any other person as to matters the member reasonably believes are within such other person's or persons' professional or expert competence, and who has been selected with reasonable care by or on behalf of the Corporation.

### ARTICLE III

#### CHAIRMAN OF THE BOARD AND OFFICERS

Section 3.1. Chairman of the Board. The Board of Directors shall elect from time to time one of its own members as the Chairman of the Board of Directors (the "Chairman"). The Chairman may also be the Chief Executive Officer or other officer of the Corporation. The Chairman shall preside at the meetings of the Board and may call meetings of the Board and any committee thereof, whenever he deems necessary, and he shall call to order and preside at all meetings of the stockholders of the Corporation. In addition, he shall have such other powers and duties as the Board shall designate from time to time.

Section 3.2. Principal Officers. The principal officers of the Corporation shall consist of a Chief Executive Officer, a President, one or more Executive Vice Presidents, a Secretary, a Treasurer and such other additional officers with such titles (including, without limitation, a Chief Operating Officer and a Chief Financial Officer) as the Board of Directors shall from time to time determine, all of whom shall be elected by and shall serve at the pleasure of the Board of Directors. Subject to applicable law, an officer may hold more than one office, if so elected by the Board of Directors. Such officers shall have the usual powers and shall perform all the usual duties incident to their respective offices. Such officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors. All officers shall be subject to the supervision and direction of the Board of Directors. The Board of Directors may from time to time elect, or the Chief Executive Officer or President may appoint, such other officers (including one or more Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers, and Assistant Controllers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as may be prescribed by the Board of Directors or by the Chief Executive Officer or President, as the case may be. The officers of the Corporation need not be stockholders of the Corporation nor need such officers be directors of the Corporation.

Section 3.3. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors

held after the annual meeting of stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time as provided in Section 3.4.

Section 3.4. Removal. Any officer elected, or agent appointed, by the Board of Directors may be removed by resolution adopted by the Board of Directors whenever, in their judgment, the best interests of the Corporation would be served thereby. Any officer or agent appointed by the Chief Executive Officer or the President may be removed by the Chief Executive Officer or the President, as the case may be, whenever, in such officer's judgment, the best interests of the Corporation would be served thereby. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed; *provided* that no elected officer shall have any contractual rights against the Corporation for compensation beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

Section 3.5. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors. Any vacancy in an office appointed by the Chief Executive Officer or the President because of death, resignation, or removal may be filled by the Chief Executive Officer or the President.

## ARTICLE IV

### INDEMNIFICATION

Section 4.1. Mandatory Indemnification. The Corporation shall indemnify any person (and such person's heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. The Corporation shall promptly pay expenses incurred by any person described in this Section 4.1 in defending any action, suit or proceeding in advance of

the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation. Notwithstanding the preceding sentences, the Corporation shall be required to indemnify a person described in such sentences who was not a director or officer of the Corporation as of December 18, 2013 only to the extent that the events precipitating any action, suit or proceeding occurred after July 9, 2012, and the Corporation shall be required to indemnify a person described in such sentences in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board of Directors of the Corporation.

Section 4.2. Permissive Indemnification. The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents, or with respect to an event occurring on or before July 9, 2012 to such of the former directors or officers, of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the laws of the State of Delaware; *provided* that, for each such former director or officer or current or former employee or agent, the Corporation may indemnify such persons only to the extent of available coverage under an applicable insurance policy (and payable from the proceeds of such insurance policy), unless otherwise required by the laws of the State of Delaware.

Section 4.3. General. The provisions of this Article IV shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article IV shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article IV and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article IV shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article IV shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, these By-laws, the Charter, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office. For purposes of this Article IV references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

## ARTICLE V

### GENERAL PROVISIONS

Section 5.1. Fixing the Record Date. (A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided* that the Board of Directors may fix a new record date for the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by Delaware Law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by Delaware Law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(C) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.2. Dividends. Subject to limitations contained in applicable law and the Charter, the Board of Directors may declare and pay dividends upon the shares of capital stock

of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 5.3. Notices. Whenever any statute, the Charter or these By-Laws require notice to be given to any Director or stockholder, such notice may be given in writing by mail, addressed to such Director or stockholder at his address as it appears on the records of the Corporation, with postage thereon prepaid. Such notice shall be deemed to have been given when it is deposited in the United States mail. Notice to Directors may also be given by telefax or e-mail.

Section 5.4. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board of Directors.

Section 5.5. Amendment. Except as otherwise provided in the Charter, these By-Laws may be adopted, amended or repealed by resolution of the Board of Directors or by vote of ~~66~~ 2/3 percent of the voting power of the stock outstanding and entitled to vote, voting as a single class.

# **Exhibit 5**

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**PATRIOT COAL CORPORATION**

**WARRANT AGREEMENT**

**Dated as of December 18, 2013**

**Warrants to Purchase Class A Common Stock, par value \$0.00001 per share**

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## WARRANT AGREEMENT

THIS WARRANT AGREEMENT (this “Agreement”), dated as of December 18, 2013, is entered into between PATRIOT COAL CORPORATION, a Delaware corporation (the “Company”), and AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC (the “Warrant Agent”). Capitalized terms not otherwise defined herein have the meanings set forth in Article 1.

### WITNESSETH:

WHEREAS, on July 9, 2012, the Company and certain of the Company’s direct and indirect subsidiaries each filed a voluntary petition under chapter 11 of title 11 of the United States Code §§ 101-1330 (as amended, the “Bankruptcy Code”) and, on September 23, 2013 certain of the Company’s other subsidiaries each filed a voluntary chapter petition under the Bankruptcy Code and continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Fourth Amended Joint Plan of Reorganization (as amended or supplemented from time to time, the “Plan”) approved by the United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”), provides that, upon consummation of the Plan, the Company shall issue to participants in the Company’s Warrants Rights Offering (collectively, the “Rights Offering Participants”) and to the “Backstop Parties” in accordance with the terms of the Backstop Rights Purchase Agreement, Warrants of the Company (the “Warrants”) entitling the registered holders thereof to purchase shares of the Class A Common Stock (the “Initial Holders”)

WHEREAS, the Bankruptcy Court confirmed the Plan and the Effective Date under the Plan occurred on the date first written above;

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company in connection with the issuance, transfer, exchange, exercise and replacement of the Warrants and the Warrant Certificates, and in this Agreement wishes to set forth, among other things, the form and provisions of the Warrants and the Warrant Certificates and the terms and conditions on which they may be issued, transferred, exchanged, exercised and replaced; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants, when executed on behalf of the Company and countersigned by or on behalf of the Warrant Agent, as provided herein, the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

### Section 1.1 Definitions. As used herein:

“Accredited Investor Certificate” means a certificate substantially in the form of Exhibit G hereto.

“A.I. Warrant Certificate” means a global Warrant Certificate that bears the Restricted Legend representing Warrants issued and sold to Accredited Investors within the meaning of Rule 501(a) of Regulation D under the Securities Act.

“Additional Common Stock” has the meaning assigned to such term in Section 6.6.

“Adjusted Exercise Price” has the meaning assigned to such term in Section 6.6.

“Agreement” has the meaning assigned to such term in the preamble of this Agreement.

“Backstop Party” has the meaning assigned to such term in the Backstop Rights Purchase Agreement.

“Backstop Rights Purchase Agreement” has the meaning assigned to such term in the Plan.

“Bankruptcy Code” has the meaning assigned to such term in the recitals of this Agreement.

“Below Market Issuance” has the meaning assigned to such term in Section 6.6.

“Bankruptcy Court” has the meaning assigned to such term in the recitals of this Agreement.

“Beneficial Holder” shall mean any person or entity that holds beneficial interests in a Warrant Certificate.

“Board of Directors” means the board of directors of the Company or any committee thereof duly authorized to act on behalf of such board.

“Book-Entry Warrants” has the meaning assigned to such term in Section 2.1.

“Business Day” means any day other than a Saturday, Sunday or any other day on which the New York Stock Exchange is authorized or obligated by law or executive order to close.

“Cash Dividend” has the meaning assigned to such term in Section 6.3(b).

“Cashless Exercise” has the meaning ascribed to such term in Section 3.2(d).

“Class A Common Stock” means the Company’s Class A common stock, par value \$0.00001 per share.

“Common Stock Equivalents” has the meaning assigned to such term in Section 6.6.

“Company” has the meaning assigned to such term in the preamble of this Agreement.

“Current Market Price” has the meaning assigned to such term in Section 6.3(c).

“Daily Closing Price” for any day shall mean the last reported closing price of the applicable security on such day on the applicable quotation system (it being understood that if only one sale occurred on such day, then the Daily Closing Price for such day shall be the price at which such sale occurred).

“Depository” has the meaning assigned to such term in Section 2.2(a)(ii).

“Depository Legend” means the legend set forth in Exhibit C.

“Effective Date” has the meaning assigned to such term in the recitals of this Agreement.

“Ex-Dividend Date” means the first date on which shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

“Exercise Amount” has the meaning assigned to such term in Section 3.2(c).

“Exercise Date” means any date on which a Warrant is exercised in accordance with the terms of the Warrant.

“Exercise Form” has the meaning assigned to such term in Section 3.2(b).

“Exercise Period” means the period commencing on the Effective Date, and expiring at 5:00 p.m., New York City time, on the tenth (10th) anniversary of the Effective Date (such time on such tenth anniversary being referred to as the “Expiration Date”).

“Exercise Price” means a price per share of Class A Common Stock of \$0.01, as adjusted pursuant to Article 6.

“Generally Occurred” shall mean a minimum of 7,500 shares of Class A Common Stock are traded and such sales are reported on the applicable over-the-counter market.

“Holder” has the meaning assigned to such term in Section 3.2(a).

“Initial Holders” has the meaning assigned to such term in the recitals of this Agreement.

“Non-Adjusted Cash Dividend” means any Cash Dividend for which a reduction in the Exercise Price has not been previously made pursuant to Section 6.3(b).

“Non-Cash Dividend” has the meaning assigned to such term in Section 6.3(a).

“Per Share Dividend Amount” means, with respect to any Cash Dividend, the amount of cash to be paid in such dividend per share of Class A Common Stock.

“Person” means an individual, a corporation, a limited liability company, a company, a voluntary association, a general partnership, a limited partnership, a joint venture, an association, a joint-stock company, a trust, an unincorporated organization or a government or any agency, instrumentality or political subdivision thereof.

“Plan” has the meaning assigned to such term in the recitals of this Agreement.

“Quoted Price” of the Class A Common Stock (or other Warrant Share security, as applicable) on any date means (i) if the Class A Common Stock (or other Warrant Share security, as applicable) is then listed and actively traded on a national securities exchange, the last reported closing price of such security on such date (or if such date is not a trading day, on the immediately preceding trading day) on the principal national securities exchange on which such security is listed or traded, or (ii) if the Class A Common Stock (or other Warrant Share security, as applicable) is not then listed on a national securities exchange, the average of the Daily Closing Prices of such security on the principal over-the-counter quotation system on which such security trades (if such security trades on more than one such system, then such principal system shall be as reasonably identified by the Company based on relative volumes traded on all such systems), measured over the immediately preceding ten (10) Business Days (which need not be consecutive) in which trading in such security Generally Occurred (or, if no such trading shall have Generally Occurred in at least ten (10) of the last thirty (30) Business Days prior to the date in question, then the Quoted Price shall be the price reflected in the most recent third party valuation provided to the Company by an investment or valuation firm retained by the Company for purposes of valuing stock awards, which valuation shall be available upon written request upon written proof of ownership in a Warrant, provided that the Company may request that the Holder requesting such valuation execute a confidentiality agreement with respect to such valuation (if such valuation has not already been made public) satisfactory to the Company, and provided further that if such valuation is more than six months old or no such valuation has been provided, the Board of Directors shall determine the Quoted Price in good faith based on the basis of such factors as it reasonably determines to be appropriate).

“Reorganization Event” has the meaning assigned to such term in Section 6.5.

“Registered Holder” has the meaning assigned to such term in Section 2.3(d).

“Restricted Legend” means the legend set forth in Exhibit B.

“Rights Offering Participant” has the meaning assigned to such term in the recitals of this Agreement.

“Rights Offerings Procedures” has the meaning assigned to such term in the Plan.

“Rule 144A Certificate” means a certificate substantially in the form of Exhibit F hereto.

“Rule 144A Warrant Certificate” means a global Warrant Certificate that bears the Restricted Legend representing Warrants issued and sold pursuant to Rule 144A.

“Securities Act” means the Securities Act of 1933, as amended, including any rules or regulations promulgated thereunder.

“Successor Person” means the successor to the Company or the Person acquiring the Company in connection with a Reorganization Event where the Company is not the surviving Person.

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, in its capacity as transfer agent for the Company.

“Warrants” has the meaning assigned to such term in the recitals of this Agreement.

“Warrant Agent” means American Stock Transfer & Trust Company, LLC, in its capacity as the initial Warrant Agent hereunder, but only for so long as it serves in such capacity, and any successor Warrant Agent appointed pursuant to this Agreement.

“Warrant Agent Office” has the meaning assigned to such term in Section 3.1.

“Warrant Certificates” has the meaning assigned to such term in Section 2.2(a).

“Warrant Register” has the meaning assigned to such term in Section 2.3(c).

“Warrants Rights Offering” has the meaning assigned to such term in the Plan.

“Warrant Shares” shall mean the shares of Common Stock issued or issuable upon exercise of a Warrant, including any other securities (including any securities of any Successor Person) purchasable upon exercise of the Warrants as provided in Article 6. A Warrant Share shall initially be equal to one share of Class A Common Stock, as subsequently adjusted pursuant to the terms of the Warrant and this Agreement. For purposes of this Agreement, a Warrant Share shall be deemed to be “outstanding” from and after the Exercise Date thereof until the redemption, repurchase or cancellation of such Warrant Share by the Company.

“Warrant Statements” has the meaning assigned to such term in Section 2.1.

## **ARTICLE 2**

### **ISSUANCE OF WARRANTS; WARRANT CERTIFICATES; BOOK-ENTRY WARRANTS**

**Section 2.1 Issuance of the Warrants.** On the terms and subject to the conditions of this Agreement and in accordance with the terms of the Plan, as of the Effective Date, (i) Warrants to purchase an aggregate of 10,000,000 Warrant Shares will be issued by the Company to the Rights Offering Participants, allocated amongst the Rights Offering Participants based on such Rights Offering Participant’s final allocation of Warrants determined pursuant to the Rights Offering Procedures, rounded up or down to the nearest whole number of underlying Warrant Shares such that no Rights Offering Participant shall receive a Warrant that includes a fraction of a Warrant Share, and (ii) Warrants to purchase an aggregate of 500,000 Warrant Shares will be issued by the Company to the Backstop Parties in accordance with the Backstop Rights Purchase Agreement, such that the Company shall issue to the Initial Holders Warrants entitling the Holders to collectively purchase, in the aggregate, up to 10,500,000 Warrant Shares, as such amounts may be adjusted from time to time pursuant to this Agreement. On such date, the Company will deliver, or cause to be delivered to the Depositary, one or more global Warrant

Certificates evidencing a portion of the Warrants. The remainder of the Warrants shall be issued by book-entry registration on the books of the Warrant Agent (“Book-Entry Warrants”) and shall be evidenced by statements issued by the Warrant Agent from time to time to the Registered Holders of Book-Entry Warrants reflecting such book-entry position (the “Warrant Statements”).

**Section 2.2 Form of Warrant; Execution of Warrant Certificates and Warrant Statements.**

(a) (i) Subject to Section 5.1 and Section 5.2 of this Agreement, the Warrants shall be issued (x) via book-entry registration on the books and records of the Warrant Agent and evidenced by the Warrant Statements, in substantially the form set forth in Exhibit A-1 hereto, and/or (y) by one or more global certificates (the “Warrant Certificates”) in substantially the form set forth in Exhibit A-2, respectively, hereto. The Warrant Statements and the Warrant Certificates shall be dated and may have such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law, including applicable rules and regulations made pursuant to any such law. The Warrant Certificates and the Warrant Statements shall be signed on behalf of the Company by the chairman of the Board of Directors, the chief financial officer, the president, any vice president, any assistant vice president, the treasurer or any assistant treasurer of the Company, and each Warrant Certificate and Warrant Statement may but need not be attested by the Company’s secretary or one of its assistant secretaries. Such signatures may be manual or facsimile signatures of such authorized officers and may be imprinted or otherwise reproduced on the Warrant Certificates and Warrant Statements.

(ii) Except as otherwise provided in paragraph (e), **Error! Reference source not found.** or Section 5.3(b)(i) each Warrant will bear the Restricted Legend.

(1) Each Warrant Certificate will bear the DTC Legend.

(2) Warrants offered and sold in reliance on any exception under the Securities Act other than Rule 144A will be issued, and upon the request of the Company to the Warrant Agent, Warrants offered and sold in reliance on Rule 144A may be issued, in the form of Book-Entry Warrants. Warrants issued and sold to Accredited Investors within the meaning of Rule 501 of Regulation D under the Securities Act shall be issued in the form of A.I. Warrant Certificates.

(b) The Warrant Certificates shall be deposited with the Warrant Agent and registered in the name of Cede & Co., as the nominee of The Depository Trust Company (the “Depository”). Each Warrant Certificate shall represent such number of the outstanding Warrants as specified therein, and each shall provide that it shall represent the aggregate amount of outstanding Warrants from time to time endorsed thereon and that the aggregate amount of outstanding Warrants represented thereby may from time to time be reduced or increased, as appropriate, in accordance with the terms of this Agreement.

(c) (i) If the Company determines (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that a Warrant is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor provision) without the need to satisfy current information or other requirements therein and that the Restricted Legend is no longer necessary or appropriate in order to ensure that subsequent transfers of the Warrant (or a beneficial interest therein) are effected in compliance with the Securities Act, or

(ii) after a Warrant is sold pursuant to an effective registration statement under the Securities Act,

the Company may instruct the Warrant Agent in writing to cancel the Warrant and issue to the Holder thereof (or to its transferee) a new Warrant of like tenor, registered in the name of the Holder thereof (or its transferee), that does not bear the Restricted Legend, and the Warrant Agent will comply with such instruction.

(d) By its acceptance of any Warrant bearing the Restricted Legend (or any beneficial interest in such a Warrant), each Holder thereof and each owner of a beneficial interest therein acknowledges the restrictions on transfer of such Warrant (and any such beneficial interest) set forth in this Agreement and in the Restricted Legend and agrees that it will transfer such Warrant (and any such beneficial interest) only in accordance with the Agreement and such legend.

(e) No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been countersigned by the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence, and the only evidence, that the Warrant Certificate so countersigned has been duly issued hereunder, and such signatures may be manual or facsimile signatures of an authorized representative of the Warrant Agent and may be imprinted or otherwise reproduced on the Warrant Certificates.

(f) In case any officer of the Company who shall have signed any of the Warrant Certificates or Warrant Statements (either manually or by facsimile signature) shall cease to hold such officer position before the Warrant Certificates so signed shall have been countersigned and delivered by the Warrant Agent as provided herein, or before the Warrant Statements so signed shall have been delivered to the Registered Holders thereof, as the case may be, such Warrant Certificates or Warrant Statements may be countersigned (either manually or by facsimile signature, in the case of the Warrant Certificates) and delivered by the Warrant Agent notwithstanding that the person who signed such Warrant Certificates or Warrant Statements has ceased to hold such officer position with the Company, and any Warrant Certificate or Warrant Statement may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Warrant Certificate or Warrant Statement, hold such officer positions with the Company, although at the date of the execution of this Agreement any such person did not hold such officer position.



**Section 2.3 Issuance of Warrant Certificates and Book-Entry Warrants.**

(a) Warrant Certificates evidencing Warrants shall be executed by the Company in the manner set forth in Section 2.2 and delivered to the Warrant Agent. Warrant Certificates evidencing the Warrants to be issued to the Initial Holders under the Plan (other than Warrants to be registered as Book-Entry Warrants) shall be so executed by the Company and delivered to the Warrant Agent upon or promptly following the execution of this Agreement. Upon written order of the Company, the Warrant Agent shall (i) register in the Warrant Register the Book-Entry Warrants and (ii) upon receipt of Warrant Certificates duly executed on behalf of the Company, countersign (either manually or by facsimile signature) each such Warrant Certificate. Such written order of the Company shall specifically state the number of Warrants that are to be issued as Book-Entry Warrants and the number of Warrants that are to be issued as Warrant Certificates including the number of Warrants to be issued as Rule 144A Warrant Certificates and A.I. Warrant Certificates. A Warrant Certificate shall be, and shall remain, subject to the provisions of this Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof.

(b) Subsequent to the original issuance of Warrant Certificates to the Initial Holders, the Warrant Agent shall countersign a Warrant Certificate only if the Warrant Certificate is issued in exchange or substitution for one or more previously countersigned Warrant Certificates or in connection with their transfer as hereinafter provided.

(c) The Warrant Agent shall keep, at an office designated for such purpose, books (the "Warrant Register") in which, subject to such reasonable regulations as it may prescribe, it shall register the Book-Entry Warrants as well as any Warrant Certificates and exchanges and transfers of outstanding Warrants in accordance with the procedures set forth in Section 5.1 and Section 5.2 of this Agreement, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of the Warrants, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Registered Holder in connection with any such exchange or registration of transfer. The Warrant Agent shall have no obligation to effect an exchange or register a transfer unless and until any payments required by the immediately preceding sentence have been made.

(d) Prior to due presentment for registration of transfer or exchange of any Warrant in accordance with the procedures set forth in this Agreement, subject to applicable law, the Company and the Warrant Agent may deem and treat the person in whose name any Warrant is registered upon the Warrant Register (the "Registered Holder" of such Warrant) as the absolute owner of such Warrant (notwithstanding any notation of ownership or other writing on a Warrant Certificate made by anyone other than the Company or the Warrant Agent), for the purpose of any exercise thereof, any distribution to the holder thereof and for all other purposes, and neither the Warrant Agent nor the Company shall be affected by notice to the contrary.

(e) The Company in issuing the Warrants may use "CUSIP" numbers, and the Warrant Agent will use CUSIP numbers in notices as a convenience to Holders, the notice to state that no representation is made as to the correctness of such numbers either as printed on the

Warrants or as contained in any notice to any Holder. The Company will promptly notify the Warrant Agent in writing of any change in the CUSIP numbers.

### **ARTICLE 3 EXERCISE OF WARRANTS**

**Section 3.1 Duration of Warrants.** Subject to the provisions of this Agreement, Warrants may be exercised on any Business Day during the Exercise Period, at the offices of the Warrant Agent at 6201 15th Avenue, Brooklyn, NY 11219, or such other place as the Company or Warrant Agent may notify the Holders from time to time, (the “Warrant Agent Office”). Each Warrant not exercised at or before the Expiration Date shall thereupon become void, and at such time all rights, under this Agreement and the applicable Warrant Certificate, of the Holder of any such Warrant shall automatically cease, with respect to any such Warrant.

#### **Section 3.2 Exercise of Warrants.**

(a) Each Warrant shall entitle (i) in the case of the Book-Entry Warrants, the Registered Holder thereof and (ii) in the case of Warrants held through the book-entry facilities of the Depository or by or through persons that are direct participants in the Depository, the Beneficial Holder thereof (the Registered Holders and the Beneficial Holders referenced in clauses (i) and (ii) above, collectively, the “Holders”), subject to the provisions of such Warrant and of this Agreement, to purchase from the Company the number of Warrant Shares specified in such Warrant, at the Exercise Price.

(b) Subject to the provisions of the Warrants and this Agreement, the Holder of a Warrant may exercise such Holder’s right to purchase the Warrant Shares, in whole or in part, at any time or from time to time (i) in the case of persons who hold Book-Entry Warrants, by providing an exercise form for the election to exercise such Warrant (each, an “Exercise Form”) substantially in the form of Exhibit D hereto, and (ii) in the case of Warrants held through the book-entry facilities of the Depository or by or through persons that are direct participants in the Depository, by providing an Exercise Form (as provided by such Holder’s broker) to its broker, in each case properly completed and executed by the Registered Holder or the Beneficial Holder thereof, as the case may be, together with payment to the Warrant Agent (for the account of the Company), in the case of an exercise for cash pursuant to Section 3.2(c), of the Exercise Amount in accordance with Section 3.2(c).

(c) The payment of the Exercise Price shall be made, at the option of the Holder, (i) in United States dollars by certified or official bank check payable to the Company, or by wire transfer to an account specified in writing by the Company or the Warrant Agent to such Holder, in either case in immediately available funds in an amount equal to the aggregate Exercise Price for such Warrant Shares as specified in the Exercise Form (the “Exercise Amount”) or (ii) by Cashless Exercise in accordance with Section 3.2(d)). The Exercise Amount shall be rounded up to the nearest one cent.

(d) In lieu of paying the Exercise Amount by certified or official bank check or by wire transfer, any Holder may elect to exercise Warrants by authorizing the Company to withhold from issuance a number of Warrant Shares issuable pursuant to the Warrant Certificate

or Warrant Statement evidencing the Warrants being exercised which, when multiplied by the Quoted Price for the trading day immediately prior to the exercise date is equal to the aggregate Exercise Price of all Warrants being exercised, and such withheld Warrant Shares shall thereupon no longer be issuable under the Warrant. Such exercise (a "Cashless Exercise") shall be honored by the Company and the Warrant Agent without payment by the Holder of any Exercise Amount or any cash or other consideration; provided, however, that the Holder shall pay such amounts as may be required pursuant to Section 5.2(c), or such taxes as may be payable upon issuance of Warrant Shares to a Person other than the Holder. The formula for determining the Warrant Shares to be issued in a Cashless Exercise is as follows:

$$X = \frac{((A-B) \times C)}{A}$$

where:

X = the number of Warrant Shares issuable upon exercise of the Warrant pursuant to this subsection (d).

A = the Quoted Price.

B = the Exercise Price.

C = the number of Warrant Shares as to which a Warrant is then being exercised including the withheld Warrant Shares.

If, with respect to any purported or attempted Cashless Exercise of Warrants, the foregoing calculation results in a negative number or zero, then no Warrant Shares shall be issuable via such purported or attempted Cashless Exercise and such Warrants shall be deemed to have not been exercised. A Holder that elects to Cashless Exercise shall provide their Exercise Form in accordance with Section 3.2(b) to the Company (or through their broker to the Company), and the Company shall instruct the Warrant Agent with the calculation of the Warrant Shares to be issued in such Cashless Exercise; provided that the Warrant Agent shall notify the Company of any Exercise Form it receives no later than three (3) Business Days after receipt of any Exercise Form so indicating a Cashless Exercise election.

(e) The date on which payment in full of the Exercise Amount is received by the Warrant Agent (or deemed to be received in the case of a Cashless Exercise) shall, subject to receipt of the Exercise Form, be deemed to be the date on which the Warrant is exercised. The Warrant Agent shall promptly deposit all funds received by it in payment for the exercise of Warrants in an account of the Company maintained with it (or in such other account as may be designated by the Company) and shall advise the Company, by telephone or by facsimile transmission or other form of electronic communication available to both parties, at the end of each day on which a payment for the exercise of Warrants is received of the amount so deposited to its account. The Warrant Agent shall promptly confirm such advice to the Company in writing.

(f) Subject to Article 6, upon surrender of the Exercise Form and payment of the Exercise Amount (or the deemed payment of the Exercise Amount in connection with a Cashless Exercise) in connection with the exercise of Warrants by any Holder:

(i) the Warrant Agent shall requisition from the Transfer Agent for issuance and delivery to or upon the written order of the applicable Holder and in such name or names as the Holder may designate (provided, that the Holder shall pay any and all taxes payable as a result of such designation), a book-entry registration, certificate or certificates in accordance with Section 3.2(m) for the Class A Shares issuable upon the exercise of the Warrants evidenced by the underlying Warrant Certificate or Book-Entry Warrant, as the case may be, less any Warrant Shares withheld in connection with a Cashless Exercise, if applicable; and

(ii) the Company shall, as promptly as practicable and at its expense, and in any event within five (5) Business Days thereafter, cause to be issued to the Holder the aggregate number of whole Warrant Shares (rounded down to the nearest whole share, and deducting any Warrant Shares withheld pursuant to Section 3.2(d)) issuable upon such exercise and deliver to the Holder written confirmation that such Warrant Shares have been duly issued and recorded on the books of the Company as hereinafter provided.

The Warrant Shares so issued shall be registered in the name of the Holder or such other name as shall be designated in the order delivered by the Holder. The book-entry registration, certificate or certificates for such Warrant Shares shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become the holder of record of such Warrant Shares as of the date of surrender of the applicable Exercise Form at the Warrant Agent Office duly executed by the Holder thereof and upon payment of the Exercise Amount or the deemed payment of the Exercise Amount in connection with a Cashless Exercise.

(g) In the event that any Holder makes a partial exercise of the Warrants evidenced by any Warrant Statement or Warrant Certificate, the Warrant Agent shall adjust the Holder's Warrant Statement or issue and deliver a new Warrant Certificate to the applicable Holder to evidence a number of Warrants equal to the number of Warrants represented by the Warrant Statement or Warrant Certificate immediately prior to such partial exercise minus the number of Warrants exercised in such partial exercise. The Warrant Agent is hereby authorized and directed to countersign such new Certificate.

(h) Any exercise of a Warrant pursuant to the terms of this Agreement shall be irrevocable and shall constitute a binding agreement between the Holder and the Company, enforceable in accordance with its terms.

(i) The Warrant Agent shall:

(i) examine the Exercise Forms and all other documents delivered to it by or on behalf of Holders as contemplated hereunder to ascertain whether or not, on their face, such Exercise Forms and any such other documents have been executed and completed in accordance with their terms and the terms hereof;

(ii) where an Exercise Form or any other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the

exercise of the Warrants exists, the Warrant Agent shall endeavor to inform the appropriate parties (including the person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(iii) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between Exercise Forms received and delivery of Warrants to the Warrant Agent's account;

(iv) advise the Company no later than three (3) Business Days after receipt of any Exercise Form, of (a) the receipt of such Exercise Form and the number of Warrants evidenced thereby that have been exercised in accordance with the terms and conditions of this Agreement, (b) the instructions with respect to delivery of the Warrant Shares deliverable upon such exercise, subject to timely receipt from the Depository of the necessary information, and (c) such other information as the Company shall reasonably require; and

(j) subject to Warrant Shares being made available to the Warrant Agent by or on behalf of the Company for delivery to the Depository, liaise with the Depository and endeavor to effect such delivery to the relevant accounts at the Depository in accordance with its customary requirements.

(k) All questions as to the validity, form and sufficiency (including time of receipt) of any exercised Warrant, Exercise Form or the Warrant Certificate evidencing any exercised Warrant will be determined by the Company in its reasonable discretion, which determination shall be final and binding absent any manifest error. The Company reserves the right to reject any and all Exercise Forms not in proper form or for which any corresponding agreement by the Company to exchange would, in the opinion of the Company, be unlawful. Such determination by the Company shall be final and binding on the Holders, absent manifest error. Moreover, the Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in the exercise thereof with regard to any particular exercise of Warrants. Neither the Company nor the Warrant Agent shall be under any duty to give notice to the Holders of the Warrants of any irregularities in any exercise of Warrants, nor shall it incur any liability for the failure to give such notice.

(l) The Company acknowledges that the bank accounts maintained by the Warrant Agent in connection with the services provided under this Agreement will be in its name and that the Warrant Agent may receive investment earnings therefrom. Neither the Company nor the Holders will be entitled to receive interest on any deposits of the Exercise Price.

(m) Book-entry registration records representing Warrant Shares shall bear a Restricted Legend (with all references to Warrants therein replaced by references to Class A Common Stock, and with such changes thereto as the Company may deem appropriate) if (i) the Warrants for which they were issued carried a Restricted Legend or (ii) the Warrant Shares are issued in a transaction exempt from registration under the Securities Act, in each case until and unless the circumstances set forth in Section 2.2(c) apply to such Warrant Shares, and any transfers thereof shall comply with the Restricted Legend.

**Section 3.3 Reservation of Warrant Shares.**

(a) For the purpose of enabling it to satisfy any obligation to issue Warrant Shares upon exercise of Warrants, the Company will at all times through the Expiration Date, reserve and keep available out of its aggregate authorized but unissued or treasury shares of Class A Common Stock, a number of shares equal to the number of Warrant Shares deliverable upon the exercise of all outstanding Warrants. The Company covenants that it will instruct the Transfer Agent to reserve such number of authorized and unissued or treasury shares of Class A Common Stock as shall be required for such purpose. The Company will keep a copy of this Agreement on file with the Transfer Agent. The Warrant Agent is hereby irrevocably authorized to requisition from time to time from the Transfer Agent stock certificates evidencing Warrant Shares issuable upon exercise of outstanding Warrants, and the Company will supply the Transfer Agent with duly executed stock certificates for such purpose.

(b) The Company covenants that all Warrant Shares issued upon exercise of the Warrants will, upon issuance in accordance with the terms of this Agreement, be fully paid and nonassessable and free from all taxes, liens, charges and security interests created by or imposed upon the Company with respect to the issuance thereof. If at any time prior to the Expiration Date, the number and kind of authorized but unissued shares of the Company's capital stock shall not be sufficient to permit exercise in full of the Warrants, the Company will use its commercially reasonable efforts to promptly take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes. The Company agrees that its issuance of Warrants shall constitute full authority to its officers who are charged with the issuance of Warrant Shares to issue Warrant Shares upon the exercise of Warrants. Without limiting the generality of the foregoing, the Company will not increase the stated or par value per share, if any, of the Class A Common Stock above the Exercise Price per share in effect immediately prior to such increase in stated or par value. Before taking any action that would cause an adjustment pursuant to Article 6 reducing any Exercise Price below the then par value (if any) of the Warrant Shares issuable upon exercise of the Warrants, the Company will take any corporate action that may, in the opinion or based on the advice of its counsel (which may be counsel employed by the Company), be necessary in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares at such Exercise Price as so adjusted.

**ARTICLE 4**

**OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANTS**

**Section 4.1 No Rights as Stockholder Conferred by Warrants, Book-Entry Warrants or Warrant Certificates.** No Book-Entry Warrant, Warrant Certificate or Warrant evidenced thereby shall, and nothing contained in this Agreement shall be construed to, entitle the Holder or any beneficial owner thereof to any of the rights of a registered holder or beneficial owner of shares of Class A Common Stock, including, without limitation, the right to receive (as a shareholder or stockholder) any dividends or distributions paid with respect to Class A Common Stock, the right to vote or to consent or to receive notice as a stockholder of the Company with respect to the election of directors of the Company or any other matter with respect to which stockholders of the Company are entitled to vote or consent or receive notice, or any other rights whatsoever as stockholders of the Company.

**Section 4.2 Lost, Mutilated, Stolen or Destroyed Warrant Certificates.** If any of the Warrant Certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, and the Warrant Agent shall countersign and deliver, in exchange and substitution for, and upon cancellation of the mutilated Warrant Certificate, or in lieu of and substitution for the Warrant Certificate lost, stolen or destroyed, a new Warrant Certificate of like tenor and representing an equivalent number of Warrants, but only upon receipt of evidence reasonably satisfactory to the Warrant Agent and the Company of the loss, theft or destruction of such Warrant Certificate and an affidavit and the posting of an indemnity or bond satisfactory to the Warrant Agent and the Company. Applicants for such substitute Warrant Certificates shall also comply with such other reasonable regulations and pay such other reasonable charges as the Warrant Agent may prescribe and as required by Section 8-405 of the Uniform Commercial Code as in effect in the State of New York.

**Section 4.3 Cancellation of Warrants.** If the Company shall purchase or otherwise acquire Warrants, the Warrant Certificates representing such Warrants shall thereupon be delivered to the Warrant Agent, if applicable, and shall be promptly cancelled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in exchange therefor or in lieu thereof. The Warrant Agent shall cause all cancelled Warrant Certificates to be destroyed and shall deliver a certificate of such destruction to the Company.

**Section 4.4 Current Public Information.** With a view to making available to the holders of Warrants the benefits of Rule 144 and Rule 144A promulgated under the Securities Act, the Company covenants that it will (i) use its reasonable best efforts to file in a timely manner all reports and other documents required, if any, to be filed by it under the Exchange Act and the rules and regulations adopted thereunder and (ii) make available information necessary to comply with Rule 144 and Rule 144A, if available with respect to resales of the Warrants under the Securities Act, at all times, all to the extent required from time to time to enable such holders to sell Warrants without registration under the Securities Act within the limitation of the exemptions provided by (x) Rule 144 and Rule 144A promulgated under the Securities Act (if available with respect to resales of the Warrants), as such rules may be amended from time to time.

## **ARTICLE 5 EXCHANGE AND TRANSFER**

### **Section 5.1 Exchange and Transfer.**

(a) *Transfer and Exchange of Warrant Certificates or Beneficial Interests Therein.*

(i) The Warrant Agent shall, upon receipt of all information required to be delivered hereunder, from time to time register the transfer of any outstanding Warrants in the Warrant Register, upon delivery to the Warrant Agent, at its office designated for such purpose, of a properly completed form of assignment substantially in the form of Exhibit E hereto, duly signed by the Registered Holder thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a

participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program and, in the case of a transfer of a Warrant Certificate, upon surrender to the Warrant Agent of such Warrant Certificate, duly endorsed. Upon any such registration of transfer, a new Warrant Certificate shall be issued to the transferee.

(ii) Subject to compliance with Section 5.3(b), if a beneficial interest in a Warrant Certificate is transferred or exchanged for a beneficial interests in another Warrant Certificate, the Warrant Agent will (x) record a decrease in the amount of the Warrant Certificate being transferred or exchanged equal to the amount of such transfer or exchange and (y) record a like increase in the amount of the other Warrant Certificate. Any beneficial interest in one Warrant Certificate that is transferred to a Person who takes delivery in the form of an interest in another Warrant Certificate, or exchanged for an interest in another Warrant Certificate, will, upon transfer or exchange, cease to be an interest in such Warrant Certificate and become an interest in the other Warrant Certificate and, accordingly, will thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Warrant Certificate for as long as it remains such an interest.

(b) *Exchange of a Beneficial Interest in a Warrant Certificate for a Book-Entry Warrant.*

(i) Any Holder of a beneficial interest in a Warrant Certificate may, upon request, exchange such beneficial interest for a Book-Entry Warrant. Upon receipt by the Warrant Agent from the Depository or its nominee of written instructions or such other form of instructions as is customary for the Depository on behalf of any person having a beneficial interest in a Warrant Certificate, the Warrant Agent shall cause, in accordance with the standing instructions and procedures existing between the Depository and Warrant Agent, the number of Warrants represented by the Warrant Certificate to be reduced by the number of Warrants to be represented by the Book-Entry Warrants to be issued in exchange for the beneficial interest of such person in the Warrant Certificate and, following such reduction, the Warrant Agent shall register in the name of the Holder a Book-Entry Warrant and deliver to said Holder a Warrant Statement.

(ii) Book-Entry Warrants issued in exchange for a beneficial interest in a Warrant Certificate pursuant to this Section 5.1(a) shall be registered in such names as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Warrant Agent. The Warrant Agent shall deliver the applicable Warrant Statements to the persons in whose names such Warrants are so registered.

(c) *Transfer and Exchange of Book-Entry Warrants.* When Book-Entry Warrants are presented to the Warrant Agent with a written request (i) to register the transfer of the Book-Entry Warrants; or (ii) to exchange such Book-Entry Warrants for an equal number of Book-Entry Warrants of other authorized denominations, then the Warrant Agent shall register the transfer or make the exchange as requested if its customary requirements for such transactions are met; *provided, however*, that the Warrant Agent has received a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by the Registered Holder thereof or by his attorney, duly authorized in writing.



(d) *Restrictions on Exchange or Transfer of a Book-Entry Warrant for a Beneficial Interest in a Warrant Certificate.* A Book-Entry Warrant may not be exchanged for a beneficial interest in a Warrant Certificate except upon satisfaction of the requirements set forth below. Upon receipt by the Warrant Agent of appropriate instruments of transfer with respect to a Book-Entry Warrant, in form satisfactory to the Warrant Agent, together with written instructions directing the Warrant Agent to make, or to direct the Depository to make, an endorsement on the Warrant Certificate to reflect an increase in the number of Warrants represented by the Warrant Certificate equal to the number of Warrants represented by such Book-Entry Warrant, then the Warrant Agent shall cancel such Book-Entry Warrant on the Warrant Register and cause, or direct the Depository to cause, in accordance with the standing instructions and procedures existing between the Depository and the Warrant Agent, the number of Warrants represented by the Warrant Certificate to be increased accordingly. If no Warrant Certificates are then outstanding, the Company shall issue and the Warrant Agent shall countersign a new Warrant Certificate representing the appropriate number of Warrants.

(e) *Restrictions on Transfer and Exchange of Warrant Certificates.* Notwithstanding any other provisions of this Agreement (other than the provisions set forth in Section 5.1(f)), unless and until it is exchanged in whole for a Book-Entry Warrant, a Warrant Certificate may not be transferred except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(f) *Book-Entry Warrants.* If at any time:

(i) the Depository for the Warrant Certificates notifies the Company that the Depository is unwilling or unable to continue as Depository for the Warrant Certificates and a successor Depository for the Warrant Certificates is not appointed by the Company within ninety (90) days after delivery of such notice; or

(ii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to exclusively cause the issuance of Book-Entry Warrants under this Agreement, then the Warrant Agent, upon written instructions signed by an officer of the Company, shall register Book-Entry Warrants, in an aggregate number equal to the number of Warrants represented by the Warrant Certificates, in exchange for such Warrant Certificates.

(g) *Restrictions on Transfer.* In addition to the transfer restrictions set forth in Section 5.3 below, no Warrants or Warrant Shares shall be sold, exchanged or otherwise transferred in violation of the Securities Act or state securities laws.

(h) *Cancellation of Warrant Certificate.* At such time as all beneficial interests in Warrant Certificates have either been exchanged for Book-Entry Warrants, or been redeemed, repurchased, cancelled or exercised, all Warrant Certificates shall be returned to, or retained and cancelled by, the Warrant Agent, upon written instructions from the Company satisfactory to the Warrant Agent, subject to applicable law.

**Section 5.2 Obligations with Respect to Transfers and Exchanges of Warrants.**

(a) To permit registrations of transfers and exchanges, the Company shall execute Warrant Certificates, if applicable, and the Warrant Agent is hereby authorized, in accordance with the provisions of Section 2.3 and this Article 5, to countersign such Warrant Certificates, either manually or by facsimile signature, if applicable, or register Book-Entry Warrants, if applicable, as required pursuant to the provisions of this Article 5 and for the purpose of any distribution of new Warrant Certificates contemplated by Section 4.2 or additional Warrant Certificates contemplated by Article 6.

(b) All Book-Entry Warrants and Warrant Certificates issued upon any registration of transfer or exchange of Book-Entry Warrants or Warrant Certificates shall be the valid obligations of the Company, entitled to the same benefits under this Agreement as the Book-Entry Warrants or Warrant Certificates surrendered upon such registration of transfer or exchange.

(c) No service charge shall be imposed upon a Holder for any registration, transfer or exchange but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Holder in connection with any such exchange or registration of transfer.

(d) So long as the Depository, or its nominee, is the registered owner of a Warrant Certificate, the Depository or such nominee, as the case may be, will be considered the sole owner or holder of the Warrants represented by such Warrant Certificate for all purposes under this Agreement. Except as provided in Section 5.1(a) and Section 5.1(f) upon the exchange of a beneficial interest in a Warrant Certificate for Book-Entry Warrants, Beneficial Holders will not be entitled to have any Warrants registered in their names, and will under no circumstances be entitled to receive physical delivery of any such Warrants and will not be considered the Registered Holder thereof under the Warrants or this Agreement. Neither the Company nor the Warrant Agent, in its capacity as registrar for such Warrants, will have any responsibility or liability for any aspect of the records relating to beneficial interests in a Warrant Certificate or for maintaining, supervising or reviewing any records relating to such beneficial interests.

(e) Subject to Section 5.1(a), Section 5.1(c) and Section 5.1(d) and this Section 5.2, the Warrant Agent shall, upon receipt of all information required to be delivered hereunder, from time to time register the transfer of any outstanding Warrants in the Warrant Register, upon surrender of Warrant Certificates, if applicable, representing such Warrants at the Warrant Agent Office as set forth in Section 8.2, duly endorsed, and accompanied by a completed form of assignment substantially in the form of Exhibit E attached hereto (or with respect to a Book-Entry Warrant, only such completed form of assignment substantially in the form of Exhibit E attached hereto), duly signed by the Registered Holder thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program. Upon any such registration of transfer, a new Warrant Certificate or a Warrant Statement, as the case may be, shall be issued to the transferee for the Warrants so transferred

(and, if any Warrants are not transferred to the transferee, to the transferor for the Warrants remaining registered in the transferor's name).

**Section 5.3 Restrictions on Transfers.**

(a) The transfer or exchange of any Warrant (or a beneficial interest therein) may only be made in accordance with this Section and Section 5.1 and, in the case of a Warrant Certificate (or a beneficial interest therein), the applicable rules and procedures of the Depository. The Warrant Agent shall refuse to register any requested transfer or exchange that does not comply with the preceding sentence.

(b) Subject to paragraph (i), the transfer or exchange of any Warrant (or a beneficial interest therein) of the type set forth in column A below for a Warrant (or a beneficial interest therein) of the type set forth opposite in column B below may only be made in compliance with the certification requirements (if any) described in the clause of this paragraph set forth opposite in column C below.

A	B	C
Rule 144A Warrant	Rule 144A Warrant	<b>Error! Reference source not found.</b>
Rule 144A Warrant	Book-Entry Warrant	<b>Error! Reference source not found.</b>
Rule 144A Warrant	A.I. Warrant	<b>Error! Reference source not found.</b>
Book-Entry Warrant	Rule 144A Warrant	<b>Error! Reference source not found.</b>

A	B	C
Book-Entry Warrant	Book-Entry Warrant	Error! Reference source not found.
Book-Entry Warrant	A.I. Warrant	Error! Reference source not found.
A.I. Warrant	Rule 144A Warrant	Error! Reference source not found.
A.I. Warrant	Book-Entry Warrant	Error! Reference source not found.

A	B	C
A.I. Warrant	A.I. Warrant	<b>Err or! Ref ere nce sou rce not fou nd.</b>

(i) No certification is required.

(ii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Warrant Agent (x) a duly completed Rule 144A Certificate or (y) a duly completed Accredited Investor Certificate, and/or an Opinion of Counsel and such other certifications and evidence as the Company may reasonably require in order to determine that the proposed transfer or exchange is being made in compliance with the Securities Act and any applicable securities laws of any state of the United States; *provided* that if the requested transfer or exchange is made by the Holder of a Book-Entry Warrant that does not bear the Restricted Legend, then no certification is required. In the event that a Book-Entry Warrant that does not bear the Restricted Legend is surrendered for transfer or exchange, upon transfer or exchange the Warrant Agent will deliver a Book-Entry Warrant that does not bear the Restricted Legend.

(iii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Warrant Agent a duly completed Rule 144A Certificate.

(c) No certification is required in connection with any transfer or exchange of any Warrant (or a beneficial interest therein)

(i) after such Warrant is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor provision) without the need to satisfy current information or other requirements therein; *provided* that the Company has *provided* the Warrant Agent with an Officers' Certificate to that effect, and the Company may require from any Person requesting a transfer or exchange in reliance upon this clause (i) an opinion of counsel and any other reasonable certifications and evidence in order to support such certificate; or

(ii) sold pursuant to an effective registration statement.

Any Book-Entry Warrant delivered in reliance upon this paragraph will not bear the Restricted Legend.

(d) The provisions of this Section 5.3(a) shall not apply to the exercise of any Warrant to the extent Warrant Shares issued upon such exercise (and any unexercised portion of the Warrant so exercised) shall be issued to the same registered Holder that exercised such Warrant.

(e) The Warrant Agent will retain copies of all certificates, opinions and other documents received in connection with the transfer or exchange of a Warrant (or a beneficial interest therein), and the Company will have the right to inspect and make copies thereof at any reasonable time upon written notice to the Warrant Agent.

(f) No sale or transfer of Warrants shall be permitted, and any such transfer shall be null and void ab initio, if, after giving effect to such Transfer, the Company would be required to become a reporting company under the Exchange Act; provided, however, that the restriction set forth in this sentence shall no longer be applicable upon the earlier of (i) the Company's registration of any class of its equity securities within the meaning of the Exchange Act and (ii) the Company's listing of any class of its securities on a national securities exchange.

(g) In the event of any purported transfer in violation of the provisions of this Agreement, such purported transfer shall be void and of no effect and the Warrant Agent shall not give effect to such transfer.

**Section 5.4 Treatment of Holders of Warrant Certificates.** Each Holder of a Warrant Certificate, by accepting the same, consents and agrees with the Company, the Warrant Agent and every subsequent Holder of such Warrant Certificate that until the transfer of such Warrant Certificate is registered on the books of the Warrant Agent, the Company and the Warrant Agent may treat the registered Holder of such Warrant Certificate as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

**Section 5.5 Fractional Warrants.** The Warrant Agent shall not be required to effect any registration of transfer or exchange which will result in the issuance of a Warrant Certificate for a fraction of a Warrant.

## ARTICLE 6

### ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES

**Section 6.1 Adjustments Generally.** The Exercise Price, the number of Warrant Shares issuable upon exercise of each Warrant and the number of Warrants outstanding are subject to adjustment from time to time upon the occurrence of any of the events enumerated in this Article 6. To the extent the context so requires, all references in this Article 6 to the Class A Common Stock shall be deemed, as of a particular time, to include any other securities included within the "Warrant Shares" as of such time.

**Section 6.2 Certain Mechanical Adjustments.** If after the Effective Date, and subject to the provisions of Section 6.8, the Company shall (i) declare a dividend or make a distribution on the Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide, reclassify or recapitalize its outstanding Class A Common Stock into a greater number of shares, (iii) combine, reclassify or recapitalize its outstanding Class A Common Stock into a smaller number of shares, or (iv) issue any shares of its capital stock by reclassification of its Class A Common Stock, the number of Warrant Shares issuable upon exercise of Warrants at the time of the record date of such dividend, distribution, subdivision, combination, reclassification or recapitalization shall be adjusted so that the Holders shall be entitled to receive the aggregate

number and kind of shares which, if their Warrants had been exercised in full immediately prior to such event, the Holders would have owned upon such exercise and been entitled to receive by virtue of such dividend, distribution, subdivision, combination, reclassification or recapitalization. Any adjustment required by this Section shall be made successively immediately after the distribution date, in the case of a dividend or distribution, or the effective date, in the case of a subdivision, combination, reclassification or recapitalization, to allow the purchase of such aggregate number and kind of shares.

**Section 6.3 Dividends and Other Distributions.**

(a) If at any time prior to the exercise in full of the Warrants, the Company shall fix a record date for the issuance or making of a distribution to all holders of the Class A Common Stock (including any such distribution to be made in connection with a consolidation or merger in which the Company is to be the continuing corporation and any such distribution taking the form of a pro rata repurchase of shares of Class A Common Stock) of evidences of its indebtedness, any other securities or any cash, property or other assets (excluding a combination, reclassification or recapitalization referred to in Section 6.2, and excluding any dividends payable solely in cash) or of subscription rights, options or warrants to purchase or acquire any capital stock of the Company (excluding stock dividends and stock reclassifications referred to in Section 6.2) (any such event being herein called a “Non-Cash Dividend”), the Exercise Price shall be decreased immediately after the record date for such Non-Cash Dividend to a price determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which shall be the then Current Market Price per share of the Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Non-Cash Dividend less the fair market value (as determined in good faith by the Company’s Board of Directors based on the written advice of an independent financial advisory firm of national reputation, without regard to any illiquidity or minority discounts) of the evidences of indebtedness, securities, property or other assets issued or distributed in such Non-Cash Dividend applicable to one share of Class A Common Stock or of such subscription rights or warrants applicable to one share of Class A Common Stock, and the denominator of which shall be such then Current Market Price per share of Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Non-Cash Dividend.

(b) If at any time prior to the exercise in full of the Warrants, the Company shall fix a record date for the issuance or making of a distribution to all holders of the Class A Common Stock of any dividend payable solely in cash (any such dividend being referred to as a “Cash Dividend”), the Exercise Price shall be decreased immediately after the record date for such Cash Dividend to a price determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which shall be the then Current Market Price per share of the Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Cash Dividend less the Per Share Dividend Amount, and the denominator of which shall be such then Current Market Price per share of Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Cash Dividend.

(c) Any adjustment required by this Section 6.3 shall be made successively whenever such a record date is fixed and in the event that such distribution is not so made, the Exercise Price shall again be adjusted to be the Exercise Price that was in effect immediately



prior to such record date. For purposes of this Section 6.3, "Current Market Price" per share of Class A Common Stock at any date shall mean, (i) if the shares of Class A Common Stock are then listed on a national securities exchange, the average of the daily Quoted Prices for ten (10) consecutive trading days immediately prior to such date, or (ii) if the shares of Class A Common Stock is not then so listed, the Quoted Price immediately prior to such date.

**Section 6.4 Adjustments in Exercise Price.** Whenever the number of Warrant Shares issuable upon the exercise of Warrants is adjusted pursuant to Section 6.2, the Exercise Price shall be adjusted (to the nearest tenth of one cent) by multiplying the Exercise Price applicable immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of Warrant Shares issuable upon exercise of each Warrant immediately prior to such adjustment, and (y) the denominator of which shall be the number of Warrant Shares issuable upon exercise of each Warrant immediately after such adjustment. Subject to Section 6.8, whenever the Exercise Price is adjusted pursuant to Section 6.3, the number of Warrant Shares issuable upon exercise of the Warrants shall simultaneously be adjusted by multiplying the number of Warrant Shares initially issuable upon exercise of each Warrant by the Exercise Price in effect on the date thereof and dividing the product so obtained by the Exercise Price, as adjusted.

**Section 6.5 Reclassification or Reorganization Event.** In the case of any reclassification or reorganization of the outstanding shares of Class A Common Stock or other Warrant Shares (other than a change covered by Section 6.2 or that solely affects the par value of such shares of Class A Common Stock), each Holder shall thereafter have the right to exercise its Warrants and in lieu of the Warrant Shares that would otherwise be issuable upon such exercise, receive the kind and amount of shares of stock or other securities or property (including cash) that such Holder would have received pursuant to such reclassification or reorganization if such Holder had exercised such Warrants immediately prior to such event. The immediately preceding sentence shall similarly apply to successive reclassifications and reorganizations. If a Reorganization Event shall occur, the certificate or articles of incorporation of the continuing or surviving or acquiring or resulting entity, or any contract or agreement providing for such Reorganization Event, shall provide that, so long as any Warrant remains outstanding, each Warrant, upon the exercise thereof at any time after the consummation of such Reorganization Event, shall be exercisable into (at an initial Exercise Price equal to the Exercise Price in effect immediately prior to such Reorganization Event, but subject to any adjustment pursuant to the terms hereof), in lieu of the Warrant Shares issuable upon such exercise prior to such consummation, the amount of cash, securities or other property receivable pursuant to such Reorganization Event by a holder of the number of shares of Class A Common Stock for which a Warrant is exercisable immediately prior to the effective time of such Reorganization Event. The provisions set forth herein providing for adjustments and otherwise for the protection of the holders of Warrants shall thereafter continue to be applicable on an as nearly equivalent basis as may be practicable and any such continuing, surviving, acquiring or resulting entity shall expressly assume all of the obligations of the Company set forth herein to the extent applicable. It is acknowledged and agreed that if, in connection with any Reorganization Event, the Warrants become exercisable solely for cash, and the Exercise Price is higher than the amount of cash for which such Warrant is exercisable, then, upon consummation of such reorganization, all Warrants then outstanding with such higher Exercise Price shall automatically be terminated and cancelled without payment, and the Company may unilaterally terminate this Warrant

Agreement by giving written notice thereof to the Warrant Agent. For purposes hereof, a “Reorganization Event” shall mean (i) a consolidation, merger, amalgamation, share exchange, sale of all or substantially all assets or similar transaction of the Company with or into another Person pursuant to which the shares of Class A Common Stock are changed into, converted into or exchanged for cash, securities or other property (whether of the Company or another Person) other than in circumstances covered by Section 6.2; (ii) a reorganization, recapitalization or reclassification or similar transaction in which the shares of Class A Common Stock are exchanged for securities other than shares of Class A Common Stock (other than in circumstances covered by Section 6.2); or (iii) a statutory exchange of the outstanding shares of Class A Common Stock for securities of another Person. The provisions of this Section 6.5 shall apply similarly to all successive reclassifications, reorganizations and events constituting Reorganization Events.

**Section 6.6 Adjustments for Certain Issuances and Repricings.** If on or after the Effective Date, the Company shall issue Class A Common Stock (other than Class A Common Stock issued pursuant to a management incentive package or this Agreement) or rights, warrants or other securities exercisable or convertible into or exchangeable into such Class A Common Stock, or stock appreciation rights or other rights to receive payments based upon the value of Class A Common Stock (“Common Stock Equivalents”) (collectively, the “Additional Common Stock”) at a price per share of Class A Common Stock less than the Current Market Price as of the date of such issuance (a “Below Market Issuance”), then the Exercise Price shall be reduced to the price (the “Adjusted Exercise Price”) determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which is the sum of (a) the total outstanding Class A Common Stock on a fully diluted basis immediately preceding such Below Market Issuance plus (b) the number of shares of Additional Common Stock (treating Common Stock Equivalents as having been fully exercised or converted) which the aggregate consideration received by the Company in the Below Market Issuance would purchase at a price per share equal to the Current Market Price as of the date immediately prior to such Below Market Issuance and the denominator of which is the total outstanding Class A Common Stock of Company on a fully diluted basis immediately after such Below Market Issuance. In the event of a Below Market Issuance, the Warrant Shares shall also be increased to the number obtained by dividing (x) the product of the Warrant Shares before such adjustment and the Exercise Price in effect immediately prior to the Below Market Issuance by (y) the Adjusted Exercise Price. For purposes of this Section 6.6, (i) the consideration received by the Company shall not be deemed reduced by any underwriting or placement agency fees, discounts, commissions and expense, (ii) the value of any non-cash portion of the consideration shall be deemed to be the fair market value of such consideration as determined in good faith by the Board of Directors based on the written advice of an independent financial advisory firm of national reputation, without regard to any illiquidity or minority discounts and (iii) to the extent the Below Market Issuance consists of the issuance of Common Stock Equivalents, the consideration received by the Company shall be deemed to include the additional consideration that would payable to the Company upon the eventual exercise, conversion or exchange of such Common Stock Equivalent, and no further adjustment shall be made for the issuance of Class A Common Stock upon such exercise, conversion or exchange. For purposes of this Section 6.6, any issuance of Class A Common Stock to an independent third party in an arms-length transaction who prior to such issuance was not a beneficial or record holder of any securities of the Company or a creditor of the Company shall be conclusively presumed not to be a Below Market Issuance. For the avoidance of doubt,

no increase in the Exercise Price or reduction in the Warrant Shares shall be made pursuant to this Section 6.6 (or Section 6.1 or Section 6.3).

**Section 6.7 Notices of Changes in Warrant and Other Events.** Upon every adjustment of the Exercise Price or the number of shares issuable upon exercise of a Warrant, the Company shall give written notice thereof to the Warrant Agent, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares of Class A Common Stock purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in Section 6.2, Section 6.3 or Section 6.5, then, in any such event, the Company shall give or cause to be given written notice to each Holder, by press release or at the last address set forth for such Holder in the register books of the Warrant Agent, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event. To the extent not covered (on or before the time period required below) by any statement or other notice delivered or required to be delivered pursuant hereto, and excluding any events specified in Section 6.2, Section 6.3 or Section 6.5, the Company shall give notice to each Registered Holder and other Holder by press release or by mail if at any time, prior to the expiration or exercise in full of the Warrants, any of the following events shall occur:

(a) the Company shall authorize the payment of any dividend payable in any securities (other than shares of Class A Common Stock in a dividend to which the adjustments set forth in this Agreement apply) or authorize the making of any dividend or distribution (other than cash dividends to which the adjustments set forth in this Agreement apply) to all holders of Class A Common Stock or any other class or series of stock then forming part of the Warrant Shares; or

(b) the Company shall authorize the issuance to all holders of Class A Common Stock (or other class or series of stock then forming part of the Warrant Shares) of any additional securities (other than a stock dividend to which the adjustments set forth in this Agreement apply) or of rights, options or warrants to subscribe for or purchase any securities; or

(c) the Company shall authorize a capital reorganization or reclassification of any class or series of stock then forming part of the Warrant Shares (other than a reorganization or reclassification for which the adjustments set forth in this Agreement apply), or any dissolution, liquidation or winding up of the Company.

Such giving of notice shall be initiated at least ten (10) Business Days prior to the date fixed as a record date or effective date or the date of closing of the Company's stock transfer books for the determination of the stockholders entitled to such dividend, distribution or issuance or for the determination of stockholders entitled to vote on the proposed event set forth in paragraph (c) above. Such notice shall specify such record date or the date of closing of the stock transfer books, as the case may be. Failure to provide such notice shall not affect the validity of any action taken in connection with such dividend, distribution, issuance or other proposed transaction. For the avoidance of doubt, no such notice shall supersede or limit any adjustment otherwise called for hereby by reason of any event as to which notice is required by this Section 6.7.

**Section 6.8 No Fractional Shares.** Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares upon exercise of Warrants. If, by reason of any adjustment made pursuant to this Article 6, any Holder would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share of Class A Common Stock, the Company shall, upon such exercise, round down to the nearest whole number the number of shares of Class A Common Stock to be issued to the Holder.

**Section 6.9 Form of Warrant.** The form of Warrant or Warrant Certificate need not be changed because of any adjustment pursuant to this Article 6, and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same number of shares as is stated in the Warrant Certificates initially issued pursuant to this Agreement. However, the Company may at any time in its sole discretion make any change in the form of Warrant or Warrant Certificate that the Company may deem appropriate and that does not affect the substance thereof, and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

**Section 6.10 De Minimis Adjustments.** No adjustment in the number of Warrant Shares purchasable hereunder shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the number of Warrant Shares purchasable upon the exercise of each Warrant; provided, however, that any adjustments which by reason of this Section 6.10 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest tenth of one cent and to the nearest one-hundredth of a Warrant Share, as the case may be.

## **ARTICLE 7 CONCERNING THE WARRANT AGENT**

**Section 7.1 Warrant Agent.** The Warrant Agent shall serve as the agent of the Company in respect of the Warrants and the Warrant Certificates, upon the terms of, and subject to the conditions set forth in, this Agreement and the Warrant Certificates. The Warrant Agent shall have the powers and authority granted to and conferred upon it hereunder and in the Warrant Certificates, and such further powers and authority as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions of this Agreement.

**Section 7.2 Conditions of Warrant Agent's Obligations.**

(a) The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following, to all of which the Company agrees and to all of which the rights hereunder of the Holders from time to time of the Warrant Certificates shall be subject:

(i) **Compensation and Indemnification.** The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon between the Company and the Warrant Agent for all services rendered by the Warrant Agent and to reimburse the

Warrant Agent for reasonable out-of-pocket expenses incurred by the Warrant Agent without gross negligence, bad faith or willful misconduct or breach of this Agreement on its part in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with its acting as the Warrant Agent hereunder, as well as the reasonable costs and expenses of defending against any claim of such liability. In addition, from time to time, Company may provide the Warrant Agent with instructions concerning the services performed by the Warrant Agent hereunder. In addition, at any time Warrant Agent may apply to any officer of Company for instruction, and may consult with legal counsel for Company with respect to any matter arising in connection with the services to be performed by the Warrant Agent under this Agreement. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by Company for any action taken or omitted by the Warrant Agent in reliance upon any Company instructions or upon the advice or opinion of such counsel. The Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from Company.

(ii) Agent for the Company. In acting under this Agreement and in connection with the Warrants and the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligation or relationship of agency or trust for or with any of the Holders of Warrant Certificates or beneficial owners of Warrants.

(iii) Counsel. The Warrant Agent may consult with counsel satisfactory to it in its reasonable judgment (who may be counsel for the Company), and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(iv) Documents. Subject to Section 3.2(j), the Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or thing suffered by it in reliance upon any Warrant Certificate, Exercise Form, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties. The Company shall perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and/or delivered all such further acts, instruments and documents as may reasonably be required by the Warrant Agent for the carrying out of the provisions of this Agreement.

(b) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depositary, trustee or agent for, any committee or body of holders of Warrant Shares or other obligations of the Company as freely as if it were not the Warrant Agent hereunder.

(i) No Liability for Interest. The Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(ii) No Liability for Invalidity. The Warrant Agent shall not be under any responsibility with respect to the validity or sufficiency of this Agreement or the execution and delivery hereof (except the due authorization to execute this Agreement and the due execution and delivery hereof by the Warrant Agent) or, subject to Section 3.2(j), with respect to the validity or execution of any Warrant Certificates (except its countersignature thereof).

(iii) No Liability for Recitals. The recitals contained herein shall be taken as the statements of the Company and the Warrant Agent assumes no liability for the correctness of the same.

(iv) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates countersigned by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a Holder of a Warrant Certificate with respect to such default.

(c) Aggregate Liability. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, other than in the case of the Warrant Agent's bad faith or willful misconduct, the amounts paid hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses,

(i) Damages. Neither party to this agreement shall be liable to the other party for any consequential, indirect, special or incidental damages under any provisions of this agreement or for any consequential, indirect, penal, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

### **Section 7.3 Resignation and Appointment of Successor.**

(a) The Company agrees, for the benefit of the Holders from time to time, that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or are no longer exercisable. The initial Warrant Agent and any successor Warrant Agent

hereunder shall be the Company or a bank or trust company in good standing, and shall be authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers and subject to examination by federal or state authority.

(b) The Warrant Agent may at any time resign as such by giving written notice of its resignation to the Company, specifying the desired date on which its resignation shall become effective; provided, however, that such date shall be not less than ninety (90) days after the date on which such notice is given unless the Company agrees to accept shorter notice. Upon receiving such notice of resignation, the Company shall promptly appoint a successor Warrant Agent (which shall be the Company or a bank or trust company in good standing, authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers and subject to examination by federal or state authority) by written instrument in duplicate signed on behalf of the Company, one copy of which shall be delivered to the resigning Warrant Agent and one copy to the successor Warrant Agent. The Company may, at any time and for any reason at no cost to the Holders, remove the Warrant Agent and appoint a successor Warrant Agent (qualified as aforesaid) by written instrument in duplicate signed on behalf of the Company and specifying such removal and the date when it is intended to become effective, one copy of which shall be delivered to the Warrant Agent being removed and one copy to the successor Warrant Agent. Any resignation or removal of the Warrant Agent and any appointment of a successor Warrant Agent shall become effective upon acceptance of appointment by the successor Warrant Agent as provided in this subsection (b). In the event a successor Warrant Agent has not been appointed and accepted its duties within ninety (90) days of the Warrant Agent's notice of resignation, the Warrant Agent may apply to any court of competent jurisdiction for the designation of a successor Warrant Agent. Upon its resignation or removal, the Warrant Agent shall be entitled to the payment by the Company of the compensation and to the reimbursement of all reasonable out-of-pocket expenses incurred by it hereunder as agreed to in Section 7.2(a).

(c) The Company shall remove the Warrant Agent and appoint a successor Warrant Agent if the Warrant Agent (i) shall become incapable of acting, (ii) shall be adjudged bankrupt or insolvent, (iii) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, (iv) shall consent to, or shall have had entered against it a court order for, any such relief or to the appointment of or taking possession by any such official in any involuntary case or other proceedings commenced against it, (v) shall make a general assignment for the benefit of creditors or (vi) shall fail generally to pay its debts as they become due. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by it of such appointment, the predecessor Warrant Agent shall, if not previously disqualified by operation of law, cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant

Agent hereunder, and such predecessor shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor as Warrant Agent hereunder.

(e) Any corporation into which the Warrant Agent hereunder may be merged or converted or any corporation with which the Warrant Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation to which the Warrant Agent shall sell or otherwise transfer all or substantially all the assets and business of the Warrant Agent, provided that it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto. No costs and expenses associated with any replacement or appointment of a successor Warrant Agent shall be paid by the Holders.

(f) In the event a successor Warrant Agent shall be appointed, the Company shall (i) give notice thereof to the predecessor Warrant Agent and the Transfer Agent not later than the effective date of any such appointment, and (ii) cause written notice thereof to be delivered to each Registered Holder at such holder's address appearing on the Warrant Register. Failure to give any notice provided for in this Section or any defect therein shall not affect the legality or validity of the removal of the Warrant Agent or the appointment of a successor Warrant Agent, as the case may be.

## **ARTICLE 8 MISCELLANEOUS**

**Section 8.1 Amendment.** The terms of the Warrants may be amended by the Company, provided, that the affirmative vote or consent of the Holders of Warrants exercisable for at least 55% majority of the Warrant Shares then issuable upon exercise of the Warrants then outstanding shall be required if the rights of the Holders are adversely affected by such amendment; provided, however, that the consent of each Holder of a Warrant affected shall be required for any amendment of this Agreement that would (i) increase the Exercise Price or decrease the number of Warrant Shares purchasable upon exercise of the Warrants, or alter the Company's obligation to issue Warrant Shares upon exercise of the underlying Warrant (other than adjustments made pursuant to Article 6 hereof), (ii) change the Expiration Date to an earlier date, or (iii) treat such Holder differently in an adverse way from any other Holder of Warrants. Notwithstanding anything to the contrary herein, upon the delivery of a certificate from a Company executive officer which states that the proposed amendment is in compliance with the terms of this Agreement and, provided such supplement or amendment does not change the Warrant Agent's rights, duties, liabilities or obligations hereunder, the Warrant Agent shall execute such amendment. Any amendment effected pursuant to and in accordance with this Section will be binding upon all Holders and upon each future Holder, the Company and the Warrant Agent. In the event of any amendment, the Company will give prompt notice thereof to all Registered Holders and, if appropriate, notation thereof will be made on all Warrant Certificates thereafter surrendered for registration of transfer or exchange.

**Section 8.2 Notices and Demands to the Company and Warrant Agent.** If the Warrant Agent shall receive any notice or demand addressed to the Company by the Holder of a



Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

(a) Any notice or communication from the Warrant Agent to the Company with respect to this Agreement shall be addressed to Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, Attention: General Counsel, and any notice or communication from the Company to the Warrant Agent with respect to this Agreement shall be addressed to such address as shall be specified in writing by the Warrant Agent to the Company from time to time (or such other address as shall be specified in writing by the Warrant Agent or by the Company). Any notice or communication that is given to any Holder pursuant to this Agreement or with respect to any Warrant, Book-Entry Warrant or Warrant Certificate shall be addressed to such Holder's address as it appears on the books of the Warrant Agent.

(b) All notices and communications made to the Company, the Warrant Agent or any Holder pursuant to this Agreement or any Warrant Certificate shall be in writing and shall be conclusively deemed to have been duly given (i) when hand delivered to the receiving party; (ii) three (3) Business Days after deposit in the U.S. mail with first class or certified mail receipt requested postage prepaid; or (iii) the next Business Day after deposit with a national overnight delivery service, postage prepaid, with next Business Day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

**Section 8.3 Applicable Law; Waiver of Jury Trial.** The validity, interpretation and performance of this Agreement and each Warrant Certificate issued hereunder and of the respective terms and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction. Nothing herein is intended to circumvent any duties owed by the parties to one another (including without limitation any duties owed to the Holders as express third-party beneficiaries), or to limit any implied covenant of good faith and fair dealing as applicable hereto, under the governing law of this Warrant Agreement. THE COMPANY, THE WARRANT AGENT, AND EACH HOLDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY WARRANT CERTIFICATE OR WARRANT ISSUED HEREUNDER.

**Section 8.4 Headings.** The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**Section 8.5 Counterparts.** This Agreement may be executed in any number of counterparts, any of which may be delivered via facsimile, PDF, or other forms of electronic delivery, each of which as so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

**Section 8.6 Inspection of Agreement.** A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by

the Holder of any Book-Entry Warrant or Warrant Certificate. The Warrant Agent may require such Holder of a Warrant Certificate to submit such Warrant Certificate for inspection by it.

**Section 8.7 Benefits of This Agreement.** This Agreement is otherwise intended solely for the benefit of the Company, the Warrant Agent and their respective successors and permitted assigns, and this Agreement shall not confer any rights upon any other Person.

**Section 8.8 Termination.** This Agreement shall terminate at the earliest to occur of (a) the exercise of all Warrants, (b) the expiration of the Exercise Period, and (c) the Company's termination hereof pursuant to Section 6.5; provided, however, that Section 7.2 and this Article 8 shall survive any termination or expiration hereof.

**Section 8.9 Confidentiality.** The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public warrant holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law.

*[Signature Page Follows]*

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

**PATRIOT COAL CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AMERICAN STOCK TRANSFER & TRUST  
COMPANY, LLC**  
as Warrant Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A-1**

**FORM OF WARRANT STATEMENT**

**[As provided by the Warrant Agent]**

**Exhibit A-2**

**FORM OF FACE OF  
GLOBAL WARRANT CERTIFICATE**

**VOID AFTER 5:00 P.M., NEW YORK CITY TIME, ON [•], 202[•]**

This Global Warrant Certificate is held by The Depository Trust Company (the “Depository”) or its nominee in custody for the benefit of the beneficial owners hereof, and is not transferable to any person under any circumstances except that (i) this Global Warrant Certificate may be exchanged in whole but not in part pursuant to Section 5.2(a) of the Warrant Agreement dated as of [•], 201[•] (the “Warrant Agreement”), (ii) this Global Warrant Certificate may be delivered to the Warrant Agent for cancellation pursuant to Section 5.1(h) of the Warrant Agreement and (iii) this Global Warrant Certificate may be transferred to a successor Depository with the prior written consent of the Company.

Unless this Global Warrant Certificate is presented by an authorized representative of the Depository to the Company or the Warrant Agent for registration of transfer, exchange or payment and any certificate issued is registered in the name of [•] or such other entity as is requested by an authorized representative of the Depository (and any payment hereon is made to [•] or to such other entity as is requested by an authorized representative of the Depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful because the registered owner hereof, [•], has an interest herein.

Transfers of this Global Warrant Certificate shall be limited to transfers in whole, but not in part, to nominees of the Depository or to a successor thereof or such successor’s nominee, and transfers of portions of this Global Warrant Certificate shall be limited to transfers made in accordance with the restrictions set forth in Article 5 of the Warrant Agreement.

No registration or transfer of the securities issuable pursuant to the Warrants will be recorded on the books of the Company until such provisions have been complied with.

THE SECURITIES REPRESENTED BY THIS WARRANT CERTIFICATE (INCLUDING THE SECURITIES ISSUABLE UPON EXERCISE OF THE WARRANTS) ARE SUBJECT TO ADDITIONAL AGREEMENTS SET FORTH IN THE WARRANT AGREEMENT, DATED AS OF •, 201[•], BY AND BETWEEN PATRIOT COAL CORPORATION AND THE WARRANT AGENT (THE “WARRANT AGREEMENT”).

THESE WARRANTS WILL BE VOID IF NOT EXERCISED PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON [•], 202[•]

**WARRANTS TO PURCHASE, AT THE ELECTION OF THE HOLDER  
CLASS A COMMON STOCK IN PATRIOT COAL CORPORATION**

CUSIP # •  
ISSUE DATE: •, 201[•]

No. A-1

\_\_\_ Warrants

This certifies that, for value received, \_\_\_\_\_, and its registered assigns (collectively, the “Registered Holder”), is the registered holder of Warrants and is entitled to purchase from Patriot Coal Corporation, a Delaware corporation (the “Company”), subject to the terms and conditions hereof, at any time before 5:00 p.m., New York time, on •, 202[•], for each Warrant, one (1) fully paid and nonassessable share of Class A Common Stock of the Company at the Exercise Price (as defined in the Warrant Agreement) applicable to Warrants. The Exercise Price and the number and kind of shares purchasable hereunder are subject to adjustment from time to time as provided in Article 6 of the Warrant Agreement. The initial Exercise Price shall be \$0.010.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

Address of Registered Holder for Notices (until changed in accordance with this Warrant):

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS WARRANT CERTIFICATE SET FORTH ON THE REVERSE HEREOF. SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

IN WITNESS WHEREOF, this Warrant has been duly executed by the Company under its corporate seal as of the \_\_\_\_ day of \_\_\_\_\_, 201\_.

**PATRIOT COAL CORPORATION**

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

Attest: \_\_\_\_\_  
Secretary

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC,**  
as Warrant Agent

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

## FORM OF REVERSE OF WARRANT CERTIFICATE

The Warrants evidenced by this Warrant Certificate is a part of a duly authorized issue of Warrants to purchase an aggregate of [•] shares of Class A Common Stock of Patriot Coal Corporation, each issued pursuant to the Warrant Agreement, a copy of which may be inspected at the Warrant Agent's office. The Warrant Agreement hereby is incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the Registered Holders of the Warrants. All capitalized terms used on the face of this Warrant herein but not defined that are defined in the Warrant Agreement shall have the meanings assigned to them therein.

Upon due presentment for registration of transfer of the Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any applicable tax or other governmental charge.

Warrants may be exercised by complying with the procedures established by the Depository for the exercise of Warrants.

The Company shall not be required to issue fractions of Warrant Shares or any certificates that evidence fractional Warrant Shares.

No Warrants may be sold, exchanged or otherwise transferred in violation of the Securities Act or state securities laws.

Neither the Warrants nor this Warrant Certificate entitles the Registered Holder to any of the rights of a stockholder of the Company.

The Company and Warrant Agent may deem and treat the Registered Holder hereof as the absolute owner of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone) for the purpose of any exercise hereof and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.



**SCHEDULE OF EXCHANGES OF INTERESTS OF GLOBAL WARRANTS**

The following exchanges of a part of this global Warrant Certificate have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in Number of Warrants in this global Warrant Certificate</b>	<b>Amount of increase in Number of Warrants in this global Warrant Certificate</b>	<b>Number of Warrants in this global Warrant Certificate following such decrease or increase</b>	<b>Signature of authorized officer of Warrant Agent</b>
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**FORM OF ASSIGNMENT**

[See Exhibit E of the Warrant Agreement]

**Exhibit B**

RESTRICTED LEGEND

THESE WARRANTS AND THE UNDERLYING COMMON STOCK TO BE ISSUED UPON EXERCISE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. THE HOLDER OF THIS WARRANT, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH WARRANTS AND THE UNDERLYING COMMON STOCK TO BE ISSUED UPON EXERCISE, ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE WARRANTS OR UNDERLYING COMMON STOCK TO BE EXERCISED UPON ITS ISSUANCE (AS APPLICABLE) ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT THAT IS AN ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE WARRANT AGENT'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C) TO REQUIRE THE DELIVERY OF A DULY COMPLETED AND SIGNED CERTIFICATE (THE FORM OF WHICH MAY BE OBTAINED FROM THE WARRANT AGENT) AND PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO THE COMPANY. EACH HOLDER AGREES NOT TO ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARDS TO THE WARRANTS OR WARRANT SHARES UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

**Exhibit C**

**DEPOSITARY LEGEND**

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS A BENEFICIAL INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL WARRANT CERTIFICATE ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL WARRANT ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE WARRANT AGREEMENT.

**Exhibit D**

**EXERCISE FORM FOR REGISTERED HOLDERS  
HOLDING BOOK-ENTRY WARRANTS**

**(To be executed upon exercise of Warrant)**

In this election form, "Warrant Agreement" means the Warrant Agreement dated [•], 2013 between Patriot Coal Corporation and [ ], and capitalized terms defined therein have the same meaning in this election form.

The undersigned hereby irrevocably elects to exercise the right, represented by the Book-Entry Warrants, to purchase Warrant Shares and (check one and fill in the appropriate information under):

herewith tenders payment for exercise of \_\_\_\_\_ Warrants in accordance with the elections specified below to the order of Patriot Coal Corporation in the amount of \$\_\_\_\_\_ (rounded up to the nearest one cent) in accordance with the terms of the Warrant Agreement and this Warrant;

- \_\_\_\_\_ Warrants are exercised for shares of Class A Common Stock;  
and

or

herewith tenders this Warrant pursuant to the net issuance exercise provisions of Section 3.2(d) of the Warrant Agreement in accordance with the elections specified below. This exercise and election shall be immediately effective or shall be effective as of 5:00 p.m., New York time, on [insert date].

- \_\_\_\_\_ Warrants are exercised for share of Class A Common Stock;  
and

The undersigned requests that [a statement representing] the Warrant Shares be delivered as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

Delivery Address (if different)

\_\_\_\_\_  
\_\_\_\_\_

If said number of shares shall not be all the shares purchasable under the within Book-Entry Warrants, the undersigned requests that a new Book-Entry Warrant representing the balance of such Warrants shall be registered, with the appropriate Warrant Statement delivered as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

Delivery Address (if different)

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number of Holder

Note: If the statement representing the Warrant Shares or any Book-Entry Warrants representing Warrants not exercised is to be registered in a name other than that in which the Book-Entry Warrants are registered, the signature of the holder hereof must be guaranteed.

SIGNATURE GUARANTEED BY:

\_\_\_\_\_

Signatures must be guaranteed by a participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program.

Countersigned:

Dated: \_\_\_\_\_, 20\_\_\_\_\_

•,

as Warrant Agent

By: \_\_\_\_\_

Name:

Title:

**Exhibit E**

**FORM OF ASSIGNMENT**

**(To be executed only upon assignment of Warrants)**

For value received, \_\_\_\_\_ hereby sells, assigns and transfers unto the Assignee(s) named below the rights represented by such Warrants listed opposite the respective name(s) of the Assignee(s) named below and all other rights of the Registered Holder under the within Warrants, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer said Warrants on the books of the within-named Company with respect to the number of Warrants set forth below, with full power of substitution in the premises:

Name(s) of Assignee(s) \_\_\_\_\_

Address \_\_\_\_\_

No. of Warrants \_\_\_\_\_

And if said number of Warrants shall not be all the Warrants represented by the Warrants owned by the Assignor, new Warrants are to be issued in the name of said undersigned for the balance remaining of the Warrants registered by said Warrants.

[THE FOLLOWING PROVISION TO BE INCLUDED ON ALL CERTIFICATES OR BOOK-ENTRY RECORDS BEARING A RESTRICTED LEGEND]

In connection with any transfer of Warrants occurring prior to the removal of the Restricted Legend, the undersigned confirms (i) the understanding that the Securities have not been registered under the Securities Act of 1933, as amended; (ii) that such transfer is made without utilizing any general solicitation or general advertising; and (iii) further as follows:

*Check One*

(1) This Warrant is being transferred to a “qualified institutional buyer” in compliance with Rule 144A under the Securities Act of 1933, as amended and certification in the form of Exhibit F to the Warrant Agreement is being furnished herewith.

*or*

(2) This Warrant is being transferred other than in accordance with (1) above and documents are being furnished which comply with the conditions of transfer set forth in this Warrant and the Warrant Agreement.

If none of the foregoing boxes is checked, the Warrant Agent is not obligated to register the Warrant in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Warrant Agreement have been satisfied.

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Signature \_\_\_\_\_

Note: The above signature should correspond  
exactly with the name on the face of this  
Warrant



**Exhibit F**

Rule 144A Certificate

\_\_\_\_\_, \_\_\_\_

American Stock Transfer & Trust Company, LLC  
6201 15th Avenue  
Brooklyn, NY 11219

Re: Patriot Coal Corporation Warrants to acquire Class A Common Stock of Patriot Coal (the “**Warrants**”) Issued under the Warrant Agreement (the “**Agreement**”) dated as of December 18, 2013 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

*[CHECK A OR B AS APPLICABLE.]*

- A. Our proposed purchase of \_\_\_\_ of Warrants issued under the Agreement.
- B. Our proposed exchange of \_\_\_\_ of Warrants issued under the Agreement for an equal number of Warrants to be held by us.

We and, if applicable, each account for which we are acting, are a qualified institutional buyer within the meaning of Rule 144A (“Rule 144A”) under the Securities Act of 1933, as amended (the “Securities Act”). If we are acting on behalf of an account, we exercise sole investment discretion with respect to such account. We are aware that the transfer of Warrants to us, or such exchange, as applicable, is being made in reliance upon the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Prior to the date of this Certificate we have received such information regarding the Company as we have requested pursuant to Rule 144A(d)(4) or have determined not to request such information.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR  
OWNER (FOR EXCHANGES)]

By: \_\_\_\_\_

Name:

Title:

Address:

Date:

**Exhibit G**

Accredited Investor Certificate

\_\_\_\_\_ , \_\_\_\_\_

American Stock Transfer & Trust Company, LLC  
6201 15th Avenue  
Brooklyn, NY 11219

Re: Patriot Coal Corporation Warrants to acquire Class A Common Stock of Patriot Coal (the “**Warrants**”) Issued under the Warrant Agreement (the “**Agreement**”) dated as of December 18, 2013 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

*[CHECK A OR B AS APPLICABLE.]*

- A. Our proposed purchase of \_\_\_\_ Warrants issued under the Indenture.
- B. Our proposed exchange of \_\_\_\_ Warrants issued under the Indenture for an equal number of Warrants to be held by us.

We hereby confirm that:

1. We are an “accredited investor” within the meaning of Rule 501(a) under the Securities Act of 1933, as amended (the “Securities Act”) (an “Accredited Investor”).
2. Any acquisition of Warrants by us will be for our own account or for the account of one or more other Accredited Investors as to which we exercise sole investment discretion.
3. We have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of an investment in the Warrants and we and any accounts for which we are acting are able to bear the economic risks of and an entire loss of our or their investment in the Warrants.
4. We are not acquiring the Warrants with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any State of the United States or any other applicable jurisdiction; *provided* that the disposition of our property and the property of any accounts for which we are acting as fiduciary will remain at all times within our and their control.
5. We acknowledge that the Warrants have not been registered under the Securities Act and that the Warrants may not be offered or sold within the United States or to or for the benefit of U.S. persons except as set forth below.

We agree for the benefit of the Company, on our own behalf and on behalf of each account for which we are acting, that such Warrants may be offered, sold, pledged or otherwise transferred only in accordance with the Securities Act and any applicable securities laws of any State of the United States and only (a) to the Company or any subsidiary thereof, (b) pursuant to a registration statement that has been declared effective under the Securities Act, (c) to a person we reasonably believe is a qualified institutional buyer in compliance with Rule 144A under the Securities Act, (d) to an Accredited Investor that, prior to such transfer, delivers to the Warrant Agent a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) relating to the restrictions on transfer of the Warrants or (e) pursuant to any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with (c) above, we acknowledge that a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) must be delivered to the Warrant Agent. Prior to the registration of any transfer in accordance with (d) or (e) above, we acknowledge that the Company reserves the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws. We acknowledge that no representation is made as to the availability of any exemption from the registration requirements of the Securities Act.

We understand that the Warrant Agent will not be required to accept for registration of transfer any Warrants acquired by us, except upon presentation of evidence satisfactory to the Company and the Warrant Agent that the foregoing restrictions on transfer have been complied with. We further understand that the Warrants acquired by us will bear a legend reflecting the substance of the preceding paragraph. We further agree to provide to any person acquiring any of the Warrants from us a notice advising such person that resales of the Warrants are restricted as stated herein and that the Warrants will bear a legend to that effect.

We agree to notify you promptly in writing if any of our acknowledgments, representations or agreements herein ceases to be accurate and complete.

We represent to you that we have full power to make the foregoing acknowledgments, representations and agreements on our own behalf and on behalf of any account for which we are acting.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR  
OWNER (FOR EXCHANGES)]

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

Date:

Upon transfer, the Warrants would be registered in the name of the new beneficial owner as follows:

\_\_\_\_\_

Taxpayer ID number: \_\_\_\_\_

## **Comparison**

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**PATRIOT COAL CORPORATION**

**WARRANT AGREEMENT**

**Dated as of December 18, 2013**

**Warrants to Purchase Class A Common Stock, par value \$0.00001 per share**

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## WARRANT AGREEMENT

THIS WARRANT AGREEMENT (this "Agreement"), dated as of December 18, 2013, is entered into between PATRIOT COAL CORPORATION, a Delaware corporation (the "Company"), and AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC (the "Warrant Agent"). Capitalized terms not otherwise defined herein have the meanings set forth in Article 1.

### W I T N E S S E T H :

WHEREAS, on July 9, 2012, the Company and certain of the Company's direct and indirect subsidiaries each filed a voluntary petition under chapter 11 of title 11 of the United States Code §§ 101-1330 (as amended, the "Bankruptcy Code") and, on September 23, 2013 certain of the Company's other subsidiaries each filed a voluntary chapter petition under the Bankruptcy Code and continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Fourth Amended Joint Plan of Reorganization (as amended or supplemented from time to time, the "Plan") approved by the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"), provides that, upon consummation of the Plan, the Company shall issue to participants in the Company's Warrants Rights Offering (collectively, the "Rights Offering Participants") and to the "Backstop Parties" in accordance with the terms of the Backstop Rights Purchase Agreement, Warrants of the Company (the "Warrants") entitling the registered holders thereof to purchase shares of the Class A Common Stock (the "Initial Holders")

WHEREAS, the Bankruptcy Court confirmed the Plan and the Effective Date under the Plan occurred on the date first written above;

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company in connection with the issuance, transfer, exchange, exercise and replacement of the Warrants and the Warrant Certificates, and in this Agreement wishes to set forth, among other things, the form and provisions of the Warrants and the Warrant Certificates and the terms and conditions on which they may be issued, transferred, exchanged, exercised and replaced; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants, when executed on behalf of the Company and countersigned by or on behalf of the Warrant Agent, as provided herein, the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**Section 1.1** **Definitions.** As used herein:

“Accredited Investor Certificate” means a certificate substantially in the form of Exhibit G hereto.

“A.I. Warrant Certificate” means a global Warrant Certificate that bears the Restricted Legend representing Warrants issued and sold to Accredited Investors within the meaning of Rule 501(a) of Regulation D under the Securities Act.

“Additional Common Stock” has the meaning assigned to such term in Section 6.6.

“Adjusted Exercise Price” has the meaning assigned to such term in Section 6.6.

“Agreement” has the meaning assigned to such term in the preamble of this Agreement.

“Backstop Party” has the meaning assigned to such term in the Backstop Rights Purchase Agreement.

“Backstop Rights Purchase Agreement” has the meaning assigned to such term in the Plan.

“Bankruptcy Code” has the meaning assigned to such term in the recitals of this Agreement.

“Below Market Issuance” has the meaning assigned to such term in Section 6.6.

“Bankruptcy Court” has the meaning assigned to such term in the recitals of this Agreement.

“Beneficial Holder” shall mean any person or entity that holds beneficial interests in a Warrant Certificate.

“Board of Directors” means the board of directors of the Company or any committee thereof duly authorized to act on behalf of such board.

“Book-Entry Warrants” has the meaning assigned to such term in Section 2.1.

“Business Day” means any day other than a Saturday, Sunday or any other day on which the New York Stock Exchange is authorized or obligated by law or executive order to close.

“Cash Dividend” has the meaning assigned to such term in Section 6.3(b).

“Cashless Exercise” has the meaning ascribed to such term in Section 3.2(d).

“Class A Common Stock” means the Company’s Class A common stock, par value \$0.00001 per share.

“Common Stock Equivalents” has the meaning assigned to such term in Section 6.6.

“Company” has the meaning assigned to such term in the preamble of this Agreement.

“Current Market Price” has the meaning assigned to such term in Section 6.3(c).

“Daily Closing Price” for any day shall mean the last reported closing price of the applicable security on such day on the applicable quotation system (it being understood that if only one sale occurred on such day, then the Daily Closing Price for such day shall be the price at which such sale occurred).

“Depository” has the meaning assigned to such term in Section 2.2(b).

“Depository Legend” means the legend set forth in Exhibit C.

“Effective Date” has the meaning assigned to such term in the recitals of this Agreement.

“Ex-Dividend Date” means the first date on which shares of Class A Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

“Exercise Amount” has the meaning assigned to such term in Section 3.2(c).

“Exercise Date” means any date on which a Warrant is exercised in accordance with the terms of the Warrant.

“Exercise Form” has the meaning assigned to such term in Section 3.2(b).

“Exercise Period” means the period commencing on the Effective Date, and expiring at 5:00 p.m., New York City time, on the tenth (10th) anniversary of the Effective Date (such time on such tenth anniversary being referred to as the “Expiration Date”).

“Exercise Price” means a price per share of Class A Common Stock of \$0.01, as adjusted pursuant to Article 6.

“Generally Occurred” shall mean a minimum of 7,500 shares of Class A Common Stock are traded and such sales are reported on the applicable over-the-counter market.

“Holder” has the meaning assigned to such term in Section 3.2(a).

“Initial Holders” has the meaning assigned to such term in the recitals of this Agreement.

“Non-Adjusted Cash Dividend” means any Cash Dividend for which a reduction in the Exercise Price has not been previously made pursuant to Section 6.3(b).

“Non-Cash Dividend” has the meaning assigned to such term in Section 6.3(a).

“Per Share Dividend Amount” means, with respect to any Cash Dividend, the amount of cash to be paid in such dividend per share of Class A Common Stock.

“Person” means an individual, a corporation, a limited liability company, a company, a voluntary association, a general partnership, a limited partnership, a joint venture, an association, a joint-stock company, a trust, an unincorporated organization or a government or any agency, instrumentality or political subdivision thereof.

“Plan” has the meaning assigned to such term in the recitals of this Agreement.

“Quoted Price” of the Class A Common Stock (or other Warrant Share security, as applicable) on any date means (i) if the Class A Common Stock (or other Warrant Share security, as applicable) is then listed and actively traded on a national securities exchange, the last reported closing price of such security on such date (or if such date is not a trading day, on the immediately preceding trading day) on the principal national securities exchange on which such security is listed or traded, or (ii) if the Class A Common Stock (or other Warrant Share security, as applicable) is not then listed on a national securities exchange, the average of the Daily Closing Prices of such security on the principal over-the-counter quotation system on which such security trades (if such security trades on more than one such system, then such principal system shall be as reasonably identified by the Company based on relative volumes traded on all such systems), measured over the immediately preceding ten (10) Business Days (which need not be consecutive) in which trading in such security Generally Occurred (or, if no such trading shall have Generally Occurred in at least ten (10) of the last thirty (30) Business Days prior to the date in question, then the Quoted Price shall be the price reflected in the most recent third party valuation provided to the Company by an investment or valuation firm retained by the Company for purposes of valuing stock awards, which valuation shall be available upon written request upon written proof of ownership in a Warrant, provided that the Company may request that the Holder requesting such valuation execute a confidentiality agreement with respect to such valuation (if such valuation has not already been made public) satisfactory to the Company, and provided further that if such valuation is more than six months old or no such valuation has been provided, the Board of Directors shall determine the Quoted Price in good faith based on the basis of such factors as it reasonably determines to be appropriate).

“Reorganization Event” has the meaning assigned to such term in Section 6.5.

“Registered Holder” has the meaning assigned to such term in Section 2.3(d).

“Restricted Legend” means the legend set forth in Exhibit B.

“Rights Offering Participant” has the meaning assigned to such term in the recitals of this Agreement.

“Rights Offerings Procedures” has the meaning assigned to such term in the Plan.

“Rule 144A Certificate” means a certificate substantially in the form of Exhibit F hereto.

“Rule 144A Warrant Certificate” means a global Warrant Certificate that bears the Restricted Legend representing Warrants issued and sold pursuant to Rule 144A.

“Securities Act” means the Securities Act of 1933, as amended, including any rules or regulations promulgated thereunder.

“Successor Person” means the successor to the Company or the Person acquiring the Company in connection with a Reorganization Event where the Company is not the surviving Person.

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, in its capacity as transfer agent for the Company.

“Warrants” has the meaning assigned to such term in the recitals of this Agreement.

“Warrant Agent” means American Stock Transfer & Trust Company, LLC, in its capacity as the initial Warrant Agent hereunder, but only for so long as it serves in such capacity, and any successor Warrant Agent appointed pursuant to this Agreement.

“Warrant Agent Office” has the meaning assigned to such term in Section 3.1.

“Warrant Certificates” has the meaning assigned to such term in Section 2.2(a).

“Warrant Register” has the meaning assigned to such term in Section 2.3(c).

“Warrants Rights Offering” has the meaning assigned to such term in the Plan.

“Warrant Shares” shall mean the shares of Common Stock issued or issuable upon exercise of a Warrant, including any other securities (including any securities of any Successor Person) purchasable upon exercise of the Warrants as provided in Article 6. A Warrant Share shall initially be equal to one share of Class A Common Stock, as subsequently adjusted pursuant to the terms of the Warrant and this Agreement. For purposes of this Agreement, a Warrant Share shall be deemed to be “outstanding” from and after the Exercise Date thereof until the redemption, repurchase or cancellation of such Warrant Share by the Company.

“Warrant Statements” has the meaning assigned to such term in Section 2.1.

## **ARTICLE 2**

### **ISSUANCE OF WARRANTS; WARRANT CERTIFICATES; BOOK-ENTRY WARRANTS**

**Section 2.1** **Issuance of the Warrants.** On the terms and subject to the conditions of this Agreement and in accordance with the terms of the Plan, as of the Effective Date, (i)

Warrants to purchase an aggregate of 10,000,000 Warrant Shares will be issued by the Company to the Rights Offering Participants, allocated amongst the Rights Offering Participants based on such Rights Offering Participant's final allocation of Warrants determined pursuant to the Rights Offering Procedures, rounded up or down to the nearest whole number of underlying Warrant Shares such that no Rights Offering Participant shall receive a Warrant that includes a fraction of a Warrant Share, and (ii) Warrants to purchase an aggregate of 500,000 Warrant Shares will be issued by the Company to the Backstop Parties in accordance with the Backstop Rights Purchase Agreement, such that the Company shall issue to the Initial Holders Warrants entitling the Holders to collectively purchase, in the aggregate, up to 10,500,000 Warrant Shares, as such amounts may be adjusted from time to time pursuant to this Agreement. On such date, the Company will deliver, or cause to be delivered to the Depository, one or more global Warrant Certificates evidencing a portion of the Warrants. The remainder of the Warrants shall be issued by book-entry registration on the books of the Warrant Agent ("Book-Entry Warrants") and shall be evidenced by statements issued by the Warrant Agent from time to time to the Registered Holders of Book-Entry Warrants reflecting such book-entry position (the "Warrant Statements").

**Section 2.2 Form of Warrant; Execution of Warrant Certificates and Warrant Statements.**

(a) (i) Subject to Section 5.1 and Section 5.2 of this Agreement, the Warrants shall be issued (x) via book-entry registration on the books and records of the Warrant Agent and evidenced by the Warrant Statements, in substantially the form set forth in Exhibit A-1 hereto, and/or (y) by one or more global certificates (the "Warrant Certificates") in substantially the form set forth in Exhibit A-2, respectively, hereto. The Warrant Statements and the Warrant Certificates shall be dated and may have such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law, including applicable rules and regulations made pursuant to any such law. The Warrant Certificates and the Warrant Statements shall be signed on behalf of the Company by the chairman of the Board of Directors, the chief financial officer, the president, any vice president, any assistant vice president, the treasurer or any assistant treasurer of the Company, and each Warrant Certificate and Warrant Statement may but need not be attested by the Company's secretary or one of its assistant secretaries. Such signatures may be manual or facsimile signatures of such authorized officers and may be imprinted or otherwise reproduced on the Warrant Certificates and Warrant Statements.

(ii) Except as otherwise provided in paragraph (c), Section 5.3(b)(ii) or Section 5.3(c) each Warrant will bear the Restricted Legend.

(1) Each Warrant Certificate will bear the DTC Legend.

(2) Warrants offered and sold in reliance on any exception under the Securities Act other than Rule 144A will be issued, and upon the request of the Company to the Warrant Agent, Warrants offered and

sold in reliance on Rule 144A may be issued, in the form of Book-Entry Warrants. Warrants issued and sold to Accredited Investors within the meaning of Rule 501 of Regulation D under the Securities Act shall be issued in the form of A.I. Warrant Certificates.

(b) The Warrant Certificates shall be deposited with the Warrant Agent and registered in the name of Cede & Co., as the nominee of The Depository Trust Company (the "Depository"). Each Warrant Certificate shall represent such number of the outstanding Warrants as specified therein, and each shall provide that it shall represent the aggregate amount of outstanding Warrants from time to time endorsed thereon and that the aggregate amount of outstanding Warrants represented thereby may from time to time be reduced or increased, as appropriate, in accordance with the terms of this Agreement.

(c) (i) If the Company determines (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that a Warrant is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor provision) without the need to satisfy current information or other requirements therein and that the Restricted Legend is no longer necessary or appropriate in order to ensure that subsequent transfers of the Warrant (or a beneficial interest therein) are effected in compliance with the Securities Act, or

(ii) after a Warrant is sold pursuant to an effective registration statement under the Securities Act,

the Company may instruct the Warrant Agent in writing to cancel the Warrant and issue to the Holder thereof (or to its transferee) a new Warrant of like tenor, registered in the name of the Holder thereof (or its transferee), that does not bear the Restricted Legend, and the Warrant Agent will comply with such instruction.

(d) By its acceptance of any Warrant bearing the Restricted Legend (or any beneficial interest in such a Warrant), each Holder thereof and each owner of a beneficial interest therein acknowledges the restrictions on transfer of such Warrant (and any such beneficial interest) set forth in this Agreement and in the Restricted Legend and agrees that it will transfer such Warrant (and any such beneficial interest) only in accordance with the Agreement and such legend.

(e) No Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Warrant Certificate has been countersigned by the Warrant Agent. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence, and the only evidence, that the Warrant Certificate so countersigned has been duly issued hereunder, and such signatures may be manual or facsimile signatures of an authorized representative of the Warrant Agent and may be imprinted or otherwise reproduced on the Warrant Certificates.

(f) In case any officer of the Company who shall have signed any of the Warrant Certificates or Warrant Statements (either manually or by facsimile signature) shall cease to hold such officer position before the Warrant Certificates so signed shall have been



countersigned and delivered by the Warrant Agent as provided herein, or before the Warrant Statements so signed shall have been delivered to the Registered Holders thereof, as the case may be, such Warrant Certificates or Warrant Statements may be countersigned (either manually or by facsimile signature, in the case of the Warrant Certificates) and delivered by the Warrant Agent notwithstanding that the person who signed such Warrant Certificates or Warrant Statements has ceased to hold such officer position with the Company, and any Warrant Certificate or Warrant Statement may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Warrant Certificate or Warrant Statement, hold such officer positions with the Company, although at the date of the execution of this Agreement any such person did not hold such officer position.

**Section 2.3 Issuance of Warrant Certificates and Book-Entry Warrants.**

(a) Warrant Certificates evidencing Warrants shall be executed by the Company in the manner set forth in Section 2.2 and delivered to the Warrant Agent. Warrant Certificates evidencing the Warrants to be issued to the Initial Holders under the Plan (other than Warrants to be registered as Book-Entry Warrants) shall be so executed by the Company and delivered to the Warrant Agent upon or promptly following the execution of this Agreement. Upon written order of the Company, the Warrant Agent shall (i) register in the Warrant Register the Book-Entry Warrants and (ii) upon receipt of Warrant Certificates duly executed on behalf of the Company, countersign (either manually or by facsimile signature) each such Warrant Certificate. Such written order of the Company shall specifically state the number of Warrants that are to be issued as Book-Entry Warrants and the number of Warrants that are to be issued as Warrant Certificates including the number of Warrants to be issued as Rule 144A Warrant Certificates and A.I. Warrant Certificates. A Warrant Certificate shall be, and shall remain, subject to the provisions of this Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof.

(b) Subsequent to the original issuance of Warrant Certificates to the Initial Holders, the Warrant Agent shall countersign a Warrant Certificate only if the Warrant Certificate is issued in exchange or substitution for one or more previously countersigned Warrant Certificates or in connection with their transfer as hereinafter provided.

(c) The Warrant Agent shall keep, at an office designated for such purpose, books (the "Warrant Register") in which, subject to such reasonable regulations as it may prescribe, it shall register the Book-Entry Warrants as well as any Warrant Certificates and exchanges and transfers of outstanding Warrants in accordance with the procedures set forth in Section 5.1 and Section 5.2 of this Agreement, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of the Warrants, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Registered Holder in connection with any such exchange or registration of transfer. The Warrant Agent shall have no obligation to effect an exchange or register a transfer unless and until any payments required by the immediately preceding sentence have been made.

(d) Prior to due presentment for registration of transfer or exchange of any Warrant in accordance with the procedures set forth in this Agreement, subject to applicable law, the Company and the Warrant Agent may deem and treat the person in whose name any Warrant is registered upon the Warrant Register (the “Registered Holder” of such Warrant) as the absolute owner of such Warrant (notwithstanding any notation of ownership or other writing on a Warrant Certificate made by anyone other than the Company or the Warrant Agent), for the purpose of any exercise thereof, any distribution to the holder thereof and for all other purposes, and neither the Warrant Agent nor the Company shall be affected by notice to the contrary.

(e) The Company in issuing the Warrants may use “CUSIP” numbers, and the Warrant Agent will use CUSIP numbers in notices as a convenience to Holders, the notice to state that no representation is made as to the correctness of such numbers either as printed on the Warrants or as contained in any notice to any Holder. The Company will promptly notify the Warrant Agent in writing of any change in the CUSIP numbers.

### **ARTICLE 3 EXERCISE OF WARRANTS**

**Section 3.1 Duration of Warrants.** Subject to the provisions of this Agreement, Warrants may be exercised on any Business Day during the Exercise Period, at the offices of the Warrant Agent at 6201 15th Avenue, Brooklyn, NY 11219, or such other place as the Company or Warrant Agent may notify the Holders from time to time, (the “Warrant Agent Office”). Each Warrant not exercised at or before the Expiration Date shall thereupon become void, and at such time all rights, under this Agreement and the applicable Warrant Certificate, of the Holder of any such Warrant shall automatically cease, with respect to any such Warrant.

#### **Section 3.2 Exercise of Warrants.**

(a) Each Warrant shall entitle (i) in the case of the Book-Entry Warrants, the Registered Holder thereof and (ii) in the case of Warrants held through the book-entry facilities of the Depository or by or through persons that are direct participants in the Depository, the Beneficial Holder thereof (the Registered Holders and the Beneficial Holders referenced in clauses (i) and (ii) above, collectively, the “Holders”), subject to the provisions of such Warrant and of this Agreement, to purchase from the Company the number of Warrant Shares specified in such Warrant, at the Exercise Price.

(b) Subject to the provisions of the Warrants and this Agreement, the Holder of a Warrant may exercise such Holder’s right to purchase the Warrant Shares, in whole or in part, at any time or from time to time (i) in the case of persons who hold Book-Entry Warrants, by providing an exercise form for the election to exercise such Warrant (each, an “Exercise Form”) substantially in the form of Exhibit D hereto, and (ii) in the case of Warrants held through the book-entry facilities of the Depository or by or through persons that are direct participants in the Depository, by providing an Exercise Form (as provided by such Holder’s broker) to its broker, in each case properly completed and executed by the Registered Holder or the Beneficial Holder thereof, as the case may be, together with payment to the

Warrant Agent (for the account of the Company), in the case of an exercise for cash pursuant to Section 3.2(c), of the Exercise Amount in accordance with Section 3.2(c).

(c) The payment of the Exercise Price shall be made, at the option of the Holder, (i) in United States dollars by certified or official bank check payable to the Company, or by wire transfer to an account specified in writing by the Company or the Warrant Agent to such Holder, in either case in immediately available funds in an amount equal to the aggregate Exercise Price for such Warrant Shares as specified in the Exercise Form (the "Exercise Amount") or (ii) by Cashless Exercise in accordance with Section 3.2(d). The Exercise Amount shall be rounded up to the nearest one cent.

(d) In lieu of paying the Exercise Amount by certified or official bank check or by wire transfer, any Holder may elect to exercise Warrants by authorizing the Company to withhold from issuance a number of Warrant Shares issuable pursuant to the Warrant Certificate or Warrant Statement evidencing the Warrants being exercised which, when multiplied by the Quoted Price for the trading day immediately prior to the exercise date is equal to the aggregate Exercise Price of all Warrants being exercised, and such withheld Warrant Shares shall thereupon no longer be issuable under the Warrant. Such exercise (a "Cashless Exercise") shall be honored by the Company and the Warrant Agent without payment by the Holder of any Exercise Amount or any cash or other consideration; provided, however, that the Holder shall pay such amounts as may be required pursuant to Section 5.2(c), or such taxes as may be payable upon issuance of Warrant Shares to a Person other than the Holder. The formula for determining the Warrant Shares to be issued in a Cashless Exercise is as follows:

$$X = \frac{((A-B) \times C)}{A}$$

where:

X = the number of Warrant Shares issuable upon exercise of the Warrant pursuant to this subsection (d).

A = the Quoted Price.

B = the Exercise Price.

C = the number of Warrant Shares as to which a Warrant is then being exercised including the withheld Warrant Shares.

If, with respect to any purported or attempted Cashless Exercise of Warrants, the foregoing calculation results in a negative number or zero, then no Warrant Shares shall be issuable via such purported or attempted Cashless Exercise and such Warrants shall be deemed to have not been exercised. A Holder that elects to Cashless Exercise shall provide their Exercise Form in accordance with Section 3.2(b) to the Company (or through their broker to the Company), and the Company shall instruct the Warrant Agent with the calculation of the Warrant Shares to be issued in such Cashless Exercise; provided that the Warrant Agent shall notify the Company

of any Exercise Form it receives no later than three (3) Business Days after receipt of any Exercise Form so indicating a Cashless Exercise election.

(e) The date on which payment in full of the Exercise Amount is received by the Warrant Agent (or deemed to be received in the case of a Cashless Exercise) shall, subject to receipt of the Exercise Form, be deemed to be the date on which the Warrant is exercised. The Warrant Agent shall promptly deposit all funds received by it in payment for the exercise of Warrants in an account of the Company maintained with it (or in such other account as may be designated by the Company) and shall advise the Company, by telephone or by facsimile transmission or other form of electronic communication available to both parties, at the end of each day on which a payment for the exercise of Warrants is received of the amount so deposited to its account. The Warrant Agent shall promptly confirm such advice to the Company in writing.

(f) Subject to Article 6, upon surrender of the Exercise Form and payment of the Exercise Amount (or the deemed payment of the Exercise Amount in connection with a Cashless Exercise) in connection with the exercise of Warrants by any Holder:

(i) the Warrant Agent shall requisition from the Transfer Agent for issuance and delivery to or upon the written order of the applicable Holder and in such name or names as the Holder may designate (provided, that the Holder shall pay any and all taxes payable as a result of such designation), a book-entry registration, certificate or certificates in accordance with Section 3.2(m) for the Class A Shares issuable upon the exercise of the Warrants evidenced by the underlying Warrant Certificate or Book-Entry Warrant, as the case may be, less any Warrant Shares withheld in connection with a Cashless Exercise, if applicable; and

(ii) the Company shall, as promptly as practicable and at its expense, and in any event within five (5) Business Days thereafter, cause to be issued to the Holder the aggregate number of whole Warrant Shares (rounded down to the nearest whole share, and deducting any Warrant Shares withheld pursuant to Section 3.2(d)) issuable upon such exercise and deliver to the Holder written confirmation that such Warrant Shares have been duly issued and recorded on the books of the Company as hereinafter provided.

The Warrant Shares so issued shall be registered in the name of the Holder or such other name as shall be designated in the order delivered by the Holder. The book-entry registration, certificate or certificates for such Warrant Shares shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become the holder of record of such Warrant Shares as of the date of surrender of the applicable Exercise Form at the Warrant Agent Office duly executed by the Holder thereof and upon payment of the Exercise Amount or the deemed payment of the Exercise Amount in connection with a Cashless Exercise.

(g) In the event that any Holder makes a partial exercise of the Warrants evidenced by any Warrant Statement or Warrant Certificate, the Warrant Agent shall adjust the Holder's Warrant Statement or issue and deliver a new Warrant Certificate to the applicable Holder to evidence a number of Warrants equal to the number of Warrants represented by the

Warrant Statement or Warrant Certificate immediately prior to such partial exercise minus the number of Warrants exercised in such partial exercise. The Warrant Agent is hereby authorized and directed to countersign such new Certificate.

(h) Any exercise of a Warrant pursuant to the terms of this Agreement shall be irrevocable and shall constitute a binding agreement between the Holder and the Company, enforceable in accordance with its terms.

(i) The Warrant Agent shall:

(i) examine the Exercise Forms and all other documents delivered to it by or on behalf of Holders as contemplated hereunder to ascertain whether or not, on their face, such Exercise Forms and any such other documents have been executed and completed in accordance with their terms and the terms hereof;

(ii) where an Exercise Form or any other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrants exists, the Warrant Agent shall endeavor to inform the appropriate parties (including the person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(iii) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between Exercise Forms received and delivery of Warrants to the Warrant Agent's account;

(iv) advise the Company no later than three (3) Business Days after receipt of any Exercise Form, of (a) the receipt of such Exercise Form and the number of Warrants evidenced thereby that have been exercised in accordance with the terms and conditions of this Agreement, (b) the instructions with respect to delivery of the Warrant Shares deliverable upon such exercise, subject to timely receipt from the Depository of the necessary information, and (c) such other information as the Company shall reasonably require; and

(j) subject to Warrant Shares being made available to the Warrant Agent by or on behalf of the Company for delivery to the Depository, liaise with the Depository and endeavor to effect such delivery to the relevant accounts at the Depository in accordance with its customary requirements.

(k) All questions as to the validity, form and sufficiency (including time of receipt) of any exercised Warrant, Exercise Form or the Warrant Certificate evidencing any exercised Warrant will be determined by the Company in its reasonable discretion, which determination shall be final and binding absent any manifest error. The Company reserves the right to reject any and all Exercise Forms not in proper form or for which any corresponding agreement by the Company to exchange would, in the opinion of the Company, be unlawful. Such determination by the Company shall be final and binding on the Holders, absent manifest error. Moreover, the Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in the exercise thereof with regard to any particular exercise of Warrants. Neither the Company nor the Warrant Agent shall be under any duty to give notice

to the Holders of the Warrants of any irregularities in any exercise of Warrants, nor shall it incur any liability for the failure to give such notice.

(l) The Company acknowledges that the bank accounts maintained by the Warrant Agent in connection with the services provided under this Agreement will be in its name and that the Warrant Agent may receive investment earnings therefrom. Neither the Company nor the Holders will be entitled to receive interest on any deposits of the Exercise Price.

(m) Book-entry registration records representing Warrant Shares shall bear a Restricted Legend (with all references to Warrants therein replaced by references to Class A Common Stock, and with such changes thereto as the Company may deem appropriate) if (i) the Warrants for which they were issued carried a Restricted Legend or (ii) the Warrant Shares are issued in a transaction exempt from registration under the Securities Act, in each case until and unless the circumstances set forth in Section 2.2(c) apply to such Warrant Shares, and any transfers thereof shall comply with the Restricted Legend.

### **Section 3.3 Reservation of Warrant Shares.**

(a) For the purpose of enabling it to satisfy any obligation to issue Warrant Shares upon exercise of Warrants, the Company will at all times through the Expiration Date, reserve and keep available out of its aggregate authorized but unissued or treasury shares of Class A Common Stock, a number of shares equal to the number of Warrant Shares deliverable upon the exercise of all outstanding Warrants. The Company covenants that it will instruct the Transfer Agent to reserve such number of authorized and unissued or treasury shares of Class A Common Stock as shall be required for such purpose. The Company will keep a copy of this Agreement on file with the Transfer Agent. The Warrant Agent is hereby irrevocably authorized to requisition from time to time from the Transfer Agent stock certificates evidencing Warrant Shares issuable upon exercise of outstanding Warrants, and the Company will supply the Transfer Agent with duly executed stock certificates for such purpose.

(b) The Company covenants that all Warrant Shares issued upon exercise of the Warrants will, upon issuance in accordance with the terms of this Agreement, be fully paid and nonassessable and free from all taxes, liens, charges and security interests created by or imposed upon the Company with respect to the issuance thereof. If at any time prior to the Expiration Date, the number and kind of authorized but unissued shares of the Company's capital stock shall not be sufficient to permit exercise in full of the Warrants, the Company will use its commercially reasonable efforts to promptly take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares to such number of shares as shall be sufficient for such purposes. The Company agrees that its issuance of Warrants shall constitute full authority to its officers who are charged with the issuance of Warrant Shares to issue Warrant Shares upon the exercise of Warrants. Without limiting the generality of the foregoing, the Company will not increase the stated or par value per share, if any, of the Class A Common Stock above the Exercise Price per share in effect immediately prior to such increase in stated or par value. Before taking any action that would cause an adjustment pursuant to Article 6 reducing any Exercise Price below the then par

value (if any) of the Warrant Shares issuable upon exercise of the Warrants, the Company will take any corporate action that may, in the opinion or based on the advice of its counsel (which may be counsel employed by the Company), be necessary in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares at such Exercise Price as so adjusted.

#### **ARTICLE 4**

#### **OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANTS**

**Section 4.1 No Rights as Stockholder Conferred by Warrants, Book-Entry Warrants or Warrant Certificates.** No Book-Entry Warrant, Warrant Certificate or Warrant evidenced thereby shall, and nothing contained in this Agreement shall be construed to, entitle the Holder or any beneficial owner thereof to any of the rights of a registered holder or beneficial owner of shares of Class A Common Stock, including, without limitation, the right to receive (as a shareholder or stockholder) any dividends or distributions paid with respect to Class A Common Stock, the right to vote or to consent or to receive notice as a stockholder of the Company with respect to the election of directors of the Company or any other matter with respect to which stockholders of the Company are entitled to vote or consent or receive notice, or any other rights whatsoever as stockholders of the Company.

**Section 4.2 Lost, Mutilated, Stolen or Destroyed Warrant Certificates.** If any of the Warrant Certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, and the Warrant Agent shall countersign and deliver, in exchange and substitution for, and upon cancellation of the mutilated Warrant Certificate, or in lieu of and substitution for the Warrant Certificate lost, stolen or destroyed, a new Warrant Certificate of like tenor and representing an equivalent number of Warrants, but only upon receipt of evidence reasonably satisfactory to the Warrant Agent and the Company of the loss, theft or destruction of such Warrant Certificate and an affidavit and the posting of an indemnity or bond satisfactory to the Warrant Agent and the Company. Applicants for such substitute Warrant Certificates shall also comply with such other reasonable regulations and pay such other reasonable charges as the Warrant Agent may prescribe and as required by Section 8-405 of the Uniform Commercial Code as in effect in the State of New York.

**Section 4.3 Cancellation of Warrants.** If the Company shall purchase or otherwise acquire Warrants, the Warrant Certificates representing such Warrants shall thereupon be delivered to the Warrant Agent, if applicable, and shall be promptly cancelled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in exchange therefor or in lieu thereof. The Warrant Agent shall cause all cancelled Warrant Certificates to be destroyed and shall deliver a certificate of such destruction to the Company.

**Section 4.4 Current Public Information.** With a view to making available to the holders of Warrants the benefits of Rule 144 and Rule 144A promulgated under the Securities Act, the Company covenants that it will (i) use its reasonable best efforts to file in a timely manner all reports and other documents required, if any, to be filed by it under the Exchange Act and the rules and regulations adopted thereunder and (ii) make available information necessary to comply with Rule 144 and Rule 144A, if available with respect to resales of the

Warrants under the Securities Act, at all times, all to the extent required from time to time to enable such holders to sell Warrants without registration under the Securities Act within the limitation of the exemptions provided by (x) Rule 144 and Rule 144A promulgated under the Securities Act (if available with respect to resales of the Warrants), as such rules may be amended from time to time.

## **ARTICLE 5 EXCHANGE AND TRANSFER**

### **Section 5.1 Exchange and Transfer.**

(a) *Transfer and Exchange of Warrant Certificates or Beneficial Interests Therein.*

(i) The Warrant Agent shall, upon receipt of all information required to be delivered hereunder, from time to time register the transfer of any outstanding Warrants in the Warrant Register, upon delivery to the Warrant Agent, at its office designated for such purpose, of a properly completed form of assignment substantially in the form of Exhibit E hereto, duly signed by the Registered Holder thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program and, in the case of a transfer of a Warrant Certificate, upon surrender to the Warrant Agent of such Warrant Certificate, duly endorsed. Upon any such registration of transfer, a new Warrant Certificate shall be issued to the transferee.

(ii) Subject to compliance with Section 5.3(b), if a beneficial interest in a Warrant Certificate is transferred or exchanged for a beneficial interests in another Warrant Certificate, the Warrant Agent will (x) record a decrease in the amount of the Warrant Certificate being transferred or exchanged equal to the amount of such transfer or exchange and (y) record a like increase in the amount of the other Warrant Certificate. Any beneficial interest in one Warrant Certificate that is transferred to a Person who takes delivery in the form of an interest in another Warrant Certificate, or exchanged for an interest in another Warrant Certificate, will, upon transfer or exchange, cease to be an interest in such Warrant Certificate and become an interest in the other Warrant Certificate and, accordingly, will thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Warrant Certificate for as long as it remains such an interest.

(b) *Exchange of a Beneficial Interest in a Warrant Certificate for a Book-Entry Warrant.*

(i) Any Holder of a beneficial interest in a Warrant Certificate may, upon request, exchange such beneficial interest for a Book-Entry Warrant. Upon receipt by the Warrant Agent from the Depository or its nominee of written instructions or such other form of instructions as is customary for the Depository on behalf of any person having a beneficial interest in a Warrant Certificate, the Warrant Agent shall cause, in accordance with the



standing instructions and procedures existing between the Depository and Warrant Agent, the number of Warrants represented by the Warrant Certificate to be reduced by the number of Warrants to be represented by the Book-Entry Warrants to be issued in exchange for the beneficial interest of such person in the Warrant Certificate and, following such reduction, the Warrant Agent shall register in the name of the Holder a Book-Entry Warrant and deliver to said Holder a Warrant Statement.

(ii) Book-Entry Warrants issued in exchange for a beneficial interest in a Warrant Certificate pursuant to this Section 5.1(a) shall be registered in such names as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Warrant Agent. The Warrant Agent shall deliver the applicable Warrant Statements to the persons in whose names such Warrants are so registered.

(c) *Transfer and Exchange of Book-Entry Warrants.* When Book-Entry Warrants are presented to the Warrant Agent with a written request (i) to register the transfer of the Book-Entry Warrants; or (ii) to exchange such Book-Entry Warrants for an equal number of Book-Entry Warrants of other authorized denominations, then the Warrant Agent shall register the transfer or make the exchange as requested if its customary requirements for such transactions are met; *provided, however*, that the Warrant Agent has received a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by the Registered Holder thereof or by his attorney, duly authorized in writing.

(d) *Restrictions on Exchange or Transfer of a Book-Entry Warrant for a Beneficial Interest in a Warrant Certificate.* A Book-Entry Warrant may not be exchanged for a beneficial interest in a Warrant Certificate except upon satisfaction of the requirements set forth below. Upon receipt by the Warrant Agent of appropriate instruments of transfer with respect to a Book-Entry Warrant, in form satisfactory to the Warrant Agent, together with written instructions directing the Warrant Agent to make, or to direct the Depository to make, an endorsement on the Warrant Certificate to reflect an increase in the number of Warrants represented by the Warrant Certificate equal to the number of Warrants represented by such Book-Entry Warrant, then the Warrant Agent shall cancel such Book-Entry Warrant on the Warrant Register and cause, or direct the Depository to cause, in accordance with the standing instructions and procedures existing between the Depository and the Warrant Agent, the number of Warrants represented by the Warrant Certificate to be increased accordingly. If no Warrant Certificates are then outstanding, the Company shall issue and the Warrant Agent shall countersign a new Warrant Certificate representing the appropriate number of Warrants.

(e) *Restrictions on Transfer and Exchange of Warrant Certificates.* Notwithstanding any other provisions of this Agreement (other than the provisions set forth in Section 5.1(f)), unless and until it is exchanged in whole for a Book-Entry Warrant, a Warrant Certificate may not be transferred except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(f) *Book-Entry Warrants.* If at any time:

(i) the Depository for the Warrant Certificates notifies the Company that the Depository is unwilling or unable to continue as Depository for the Warrant Certificates and a successor Depository for the Warrant Certificates is not appointed by the Company within ninety (90) days after delivery of such notice; or

(ii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to exclusively cause the issuance of Book-Entry Warrants under this Agreement, then the Warrant Agent, upon written instructions signed by an officer of the Company, shall register Book-Entry Warrants, in an aggregate number equal to the number of Warrants represented by the Warrant Certificates, in exchange for such Warrant Certificates.

(g) *Restrictions on Transfer.* In addition to the transfer restrictions set forth in Section 5.3 below, no Warrants or Warrant Shares shall be sold, exchanged or otherwise transferred in violation of the Securities Act or state securities laws.

(h) *Cancellation of Warrant Certificate.* At such time as all beneficial interests in Warrant Certificates have either been exchanged for Book-Entry Warrants, or been redeemed, repurchased, cancelled or exercised, all Warrant Certificates shall be returned to, or retained and cancelled by, the Warrant Agent, upon written instructions from the Company satisfactory to the Warrant Agent, subject to applicable law.

**Section 5.2 Obligations with Respect to Transfers and Exchanges of Warrants.**

(a) To permit registrations of transfers and exchanges, the Company shall execute Warrant Certificates, if applicable, and the Warrant Agent is hereby authorized, in accordance with the provisions of Section 2.3 and this Article 5, to countersign such Warrant Certificates, either manually or by facsimile signature, if applicable, or register Book-Entry Warrants, if applicable, as required pursuant to the provisions of this Article 5 and for the purpose of any distribution of new Warrant Certificates contemplated by Section 4.2 or additional Warrant Certificates contemplated by Article 6.

(b) All Book-Entry Warrants and Warrant Certificates issued upon any registration of transfer or exchange of Book-Entry Warrants or Warrant Certificates shall be the valid obligations of the Company, entitled to the same benefits under this Agreement as the Book-Entry Warrants or Warrant Certificates surrendered upon such registration of transfer or exchange.

(c) No service charge shall be imposed upon a Holder for any registration, transfer or exchange but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Holder in connection with any such exchange or registration of transfer.

(d) So long as the Depository, or its nominee, is the registered owner of a Warrant Certificate, the Depository or such nominee, as the case may be, will be considered the sole owner or holder of the Warrants represented by such Warrant Certificate for all purposes under this Agreement. Except as provided in Section 5.1(a) and Section 5.1(f) upon

the exchange of a beneficial interest in a Warrant Certificate for Book-Entry Warrants, Beneficial Holders will not be entitled to have any Warrants registered in their names, and will under no circumstances be entitled to receive physical delivery of any such Warrants and will not be considered the Registered Holder thereof under the Warrants or this Agreement. Neither the Company nor the Warrant Agent, in its capacity as registrar for such Warrants, will have any responsibility or liability for any aspect of the records relating to beneficial interests in a Warrant Certificate or for maintaining, supervising or reviewing any records relating to such beneficial interests.

(e) Subject to Section 5.1(a), Section 5.1(c) and Section 5.1(d) and this Section 5.2, the Warrant Agent shall, upon receipt of all information required to be delivered hereunder, from time to time register the transfer of any outstanding Warrants in the Warrant Register, upon surrender of Warrant Certificates, if applicable, representing such Warrants at the Warrant Agent Office as set forth in Section 8.2, duly endorsed, and accompanied by a completed form of assignment substantially in the form of Exhibit E attached hereto (or with respect to a Book-Entry Warrant, only such completed form of assignment substantially in the form of Exhibit E attached hereto), duly signed by the Registered Holder thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program. Upon any such registration of transfer, a new Warrant Certificate or a Warrant Statement, as the case may be, shall be issued to the transferee for the Warrants so transferred (and, if any Warrants are not transferred to the transferee, to the transferor for the Warrants remaining registered in the transferor's name).

**Section 5.3 Restrictions on Transfers.**

(a) The transfer or exchange of any Warrant (or a beneficial interest therein) may only be made in accordance with this Section and Section 5.1 and, in the case of a Warrant Certificate (or a beneficial interest therein), the applicable rules and procedures of the Depository. The Warrant Agent shall refuse to register any requested transfer or exchange that does not comply with the preceding sentence.

(b) Subject to paragraph (c), the transfer or exchange of any Warrant (or a beneficial interest therein) of the type set forth in column A below for a Warrant (or a beneficial interest therein) of the type set forth opposite in column B below may only be made in compliance with the certification requirements (if any) described in the clause of this paragraph set forth opposite in column C below.

<b>A</b>	<b>B</b>	<b>C</b>
Rule 144A Warrant	Rule 144A Warrant	(i)
Rule 144A Warrant	Book-Entry Warrant	(ii)
Rule 144A Warrant	A.I. Warrant	(ii)
Book-Entry Warrant	Rule 144A Warrant	(iii)
Book-Entry Warrant	Book-Entry Warrant	(ii)

<b>A</b>	<b>B</b>	<b>C</b>
Book-Entry Warrant	A.I. Warrant	(ii)
A.I. Warrant	Rule 144A Warrant	(iii)
A.I. Warrant	Book-Entry Warrant	(ii)
A.I. Warrant	A.I. Warrant	(i)

(i) No certification is required.

(ii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Warrant Agent (x) a duly completed Rule 144A Certificate or (y) a duly completed Accredited Investor Certificate, and/or an Opinion of Counsel and such other certifications and evidence as the Company may reasonably require in order to determine that the proposed transfer or exchange is being made in compliance with the Securities Act and any applicable securities laws of any state of the United States; *provided* that if the requested transfer or exchange is made by the Holder of a Book-Entry Warrant that does not bear the Restricted Legend, then no certification is required. In the event that a Book-Entry Warrant that does not bear the Restricted Legend is surrendered for transfer or exchange, upon transfer or exchange the Warrant Agent will deliver a Book-Entry Warrant that does not bear the Restricted Legend.

(iii) The Person requesting the transfer or exchange must deliver or cause to be delivered to the Warrant Agent a duly completed Rule 144A Certificate.

(c) No certification is required in connection with any transfer or exchange of any Warrant (or a beneficial interest therein)

(i) after such Warrant is eligible for resale pursuant to Rule 144 under the Securities Act (or a successor provision) without the need to satisfy current information or other requirements therein; *provided* that the Company has *provided* the Warrant Agent with an Officers' Certificate to that effect, and the Company may require from any Person requesting a transfer or exchange in reliance upon this clause (i) an opinion of counsel and any other reasonable certifications and evidence in order to support such certificate; or

(ii) sold pursuant to an effective registration statement.

Any Book-Entry Warrant delivered in reliance upon this paragraph will not bear the Restricted Legend.

(d) The provisions of this Section 5.3(a) shall not apply to the exercise of any Warrant to the extent Warrant Shares issued upon such exercise (and any unexercised portion of the Warrant so exercised) shall be issued to the same registered Holder that exercised such Warrant.

(e) The Warrant Agent will retain copies of all certificates, opinions and other documents received in connection with the transfer or exchange of a Warrant (or a

beneficial interest therein), and the Company will have the right to inspect and make copies thereof at any reasonable time upon written notice to the Warrant Agent.

(f) No sale or transfer of Warrants shall be permitted, and any such transfer shall be null and void ab initio, if, after giving effect to such Transfer, the Company would be required to become a reporting company under the Exchange Act; provided, however, that the restriction set forth in this sentence shall no longer be applicable upon the earlier of (i) the Company's registration of any class of its equity securities within the meaning of the Exchange Act and (ii) the Company's listing of any class of its securities on a national securities exchange.

(g) In the event of any purported transfer in violation of the provisions of this Agreement, such purported transfer shall be void and of no effect and the Warrant Agent shall not give effect to such transfer.

**Section 5.4 Treatment of Holders of Warrant Certificates.** Each Holder of a Warrant Certificate, by accepting the same, consents and agrees with the Company, the Warrant Agent and every subsequent Holder of such Warrant Certificate that until the transfer of such Warrant Certificate is registered on the books of the Warrant Agent, the Company and the Warrant Agent may treat the registered Holder of such Warrant Certificate as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

**Section 5.5 Fractional Warrants.** The Warrant Agent shall not be required to effect any registration of transfer or exchange which will result in the issuance of a Warrant Certificate for a fraction of a Warrant.

## ARTICLE 6

### ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES

**Section 6.1 Adjustments Generally.** The Exercise Price, the number of Warrant Shares issuable upon exercise of each Warrant and the number of Warrants outstanding are subject to adjustment from time to time upon the occurrence of any of the events enumerated in this Article 6. To the extent the context so requires, all references in this Article 6 to the Class A Common Stock shall be deemed, as of a particular time, to include any other securities included within the "Warrant Shares" as of such time.

**Section 6.2 Certain Mechanical Adjustments.** If after the Effective Date, and subject to the provisions of Section 6.8, the Company shall (i) declare a dividend or make a distribution on the Class A Common Stock payable in shares of Class A Common Stock, (ii) subdivide, reclassify or recapitalize its outstanding Class A Common Stock into a greater number of shares, (iii) combine, reclassify or recapitalize its outstanding Class A Common Stock into a smaller number of shares, or (iv) issue any shares of its capital stock by reclassification of its Class A Common Stock, the number of Warrant Shares issuable upon exercise of Warrants at the time of the record date of such dividend, distribution, subdivision, combination, reclassification or recapitalization shall be adjusted so that the Holders shall be entitled to receive the aggregate number and kind of shares which, if their Warrants had been

exercised in full immediately prior to such event, the Holders would have owned upon such exercise and been entitled to receive by virtue of such dividend, distribution, subdivision, combination, reclassification or recapitalization. Any adjustment required by this Section shall be made successively immediately after the distribution date, in the case of a dividend or distribution, or the effective date, in the case of a subdivision, combination, reclassification or recapitalization, to allow the purchase of such aggregate number and kind of shares.

**Section 6.3 Dividends and Other Distributions.**

(a) If at any time prior to the exercise in full of the Warrants, the Company shall fix a record date for the issuance or making of a distribution to all holders of the Class A Common Stock (including any such distribution to be made in connection with a consolidation or merger in which the Company is to be the continuing corporation and any such distribution taking the form of a pro rata repurchase of shares of Class A Common Stock) of evidences of its indebtedness, any other securities or any cash, property or other assets (excluding a combination, reclassification or recapitalization referred to in Section 6.2, and excluding any dividends payable solely in cash) or of subscription rights, options or warrants to purchase or acquire any capital stock of the Company (excluding stock dividends and stock reclassifications referred to in Section 6.2) (any such event being herein called a “Non-Cash Dividend”), the Exercise Price shall be decreased immediately after the record date for such Non-Cash Dividend to a price determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which shall be the then Current Market Price per share of the Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Non-Cash Dividend less the fair market value (as determined in good faith by the Company’s Board of Directors based on the written advice of an independent financial advisory firm of national reputation, without regard to any illiquidity or minority discounts) of the evidences of indebtedness, securities, property or other assets issued or distributed in such Non-Cash Dividend applicable to one share of Class A Common Stock or of such subscription rights or warrants applicable to one share of Class A Common Stock, and the denominator of which shall be such then Current Market Price per share of Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Non-Cash Dividend.

(b) If at any time prior to the exercise in full of the Warrants, the Company shall fix a record date for the issuance or making of a distribution to all holders of the Class A Common Stock of any dividend payable solely in cash (any such dividend being referred to as a “Cash Dividend”), the Exercise Price shall be decreased immediately after the record date for such Cash Dividend to a price determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which shall be the then Current Market Price per share of the Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Cash Dividend less the Per Share Dividend Amount, and the denominator of which shall be such then Current Market Price per share of Class A Common Stock on the date immediately prior to the Ex-Dividend Date for such Cash Dividend.

(c) Any adjustment required by this Section 6.3 shall be made successively whenever such a record date is fixed and in the event that such distribution is not so made, the Exercise Price shall again be adjusted to be the Exercise Price that was in effect immediately prior to such record date. For purposes of this Section 6.3, “Current Market

Price” per share of Class A Common Stock at any date shall mean, (i) if the shares of Class A Common Stock are then listed on a national securities exchange, the average of the daily Quoted Prices for ten (10) consecutive trading days immediately prior to such date, or (ii) if the shares of Class A Common Stock is not then so listed, the Quoted Price immediately prior to such date.

**Section 6.4 Adjustments in Exercise Price.** Whenever the number of Warrant Shares issuable upon the exercise of Warrants is adjusted pursuant to Section 6.2, the Exercise Price shall be adjusted (to the nearest tenth of one cent) by multiplying the Exercise Price applicable immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of Warrant Shares issuable upon exercise of each Warrant immediately prior to such adjustment, and (y) the denominator of which shall be the number of Warrant Shares issuable upon exercise of each Warrant immediately after such adjustment. Subject to Section 6.8, whenever the Exercise Price is adjusted pursuant to Section 6.3, the number of Warrant Shares issuable upon exercise of the Warrants shall simultaneously be adjusted by multiplying the number of Warrant Shares initially issuable upon exercise of each Warrant by the Exercise Price in effect on the date thereof and dividing the product so obtained by the Exercise Price, as adjusted.

**Section 6.5 Reclassification or Reorganization Event.** In the case of any reclassification or reorganization of the outstanding shares of Class A Common Stock or other Warrant Shares (other than a change covered by Section 6.2 or that solely affects the par value of such shares of Class A Common Stock), each Holder shall thereafter have the right to exercise its Warrants and in lieu of the Warrant Shares that would otherwise be issuable upon such exercise, receive the kind and amount of shares of stock or other securities or property (including cash) that such Holder would have received pursuant to such reclassification or reorganization if such Holder had exercised such Warrants immediately prior to such event. The immediately preceding sentence shall similarly apply to successive reclassifications and reorganizations. If a Reorganization Event shall occur, the certificate or articles of incorporation of the continuing or surviving or acquiring or resulting entity, or any contract or agreement providing for such Reorganization Event, shall provide that, so long as any Warrant remains outstanding, each Warrant, upon the exercise thereof at any time after the consummation of such Reorganization Event, shall be exercisable into (at an initial Exercise Price equal to the Exercise Price in effect immediately prior to such Reorganization Event, but subject to any adjustment pursuant to the terms hereof), in lieu of the Warrant Shares issuable upon such exercise prior to such consummation, the amount of cash, securities or other property receivable pursuant to such Reorganization Event by a holder of the number of shares of Class A Common Stock for which a Warrant is exercisable immediately prior to the effective time of such Reorganization Event. The provisions set forth herein providing for adjustments and otherwise for the protection of the holders of Warrants shall thereafter continue to be applicable on an as nearly equivalent basis as may be practicable and any such continuing, surviving, acquiring or resulting entity shall expressly assume all of the obligations of the Company set forth herein to the extent applicable. It is acknowledged and agreed that if, in connection with any Reorganization Event, the Warrants become exercisable solely for cash, and the Exercise Price is higher than the amount of cash for which such Warrant is exercisable, then, upon consummation of such reorganization, all Warrants then outstanding with such higher Exercise Price shall automatically be terminated and cancelled without

payment, and the Company may unilaterally terminate this Warrant Agreement by giving written notice thereof to the Warrant Agent. For purposes hereof, a “Reorganization Event” shall mean (i) a consolidation, merger, amalgamation, share exchange, sale of all or substantially all assets or similar transaction of the Company with or into another Person pursuant to which the shares of Class A Common Stock are changed into, converted into or exchanged for cash, securities or other property (whether of the Company or another Person) other than in circumstances covered by Section 6.2; (ii) a reorganization, recapitalization or reclassification or similar transaction in which the shares of Class A Common Stock are exchanged for securities other than shares of Class A Common Stock (other than in circumstances covered by Section 6.2); or (iii) a statutory exchange of the outstanding shares of Class A Common Stock for securities of another Person. The provisions of this Section 6.5 shall apply similarly to all successive reclassifications, reorganizations and events constituting Reorganization Events.

**Section 6.6 Adjustments for Certain Issuances and Repricings.** If on or after the Effective Date, the Company shall issue Class A Common Stock (other than Class A Common Stock issued pursuant to a management incentive package or this Agreement) or rights, warrants or other securities exercisable or convertible into or exchangeable into such Class A Common Stock, or stock appreciation rights or other rights to receive payments based upon the value of Class A Common Stock (“Common Stock Equivalents”) (collectively, the “Additional Common Stock”) at a price per share of Class A Common Stock less than the Current Market Price as of the date of such issuance (a “Below Market Issuance”), then the Exercise Price shall be reduced to the price (the “Adjusted Exercise Price”) determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which is the sum of (a) the total outstanding Class A Common Stock on a fully diluted basis immediately preceding such Below Market Issuance plus (b) the number of shares of Additional Common Stock (treating Common Stock Equivalents as having been fully exercised or converted) which the aggregate consideration received by the Company in the Below Market Issuance would purchase at a price per share equal to the Current Market Price as of the date immediately prior to such Below Market Issuance and the denominator of which is the total outstanding Class A Common Stock of Company on a fully diluted basis immediately after such Below Market Issuance. In the event of a Below Market Issuance, the Warrant Shares shall also be increased to the number obtained by dividing (x) the product of the Warrant Shares before such adjustment and the Exercise Price in effect immediately prior to the Below Market Issuance by (y) the Adjusted Exercise Price. For purposes of this Section 6.6, (i) the consideration received by the Company shall not be deemed reduced by any underwriting or placement agency fees, discounts, commissions and expense, (ii) the value of any non-cash portion of the consideration shall be deemed to be the fair market value of such consideration as determined in good faith by the Board of Directors based on the written advice of an independent financial advisory firm of national reputation, without regard to any illiquidity or minority discounts and (iii) to the extent the Below Market Issuance consists of the issuance of Common Stock Equivalents, the consideration received by the Company shall be deemed to include the additional consideration that would payable to the Company upon the eventual exercise, conversion or exchange of such Common Stock Equivalent, and no further adjustment shall be made for the issuance of Class A Common Stock upon such exercise, conversion or exchange. For purposes of this Section 6.6, any issuance of Class A Common Stock to an independent third party in an arms-length transaction who prior to such issuance



was not a beneficial or record holder of any securities of the Company or a creditor of the Company shall be conclusively presumed not to be a Below Market Issuance. For the avoidance of doubt, no increase in the Exercise Price or reduction in the Warrant Shares shall be made pursuant to this Section 6.6 (or Section 6.1 or Section 6.3).

**Section 6.7 Notices of Changes in Warrant and Other Events.** Upon every adjustment of the Exercise Price or the number of shares issuable upon exercise of a Warrant, the Company shall give written notice thereof to the Warrant Agent, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares of Class A Common Stock purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in Section 6.2, Section 6.3 or Section 6.5, then, in any such event, the Company shall give or cause to be given written notice to each Holder, by press release or at the last address set forth for such Holder in the register books of the Warrant Agent, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event. To the extent not covered (on or before the time period required below) by any statement or other notice delivered or required to be delivered pursuant hereto, and excluding any events specified in Section 6.2, Section 6.3 or Section 6.5, the Company shall give notice to each Registered Holder and other Holder by press release or by mail if at any time, prior to the expiration or exercise in full of the Warrants, any of the following events shall occur:

(a) the Company shall authorize the payment of any dividend payable in any securities (other than shares of Class A Common Stock in a dividend to which the adjustments set forth in this Agreement apply) or authorize the making of any dividend or distribution (other than cash dividends to which the adjustments set forth in this Agreement apply) to all holders of Class A Common Stock or any other class or series of stock then forming part of the Warrant Shares; or

(b) the Company shall authorize the issuance to all holders of Class A Common Stock (or other class or series of stock then forming part of the Warrant Shares) of any additional securities (other than a stock dividend to which the adjustments set forth in this Agreement apply) or of rights, options or warrants to subscribe for or purchase any securities; or

(c) the Company shall authorize a capital reorganization or reclassification of any class or series of stock then forming part of the Warrant Shares (other than a reorganization or reclassification for which the adjustments set forth in this Agreement apply), or any dissolution, liquidation or winding up of the Company.

Such giving of notice shall be initiated at least ten (10) Business Days prior to the date fixed as a record date or effective date or the date of closing of the Company's stock transfer books for the determination of the stockholders entitled to such dividend, distribution or issuance or for the determination of stockholders entitled to vote on the proposed event set forth in paragraph (c) above. Such notice shall specify such record date or the date of closing of the stock transfer books, as the case may be. Failure to provide such notice shall not affect the validity of any action taken in connection with such dividend, distribution, issuance or

other proposed transaction. For the avoidance of doubt, no such notice shall supersede or limit any adjustment otherwise called for hereby by reason of any event as to which notice is required by this Section 6.7.

**Section 6.8 No Fractional Shares.** Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares upon exercise of Warrants. If, by reason of any adjustment made pursuant to this Article 6, any Holder would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share of Class A Common Stock, the Company shall, upon such exercise, round down to the nearest whole number the number of shares of Class A Common Stock to be issued to the Holder.

**Section 6.9 Form of Warrant.** The form of Warrant or Warrant Certificate need not be changed because of any adjustment pursuant to this Article 6, and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same number of shares as is stated in the Warrant Certificates initially issued pursuant to this Agreement. However, the Company may at any time in its sole discretion make any change in the form of Warrant or Warrant Certificate that the Company may deem appropriate and that does not affect the substance thereof, and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

**Section 6.10 De Minimis Adjustments.** No adjustment in the number of Warrant Shares purchasable hereunder shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the number of Warrant Shares purchasable upon the exercise of each Warrant; provided, however, that any adjustments which by reason of this Section 6.10 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest tenth of one cent and to the nearest one-hundredth of a Warrant Share, as the case may be.

## ARTICLE 7 CONCERNING THE WARRANT AGENT

**Section 7.1 Warrant Agent.** The Warrant Agent shall serve as the agent of the Company in respect of the Warrants and the Warrant Certificates, upon the terms of, and subject to the conditions set forth in, this Agreement and the Warrant Certificates. The Warrant Agent shall have the powers and authority granted to and conferred upon it hereunder and in the Warrant Certificates, and such further powers and authority as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions of this Agreement.

### **Section 7.2 Conditions of Warrant Agent's Obligations.**

(a) The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following, to all of which the Company agrees and to all of which the rights hereunder of the Holders from time to time of the Warrant Certificates shall be subject:

(i) Compensation and Indemnification. The Company agrees promptly to pay the Warrant Agent the compensation to be agreed upon between the Company and the Warrant Agent for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for reasonable out-of-pocket expenses incurred by the Warrant Agent without gross negligence, bad faith or willful misconduct or breach of this Agreement on its part in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on the part of the Warrant Agent, arising out of or in connection with its acting as the Warrant Agent hereunder, as well as the reasonable costs and expenses of defending against any claim of such liability. In addition, from time to time, Company may provide the Warrant Agent with instructions concerning the services performed by the Warrant Agent hereunder. In addition, at any time Warrant Agent may apply to any officer of Company for instruction, and may consult with legal counsel for Company with respect to any matter arising in connection with the services to be performed by the Warrant Agent under this Agreement. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by Company for any action taken or omitted by the Warrant Agent in reliance upon any Company instructions or upon the advice or opinion of such counsel. The Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from Company.

(ii) Agent for the Company. In acting under this Agreement and in connection with the Warrants and the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligation or relationship of agency or trust for or with any of the Holders of Warrant Certificates or beneficial owners of Warrants.

(iii) Counsel. The Warrant Agent may consult with counsel satisfactory to it in its reasonable judgment (who may be counsel for the Company), and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(iv) Documents. Subject to Section 3.2(j), the Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or thing suffered by it in reliance upon any Warrant Certificate, Exercise Form, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties. The Company shall perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and/or delivered all such further acts, instruments and documents as may reasonably be required by the Warrant Agent for the carrying out of the provisions of this Agreement.

(b) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depository, trustee or agent for, any

committee or body of holders of Warrant Shares or other obligations of the Company as freely as if it were not the Warrant Agent hereunder.

(i) No Liability for Interest. The Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(ii) No Liability for Invalidity. The Warrant Agent shall not be under any responsibility with respect to the validity or sufficiency of this Agreement or the execution and delivery hereof (except the due authorization to execute this Agreement and the due execution and delivery hereof by the Warrant Agent) or, subject to Section 3.2(j), with respect to the validity or execution of any Warrant Certificates (except its countersignature thereof).

(iii) No Liability for Recitals. The recitals contained herein shall be taken as the statements of the Company and the Warrant Agent assumes no liability for the correctness of the same.

(iv) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates countersigned by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a Holder of a Warrant Certificate with respect to such default.

(c) Aggregate Liability. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, other than in the case of the Warrant Agent's bad faith or willful misconduct, the amounts paid hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses,

(i) Damages. Neither party to this agreement shall be liable to the other party for any consequential, indirect, special or incidental damages under any provisions of this agreement or for any consequential, indirect, penal, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

**Section 7.3 Resignation and Appointment of Successor.**

(a) The Company agrees, for the benefit of the Holders from time to time, that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or are no longer exercisable. The initial Warrant Agent and any successor Warrant Agent hereunder shall be the Company or a bank or trust company in good standing, and shall be authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers and subject to examination by federal or state authority.

(b) The Warrant Agent may at any time resign as such by giving written notice of its resignation to the Company, specifying the desired date on which its resignation shall become effective; provided, however, that such date shall be not less than ninety (90) days after the date on which such notice is given unless the Company agrees to accept shorter notice. Upon receiving such notice of resignation, the Company shall promptly appoint a successor Warrant Agent (which shall be the Company or a bank or trust company in good standing, authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers and subject to examination by federal or state authority) by written instrument in duplicate signed on behalf of the Company, one copy of which shall be delivered to the resigning Warrant Agent and one copy to the successor Warrant Agent. The Company may, at any time and for any reason at no cost to the Holders, remove the Warrant Agent and appoint a successor Warrant Agent (qualified as aforesaid) by written instrument in duplicate signed on behalf of the Company and specifying such removal and the date when it is intended to become effective, one copy of which shall be delivered to the Warrant Agent being removed and one copy to the successor Warrant Agent. Any resignation or removal of the Warrant Agent and any appointment of a successor Warrant Agent shall become effective upon acceptance of appointment by the successor Warrant Agent as provided in this subsection (b). In the event a successor Warrant Agent has not been appointed and accepted its duties within ninety (90) days of the Warrant Agent's notice of resignation, the Warrant Agent may apply to any court of competent jurisdiction for the designation of a successor Warrant Agent. Upon its resignation or removal, the Warrant Agent shall be entitled to the payment by the Company of the compensation and to the reimbursement of all reasonable out-of-pocket expenses incurred by it hereunder as agreed to in Section 7.2(a).

(c) The Company shall remove the Warrant Agent and appoint a successor Warrant Agent if the Warrant Agent (i) shall become incapable of acting, (ii) shall be adjudged bankrupt or insolvent, (iii) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, (iv) shall consent to, or shall have had entered against it a court order for, any such relief or to the appointment of or taking possession by any such official in any involuntary case or other proceedings commenced against it, (v) shall make a general assignment for the benefit of creditors or (vi) shall fail generally to pay its debts as they become due. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by it of such appointment, the predecessor Warrant Agent shall, if not previously disqualified by operation of law, cease to be Warrant Agent hereunder.

(d) Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, immunities, duties and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor as Warrant Agent hereunder.

(e) Any corporation into which the Warrant Agent hereunder may be merged or converted or any corporation with which the Warrant Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation to which the Warrant Agent shall sell or otherwise transfer all or substantially all the assets and business of the Warrant Agent, provided that it shall be qualified as aforesaid, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto. No costs and expenses associated with any replacement or appointment of a successor Warrant Agent shall be paid by the Holders.

(f) In the event a successor Warrant Agent shall be appointed, the Company shall (i) give notice thereof to the predecessor Warrant Agent and the Transfer Agent not later than the effective date of any such appointment, and (ii) cause written notice thereof to be delivered to each Registered Holder at such holder's address appearing on the Warrant Register. Failure to give any notice provided for in this Section or any defect therein shall not affect the legality or validity of the removal of the Warrant Agent or the appointment of a successor Warrant Agent, as the case may be.

## ARTICLE 8 MISCELLANEOUS

**Section 8.1 Amendment.** The terms of the Warrants may be amended by the Company, provided, that the affirmative vote or consent of the Holders of Warrants exercisable for at least ~~66-2/3~~<sup>55</sup>% majority of the Warrant Shares then issuable upon exercise of the Warrants then outstanding shall be required if the rights of the Holders are adversely affected by such amendment; provided, however, that the consent of each Holder of a Warrant affected shall be required for any amendment of this Agreement that would (i) increase the Exercise Price or decrease the number of Warrant Shares purchasable upon exercise of the Warrants, or alter the Company's obligation to issue Warrant Shares upon exercise of the underlying Warrant (other than adjustments made pursuant to Article 6 hereof), (ii) change the Expiration Date to an earlier date, or (iii) treat such Holder differently in an adverse way from any other Holder of Warrants. Notwithstanding anything to the contrary herein, upon the delivery of a certificate from a Company executive officer which states that the proposed amendment is in compliance with the terms of this Agreement and, provided such supplement or amendment does not change the Warrant Agent's rights, duties, liabilities or obligations hereunder, the Warrant Agent shall execute such amendment. Any amendment effected pursuant to and in accordance with this Section will be binding upon all Holders and upon

each future Holder, the Company and the Warrant Agent. In the event of any amendment, the Company will give prompt notice thereof to all Registered Holders and, if appropriate, notation thereof will be made on all Warrant Certificates thereafter surrendered for registration of transfer or exchange.

**Section 8.2 Notices and Demands to the Company and Warrant Agent.** If the Warrant Agent shall receive any notice or demand addressed to the Company by the Holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

(a) Any notice or communication from the Warrant Agent to the Company with respect to this Agreement shall be addressed to Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, Attention: General Counsel, and any notice or communication from the Company to the Warrant Agent with respect to this Agreement shall be addressed to such address as shall be specified in writing by the Warrant Agent to the Company from time to time (or such other address as shall be specified in writing by the Warrant Agent or by the Company). Any notice or communication that is given to any Holder pursuant to this Agreement or with respect to any Warrant, Book-Entry Warrant or Warrant Certificate shall be addressed to such Holder's address as it appears on the books of the Warrant Agent.

(b) All notices and communications made to the Company, the Warrant Agent or any Holder pursuant to this Agreement or any Warrant Certificate shall be in writing and shall be conclusively deemed to have been duly given (i) when hand delivered to the receiving party; (ii) three (3) Business Days after deposit in the U.S. mail with first class or certified mail receipt requested postage prepaid; or (iii) the next Business Day after deposit with a national overnight delivery service, postage prepaid, with next Business Day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

**Section 8.3 Applicable Law; Waiver of Jury Trial.** The validity, interpretation and performance of this Agreement and each Warrant Certificate issued hereunder and of the respective terms and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction. Nothing herein is intended to circumvent any duties owed by the parties to one another (including without limitation any duties owed to the Holders as express third-party beneficiaries), or to limit any implied covenant of good faith and fair dealing as applicable hereto, under the governing law of this Warrant Agreement. THE COMPANY, THE WARRANT AGENT, AND EACH HOLDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY WARRANT CERTIFICATE OR WARRANT ISSUED HEREUNDER.

**Section 8.4 Headings.** The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**Section 8.5 Counterparts.** This Agreement may be executed in any number of counterparts, any of which may be delivered via facsimile, PDF, or other forms of electronic delivery, each of which as so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

**Section 8.6 Inspection of Agreement.** A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by the Holder of any Book-Entry Warrant or Warrant Certificate. The Warrant Agent may require such Holder of a Warrant Certificate to submit such Warrant Certificate for inspection by it.

**Section 8.7 Benefits of This Agreement.** This Agreement is otherwise intended solely for the benefit of the Company, the Warrant Agent and their respective successors and permitted assigns, and this Agreement shall not confer any rights upon any other Person.

**Section 8.8 Termination.** This Agreement shall terminate at the earliest to occur of (a) the exercise of all Warrants, (b) the expiration of the Exercise Period, and (c) the Company's termination hereof pursuant to Section 6.5; provided, however, that Section 7.2 and this Article 8 shall survive any termination or expiration hereof.

**Section 8.9 Confidentiality.** The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public warrant holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law.

*[Signature Page Follows]*



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

**PATRIOT COAL CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AMERICAN STOCK TRANSFER & TRUST  
COMPANY, LLC**  
as Warrant Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A-1**

**FORM OF WARRANT STATEMENT**

**[As provided by the Warrant Agent]**

**Exhibit A-2**

**FORM OF FACE OF  
GLOBAL WARRANT CERTIFICATE**

**VOID AFTER 5:00 P.M., NEW YORK CITY TIME, ON [•], 202[•]**

This Global Warrant Certificate is held by The Depository Trust Company (the “Depository”) or its nominee in custody for the benefit of the beneficial owners hereof, and is not transferable to any person under any circumstances except that (i) this Global Warrant Certificate may be exchanged in whole but not in part pursuant to Section 5.2(a) of the Warrant Agreement dated as of [•], 201[•] (the “Warrant Agreement”), (ii) this Global Warrant Certificate may be delivered to the Warrant Agent for cancellation pursuant to Section 5.1(h) of the Warrant Agreement and (iii) this Global Warrant Certificate may be transferred to a successor Depository with the prior written consent of the Company.

Unless this Global Warrant Certificate is presented by an authorized representative of the Depository to the Company or the Warrant Agent for registration of transfer, exchange or payment and any certificate issued is registered in the name of [•] or such other entity as is requested by an authorized representative of the Depository (and any payment hereon is made to [•] or to such other entity as is requested by an authorized representative of the Depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful because the registered owner hereof, [•], has an interest herein.

Transfers of this Global Warrant Certificate shall be limited to transfers in whole, but not in part, to nominees of the Depository or to a successor thereof or such successor’s nominee, and transfers of portions of this Global Warrant Certificate shall be limited to transfers made in accordance with the restrictions set forth in Article 5 of the Warrant Agreement.

No registration or transfer of the securities issuable pursuant to the ~~Warrant~~Warrants will be recorded on the books of the Company until such provisions have been complied with.

THE SECURITIES REPRESENTED BY THIS WARRANT CERTIFICATE (INCLUDING THE SECURITIES ISSUABLE UPON EXERCISE OF THE ~~WARRANT~~WARRANTS) ARE SUBJECT TO ADDITIONAL AGREEMENTS SET FORTH IN THE WARRANT AGREEMENT, DATED AS OF •, 201[•], BY AND BETWEEN PATRIOT COAL CORPORATION AND THE WARRANT AGENT (THE “WARRANT AGREEMENT”).

~~THIS WARRANT~~THESE WARRANTS WILL BE VOID IF NOT EXERCISED PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON [•], 202[•]

~~WARRANT~~WARRANTS TO PURCHASE, AT THE ELECTION OF THE HOLDER CLASS A COMMON STOCK IN PATRIOT COAL CORPORATION

CUSIP # •  
ISSUE DATE: •, 201[•]

No. A-1

Warrants

This certifies that, for value received, \_\_\_\_\_, and its registered assigns (collectively, the “Registered Holder”), is the registered holder of Warrants and is entitled to purchase from Patriot Coal Corporation, a Delaware corporation (the “Company”), subject to the terms and conditions hereof, at any time before 5:00 p.m., New York time, on •, 202[•] ~~the number of,~~ for each Warrant, one (1) fully paid and nonassessable ~~share~~share of Class A Common Stock of the Company, ~~as set forth above~~ at the Exercise Price (as defined in the Warrant Agreement) applicable to Warrants. The Exercise Price and the number and kind of shares purchasable hereunder are subject to adjustment from time to time as provided in Article 6 of the Warrant Agreement. The initial Exercise Price shall be \$0.010.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

Address of Registered Holder for Notices (until changed in accordance with this Warrant):

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS WARRANT CERTIFICATE SET FORTH ON THE REVERSE HEREOF. SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

IN WITNESS WHEREOF, this Warrant has been duly executed by the Company under its corporate seal as of the \_\_\_\_ day of \_\_\_\_\_, 201\_.

**PATRIOT COAL CORPORATION**

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

Attest: \_\_\_\_\_  
Secretary

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC,**  
as Warrant Agent

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

**FORM OF REVERSE OF WARRANT CERTIFICATE**

The ~~Warrant~~Warrants evidenced by this Warrant Certificate is a part of a duly authorized issue of Warrants to purchase an aggregate of [•] shares of Class A Common Stock of Patriot Coal Corporation, each issued pursuant to the Warrant Agreement, a copy of which may be inspected at the Warrant Agent's office. The Warrant Agreement hereby is incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the Registered Holders of the Warrants. All capitalized terms used on the face of this Warrant herein but not defined that are defined in the Warrant Agreement shall have the meanings assigned to them therein.

Upon due presentment for registration of transfer of the Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any applicable tax or other governmental charge.

Warrants may be exercised by complying with the procedures established by the Depository for the exercise of Warrants.

The Company shall not be required to issue fractions of Warrant Shares or any certificates that evidence fractional Warrant Shares.

No Warrants may be sold, exchanged or otherwise transferred in violation of the Securities Act or state securities laws.

~~This~~Neither the Warrants nor this Warrant ~~does not entitle~~Certificate entitles the Registered Holder to any of the rights of a stockholder of the Company.

The Company and Warrant Agent may deem and treat the Registered Holder hereof as the absolute owner of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone) for the purpose of any exercise hereof and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

**SCHEDULE OF EXCHANGES OF INTERESTS OF GLOBAL WARRANTS**

The following exchanges of a part of this global Warrant Certificate have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in Number of Warrants in this global Warrant Certificate</b>	<b>Amount of increase in Number of Warrants in this global Warrant Certificate</b>	<b>Number of Warrants in this global Warrant Certificate following such decrease or increase</b>	<b>Signature of authorized officer of Warrant Agent</b>
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**FORM OF ASSIGNMENT**

[See Exhibit E of the Warrant Agreement]



**Exhibit B**

RESTRICTED LEGEND

~~THIS WARRANT~~THESE WARRANTS AND THE UNDERLYING COMMON STOCK TO BE ISSUED UPON ~~ITS~~ EXERCISE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. THE HOLDER OF THIS WARRANT, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH ~~WARRANT~~WARRANTS AND THE UNDERLYING COMMON STOCK TO BE ISSUED UPON ~~ITS~~ EXERCISE, ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE WARRANTS OR UNDERLYING COMMON STOCK TO BE EXERCISED UPON ITS ISSUANCE (AS APPLICABLE) ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT THAT IS AN ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE WARRANT AGENT'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C) TO REQUIRE THE DELIVERY OF A DULY COMPLETED AND SIGNED CERTIFICATE (THE FORM OF WHICH MAY BE OBTAINED FROM THE WARRANT AGENT) AND PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO THE COMPANY. EACH HOLDER AGREES NOT TO ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARDS TO THE WARRANTS OR WARRANT SHARES UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

**Exhibit C**

DEPOSITARY LEGEND

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS A BENEFICIAL INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL WARRANT CERTIFICATE ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL WARRANT ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE WARRANT AGREEMENT.

**Exhibit D**

**EXERCISE FORM FOR REGISTERED HOLDERS  
HOLDING BOOK-ENTRY WARRANTS**

**(To be executed upon exercise of Warrant)**

In this election form, "Warrant Agreement" means the Warrant Agreement dated [•], 2013 between Patriot Coal Corporation and [ ], and capitalized terms defined therein have the same meaning in this election form.

The undersigned hereby irrevocably elects to exercise the right, represented by the Book-Entry Warrants, to purchase Warrant Shares and (check one and fill in the appropriate information under):

herewith tenders payment for exercise of \_\_\_\_\_ Warrants in accordance with the elections specified below to the order of Patriot Coal Corporation in the amount of \$\_\_\_\_\_ (rounded up to the nearest one cent) in accordance with the terms of the Warrant Agreement and this Warrant;

- \_\_\_\_\_ Warrants are exercised for shares of Class A Common Stock; and

or

herewith tenders this Warrant pursuant to the net issuance exercise provisions of Section 3.2(d) of the Warrant Agreement in accordance with the elections specified below. This exercise and election shall be immediately effective or shall be effective as of 5:00 p.m., New York time, on [insert date].

- \_\_\_\_\_ Warrants are exercised for share of Class A Common Stock; and

The undersigned requests that [a statement representing] the Warrant Shares be delivered as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

Delivery Address (if different)

\_\_\_\_\_  
\_\_\_\_\_

If said number of shares shall not be all the shares purchasable under the within Book-Entry Warrants, the undersigned requests that a new Book-Entry Warrant representing the balance of such Warrants shall be registered, with the appropriate Warrant Statement delivered as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

Delivery Address (if different)

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number of Holder

Note: If the statement representing the Warrant Shares or any Book-Entry Warrants representing Warrants not exercised is to be registered in a name other than that in which the Book-Entry Warrants are registered, the signature of the holder hereof must be guaranteed.

SIGNATURE GUARANTEED BY:

\_\_\_\_\_

Signatures must be guaranteed by a participant in the Securities Transfer Agent Medallion Program, the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program.

Countersigned:

Dated: \_\_\_\_\_, 20\_\_\_\_\_

•,

as Warrant Agent

By: \_\_\_\_\_

Name:

Title:

**Exhibit E**

**FORM OF ASSIGNMENT**

(To be executed only upon assignment of ~~Warrant~~Warrants)

For value received, \_\_\_\_\_ hereby sells, assigns and transfers unto the Assignee(s) named below the rights represented by such Warrants listed opposite the respective name(s) of the Assignee(s) named below and all other rights of the Registered Holder under the within Warrants, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer said Warrants on the books of the within-named Company with respect to the number of Warrants set forth below, with full power of substitution in the premises:

Name(s) of Assignee(s) \_\_\_\_\_

Address \_\_\_\_\_

No. of Warrants \_\_\_\_\_

And if said number of Warrants shall not be all the Warrants represented by the Warrants owned by the Assignor, new Warrants are to be issued in the name of said undersigned for the balance remaining of the Warrants registered by said Warrants.

[THE FOLLOWING PROVISION TO BE INCLUDED ON ALL CERTIFICATES OR BOOK-ENTRY RECORDS BEARING A RESTRICTED LEGEND]

In connection with any transfer of ~~this Warrant~~Warrants occurring prior to the removal of the Restricted Legend, the undersigned confirms (i) the understanding that the Securities have not been registered under the Securities Act of 1933, as amended; (ii) that such transfer is made without utilizing any general solicitation or general advertising; and (iii) further as follows:

*Check One*

(1) This Warrant is being transferred to a “qualified institutional buyer” in compliance with Rule 144A under the Securities Act of 1933, as amended and certification in the form of Exhibit F to the Warrant Agreement is being furnished herewith.

*or*

(2) This Warrant is being transferred other than in accordance with (1) above and documents are being furnished which comply with the conditions of transfer set forth in this Warrant and the Warrant Agreement.

If none of the foregoing boxes is checked, the Warrant Agent is not obligated to register ~~this~~the Warrant in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Warrant Agreement have been satisfied.

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Signature\_\_\_\_\_

Note: The above signature should correspond  
exactly with the name on the face of this  
Warrant

**Exhibit F**

Rule 144A Certificate

\_\_\_\_\_ , \_\_\_\_\_

American Stock Transfer & Trust Company, LLC  
6201 15th Avenue  
Brooklyn, NY 11219

Re: Patriot Coal Corporation Warrants to acquire Class A Common Stock of Patriot Coal (the “**Warrants**”) Issued under the Warrant Agreement (the “**Agreement**”) dated as of December 18, 2013 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

*[CHECK A OR B AS APPLICABLE.]*

- ☞ A. Our proposed purchase of \_\_\_\_ of Warrants issued under the Agreement.
- ☞ B. Our proposed exchange of \_\_\_\_ of Warrants issued under the Agreement for an equal number of Warrants to be held by us.

We and, if applicable, each account for which we are acting, are a qualified institutional buyer within the meaning of Rule 144A (“Rule 144A”) under the Securities Act of 1933, as amended (the “Securities Act”). If we are acting on behalf of an account, we exercise sole investment discretion with respect to such account. We are aware that the transfer of Warrants to us, or such exchange, as applicable, is being made in reliance upon the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Prior to the date of this Certificate we have received such information regarding the Company as we have requested pursuant to Rule 144A(d)(4) or have determined not to request such information.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR  
OWNER (FOR EXCHANGES)]

By: \_\_\_\_\_

Name:

Title:

Address:

Date:



**Exhibit G**

Accredited Investor Certificate

\_\_\_\_\_ , \_\_\_\_\_

American Stock Transfer & Trust Company, LLC  
6201 15th Avenue  
Brooklyn, NY 11219

Re: Patriot Coal Corporation Warrants to acquire Class A Common Stock of Patriot Coal (the “**Warrants**”) Issued under the Warrant Agreement (the “**Agreement**”) dated as of December 18, 2013 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

*[CHECK A OR B AS APPLICABLE.]*

- ☞ A. Our proposed purchase of \_\_\_\_ Warrants issued under the Indenture.
- ☞ B. Our proposed exchange of \_\_\_\_ Warrants issued under the Indenture for an equal number of Warrants to be held by us.

We hereby confirm that:

1. We are an “accredited investor” within the meaning of Rule 501(a) under the Securities Act of 1933, as amended (the “Securities Act”) (an “Accredited Investor”).
2. Any acquisition of Warrants by us will be for our own account or for the account of one or more other Accredited Investors as to which we exercise sole investment discretion.
3. We have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of an investment in the Warrants and we and any accounts for which we are acting are able to bear the economic risks of and an entire loss of our or their investment in the Warrants.
4. We are not acquiring the Warrants with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any State of the United States or any other applicable jurisdiction; *provided* that the disposition of our property and the property of any accounts for which we are acting as fiduciary will remain at all times within our and their control.
5. We acknowledge that the Warrants have not been registered under the Securities Act and that the Warrants may not be offered or sold within the United States or to or for the benefit of U.S. persons except as set forth below.

We agree for the benefit of the Company, on our own behalf and on behalf of each account for which we are acting, that such Warrants may be offered, sold, pledged or otherwise transferred only in accordance with the Securities Act and any applicable securities laws of any State of the United States and only (a) to the Company or any subsidiary thereof, (b) pursuant to a registration statement that has been declared effective under the Securities Act, (c) to a person we reasonably believe is a qualified institutional buyer in compliance with Rule 144A under the Securities Act, (d) to an Accredited Investor that, prior to such transfer, delivers to the Warrant Agent a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) relating to the restrictions on transfer of the Warrants or (e) pursuant to any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with (c) above, we acknowledge that a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) must be delivered to the Warrant Agent. Prior to the registration of any transfer in accordance with (d) or (e) above, we acknowledge that the Company reserves the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws. We acknowledge that no representation is made as to the availability of any exemption from the registration requirements of the Securities Act.

We understand that the Warrant Agent will not be required to accept for registration of transfer any Warrants acquired by us, except upon presentation of evidence satisfactory to the Company and the Warrant Agent that the foregoing restrictions on transfer have been complied with. We further understand that the Warrants acquired by us will bear a legend reflecting the substance of the preceding paragraph. We further agree to provide to any person acquiring any of the Warrants from us a notice advising such person that resales of the Warrants are restricted as stated herein and that the Warrants will bear a legend to that effect.

We agree to notify you promptly in writing if any of our acknowledgments, representations or agreements herein ceases to be accurate and complete.

We represent to you that we have full power to make the foregoing acknowledgments, representations and agreements on our own behalf and on behalf of any account for which we are acting.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR  
OWNER (FOR EXCHANGES)]

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

Title:  
Address:  
Date:

Upon transfer, the Warrants would be registered in the name of the new beneficial owner as follows:

\_\_\_\_\_

Taxpayer ID number: \_\_\_\_\_

# **Exhibit 6**

**STOCKHOLDERS AGREEMENT**  
**AMONG**  
**PATRIOT COAL CORPORATION**  
**AND**  
**CERTAIN OF ITS STOCKHOLDERS**  
**PARTY HERETO**  
**DATED AS OF DECEMBER 18, 2013**

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## **STOCKHOLDERS AGREEMENT**

**This Stockholders Agreement** (as it may be amended, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of December 18, 2013 (the “**Effective Date**”), is entered into among Patriot Coal Corporation, a Delaware corporation (the “**Company**”) and each of the undersigned entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees executing a counterpart signature page hereof or a joinder agreement hereto substantially in the form of Exhibit A hereto, in each case, whether on the date hereof or hereafter (collectively, the “**Stockholders**”).

### **WITNESSETH:**

**WHEREAS**, on July 9, 2012 (the “**Petition Date**”), the Debtors filed voluntary chapter 11 petitions under title 11 of the United States Code (the “**Bankruptcy Code**”), and the Debtors’ chapter 11 cases are being jointly administered by the United States Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”) under the caption *In re Patriot Coal Corporation, et al*, Case No. 12-51502-659 (Jointly Administered) (the “**Chapter 11 Cases**”);

**WHEREAS**, on November 4, 2013, the Debtors filed the *Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 4927] (as amended and supplemented through the date hereof, the “**Plan**”);

**WHEREAS**, on November 4, 2013, the Debtors and the Backstop Parties (as defined below) entered into that certain backstop rights purchase agreement, attached as Appendix G to the *Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 4928] (the “**Backstop Rights Purchase Agreement**”);

**WHEREAS**, on December [17], 2013, the Bankruptcy Court entered an order confirming the Plan;

**WHEREAS**, the Plan provides for, among other things, the cancellation of all existing equity in the Company and the issuance of Class A Common Stock (as defined below) and warrants of the Company (the “**Warrants**”) exercisable for Class A Common Stock;

**WHEREAS**, the Plan provides for, among other things, the Company’s execution of a stockholders’ agreement that provides the Backstop Parties and certain other holders of at least 5% of the Fully-Diluted Class A Common Stock certain consent and information rights;

**WHEREAS**, in connection with the consummation of the transactions contemplated by the Plan and the Backstop Rights Purchase Agreement, the Company and the Stockholders desire to enter into this Agreement to provide certain rights and obligations among them; and

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in Section 1.1.

## ARTICLE I

### CERTAIN DEFINITIONS

#### Section 1.1 Definitions

As used in this Agreement, the following terms shall have the following respective meanings:

“**5% Owner**” means any Person beneficially owning 5% or more of the Equity Securities entitled to vote on the election of the directors of the Company.

“**Affiliate**” of a Person means (a) such Person’s controlling member, general partner, manager and investment manager and affiliates thereof; (b) any entity with the same general partner, manager or investment manager as such Person or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager of such Person; and (c) any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person, the general partner of such Person, investment manager of such Person or an affiliate of such Person, general partner or investment manager. The term “**control**” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise.

“**Agreement**” has the meaning specified in the Preamble.

“**Backstop Parties**” means (i) the entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees set forth in the signature pages to the Backstop Agreement and (ii) any person executing a joinder to the Backstop Agreement as a “Backstop Party” in substantially the forms attached thereto.

“**Backstop Rights Purchase Agreement**” has the meaning specified in the Recitals.

“**Bankruptcy Code**” has the meaning specified in the Recitals.

“**Bankruptcy Court**” has the meaning specified in the Recitals.

“**Board**” means the Board of Directors of the Company.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“**Chapter 11 Cases**” has the meaning specified in the Recitals.

“**Class A Common Stock**” means Class A common stock, par value \$0.00001 per share, of the Company, entitled to one vote per share of common stock on all matters on which the common stock of the Company is entitled to vote, as constituted on the date hereof, any such stock into which such common stock shall have changed or any stock resulting from any reclassification of



such common stock and any shares of any class of the Company's capital stock issued with respect to shares of such common stock by way of stock split, stock dividend or other recapitalization.

“**Company**” has the meaning specified in the Preamble.

“**Competitor**” means any Person that the Board in good faith determines is a competitor of the Company or any of its Subsidiaries.

“**Consent**” means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person.

“**Consent Notice**” has the meaning specified in Section 3.1(c).

“**Consent Right**” has the meaning specified in Section 3.1(a).

“**Consent Right Holders**” means the Stockholders that are parties to this Agreement.

“**Consent Securities**” has the meaning specified in Section 3.1(a).

“**Debtors**” has the meaning specified in the Recitals.

“**Effective Date**” has the meaning specified in the Preamble.

“**Eligible Offering**” has the meaning specified in Section 3.1(b).

“**Equity Securities**” means any class of capital stock, including the Class A Common Stock or any preferred stock of the Company, however described or whether voting or non-voting, and all securities convertible or exercisable into or exchangeable for or rights to purchase any such capital stock of the Company, if any, including any Equity Security Equivalent and any and all other equity securities of the Company or securities convertible into or exchangeable for such security or issued as a distribution with respect to or in exchange for such securities.

“**Equity Security Equivalent**” means any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into Equity Securities.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fair Market Value**” means, as of any date when the Class A Common Stock is listed on one or more national securities exchanges, the closing price reported on the principal national securities exchange on which such Class A Common Stock is listed and traded on the date of determination, or, if there is no such closing price reported on that date, then on the last preceding date on which such a closing price was reported. If the Class A Common Stock is not listed on a national securities exchange, the Fair Market Value shall mean, as determined by the Board in good faith, a valuation based upon the price that would be paid for the Class A Common Stock in an acquisition of all outstanding shares of capital stock of the Company on a

standalone basis in a privately negotiated arm's length transaction between a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy, (i) taking into account the aggregate amount payable in respect of the liquidation preference of any capital stock of the Company having a liquidation preference, and (ii) taking into account the aggregate amount payable in respect of any accrued and unpaid dividends on any capital stock of the Company whose holders have rights to dividends that are senior to the rights of holders of Class A Common Stock. The Company shall prepare and deliver to the Consent Right Holders its calculation of the Fair Market Value per share of Class A Common Stock (the "**Company's Valuation**") within ten days of its delivery of a Consent Notice. If a Consent Right Holder does not agree with the Company's Valuation, then the Consent Right Holder may request, within 10 business days after delivery of the Company's Valuation to the Consent Right Holder, that the Company's Valuation be reviewed by an independent investment banking or other valuation firm approved by the Consent Right Holders of a majority of all Equity Securities beneficially owned by all Consent Right Holders. The Company and the Consent Right Holder shall be responsible for their own fees and expenses, including the fees and expenses of their respective counsel, provided, however, the Company shall be solely responsible for the fees and expenses of any investment banking or other valuation firm engaged to provide a valuation as described above.

"**Family Member**" shall mean any person's spouse, minor child, adult child, stepchild, adopted child, brother, sister, parent, adoptive parent, stepparent, stepbrother, stepsister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law or mother-in-law.

"**Fully-Diluted**" means, (1) with respect to the calculation of the total number of outstanding shares of Class A Common Stock, (i) all such shares of Class A Common Stock actually outstanding or actually held by such Person or Persons and (ii) all shares of Class A Common Stock underlying options, warrants and other Equity Security Equivalents outstanding, disregarding, in each case, any vesting provisions of such instruments; and (2) with respect to the calculation of the number of shares of Class A Common Stock held by a Person or group of Persons, (i) all such shares of Class A Common Stock actually held by such Person or Persons and (ii) all shares of Class A Common Stock underlying options, warrants and other Equity Security Equivalents held by such Person or Persons, disregarding, in each case, any vesting provisions of such instruments. For the avoidance of doubt, the "Fully-Diluted" number of securities outstanding does not including securities held by the Company in treasury or otherwise.

"**Fundamental Documents**" means the Company's charter and by-laws.

"**GAAP**" has the meaning specified in Section 3.2(a)(i).

"**Governmental Authority**" means any international, supranational or national government, any state, provincial, local or other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government; any court, tribunal or arbitrator; any self-regulatory organization; or any securities exchange or quotation system.

“**Independent Third Party**” means any Person who, immediately prior to the contemplated transaction, (a) is not a 5% Owner, (b) is not an Affiliate of any 5% Owner, and (c) is not a Family Member of any 5% Owner.

“**IPO**” means a bona fide sale by the Company of Equity Securities in an initial public offering registered under the Securities Act which has been approved by the Board.

“**Joinder Agreement**” means the joinder agreement substantially in the form of Exhibit A hereto, which may be executed by a Person, together with its Affiliates, holding Class A Common Stock or Warrants whose number of shares of Class A Common Stock plus the number of shares of Class A Common Stock into which their Warrants could be exercised for would, in the aggregate, be equal to or greater than 5% of the total number of outstanding shares of Class A Common Stock (calculated on a Fully-Diluted basis).

“**Non-Employee Holders**” has the meaning specified in Section 4.2.

“**Notice**” has the meaning specified in Section 5.6(a).

“**own**” means to own, hold or otherwise exercise investment discretion over the applicable Equity Securities. The terms “**owner**” and “**ownership**” shall have meanings correlative of the foregoing.

“**Person**” or “**person**” means any natural person, firm, limited liability company, general or limited partnership, association, corporation, company, joint venture, trust, Governmental Authority or other entity.

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” has the meaning specified in the Recitals.

“**Proprietary Information**” has the meaning specified in Section 4.1.

“**Registration Rights Agreement**” means the registration rights agreement, dated as of the Effective Date, between the Company and the Stockholders party thereto.

“**Sale of the Company**” means the sale of the Company, in one transaction or a series of related transactions, to an Independent Third Party or group of Independent Third Parties pursuant to which such party or parties acquire(s) (i) Equity Securities of the Company representing more than 50% of the voting power of all outstanding voting Equity Securities of the Company (whether by way of merger, consolidation or otherwise) or (ii) all or substantially all of the assets of the Company and its Subsidiaries determined on a consolidated basis.

“**SEC**” means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Stockholders**” has the meaning specified in the Recitals.

“**Subsidiary**” means any Person (a) in which the Company owns, directly or indirectly, 50% or more of the securities or other ownership interests of such other Person, (b) in which the Company owns, directly or indirectly, securities or other ownership interests having ordinary voting power to elect a majority of the board of managers/directors, or other persons performing similar functions, of such Person or (c) the management of which is otherwise controlled, directly or indirectly, by the Company.

“**Warrants**” has the meaning specified in the Recitals.

## **Section 1.2 Headings; Table of Contents**

Headings and table of contents should be ignored in constructing this Agreement.

## **Section 1.3 Singular, Plural, Gender**

References to one gender include all genders and references to the singular include the plural and vice versa.

## **Section 1.4 Exhibits and Recitals**

References to this Agreement shall include any Exhibits, Annexes and Recitals and references to Sections, Annexes and Exhibits are to Sections of and Exhibits and Annexes to this Agreement.

## **Section 1.5 Information**

References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

## **Section 1.6 Interpretation**

Whenever the words “**include**,” “**includes**” or “**including**” are used in this Agreement, they shall be deemed to be followed by the words “**without limitation**.” This Agreement shall be construed as if it is drafted by all the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement if an ambiguity or question of intent or interpretation arises. If the last day of performance of any obligation hereunder is not a Business Day, then the deadline for such performance or the expiration of the applicable period or date shall be extended to the next Business Day.

### **Section 1.7 Calculation of Ownership Percentages**

All Stockholder ownership percentages of the outstanding Class A Common Stock shall be calculated for purposes of this Agreement on a Fully-Diluted basis.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

Each of the parties hereby severally (and not jointly) represents and warrants to each of the other parties as follows:

#### **Section 2.1 Authority; Enforceability**

Such party has the legal capacity or full power and authority (corporate or otherwise) to execute and deliver this Agreement and to perform its obligations hereunder. Such party (in the case of parties that are not natural persons) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation or organization, and the execution of this Agreement and the consummation of the transactions contemplated herein have been duly and validly authorized by all necessary action. No other act or proceeding, corporate or otherwise, on its part is necessary to authorize the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by such party and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws relating to or affecting the rights of creditors generally and to the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

#### **Section 2.2 No Breach**

Neither the execution of this Agreement nor the performance by such party of its obligations hereunder nor the consummation of the transactions contemplated hereby does or will:

(a) in the case of parties that are not natural persons, violate or conflict with its certificate of incorporation, bylaws or other organizational documents;

(b) violate, conflict with or result in the breach or termination of, or otherwise give any other person the right to accelerate, renegotiate or terminate or receive any payment or constitute a default or an event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default) under the terms of any material contract or agreement to which it is a party or by which it or any of its assets or operations are bound or affected; or

(c) constitute a violation by such party of any laws, rules or regulations of any governmental, administrative or regulatory authority or any judgments, orders, rulings or awards of any court, arbitrator or other judicial authority or any Governmental Authority.

### Section 2.3 Consents

No Consent is required to be made or obtained by such party, other than those which have been made or obtained, in connection with (a) the execution or enforceability of this Agreement or (b) the consummation of any of the transactions contemplated by this Agreement and any respective ancillary agreements thereto.

## ARTICLE III

### RIGHTS OF CERTAIN STOCKHOLDERS

#### Section 3.1 Consent Rights

(a) In addition to any other consent required by law or this Agreement, the Company shall not issue or enter into an agreement to issue Equity Securities or Equity Security Equivalents or any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into Equity Securities or Equity Security Equivalents (“**Consent Securities**”), at less than Fair Market Value at the time of such issuance or agreement to issue, except pursuant to any Eligible Offering, without the prior written consent (the “**Consent Right**”) of Consent Right Holders holding Class A Common Stock representing at least 55% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis.

(b) For purposes of this Agreement, the following term shall have the meaning set forth below:

“**Eligible Offering**” means an offer by the Company to issue any Consent Security:

(i) of Equity Securities or options or warrants to purchase Equity Securities, in each case issued or granted in accordance with the terms of any equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board;

(ii) of Equity Securities issued, or issuable upon conversion of other securities of the Company issued pursuant to, in connection with or as consideration for any acquisition, merger or other similar transaction by the Company for which stockholder approval would not be required under applicable listing rules of the New York Stock Exchange if the Company were a public company listed on the New York Stock Exchange; or

(iii) of Equity Securities issued on a *pro rata* basis pursuant to any stock split, stock dividend on Equity Securities or recapitalization approved by the Board.

(c) The Company shall, before any securities are issued or the Company agrees to issue any securities other than pursuant to an Eligible Offering, give written notice (a “**Consent Notice**”) thereof to each Consent Right Holder. Such Consent Notice shall specify the amount and type of securities proposed to be issued, the proposed date of issuance, the consideration that the Company intends to receive therefore and all other material terms and conditions of such proposed issuance.

(d) Except for equity securities of a Subsidiary to be owned by the Company or another Subsidiary, the rights and obligations of the Company in this Section 3.1 shall apply to each Subsidiary of the Company to the same extent as if such Subsidiary were the Company for purposes of this Section 3.1. Except for equity securities of a Subsidiary to be owned by the Company or another Subsidiary, the Stockholders shall have the Consent Rights with respect to each Subsidiary of the Company as if such Subsidiary were the Company for purposes of this Section 3.1.

### **Section 3.2 Information**

(a) The Company shall make available to each Stockholder the following:

(i) within 90 days after the end of each fiscal year, annual financial statements prepared in accordance with United States generally accepted accounting principles (“**GAAP**”) that would be required to be included in Item 8 of Part II of Form 10-K if the Company were required to file such form, together with a “Management's Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries and a report on the annual financial statements by the Company's certified independent accountants;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, all quarterly financial statements prepared in accordance with GAAP that would be required to be included in Item 1 of Part I of Form 10-Q if the Company were required to file such form, together with a “Management's Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries; and

(iii) within five business days after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K if the Company were required to file this form, reports containing substantially all of the information with respect to the Company and its Subsidiaries that would be required to be filed in a Current Report on Form 8-K if the Company had been a reporting company under the Exchange Act [(other than Items 1.01 or 1.02 (in each case, to the extent not relating to a financing or acquisition), 1.04, 2.02, 2.05, 2.06, 5.02, 5.03, 5.04, 5.05, 5.06 and 5.07] or any of the Items under Sections 3, 6, 7, 8 or 9 of Form 8-K); provided, however, that no such current report will be required to be furnished if the Company determines in

good faith that such event is not material to Stockholders or to the business, assets, operations or financial positions of the Company and its Subsidiaries, taken as a whole.

(b) Notwithstanding Section 3.2(a), nothing in this Agreement will require (a) the Company to comply with Section 302 or Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Items 301 or 302 of Regulation S-K or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein), in each case, as in effect on the date of the date of this agreement, (b) any reports to contain the separate financial information for guarantors as contemplated by Rule 3-05, Rule 3-09 or Rule 3-10 of Regulation S-X promulgated by the SEC, (c) any reports to contain information required by Item 601 of Regulation S-K, or (d) any reports to include the schedules identified in Section 5-04 of Regulation S-X under the Securities Act. References under this Section 3.2 to the laws, rules, forms, items, articles and sections shall be to such laws, rules, forms, items, articles and sections as they exist on the date of this Agreement, without giving effect to amendments thereto that may take effect after the date of this Agreement.

(c) The Company will (a) post such financial statements and other information on its public website (or through a public announcement or such other medium as the Company may use at the time) within the time periods specified above and (b) arrange and participate in quarterly conference calls to discuss its results of operations no later than ten business days following the date on which each of the quarterly and annual reports are made available as provided above; provided that the Company may limit the information made available during such conference calls to the extent the Company determines, in its sole discretion, that such information that (x) would not be material to the Stockholders or to the business, assets, operations or financial positions of the Company and its Subsidiaries, taken as a whole, or (y) would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Company and its Subsidiaries, taken as a whole. The Company will provide on its public website (or through a public announcement or such other medium as the Company may use at the time) dial-in conference call information substantially concurrently with the posting of such reports as provided for in clause (a) above.

(d) In addition, to the extent not satisfied by the foregoing, for so long as any Class A Common Stock or Warrants are outstanding and the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Stockholder or to a prospective purchaser of any such Class A Common Stock or Warrant designated by any such Stockholder, as the case may be, to the extent required to permit compliance by such Stockholder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act or any successor provisions.



## ARTICLE IV

### ADDITIONAL COVENANTS

#### Section 4.1 Confidentiality

Subject to this Section 4.1, unless the disinterested members of the Board otherwise agree, each Stockholder shall hold in strict confidence any Proprietary Information (as hereinafter defined) it receives regarding the Company (or any predecessor thereto or any Subsidiary thereof), or any Proprietary Information regarding the business or affairs of any other Stockholder in respect of the Company, whether such information is received from the Company, another Stockholder or Affiliate or partner of a Stockholder or another Person for the period commencing on the Effective Date and ending on the first anniversary of the date such Stockholder shall no longer be a Stockholder of the Company. “**Proprietary Information**” means any information that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use, and includes information of the Company, its Subsidiaries, any Stockholder and any Person with whom the Company or any Stockholder does business; *provided* that Proprietary Information shall not include (a) information that is or becomes available to the public generally without breach of this Section 4.1 and (b) information that becomes available to the Stockholder on a non-confidential basis from a source other than the Company or its Subsidiaries or any other Stockholder or its Affiliates; *provided* that such source was not known by the Stockholder to be bound by a confidentiality obligation to the Company or its Subsidiaries. The provisions of this Section 4.1 shall survive and remain enforceable against each Stockholder for a period of one year following the date such Stockholder ceases to be a Stockholder of the Company, whether through a transfer of all of such Stockholder’s Equity Securities or otherwise. Notwithstanding anything herein to the contrary, a Stockholder may disclose (a) Proprietary Information to a bona fide potential purchaser of Company securities held by such Stockholder and/or the broker in such transaction if such bona fide potential purchaser and/or broker executes a confidentiality agreement with such Stockholder in a form reasonably satisfactory to the Company (which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof); provided that no Proprietary Information may be shared with a Competitor or any Person who is an Affiliate of a Competitor; (b) information required to be disclosed by applicable laws and regulations or stock exchange requirements or requirements of the Financial Industry Regulatory Authority, Inc., if applicable, including to regulatory bodies asserting jurisdiction over a Stockholder; (c) information required to be disclosed pursuant to an order, subpoena or legal process; (d) information disclosed to current, former or prospective members, owners, partners, officers, fiduciaries, directors or Affiliates of or lenders to such Stockholder (and the members, owners, partners, officers, fiduciaries or directors of such Affiliates), and to auditors, counsel, and other professional advisors to such Persons or the Company; *provided* that such Persons have been informed of the confidential nature of the information and directed to keep such information confidential, and, in any event, the Stockholder disclosing such information shall be liable for any failure by such Persons to abide by the provisions of this Section 4.1; *provided, further*, that if any such Person is a Competitor no such information shall be disclosed to such Person by a Stockholder without written consent of the Company; and provided, further, that if any such Person is an Affiliate of a material Competitor, the Stockholder shall enter into a

confidentiality agreement with such Person with respect to such information to the reasonable satisfaction of the Company (which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof); and (e) information disclosed in connection with any litigation or dispute among the Stockholder and the Company; *provided* that any disclosure pursuant to clause (b), (c) or (e) of this sentence shall be made only subject to such procedures the Stockholder making such disclosure determines in good faith are reasonable and appropriate in the circumstances, taking into account the need to maintain the confidentiality of such information and the availability, if any, of procedures under laws, regulations, subpoenas or other legal processes; *provided further* that nothing herein shall be construed to require any Stockholder to expend any amounts with respect to the procedures under laws, regulations, subpoenas or other legal process referenced in the immediately preceding proviso.

#### **Section 4.2 Competing Activities**

Subject only to the terms of any written agreement to the contrary, the Stockholders and their officers, directors, shareholders, partners, members, managers, agents and employees, who are not employees of the Company or its Subsidiaries (“**Non-Employee Holders**”), and each of their respective Affiliates, may engage or invest in, independently or with others, any business activity of any type or description, including those that might be the same as or similar to the Company’s business and that might be in direct or indirect competition with the Company. Neither the Company, its Subsidiaries nor any Stockholder shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Non-Employee Holders shall not be obligated to present to the Company any matter, transaction or interest that is presented to, or acquired, created, or developed by, or which otherwise comes into the possession of any such Non-Employee Holder, even if the matter, transaction or interest is of the character that, if presented to the Company, could be taken by the Company, other than if such matter, transaction or interest was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person’s capacity as a member of the Board specifically for the benefit of the Company. The Non-Employee Holders shall have the right to hold any matter, transaction or interest for their own account or to recommend such matter, transaction or interest to Persons other than the Company, other than if such opportunity was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person’s capacity as a member of the Board specifically for the benefit of the Company. Each Non-Employee Holder acknowledges that the other Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees and each of their respective Affiliates either now or in the future may directly or indirectly hold interest in and/or manage other businesses, including businesses that may compete with the Company and for the Non-Employee Holders’ time. Each Stockholder hereby waives any and all rights and claims that they may otherwise have against the Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees, and each of their respective Affiliates, as a result of any of such activities.

### **Section 4.3 No Effect Upon Lending Relationship**

Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of any Stockholder in its capacity as a lender to the Company or any of its subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect Stockholder of the Company, (ii) the interests of the Company or (iii) any duty it may have to any other direct or indirect Stockholder of the Company, except as may be required under the applicable loan documents or by commercial law applicable to creditors generally.

### **Section 4.4 Passive Investment**

The parties hereto acknowledge and agree that the Backstop Parties are making a passive investment in the Company and shall not be and are not entitled to be actively involved in the management or operation of the Company.

## **ARTICLE V**

### **MISCELLANEOUS**

#### **Section 5.1 Entire Agreement; No Other Representations**

This Agreement (including the Exhibits and Annexes hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties both written and oral, among the parties hereto, with respect to the subject matter hereof.

#### **Section 5.2 Modification or Amendment of Stockholders Agreement**

(a) Other than as a result of execution and delivery of a Joinder Agreement, this Agreement may not be modified, altered, amended or supplemented except by an agreement in writing signed by the Company and Consent Right Holders holding Class A Common Stock representing at least 55% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis.

(b) The Fundamental Documents and the other organizational documents of the Company and its Subsidiaries shall not adversely affect in any respect the rights granted to the Stockholders pursuant to this Agreement. In the event of any conflict or inconsistency between the Fundamental Documents and other organizational documents of the Company and its Subsidiaries and this Agreement, each Stockholder agrees to take all necessary action in order to cause the Fundamental Documents and other organizational documents of the

Company and its Subsidiaries to be amended in order to give full effect to the provisions of this Agreement.

### **Section 5.3 Waiver**

No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

### **Section 5.4 Counterparts**

This Agreement may be executed in several counterparts (including by facsimile, .pdf or other electronic transmission), each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

### **Section 5.5 Governing Law and Venue; Waiver of Jury Trial.**

(a) THIS AGREEMENT AND ALL DISPUTES BETWEEN THE PARTIES UNDER OR RELATING TO THIS AGREEMENT OR THE FACTS AND CIRCUMSTANCES LEADING TO ITS EXECUTION AND DELIVERY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANY OTHER STATE.

(b) Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall only be brought in any federal court located in the State of Delaware or any Delaware state court, and each party consents to the exclusive jurisdiction and venue of such courts (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such, action, suit or proceeding in any such court or that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum; provided, however, that any action, suit or proceeding, seeking to enforce a final judgment rendered in such court may be brought in any court of competent jurisdiction. Process in any such action, suit or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, service of process on such party as provided in Section 5.6 shall be deemed effective service of process on such party.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE OUT OF OR RELATING TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY EXPRESSLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR DISPUTE DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL ACTIONS, SUITS AND PROCEEDINGS THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY REPRESENTS AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) SUCH PARTY UNDERSTANDS AND WITH THE ADVICE OF COUNSEL HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND REPRESENTATIONS IN THIS SECTION 5.5(C). IN THE EVENT OF LITIGATION THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

#### **Section 5.6 Notices and Waivers**

(a) Any notice or other communication in connection with this Agreement (each, a “**Notice**”) shall be:

(i) in writing in English; and

(ii) delivered by hand, fax, registered post or by courier using an internationally recognized courier company.

(b) Notices to the Company shall be sent to the following address, or such other person or address as the Company may notify to the Stockholders from time to time:

Patriot Coal Corporation  
12312 Olive Boulevard, Suite 400  
St. Louis, Missouri 63141  
Attention: General Counsel  
Facsimile No.: (314) 275-3656

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: Brian Resnick  
Facsimile No.: (212) 701-5213

and with a copy to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Stephen E. Hessler  
Facsimile No.: (212) 446-4900

(c) Notices to the Stockholders shall be sent to such Stockholders at the addresses set forth in the register of Stockholders maintained by the Company, or on any Joinder Agreement or such other address or facsimile number as such party may hereafter specify in accordance with this Section 5.6 by notice to the party sending the communication. The Company will provide a Stockholder with the addresses for the other Stockholders upon a written request for such information for the purpose of sending out a Notice in accordance with this Agreement.

(d) A Notice shall be effective upon receipt and shall be deemed to have been received:

(i) at the time of delivery, if delivered by hand, registered post or courier; and

(ii) at the expiration of two hours after completion of the transmission, if sent by facsimile,

*provided* that if a Notice would become effective under the above provisions after 5:30 p.m. on any Business Day, then it shall be deemed instead to become effective at 9:30 a.m. on the next Business Day. References in this Agreement to time are to local time at the location of the addressee as set out in the Notice.

(e) Subject to the foregoing provisions of this Section 5.6, in proving service of a Notice, it shall be sufficient to prove that the envelope containing such Notice was properly addressed and delivered by hand, registered post or courier to the relevant address pursuant to the above provisions or that the facsimile transmission report (call back verification) states that the communication was properly sent.

### **Section 5.7 Certain Adjustments**

Subject to Section 5.11 hereof, the provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of Class A Common Stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution for the shares of Class A Common Stock or other preemptive securities, by combination, recapitalization, reclassification, merger, consolidation or otherwise and the terms “**Class A Common Stock**” and “**Equity Securities**” shall include all such other securities. In the event of any change in the capitalization of the Company, as a result of any split, dividend or combination or otherwise, in each case subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be appropriately adjusted.

### **Section 5.8 Specific Performance**

The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any state or federal court of Delaware (this being in addition to any other remedy to which they are entitled at law or in equity), and each party hereto agrees to waive in any action for such enforcement the defense that a remedy at law would be adequate.

### **Section 5.9 Severability**

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability or the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

### **Section 5.10 Assignment**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by either the Company or any Stockholder except as otherwise expressly stated hereunder or with the prior written consent of each other party hereto; provided, however, that any Stockholder may assign its rights and obligations under this Agreement to an Affiliate of such Stockholder who executes a Joinder Agreement without the consent of any other party to this Agreement. A Person who

executes a Joinder Agreement as a Stockholder in accordance with the provisions hereof shall have all of the rights and obligations of a Stockholder hereunder.

### **Section 5.11 Termination**

The provisions of this Agreement, other than Section 4.1 and Article V, shall terminate upon a writing executed by Consent Right Holders holding Class A Common Stock representing at least 55% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis. An individual Stockholder's rights under this Agreement will terminate upon the Stockholder holding less than 1% of the Fully-Diluted Class A Common Stock then outstanding. This Agreement will terminate automatically upon consummation of the IPO or a Sale of the Company.

### **Section 5.12 Further Assurances**

Each of the parties hereto covenants and agrees upon the request of any other to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated hereby.

### **Section 5.13 Fees and Expenses**

The Company will pay its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit or quarterly review, all tax preparation fees and expenses, and the expenses of any liability insurance, including directors' and officers' liability insurance. None of the Stockholders or their respective Affiliates shall be entitled to be paid management, transaction or monitoring fees by the Company or its Subsidiaries.

### **Section 5.14 No Third-Party Beneficiaries**

Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors and assigns any legal or equitable right, remedy or claim under or in respect of any agreement or provision contained herein.

[Signature pages follow.]



IN WITNESS WHEREOF, the parties hereto have caused this Stockholders Agreement to be executed as of the Effective Date.

PATRIOT COAL CORPORATION

By: \_\_\_\_\_

Name:

Title:

STOCKHOLDERS:

[ ]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**JOINDER AGREEMENT**

**Whereas**, the undersigned, together with its Affiliates, holds at least 5% of the total number of outstanding shares of Class A Common Stock (as such term is defined in the Stockholders Agreement) of Patriot Coal Corporation (the “**Company**”), calculated on a Fully-Diluted basis; and

**Whereas**, the undersigned has agreed to join in a certain Stockholders Agreement (the “**Stockholders Agreement**”) dated as of December 18, 2013, among the Company and the Stockholders (as such term is defined in the Stockholders Agreement).

**Now, Therefore**, the undersigned agrees as follows:

1. The undersigned hereby joins in the Stockholders Agreement as a “Stockholder” and agrees to be bound by the terms and provisions of, and shall be entitled to the benefits under, the Stockholders Agreement as provided by the Stockholders Agreement.
2. The undersigned hereby authorizes this signature page to be attached to a counterpart of such Stockholders Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement this [●] day of [●],  
20[●].

Name:

Title:

## **Comparison**

**STOCKHOLDERS AGREEMENT**  
**AMONG**  
**PATRIOT COAL CORPORATION**  
**AND**  
**CERTAIN OF ITS STOCKHOLDERS**  
**PARTY HERETO**  
**DATED AS OF DECEMBER 18, 2013**

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## STOCKHOLDERS AGREEMENT

**This Stockholders Agreement** (as it may be amended, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of December 18, 2013 (the “**Effective Date**”), is entered into among Patriot Coal Corporation, a Delaware corporation (the “**Company**”) and each of the undersigned entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees executing a counterpart signature page hereof or a joinder agreement hereto substantially in the form of Exhibit A hereto, in each case, whether on the date hereof or hereafter (collectively, the “**Stockholders**”).

### W I T N E S S E T H:

**WHEREAS**, on July 9, 2012 (the “**Petition Date**”), the Debtors filed voluntary chapter 11 petitions under title 11 of the United States Code (the “**Bankruptcy Code**”), and the Debtors’ chapter 11 cases are being jointly administered by the United States Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”) under the caption *In re Patriot Coal Corporation, et al*, Case No. 12-51502-659 (Jointly Administered) (the “**Chapter 11 Cases**”);

**WHEREAS**, on November 4, 2013, the Debtors filed the *Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 4927] (as amended and supplemented through the date hereof, the “**Plan**”);

**WHEREAS**, on November 4, 2013, the Debtors and the Backstop Parties (as defined below) entered into that certain backstop rights purchase agreement, attached as Appendix G to the *Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 4928] (the “**Backstop Rights Purchase Agreement**”);

**WHEREAS**, on December [17], 2013, the Bankruptcy Court entered an order confirming the Plan;

**WHEREAS**, the Plan provides for, among other things, the cancellation of all existing equity in the Company and the issuance of Class A Common Stock (as defined below) and warrants of the Company (the “**Warrants**”) exercisable for Class A Common Stock;

**WHEREAS**, the Plan provides for, among other things, the Company’s execution of a stockholders’ agreement that provides the Backstop Parties and certain other holders of at least 5% of the Fully-Diluted Class A Common Stock certain consent and information rights;

**WHEREAS**, in connection with the consummation of the transactions contemplated by the Plan and the Backstop Rights Purchase Agreement, the Company and the Stockholders desire to enter into this Agreement to provide certain rights and obligations among them; and

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in Section 1.1.



## ARTICLE I

### CERTAIN DEFINITIONS

#### Section 1.1 Definitions

As used in this Agreement, the following terms shall have the following respective meanings:

**“5% Owner”** means any Person beneficially owning 5% or more of the Equity Securities entitled to vote on the election of the directors of the Company.

**“Affiliate”** of a Person means (a) such Person’s controlling member, general partner, manager and investment manager and affiliates thereof; (b) any entity with the same general partner, manager or investment manager as such Person or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager of such Person; and (c) any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person, the general partner of such Person, investment manager of such Person or an affiliate of such Person, general partner or investment manager. The term **“control”** (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise.

**“Agreement”** has the meaning specified in the Preamble.

**“Backstop Parties”** means (i) the entities and/or their investment advisors, managers, managed funds or accounts, intermediaries or nominees set forth in the signature pages to the Backstop Agreement and (ii) any person executing a joinder to the Backstop Agreement as a “Backstop Party” in substantially the forms attached thereto.

**“Backstop Rights Purchase Agreement”** has the meaning specified in the Recitals.

**“Bankruptcy Code”** has the meaning specified in the Recitals.

**“Bankruptcy Court”** has the meaning specified in the Recitals.

**“Board”** means the Board of Directors of the Company.

**“Business Day”** means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

**“Chapter 11 Cases”** has the meaning specified in the Recitals.

**“Class A Common Stock”** means Class A common stock, par value \$0.00001 per share, of the Company, entitled to one vote per share of common stock on all matters on which the common stock of the Company is entitled to vote, as constituted on the date hereof, any such

stock into which such common stock shall have changed or any stock resulting from any reclassification of such common stock and any shares of any class of the Company's capital stock issued with respect to shares of such common stock by way of stock split, stock dividend or other recapitalization.

“**Company**” has the meaning specified in the Preamble.

“**Competitor**” means any Person that the Board in good faith determines is a competitor of the Company or any of its Subsidiaries.

“**Consent**” means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person.

“**Consent Notice**” has the meaning specified in Section 3.1(c).

“**Consent Right**” has the meaning specified in Section 3.1(a).

“**Consent Right Holders**” means the Stockholders that are parties to this Agreement.

“**Consent Securities**” has the meaning specified in Section 3.1(a).

“**Debtors**” has the meaning specified in the Recitals.

“**Effective Date**” has the meaning specified in the Preamble.

“**Eligible Offering**” has the meaning specified in Section 3.1(b).

“**Equity Securities**” means any class of capital stock, including the Class A Common Stock or any preferred stock of the Company, however described or whether voting or non-voting, and all securities convertible or exercisable into or exchangeable for or rights to purchase any such capital stock of the Company, if any, including any Equity Security Equivalent and any and all other equity securities of the Company or securities convertible into or exchangeable for such security or issued as a distribution with respect to or in exchange for such securities.

“**Equity Security Equivalent**” means any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into Equity Securities.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fair Market Value**” means, as of any date when the Class A Common Stock is listed on one or more national securities exchanges, the closing price reported on the principal national securities exchange on which such Class A Common Stock is listed and traded on the date of determination, or, if there is no such closing price reported on that date, then on the last preceding date on which such a closing price was reported. If the Class A Common Stock is not listed on a national securities exchange, the Fair Market Value shall mean, as determined by the Board in good faith, a valuation based upon the price that would be paid for the Class

A Common Stock in an acquisition of all outstanding shares of capital stock of the Company on a standalone basis in a privately negotiated arm's length transaction between a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy, (i) taking into account the aggregate amount payable in respect of the liquidation preference of any capital stock of the Company having a liquidation preference, and (ii) taking into account the aggregate amount payable in respect of any accrued and unpaid dividends on any capital stock of the Company whose holders have rights to dividends that are senior to the rights of holders of Class A Common Stock. The Company shall prepare and deliver to the Consent Right Holders its calculation of the Fair Market Value per share of Class A Common Stock (the "**Company's Valuation**") within ten days of its delivery of a Consent Notice. If a Consent Right Holder does not agree with the Company's Valuation, then the Consent Right Holder may request, within 10 business days after delivery of the Company's Valuation to the Consent Right Holder, that the Company's Valuation be reviewed by an independent investment banking or other valuation firm approved by the Consent Right Holders of a majority of all Equity Securities beneficially owned by all Consent Right Holders. The Company and the Consent Right Holder shall be responsible for their own fees and expenses, including the fees and expenses of their respective counsel, provided, however, the Company shall be solely responsible for the fees and expenses of any investment banking or other valuation firm engaged to provide a valuation as described above.

"**Family Member**" shall mean any person's spouse, minor child, adult child, stepchild, adopted child, brother, sister, parent, adoptive parent, stepparent, stepbrother, stepsister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law or mother-in-law.

"**Fully-Diluted**" means, (1) with respect to the calculation of the total number of outstanding shares of Class A Common Stock, (i) all such shares of Class A Common Stock actually outstanding or actually held by such Person or Persons and (ii) all shares of Class A Common Stock underlying options, warrants and other Equity Security Equivalents outstanding, disregarding, in each case, any vesting provisions of such instruments; and (2) with respect to the calculation of the number of shares of Class A Common Stock held by a Person or group of Persons, (i) all such shares of Class A Common Stock actually held by such Person or Persons and (ii) all shares of Class A Common Stock underlying options, warrants and other Equity Security Equivalents held by such Person or Persons, disregarding, in each case, any vesting provisions of such instruments. For the avoidance of doubt, the "Fully-Diluted" number of securities outstanding does not including securities held by the Company in treasury or otherwise.

"**Fundamental Documents**" means the Company's charter and by-laws.

"**GAAP**" has the meaning specified in Section 3.2(a)(i).

"**Governmental Authority**" means any international, supranational or national government, any state, provincial, local or other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government; any court, tribunal or arbitrator; any self-regulatory organization; or any securities exchange or quotation system.

“**Independent Third Party**” means any Person who, immediately prior to the contemplated transaction, (a) is not a 5% Owner, (b) is not an Affiliate of any 5% Owner, and (c) is not a Family Member of any 5% Owner.

“**IPO**” means a bona fide sale by the Company of Equity Securities in an initial public offering registered under the Securities Act which has been approved by the Board.

“**Joinder Agreement**” means the joinder agreement substantially in the form of Exhibit A hereto, which may be executed by a Person, together with its Affiliates, holding Class A Common Stock or Warrants whose number of shares of Class A Common Stock plus the number of shares of Class A Common Stock into which their Warrants could be exercised for would, in the aggregate, be equal to or greater than 5% of the total number of outstanding shares of Class A Common Stock (calculated on a Fully-Diluted basis).

“**Non-Employee Holders**” has the meaning specified in Section 4.2.

“**Notice**” has the meaning specified in Section 5.6(a).

“**own**” means to own, hold or otherwise exercise investment discretion over the applicable Equity Securities. The terms “**owner**” and “**ownership**” shall have meanings correlative of the foregoing.

“**Person**” or “**person**” means any natural person, firm, limited liability company, general or limited partnership, association, corporation, company, joint venture, trust, Governmental Authority or other entity.

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” has the meaning specified in the Recitals.

“**Proprietary Information**” has the meaning specified in Section 4.1.

“**Registration Rights Agreement**” means the registration rights agreement, dated as of the Effective Date, between the Company and the Stockholders party thereto.

“**Sale of the Company**” means the sale of the Company, in one transaction or a series of related transactions, to an Independent Third Party or group of Independent Third Parties pursuant to which such party or parties acquire(s) (i) Equity Securities of the Company representing more than 50% of the voting power of all outstanding voting Equity Securities of the Company (whether by way of merger, consolidation or otherwise) or (ii) all or substantially all of the assets of the Company and its Subsidiaries determined on a consolidated basis.

“**SEC**” means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Stockholders**” has the meaning specified in the Recitals.

“**Subsidiary**” means any Person (a) in which the Company owns, directly or indirectly, 50% or more of the securities or other ownership interests of such other Person, (b) in which the Company owns, directly or indirectly, securities or other ownership interests having ordinary voting power to elect a majority of the board of managers/directors, or other persons performing similar functions, of such Person or (c) the management of which is otherwise controlled, directly or indirectly, by the Company.

“**Warrants**” has the meaning specified in the Recitals.

## **Section 1.2 Headings; Table of Contents**

Headings and table of contents should be ignored in constructing this Agreement.

## **Section 1.3 Singular, Plural, Gender**

References to one gender include all genders and references to the singular include the plural and vice versa.

## **Section 1.4 Exhibits and Recitals**

References to this Agreement shall include any Exhibits, Annexes and Recitals and references to Sections, Annexes and Exhibits are to Sections of and Exhibits and Annexes to this Agreement.

## **Section 1.5 Information**

References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

## **Section 1.6 Interpretation**

Whenever the words “**include**,” “**includes**” or “**including**” are used in this Agreement, they shall be deemed to be followed by the words “**without limitation**.” This Agreement shall be construed as if it is drafted by all the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement if an ambiguity or question of intent or interpretation arises. If the last day of performance of any obligation hereunder is not a Business Day, then the deadline for such performance or the expiration of the applicable period or date shall be extended to the next Business Day.

### **Section 1.7 Calculation of Ownership Percentages**

All Stockholder ownership percentages of the outstanding Class A Common Stock shall be calculated for purposes of this Agreement on a Fully-Diluted basis.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

Each of the parties hereby severally (and not jointly) represents and warrants to each of the other parties as follows:

#### **Section 2.1 Authority; Enforceability**

Such party has the legal capacity or full power and authority (corporate or otherwise) to execute and deliver this Agreement and to perform its obligations hereunder. Such party (in the case of parties that are not natural persons) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation or organization, and the execution of this Agreement and the consummation of the transactions contemplated herein have been duly and validly authorized by all necessary action. No other act or proceeding, corporate or otherwise, on its part is necessary to authorize the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by such party and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws relating to or affecting the rights of creditors generally and to the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

#### **Section 2.2 No Breach**

Neither the execution of this Agreement nor the performance by such party of its obligations hereunder nor the consummation of the transactions contemplated hereby does or will:

(a) in the case of parties that are not natural persons, violate or conflict with its certificate of incorporation, bylaws or other organizational documents;

(b) violate, conflict with or result in the breach or termination of, or otherwise give any other person the right to accelerate, renegotiate or terminate or receive any payment or constitute a default or an event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default) under the terms of any material contract or agreement to which it is a party or by which it or any of its assets or operations are bound or affected; or

(c) constitute a violation by such party of any laws, rules or regulations of any governmental, administrative or regulatory authority or any judgments,

orders, rulings or awards of any court, arbitrator or other judicial authority or any Governmental Authority.

### **Section 2.3 Consents**

No Consent is required to be made or obtained by such party, other than those which have been made or obtained, in connection with (a) the execution or enforceability of this Agreement or (b) the consummation of any of the transactions contemplated by this Agreement and any respective ancillary agreements thereto.

## **ARTICLE III**

### **RIGHTS OF CERTAIN STOCKHOLDERS**

#### **Section 3.1 Consent Rights**

(a) In addition to any other consent required by law or this Agreement, the Company shall not issue or enter into an agreement to issue Equity Securities or Equity Security Equivalents or any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into Equity Securities or Equity Security Equivalents (“**Consent Securities**”), at less than Fair Market Value at the time of such issuance or agreement to issue, except pursuant to any Eligible Offering, without the prior written consent (the “**Consent Right**”) of Consent Right Holders holding Class A Common Stock representing at least ~~66-2/3~~55% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis.

(b) For purposes of this Agreement, the following term shall have the meaning set forth below:

“**Eligible Offering**” means an offer by the Company to issue any Consent Security:

(i) of Equity Securities or options or warrants to purchase Equity Securities, in each case issued or granted in accordance with the terms of any equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board;

(ii) of Equity Securities issued, or issuable upon conversion of other securities of the Company issued pursuant to, in connection with or as consideration for any acquisition, merger or other similar transaction by the Company for which stockholder approval would not be required under applicable listing rules of the New York Stock Exchange if the Company were a public company listed on the New York Stock Exchange; or

(iii) of Equity Securities issued on a *pro rata* basis pursuant to any stock split, stock dividend on Equity Securities or recapitalization approved by the Board.

(c) The Company shall, before any securities are issued or the Company agrees to issue any securities other than pursuant to an Eligible Offering, give written notice (a “**Consent Notice**”) thereof to each Consent Right Holder. Such Consent Notice shall specify the amount and type of securities proposed to be issued, the proposed date of issuance, the consideration that the Company intends to receive therefore and all other material terms and conditions of such proposed issuance.

(d) Except for equity securities of a Subsidiary to be owned by the Company or another Subsidiary, the rights and obligations of the Company in this Section 3.1 shall apply to each Subsidiary of the Company to the same extent as if such Subsidiary were the Company for purposes of this Section 3.1. Except for equity securities of a Subsidiary to be owned by the Company or another Subsidiary, the Stockholders shall have the Consent Rights with respect to each Subsidiary of the Company as if such Subsidiary were the Company for purposes of this Section 3.1.

### **Section 3.2 Information**

(a) The Company shall make available to each Stockholder the following:

(i) within 90 days after the end of each fiscal year, annual financial statements prepared in accordance with United States generally accepted accounting principles (“**GAAP**”) that would be required to be included in Item 8 of Part II of Form 10-K if the Company were required to file such form, together with a “Management's Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries and a report on the annual financial statements by the Company's certified independent accountants;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, all quarterly financial statements prepared in accordance with GAAP that would be required to be included in Item 1 of Part I of Form 10-Q if the Company were required to file such form, together with a “Management's Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries; and

(iii) within five business days after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K if the Company were required to file this form, reports containing substantially all of the information with respect to the Company and its Subsidiaries that would be required to be filed in a Current Report on Form 8-K if the Company had been a reporting company under the Exchange Act [(other than Items 1.01 or 1.02 (in each case, to the extent not relating to a financing or acquisition), 1.04, 2.02, 2.05, 2.06, 5.02, 5.03, 5.04, 5.05, 5.06 and 5.07] or any of the Items under Sections 3, 6, 7, 8 or 9 of Form 8-K); provided, however, that no such current report will be required to be furnished if the



Company determines in good faith that such event is not material to Stockholders or to the business, assets, operations or financial positions of the Company and its Subsidiaries, taken as a whole.

(b) Notwithstanding Section 3.2(a), nothing in this Agreement will require (a) the Company to comply with Section 302 or Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Items 301 or 302 of Regulation S-K or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein), in each case, as in effect on the date of the date of this agreement, (b) any reports to contain the separate financial information for guarantors as contemplated by Rule 3-05, Rule 3-09 or Rule 3-10 of Regulation S-X promulgated by the SEC, (c) any reports to contain information required by Item 601 of Regulation S-K, or (d) any reports to include the schedules identified in Section 5-04 of Regulation S-X under the Securities Act. References under this Section 3.2 to the laws, rules, forms, items, articles and sections shall be to such laws, rules, forms, items, articles and sections as they exist on the date of this Agreement, without giving effect to amendments thereto that may take effect after the date of this Agreement.

(c) The Company will (a) post such financial statements and other information on its public website (or through a public announcement or such other medium as the Company may use at the time) within the time periods specified above and (b) arrange and participate in quarterly conference calls to discuss its results of operations no later than ten business days following the date on which each of the quarterly and annual reports are made available as provided above; provided that the Company may limit the information made available during such conference calls to the extent the Company determines, in its sole discretion, that such information that (x) would not be material to the Stockholders or to the business, assets, operations or financial positions of the Company and its Subsidiaries, taken as a whole, or (y) would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Company and its Subsidiaries, taken as a whole. The Company will provide on its public website (or through a public announcement or such other medium as the Company may use at the time) dial-in conference call information substantially concurrently with the posting of such reports as provided for in clause (a) above.

(d) In addition, to the extent not satisfied by the foregoing, for so long as any Class A Common Stock or Warrants are outstanding and the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Stockholder or to a prospective purchaser of any such Class A Common Stock or Warrant designated by any such Stockholder, as the case may be, to the extent required to permit compliance by such Stockholder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act or any successor provisions.

## ARTICLE IV

### ADDITIONAL COVENANTS

#### Section 4.1 Confidentiality

Subject to this Section 4.1, unless the disinterested members of the Board otherwise agree, each Stockholder shall hold in strict confidence any Proprietary Information (as hereinafter defined) it receives regarding the Company (or any predecessor thereto or any Subsidiary thereof), or any Proprietary Information regarding the business or affairs of any other Stockholder in respect of the Company, whether such information is received from the Company, another Stockholder or Affiliate or partner of a Stockholder or another Person for the period commencing on the Effective Date and ending on the first anniversary of the date such Stockholder shall no longer be a Stockholder of the Company. “**Proprietary Information**” means any information that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use, and includes information of the Company, its Subsidiaries, any Stockholder and any Person with whom the Company or any Stockholder does business; *provided* that Proprietary Information shall not include (a) information that is or becomes available to the public generally without breach of this Section 4.1 and (b) information that becomes available to the Stockholder on a non-confidential basis from a source other than the Company or its Subsidiaries or any other Stockholder or its Affiliates; *provided* that such source was not known by the Stockholder to be bound by a confidentiality obligation to the Company or its Subsidiaries. The provisions of this Section 4.1 shall survive and remain enforceable against each Stockholder for a period of one year following the date such Stockholder ceases to be a Stockholder of the Company, whether through a transfer of all of such Stockholder’s Equity Securities or otherwise. Notwithstanding anything herein to the contrary, a Stockholder may disclose (a) Proprietary Information to a bona fide potential purchaser of Company securities held by such Stockholder and/or the broker in such transaction if such bona fide potential purchaser and/or broker executes a confidentiality agreement with such Stockholder in a form reasonably satisfactory to the Company (which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof); *provided* that no Proprietary Information may be shared with a Competitor or any Person who is an Affiliate of a Competitor; (b) information required to be disclosed by applicable laws and regulations or stock exchange requirements or requirements of the Financial Industry Regulatory Authority, Inc., if applicable, including to regulatory bodies asserting jurisdiction over a Stockholder; (c) information required to be disclosed pursuant to an order, subpoena or legal process; (d) information disclosed to current, former or prospective members, owners, partners, officers, fiduciaries, directors or Affiliates of or lenders to such Stockholder (and the members, owners, partners, officers, fiduciaries or directors of such Affiliates), and to auditors, counsel, and other professional advisors to such Persons or the Company; *provided* that such Persons have been informed of the confidential nature of the information and directed to keep such information confidential, and, in any event, the Stockholder disclosing such information shall be liable for any failure by such Persons to abide by the provisions of this Section 4.1; *provided, further*, that if any such Person is a Competitor no such information shall be disclosed to such Person by a

Stockholder without written consent of the Company; and provided, further, that if any such Person is an Affiliate of a material Competitor, the Stockholder shall enter into a confidentiality agreement with such Person with respect to such information to the reasonable satisfaction of the Company (which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof); and (e) information disclosed in connection with any litigation or dispute among the Stockholder and the Company; *provided* that any disclosure pursuant to clause (b), (c) or (e) of this sentence shall be made only subject to such procedures the Stockholder making such disclosure determines in good faith are reasonable and appropriate in the circumstances, taking into account the need to maintain the confidentiality of such information and the availability, if any, of procedures under laws, regulations, subpoenas or other legal processes; *provided further* that nothing herein shall be construed to require any Stockholder to expend any amounts with respect to the procedures under laws, regulations, subpoenas or other legal process referenced in the immediately preceding proviso.

#### **Section 4.2 Competing Activities**

Subject only to the terms of any written agreement to the contrary, the Stockholders and their officers, directors, shareholders, partners, members, managers, agents and employees, who are not employees of the Company or its Subsidiaries (“**Non-Employee Holders**”), and each of their respective Affiliates, may engage or invest in, independently or with others, any business activity of any type or description, including those that might be the same as or similar to the Company’s business and that might be in direct or indirect competition with the Company. Neither the Company, its Subsidiaries nor any Stockholder shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Non-Employee Holders shall not be obligated to present to the Company any matter, transaction or interest that is presented to, or acquired, created, or developed by, or which otherwise comes into the possession of any such Non-Employee Holder, even if the matter, transaction or interest is of the character that, if presented to the Company, could be taken by the Company, other than if such matter, transaction or interest was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person’s capacity as a member of the Board specifically for the benefit of the Company. The Non-Employee Holders shall have the right to hold any matter, transaction or interest for their own account or to recommend such matter, transaction or interest to Persons other than the Company, other than if such opportunity was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person’s capacity as a member of the Board specifically for the benefit of the Company. Each Non-Employee Holder acknowledges that the other Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees and each of their respective Affiliates either now or in the future may directly or indirectly hold interest in and/or manage other businesses, including businesses that may compete with the Company and for the Non-Employee Holders’ time. Each Stockholder hereby waives any and all rights and claims that they may otherwise have against the Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees, and each of their respective Affiliates, as a result of any of such activities.

### **Section 4.3 No Effect Upon Lending Relationship**

Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of any Stockholder in its capacity as a lender to the Company or any of its subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect Stockholder of the Company, (ii) the interests of the Company or (iii) any duty it may have to any other direct or indirect Stockholder of the Company, except as may be required under the applicable loan documents or by commercial law applicable to creditors generally.

### **Section 4.4 Passive Investment**

The parties hereto acknowledge and agree that the Backstop Parties are making a passive investment in the Company and shall not be and are not entitled to be actively involved in the management or operation of the Company.

## **ARTICLE V**

### **MISCELLANEOUS**

#### **Section 5.1 Entire Agreement; No Other Representations**

This Agreement (including the Exhibits and Annexes hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties both written and oral, among the parties hereto, with respect to the subject matter hereof.

#### **Section 5.2 Modification or Amendment of Stockholders Agreement**

(a) Other than as a result of execution and delivery of a Joinder Agreement, this Agreement may not be modified, altered, amended or supplemented except by an agreement in writing signed by the Company and Consent Right Holders holding Class A Common Stock representing at least ~~66-2/3~~55% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis.

(b) The Fundamental Documents and the other organizational documents of the Company and its Subsidiaries shall not adversely affect in any respect the rights granted to the Stockholders pursuant to this Agreement. In the event of any conflict or inconsistency between the Fundamental Documents and other organizational documents of the Company and its Subsidiaries and this Agreement, each Stockholder agrees to take all necessary action in order to cause the Fundamental Documents and other organizational documents of the Company and its Subsidiaries to be amended in order to give full effect to the provisions of this Agreement.

### **Section 5.3 Waiver**

No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

### **Section 5.4 Counterparts**

This Agreement may be executed in several counterparts (including by facsimile, .pdf or other electronic transmission), each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

### **Section 5.5 Governing Law and Venue; Waiver of Jury Trial.**

(a) THIS AGREEMENT AND ALL DISPUTES BETWEEN THE PARTIES UNDER OR RELATING TO THIS AGREEMENT OR THE FACTS AND CIRCUMSTANCES LEADING TO ITS EXECUTION AND DELIVERY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANY OTHER STATE.

(b) Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall only be brought in any federal court located in the State of Delaware or any Delaware state court, and each party consents to the exclusive jurisdiction and venue of such courts (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such, action, suit or proceeding in any such court or that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum; provided, however, that any action, suit or proceeding, seeking to enforce a final judgment rendered in such court may be brought in any court of competent jurisdiction. Process in any such action, suit or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, service of process on such party as provided in Section 5.6 shall be deemed effective service of process on such party.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE OUT OF OR RELATING TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY EXPRESSLY, IRREVOCABLY AND

UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR DISPUTE DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL ACTIONS, SUITS AND PROCEEDINGS THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY REPRESENTS AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) SUCH PARTY UNDERSTANDS AND WITH THE ADVICE OF COUNSEL HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND REPRESENTATIONS IN THIS SECTION 5.5(C). IN THE EVENT OF LITIGATION THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

#### **Section 5.6 Notices and Waivers**

(a) Any notice or other communication in connection with this Agreement (each, a “**Notice**”) shall be:

(i) in writing in English; and

(ii) delivered by hand, fax, registered post or by courier using an internationally recognized courier company.

(b) Notices to the Company shall be sent to the following address, or such other person or address as the Company may notify to the Stockholders from time to time:

Patriot Coal Corporation  
12312 Olive Boulevard, Suite 400  
St. Louis, Missouri 63141  
Attention: General Counsel  
Facsimile No.: (314) 275-3656

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

Attention: Brian Resnick  
Facsimile No.: (212) 701-5213

and with a copy to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Stephen E. Hessler  
Facsimile No.: (212) 446-4900

(c) Notices to the Stockholders shall be sent to such Stockholders at the addresses set forth in the register of Stockholders maintained by the Company, or on any Joinder Agreement or such other address or facsimile number as such party may hereafter specify in accordance with this Section 5.6 by notice to the party sending the communication. The Company will provide a Stockholder with the addresses for the other Stockholders upon a written request for such information for the purpose of sending out a Notice in accordance with this Agreement.

(d) A Notice shall be effective upon receipt and shall be deemed to have been received:

(i) at the time of delivery, if delivered by hand, registered post or courier; and

(ii) at the expiration of two hours after completion of the transmission, if sent by facsimile,

*provided* that if a Notice would become effective under the above provisions after 5:30 p.m. on any Business Day, then it shall be deemed instead to become effective at 9:30 a.m. on the next Business Day. References in this Agreement to time are to local time at the location of the addressee as set out in the Notice.

(e) Subject to the foregoing provisions of this Section 5.6, in proving service of a Notice, it shall be sufficient to prove that the envelope containing such Notice was properly addressed and delivered by hand, registered post or courier to the relevant address pursuant to the above provisions or that the facsimile transmission report (call back verification) states that the communication was properly sent.

### **Section 5.7 Certain Adjustments**

Subject to Section 5.11 hereof, the provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of Class A Common Stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution for the shares of Class A Common Stock or other preemptive securities, by combination, recapitalization,

reclassification, merger, consolidation or otherwise and the terms “**Class A Common Stock**” and “**Equity Securities**” shall include all such other securities. In the event of any change in the capitalization of the Company, as a result of any split, dividend or combination or otherwise, in each case subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be appropriately adjusted.

### **Section 5.8 Specific Performance**

The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any state or federal court of Delaware (this being in addition to any other remedy to which they are entitled at law or in equity), and each party hereto agrees to waive in any action for such enforcement the defense that a remedy at law would be adequate.

### **Section 5.9 Severability**

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability or the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

### **Section 5.10 Assignment**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by either the Company or any Stockholder except as otherwise expressly stated hereunder or with the prior written consent of each other party hereto; provided, however, that any Stockholder may assign its rights and obligations under this Agreement to an Affiliate of such Stockholder who executes a Joinder Agreement without the consent of any other party to this Agreement. A Person who executes a Joinder Agreement as a Stockholder in accordance with the provisions hereof shall have all of the rights and obligations of a Stockholder hereunder.

### **Section 5.11 Termination**

The provisions of this Agreement, other than Section 4.1 and Article V, shall terminate upon a writing executed by Consent Right Holders holding Class A Common Stock representing at least ~~66-2/3~~66-2/355% of the Class A Common Stock then held by all Consent Right Holders, calculated on a Fully-Diluted basis. An individual Stockholder’s rights under this Agreement



will terminate upon the Stockholder holding less than 1% of the Fully-Diluted Class A Common Stock then outstanding. This Agreement will terminate automatically upon consummation of the IPO or a Sale of the Company.

#### **Section 5.12 Further Assurances**

Each of the parties hereto covenants and agrees upon the request of any other to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated hereby.

#### **Section 5.13 Fees and Expenses**

The Company will pay its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit or quarterly review, all tax preparation fees and expenses, and the expenses of any liability insurance, including directors' and officers' liability insurance. None of the Stockholders or their respective Affiliates shall be entitled to be paid management, transaction or monitoring fees by the Company or its Subsidiaries.

#### **Section 5.14 No Third-Party Beneficiaries**

Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors and assigns any legal or equitable right, remedy or claim under or in respect of any agreement or provision contained herein.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Stockholders Agreement to be executed as of the Effective Date.

PATRIOT COAL CORPORATION

By: \_\_\_\_\_

Name:

Title:

STOCKHOLDERS:

[ ]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**JOINDER AGREEMENT**

**Whereas**, the undersigned, together with its Affiliates, holds at least 5% of the total number of outstanding shares of Class A Common Stock (as such term is defined in the Stockholders Agreement) of Patriot Coal Corporation (the “**Company**”), calculated on a Fully-Diluted basis; and

**Whereas**, the undersigned has agreed to join in a certain Stockholders Agreement (the “**Stockholders Agreement**”) dated as of December 18, 2013, among the Company and the Stockholders (as such term is defined in the Stockholders Agreement).

**Now, Therefore**, the undersigned agrees as follows:

1. The undersigned hereby joins in the Stockholders Agreement as a “Stockholder” and agrees to be bound by the terms and provisions of, and shall be entitled to the benefits under, the Stockholders Agreement as provided by the Stockholders Agreement.
2. The undersigned hereby authorizes this signature page to be attached to a counterpart of such Stockholders Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement this [●] day of [●],  
20[●].

Name:

Title: