

**CONTURA ENERGY, INC.**  
**(a Delaware corporation)**

**WRITTEN CONSENT OF STOCKHOLDERS**

**April 29, 2018**

Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (“**DGCL**”), the Amended and Restated Certificate of Incorporation (the “**Existing Certificate of Incorporation**”) of Contura Energy, Inc. (the “**Corporation**”) and the Amended and Restated Bylaws (the “**Existing Bylaws**”) of the Corporation, the undersigned stockholders (the “**Stockholders**”), who constitute the holders of not less than the minimum number of votes that would be necessary to authorize or take the following actions at a meeting at which all of the shares entitled to vote thereon were present, hereby consent to the adoption of the following resolutions and hereby waive any notice required by law, the Existing Certificate of Incorporation or the Existing Bylaws with respect thereto:

**Adoption of the Second Amended and Restated Certificate of Incorporation**

**WHEREAS**, the Board of Directors of the Corporation (the “**Board**”) has determined that it is advisable and in the best interest of the Corporation and its stockholders that, contingent on and effective immediately prior to the closing of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of April 29, 2018, by and between ANR, Inc. (“**ANR**”), a Delaware corporation, Alpha Natural Resources Holdings, Inc., a Delaware corporation, the Corporation (“**Holdings**”), Prime Acquisition I, Inc., a Delaware corporation and wholly owned Subsidiary of Contura (“**MergerSub 1**”), and Prime Acquisition II, Inc., a Delaware corporation and wholly owned Subsidiary of MergerSub 1 (the “**Merger Transaction**”), the Existing Certificate of Incorporation be amended and restated in substantially the form attached hereto as Exhibit A (the “**Second Amended and Restated Certificate of Incorporation**”), in order to, among other things, increase the number of shares of the Corporation’s common stock, par value \$0.01 per share (the “**Common Stock**”) and preferred stock, par value \$0.01 per share, authorized for issuance by the Corporation, and has recommended the approval of the Second Amended and Restated Certificate of Incorporation by the stockholders;

**NOW, THEREFORE, BE IT RESOLVED**, that the Second Amended and Restated Certificate of Incorporation, recommended by the Board and substantially in the form attached hereto as Exhibit A, is hereby adopted and approved in all respects, provided that the Second Amended and Restated Certificate of Incorporation shall not become effective until immediately prior to the closing of the Merger Transaction.

**Approval of the Indemnification Agreements**

**WHEREAS**, the Board has determined that it is advisable and in the best interest of the Corporation and its stockholders that, contingent on, and effective contemporaneously with, the effectiveness of the registration statement on Form S-4 filed in connection with the Merger Transaction (the “**Registration Statement**”), the Corporation enter into indemnification agreements with each of its directors and executive officers in substantially the form attached hereto as Exhibit B (the “**Indemnification Agreements**”);

**NOW, THEREFORE, BE IT RESOLVED**, that the Indemnification Agreements to be entered into with each the Corporation's directors and executive officers, substantially in the form attached hereto as Exhibit B, is hereby approved, contingent on, and effective contemporaneously with, the effectiveness of the Registration Statement.

### **Adoption of the 2018 Long-Term Incentive Plan**

**WHEREAS**, the Board has determined that it is advisable and in the best interest of the Corporation and its stockholders to adopt the Contura Energy, Inc. 2018 Long-Term Incentive Plan, substantially in the form attached as Exhibit C hereto (the "**LTIP**").

**NOW, THEREFORE, BE IT RESOLVED**, the LTIP is hereby approved and adopted, and the Corporation is authorized to reserve up to 1,000,000 shares of the Corporation's common stock for issuance under the LTIP.

### **General Authorizing Resolutions**

**FURTHER RESOLVED**, that the officers and directors of the Corporation be, and each acting alone is, hereby authorized, empowered and directed, for and on behalf of the Corporation, to take or cause to be taken any and all actions, including, without limitation, the execution, acknowledgement, filing, amendment and delivery of any and all papers, agreements, documents, instruments and certificates, and the payment of such sums, as such officers and directors may deem necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions and each of them, and that the performance of such acts by them shall be conclusive evidence of the approval thereof and the authority therefor by and from the Corporation; and

**FURTHER RESOLVED**, that all actions heretofore taken by any officer or director of the Corporation in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

### **Record Holder Consent**

Each Stockholder, severally and not jointly and severally, agrees that with respect to the shares of Common Stock owned beneficially but not of record by such Stockholder, such Stockholder will cause the record owner of such shares of Common Stock to execute and deliver to the Company no later than May 18, 2018, a written consent in the form attached hereto as Exhibit D approving the matters set forth above or in such other form as such record holder agrees to provide that effectively consents to the matters set forth above and is reasonably satisfactory to the Corporation.

### **Waiver of Appraisal Rights**

Each Stockholder, severally and not jointly and severally, hereby waives, and agrees not to exercise or assert, any appraisal or similar rights (including under Section 262 of the DGCL) in respect of each share of common stock, par value \$0.01 per share, of Holdings and each share of Class C-1 common stock, par value \$0.01 per share, of ANR to the extent beneficially owned by such Stockholder or any of its affiliates in connection with the Merger Transaction and agrees to cause its affiliates to do the same.

[Signature Page Follows]

**Stockholder Signature Page**

IN WITNESS WHEREOF, the undersigned have executed this Written Consent of Stockholders of the Corporation as of the date first set forth above. By executing this Signature Page, the undersigned hereby represents and warrants that the undersigned beneficially owns (with the sole power to vote and dispose of same) the number of shares of Common Stock set forth below, including the number of shares of Common Stock held of record by such Stockholder set forth below.

Date: \_\_\_\_\_

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

Number of shares of Common Stock  
beneficially owned by the Stockholder  
(including \_\_\_\_\_ shares of Common  
Stock held of record by such Stockholder):

Name:  
Title:

\_\_\_\_\_

**Exhibit A**

**Form of Second Amended and Restated Certificate of Incorporation**

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

**OF**

**CONTURA ENERGY, INC.**

Pursuant to the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (“**Delaware Law**”), Contura Energy, Inc., a corporation organized under the laws of the State of Delaware, does hereby certify that:

FIRST: The present name of the corporation is Contura Energy, Inc. (the “**Corporation**”). The Corporation was incorporated on June 10, 2016 under the name Contura Energy, Inc., pursuant to Delaware Law.

SECOND: The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as hereinafter provided for (the “**Second Amended and Restated Certificate of Incorporation**”). The Second Amended and Restated Certificate of Incorporation herein certified has been duly adopted by the Corporation’s Board of Directors and stockholders in accordance with the provisions of Sections 228, 242 and 245 of Delaware Law. The Second Amended and Restated Certificate of Incorporation shall become effective upon filing with the Secretary of State of the State of Delaware.

THIRD: The Second Amended and Restated Certificate of Incorporation of the Corporation shall, at the effective time, read as follows:

**ARTICLE 1.  
NAME**

The name of the corporation is Contura Energy, Inc. (the “**Corporation**”).

**ARTICLE 2.  
REGISTERED OFFICE AND AGENT**

The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE 3.  
PURPOSE AND POWERS**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under Delaware Law.

## **ARTICLE 4. CAPITAL STOCK**

### **(A) Authorized Shares**

1. **Classes of Stock.** The total number of shares of stock that the Corporation shall have authority to issue is 55,000,000, consisting of 50,000,000 shares of Common Stock, par value \$0.01 per share (the ‘**Common Stock**’), and 5,000,000 shares of Preferred Stock, par value \$0.01 per share (the ‘**Preferred Stock**’).

2. **Preferred Stock.** The Board of Directors is hereby empowered, without any action or vote by the Corporation’s stockholders (except as may otherwise be provided by the terms of any class or series of Preferred Stock then outstanding), to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series to the extent permitted by Delaware Law.

### **(B) Voting Rights**

Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Second Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Second Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) or pursuant to Delaware Law.

### **(C) Dividends**

Subject to the rights of any holders of any class or series of Preferred Stock then outstanding, the holders of Common Stock shall be entitled to the payment of dividends when and as declared by the Board of Directors in accordance with applicable law and to receive other distributions from the Corporation. Any dividends declared by the Board of Directors to the holders of the then-outstanding Common Stock shall be paid to the holders thereof *pro rata* in accordance with the number of shares of Common Stock held by each such holder as of the record date of such dividend.

**ARTICLE 5.**  
**BYLAWS**

The Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation (the “**Bylaws**”).

The stockholders may adopt, amend or repeal the Bylaws only with the affirmative vote of the holders of not less than 66 2/3% of the voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

**ARTICLE 6.**  
**BOARD OF DIRECTORS**

**(A) Power of the Board of Directors.** The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors.

**(B) Number of Directors.** The number of directors which shall constitute the Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time solely by the affirmative vote of a majority of the Board of Directors.

**(C) Election of Directors.** Each director shall be elected annually at each annual meeting of stockholders to hold office for a term expiring at the next annual meeting of stockholders, with each director to hold office until such director’s successor shall have been duly elected and qualified or until such director’s earlier death, resignation or removal. In no event will a decrease in the number of directors shorten the term of any incumbent director. There shall be no cumulative voting in the election of directors. Election of directors need not be by written ballot unless the Bylaws so provide.

**(D) Vacancies.** Vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors calls a special meeting for which the election of directors is included as business or as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term ending at the next annual meeting of stockholders, and until such director’s successor shall have been duly elected and qualified or until such director’s earlier death, resignation or removal.

**(E) Removal.** Any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created shall be filled in accordance with Article 6(D) herein.



**(F) Preferred Stock Directors.** Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of such class or series of Preferred Stock adopted by resolution or resolutions adopted by the Board of Directors pursuant to Article 4(A) hereto, and such directors so elected shall not be subject to the provisions of this Article 6 unless otherwise provided therein.

## **ARTICLE 7. MEETINGS OF STOCKHOLDERS**

**(A) Annual Meetings.** An annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting at such place, on such date, and at such time as the Board of Directors shall determine.

**(B) Special Meetings.** Special meetings of the stockholders may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of such class or series of Preferred Stock adopted by resolution or resolutions of the Board of Directors pursuant to Article 4(A) hereto, special meetings of holders of such Preferred Stock.

**(C) No Action by Written Consent.** Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the resolution or resolutions adopted by the Board of Directors pursuant to Article 4(A) hereto for such class or series of Preferred Stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law, as amended from time to time, and this Article 7 and may not be taken by written consent of stockholders without a meeting.

## **ARTICLE 8. INDEMNIFICATION**

**(A) Limited Liability.** 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 to the fullest extent permitted by Delaware Law.

**(B) Right to Indemnification.**

(1) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal,

administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, limited liability company, partnership, joint venture, trust or other enterprise (an “**Indemnitee**”), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this Article 8 shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware Law. The right to indemnification conferred in this Article 8 shall be a contract right.

(2) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

**(C) Insurance.** The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person’s status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law.

**(D) Nonexclusivity of Rights.** The rights and authority conferred in this Article 8 shall not be exclusive of any other right that any person may otherwise have or hereafter acquire.

**(E) Preservation of Rights.** Neither the amendment nor repeal of this Article 8, nor the adoption of any provision of this Second Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

**(F) Jointly Indemnifiable Claims.** Given that certain Jointly Indemnifiable Claims (as defined below) may arise due to the service of an Indemnitee as a director and/or officer of the Corporation at the request of an Indemnitee-Related Entity (as defined below), the Corporation shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Article 8, irrespective of any right of recovery an Indemnitee may have from any Indemnitee-Related Entity. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by an Indemnitee-Related Entity and no right of advancement, indemnification or recovery an Indemnitee may have from any

Indemnitee-Related Entity shall reduce or otherwise alter the rights of an Indemnitee or the obligations of the Corporation under this Article 8. In the event that an Indemnitee-Related Entity shall make any payment to the Indemnitee in respect of indemnification or advancement of expenses with respect to any Jointly Indemnifiable Claim, such Indemnitee-Related Entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee against the Corporation, and the Indemnitee shall execute all documents and instruments reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents and instruments as may be necessary to enable such Indemnitee-Related Entity effectively to bring suit to enforce such rights. Each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Article 8(F) and entitled to enforce this Article 8(F).

The term “**Indemnitee-Related Entity**” means any corporation, limited liability company, partnership, joint venture, trust or other enterprise (other than the Corporation or any other corporation, partnership, joint venture, trust or other enterprise for which the Indemnitee has agreed, on behalf of the Corporation or at the Corporation’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses in respect of a matter with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

The term “**Jointly Indemnifiable Claims**” shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both an Indemnitee-Related Entity and the Corporation pursuant to applicable law or any agreement, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or an Indemnitee-Related Entity, as applicable.

## **ARTICLE 9. AMENDMENTS**

The Corporation reserves the right to amend this Second Amended and Restated Certificate of Incorporation in any manner permitted by the Delaware Law and all rights and powers conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles 4(B), 5, 6, 7, 8 and this Article 9 may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth in any of Articles 4(B), 5, 6, 7, 8 or this Article 9, unless such action is approved by the affirmative vote of the holders of not less than 66 2/3% of the total voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

IN WITNESS WHEREOF, said Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer on this [●] day of [●] 2018.

**CONTURA ENERGY, INC.**

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

**Exhibit B**  
**Form of Indemnification Agreement**

**CONTURA ENERGY, INC.  
INDEMNIFICATION AGREEMENT**

**THIS INDEMNIFICATION AGREEMENT** (this "**Agreement**") is made as of [-], 2018, by and between Contura Energy, Inc., a Delaware corporation (the "**Company**"), and \_\_\_\_\_ (the "**Indemnitee**").

**RECITALS:**

**A.** It is essential that the Company retain and attract as directors and officers the most capable persons available.

**B.** The Indemnitee is (or is being elected or appointed as) a director and/or officer of the Company and in that capacity is (or will be) performing a valuable service for the Company.

**C.** The Company's Second Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**") contains a provision which provides for indemnification of and advancement of expenses to the directors and officers of the Company for liabilities and expenses they incur in their capacities as such, and the Certificate of Incorporation and Section 145 of the General Corporation Law of the State of Delaware (the "**DGCL**") provide that they are not exclusive of any other rights to indemnification and advancement of expenses.

**D.** In recognition of Indemnitee's need for protection against personal liability in order to enhance Indemnitee's service and continued service to the Company in an effective manner, the potential difficulty in obtaining satisfactory Directors and Officers Liability Insurance (the "**D&O Insurance**") coverage, and Indemnitee's reliance on the Certificate of Incorporation, and in part to provide Indemnitee with specific contractual assurance that the protection promised by the Certificate of Incorporation will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of the Certificate of Incorporation or any change in the composition of the Company's Board of Directors or acquisition transaction relating to the Company), the Company desires to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee to the fullest extent permitted by law and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of Indemnitee under the Company's D&O Insurance policies.

**E.** The Indemnitee is willing to serve and/or to continue to serve, the Company, only on the condition that the Company furnish the indemnity provided for herein.

**NOW, THEREFORE**, in consideration of Indemnitee's service and/or continuing to serve the Company directly, or, at its request, other enterprises and intending to be legally bound hereby, the parties hereto agree as follows:

**1. Definitions.**

(a) A "**Change in Control**" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) any merger, consolidation or business combination in which the stockholders of the Company immediately prior to the merger, consolidation or business combination do not own at least a majority of the outstanding equity interests of the surviving parent entity;

(ii) the sale of all or substantially all of the Company's assets in a single transaction or a series of related transactions;

(iii) the acquisition of beneficial ownership or control of (including, without limitation, power to vote) a majority of the outstanding common stock of the Company by any person or entity (including a "group" as defined by or under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended);

(iv) the stockholders of the Company approve any plan for the dissolution or liquidation of the Company; or

(v) a contested election of directors, as a result of which or in connection with which the persons who were directors of the Company before such election or their nominees cease to constitute a majority of the Company's Board.

(b) "**Corporate Status**" describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, representative, agent or fiduciary of the Company.

(c) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(d) "**Expenses**" include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement or under any D&O Insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments, fines or other losses in connection with any Proceeding.

(e) "**Indemnitee-Related Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other enterprise (other than the Company or any other corporation, partnership, joint venture, trust or other enterprise for which the Indemnitee has agreed, on behalf of the Company or at the Company's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses in respect of a matter with respect to which, in whole or in part, the Company may also have an indemnification or advancement obligation.

(f) "**Independent Counsel**" means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement or as

Independent Counsel with respect to matters concerning other indemnitees under other indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(g) **"Interested Stockholder"** means any person (other than the Company or any subsidiary of the Company and other than any profit sharing, employee stock ownership, or other employee benefit plan of the Company or any subsidiary of the Company or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is at such time the beneficial owner, directly or indirectly, of more than fifteen percent (15%) of the voting power of the outstanding common stock of the Company;

(ii) was at any time within the two-year period immediately prior to such time the beneficial owner, directly or indirectly, of more than fifteen percent (15%) of the voting power of the then outstanding common stock of the Company; or

(iii) is at such time an assignee of or has otherwise succeeded to the beneficial ownership of any shares of common stock of the Company which were at any time within the two-year period immediately prior to such time beneficially owned by any Interested Stockholder, if such assignment or succession has occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933, as amended.

(h) **"Jointly Indemnifiable Claims"** shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both an Indemnitee-Related Entity and the Company pursuant to applicable law or any agreement, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Company or an Indemnitee-Related Entity, as applicable.

(i) A **"Potential Change of Control"** shall occur if:

(i) the Company enters into an agreement or arrangement the consummation of which would result in the occurrence of a Change in Control;

(ii) any Person (including the Company) publicly announces an intention to take or to consider taking actions which if consummated would constitute a Change in Control; or

(iii) the Board of Directors of the Company adopts a resolution to the effect that, for purposes of this Agreement, a Potential Change of Control has occurred.

(j) **"Proceeding"** means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be, or could reasonably be expected to be, involved as a party, a potential party, a non-party witness or



otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee's part while acting as a director or officer of the Company, or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, representative, agent or fiduciary of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(k) "**Unaffiliated Director**" means any member of the Board of Directors of the Company who is unaffiliated with, and not a representative of, an Interested Stockholder and who was a member of the Board of Directors prior to the time that the Interested Stockholder became an Interested Stockholder or became a member subsequently to fill a vacancy created by an increase in the size of the Board of Directors and did receive the favorable vote of two-thirds (2/3) of the Unaffiliated Directors in connection with being nominated for election by the stockholders to fill such vacancy or in being elected by the Board of Directors to fill such vacancy, and any successor of an Unaffiliated Director who is unaffiliated with, and not a representative of, the Interested Stockholder and is recommended or elected to succeed an Unaffiliated Director by a majority of the Unaffiliated Directors then on the Board of Directors.

Reference to "**other enterprises**" shall include employee benefit plans and administrative committees thereof; references to "**fin**es" shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to "**serv**ing at the request of the Company" shall include any service as a director, officer, employee or agent of the Company 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; a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement; references to "**to the fullest extent permitted by applicable law**" shall include, but not be limited to: (i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL and (ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

**2. Indemnity in Third-Party Proceedings.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

**3. Indemnity in Proceedings by or in the Right of the Company.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if

Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

**4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful.** To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in any Proceeding or in defense of any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. To the extent permitted by applicable law, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**5. Indemnification for Expenses of a Witness.** Notwithstanding any other provision of this Agreement, to the extent that Indemnitee, by reason of his or her Corporate Status, is to be a witness or to be interviewed in any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

**6. Additional Indemnification.** In the event that applicable law permits indemnification in addition to the indemnification provided in Sections 2, 3 and 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's Certificate of Incorporation and Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such Expenses to which the Indemnitee is entitled.

**7. Contribution.** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, then in respect of any actual or threatened proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such proceeding) the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as

is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and transaction(s) giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such event(s) and transaction(s).

## **8. Notification and Defense of Claim.**

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights. With respect to any Proceeding as to which the Indemnitee has so notified the Company:

(i) The Company will be entitled to participate therein at its own expense; and

(ii) Except as otherwise provided below, the Company may assume the defense thereof, with counsel reasonably satisfactory to the Indemnitee. After the Company notifies the Indemnitee of its election to so assume the defense, the Company will not be liable to the Indemnitee under this Agreement for any legal Expenses subsequently incurred by the Indemnitee in connection with the defense, other than legal Expenses relating to the reasonable costs of investigation, including an investigation in connection with determining whether there exists a conflict of interest of the type described in clause (B) of this paragraph, or as otherwise provided in this paragraph. The Indemnitee shall have the right to employ his or her counsel in such action, suit or proceeding but the fees and expenses of such counsel incurred after the Company notifies the Indemnitee of its assumption of the defense shall be at the expense of the Indemnitee unless (A) the Company authorizes the Indemnitee's employment of counsel, provided, that following a Change in Control, the Indemnitee shall be entitled to employ his or her own counsel at the Company's expense after giving not less than 30 days' notice to the Company unless the Company has Unaffiliated Directors and a majority of the Unaffiliated Directors determine that the Indemnitee's interests are adequately represented by the counsel employed by the Company; (B) the Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense or (C) the Company shall not have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Company or as to which the Indemnitee shall have made the conclusion described in clause (B) of this paragraph.

(b) The Company shall not be obligated to indemnify the Indemnitee under this Agreement for any amounts paid in settlement of any action, claim or Proceeding effected without its written consent. The Company shall not settle any action, claim or Proceeding in any manner which would impose any penalty or limitation on the Indemnitee without the Indemnitee's written consent. Neither the Company nor the Indemnitee shall unreasonably withhold their consent to any proposed settlement.

## **9. Procedure for Indemnification.**

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to

Indemnitee and as is reasonably necessary to determine whether and to what extent Indemnitee would be entitled to indemnification following the final disposition of such Proceeding. The Company shall, as soon as reasonably practicable after receipt of such a request for indemnification, advise the Board of Directors that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 9(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's Board of Directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's Board of Directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's Board of Directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's Board of Directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's Board of Directors, by the stockholders of the Company. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within sixty (60) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 9(b), the Independent Counsel shall be selected as provided in this Section 9(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's Board of Directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's Board of Directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 9(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 9(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to

Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing),

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

**10. Advancement of Expenses; Procedure for Advances.** The Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding. Advances shall be unsecured and interest free and made without regard to Indemnitee's ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. To obtain advances of Expenses, Indemnitee shall submit from time to time to the Company a written request requesting such advances and shall provide copies of invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that Indemnitee's lawyers believe would likely cause Indemnitee to waive any privilege accorded by applicable law may be redacted from the copy of the invoice submitted to the Company (in which case, Indemnitee shall also submit a letter addressed to the Company from such lawyers to the effect that they believe submission of the redacted information would likely cause Indemnitee to waive a privilege accorded by applicable law). Upon receipt of a such a request for an advance of Expenses along with copies of the related invoices (and, if applicable, a letter from Indemnitee's lawyers with respect to redactions on the legal invoice(s)), Company shall advance the Expenses to Indemnitee as soon as reasonably practicable, but in any event no later than twenty (20) days, after such receipt by the Company. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 16 of this Agreement.

**11. Maintenance of Insurance; Funding.**

(a) The Company represents that a summary of the terms of the D&O Insurance in effect as of the date of this Agreement is attached hereto as Exhibit A (the "**Insurance Policies**"). Subject only to the provisions of Section 11(b) hereof, the Company agrees that, so long as Indemnitee shall continue to serve as an officer or director of the Company (or shall continue at the request of the Company to serve as a director, trustee, general partner, managing member, officer, employee, representative, agent or fiduciary of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan) and thereafter so long as Indemnitee shall be subject to any possible Proceeding, the Company shall purchase and maintain in effect for the benefit of Indemnitee one or more valid, binding and enforceable policy or policies of D&O Insurance providing coverage at least comparable to that provided pursuant to the Insurance Policies.

(b) The Company shall not be required to maintain said Insurance Policies in effect if, in the reasonable, good faith business judgment of the then Board of Directors of the Company (i) the premium cost for such insurance is substantially disproportionate to the amount of coverage, (ii) the coverage provided by such insurance is so limited by exclusions that there is insufficient benefit from such insurance or (iii) said insurance is not otherwise reasonably available; provided, however, that in the event the then Board of Directors makes such a judgment, the Company shall purchase and maintain in force a policy or policies of D&O Insurance in the amount and with such coverage as the then Board of Directors determines to be reasonably available. Notwithstanding the general provisions of this Section 11(b), following a Change in Control, any decision not to maintain any policy or policies of D&O Insurance or to reduce the amount or coverage under any such policy or policies shall be effective only if

there are Unaffiliated Directors (as defined in Section 1(k) hereof) and shall require the concurrence of a majority of the Unaffiliated Directors.

(c) If and to the extent the Company, acting under Section 11(b), does not purchase and maintain in effect the policy or policies of D&O Insurance described in this Section 11, the Company shall indemnify and hold harmless the Indemnitee to the full extent of the coverage which would otherwise have been provided by such policies. The rights of the Indemnitee hereunder shall be in addition to all other rights of Indemnitee under the remaining provisions of this Agreement.

(d) In the event of a Potential Change of Control and if and to the extent the Company is not required to maintain in effect the policy or policies of D&O Insurance described in Section 11(a) pursuant to the provisions of Section 11(b), the Company shall, upon written request of Indemnitee, create a "Trust" for the benefit of Indemnitee, and from time to time, upon written request by Indemnitee, shall fund such Trust in an amount sufficient to pay any and all Expenses and any and all liability and loss, including judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement actually and reasonably incurred by him or on his behalf for which the Indemnitee is entitled to indemnification or with respect to which indemnification is claimed, reasonably anticipated or proposed to be paid in accordance with the terms of this Agreement or otherwise; provided that in no event shall more than \$100,000 be required to be deposited in any Trust created hereunder in excess of the amounts deposited in respect of reasonably anticipated Expenses. The amounts to be deposited in the Trust pursuant to the foregoing funding obligation shall be determined by a majority of the Unaffiliated Directors whose determination shall be final and conclusive. At all times the Trust shall remain as an asset of the Company and subject to the claims of the Company's creditors.

The terms of the Trust shall provide that upon a Change in Control (i) the Trust shall not be revoked or the principal thereof invaded, without the written consent of the Indemnitee except as set forth in the preceding paragraph, (ii) the procedures set forth in Section 10 regarding advancement of expenses with respect to the Company shall apply to the Trust, (iii) the Trust shall continue to be funded by the Company in accordance with the funding obligation set forth above (and in the event that there are no Unaffiliated Directors, the decision regarding the amount to fund shall be made by Independent Counsel selected as provided in Section 9(c)), (iv) the Trustee shall promptly pay to the Indemnitee all amounts for which the Indemnitee shall be entitled to indemnification pursuant to this Agreement or otherwise, and (v) all unexpended funds in such Trust shall revert to the Company upon a final determination by a majority of the Unaffiliated Directors or by Independent Counsel or a court of competent jurisdiction, as the case may be, that the Indemnitee has been fully indemnified under the terms of this Agreement. The Trustee shall be a bank or trust company or other individual or entity chosen by the Indemnitee and reasonably acceptable and approved of by the Company.

## **12. Remedies of Indemnitee.**

(a) Subject to Section 12(d), in the event that (i) a determination is made pursuant to Section 9 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 9 of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 or 12(d) of this Agreement, within thirty (30) days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or

other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by the Delaware Court of Chancery of Indemnitee's right to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) The failure of the Company, its Board of Directors, any committee or subgroup of the Board of Directors, Independent Counsel or stockholders to have made a determination that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct shall not be a defense to the action or create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 9 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 12, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 9 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than sixty (60) days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, to the extent Indemnitee is successful in such action and to the extent not prohibited by law.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

### **13. Presumptions and Effect of Certain Proceedings.**

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9 of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by such person, persons or entity of any determination contrary to that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Company, including financial statements, (ii) information supplied to Indemnitee by the officers of the Company in the course of their duties, (iii) the advice of legal counsel for the Company or its Board of Directors or counsel selected by any committee of the Board of Directors or (iv) information or records given or reports made to the Company by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Company or its Board of Directors or any committee of the Board of Directors. The provisions of this Section 13(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Company shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

**14. Subrogation; No Duplication of Payments.** In the event that the Company pays any Expenses under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights. The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment from a third party for such amounts under any insurance policy, contract, agreement or otherwise; provided, however, that if the Indemnitee repays any of these payments to such third party (whether due to a reservation of rights or otherwise), the Company shall again be obligated to Indemnitee under this Agreement with respect to such payments. Notwithstanding the foregoing, the Company shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any Jointly Indemnifiable Claims that may arise due to the service of an Indemnitee as a director and/or officer of the Company at the request of an Indemnitee-Related Entity, irrespective of any right of recovery an Indemnitee may have from any Indemnitee-Related Entity. Under no circumstance shall the Company be entitled to any right of subrogation against or contribution by an Indemnitee-Related Entity.



**15. Services to Company.** Indemnitee agrees to serve as a director or officer of the Company for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries), any existing formal severance policies adopted by the Company's Board of Directors or, with respect to service as a director or officer of the Company, the Company's Certificate of Incorporation or Bylaws or the DGCL.

**16. Exclusions.** Notwithstanding the foregoing, the Company shall not be liable under this Agreement to pay any Expenses in connection with any Proceeding:

(a) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(b) for a disgorgement of profits made from the purchase and sale by the Indemnitee of securities pursuant to Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law or common law;

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company's Board of Directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) otherwise authorized in Section 12(d) or (iii) otherwise required by applicable law; or

(d) if prohibited by applicable law.

**17. Waivers.** The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

**18. Entire Agreement.** This Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are superseded by this Agreement, provided that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and Bylaws of the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

**19. Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing (which may be by facsimile transmission). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

**20. Amendments.** The entitlement to payment hereunder of an Indemnitee shall not be affected or diminished by any amendment, termination or repeal of the General Corporation Law of the State of Delaware or the Certificate of Incorporation of the Company with respect to any Proceeding arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of any such amendment, termination or repeal. This Agreement may not be modified or altered except by a formal writing signed by both the Company and the Indemnitee that specifically refers to this Agreement.

**21. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument.

**22. Indemnification Hereunder Not Exclusive.** Nothing herein shall be deemed to diminish or otherwise restrict the Indemnitee's right to indemnification under any provision of the Certificate of Incorporation or the Bylaws of the Company and amendments thereto or under law. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. It is the intention of the parties in entering into this Agreement that the insurers under any D&O Insurance policy shall be obligated ultimately to pay any claims by Indemnitee which are covered by such policy and not to give such insurers any rights against the Company under or with respect to this Agreement, including, without limitation, any right to be subrogated to any of Indemnitee's rights hereunder, unless otherwise expressly agreed to by the Company in writing, and the obligation of such insurers to the Company or Indemnitee shall not be deemed reduced or impaired in any respect by virtue of the provisions of this Agreement.

**23. Governing Law.** This Agreement shall be governed by and construed in accordance with Delaware law, without regard to its conflict of laws rules.

**24. Saving Clause.** Wherever there is conflict between any provision of this Agreement and any applicable present or future statute, law or regulation contrary to which the Company and the Indemnitee have no legal right to contract, the latter shall prevail but (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby but in such event the affected

provisions of this Agreement shall be curtailed and restricted only to the extent necessary to bring them within applicable legal requirements.

**25. Coverage; Continuation of Indemnity.** The provisions of this Agreement shall apply with respect to the Indemnitee's service as a Director or officer of the Company prior to the date of this Agreement (if any) and with respect to all periods of such service after the date of this Agreement, even though the Indemnitee may have ceased to be a Director or officer of the Company and shall inure to the benefit of the heirs, executors, administrators, legatees and assigns of the Indemnitee. To the extent Indemnitee served as an officer or director of Alpha Natural Resources, Inc., a predecessor of the Company, the provisions of this Agreement shall also apply with respect to the time period that Indemnitee served as an officer or director of Alpha Natural Resources, Inc. All agreements and obligations of the Company contained in this Agreement shall continue during the period the Indemnitee is a director or officer of the Company (or is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, representative, agent or fiduciary of another corporation, partnership, joint venture, trust, limited liability company or other enterprise and shall continue thereafter so long as the Indemnitee shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, by reason of the fact that the Indemnitee was a director or officer of the Company or serving in any other capacity referred to herein.

**26. Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors, administrators, legatees and assigns. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

**27. Miscellaneous.**

(a) Notwithstanding Section 20, the Company may amend this Agreement from time to time without Indemnitee's consent to the extent deemed necessary or appropriate, in its sole discretion, to effect compliance with Section 409A of the Internal Revenue Code, including regulations and interpretations thereunder, which amendments may result in a reduction of benefits provided hereunder and/or other unfavorable changes to Indemnitee.

(b) This Agreement is intended to provide for the indemnification of, and/or purchase of insurance policies providing for payments of, expenses and damages incurred with respect to *bona fide* claims against the Indemnitee, as a service provider, or the Company, as the service recipient, in accordance with Treas. Reg. Section 1.409A-1(b)(10), pursuant to which the Agreement shall not provide for the deferral of compensation. The Agreement shall be construed consistently, and limited in accordance with, the provisions of such regulation.

*[remainder of page intentionally left blank]*

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

**CONTURA ENERGY, INC.**

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

**INDEMNITEE**

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

**Exhibit C**

**Form of 2018 Long-Term Incentive Plan**

**CONTURA ENERGY, INC.**  
**2018 LONG-TERM INCENTIVE PLAN**

Section 1. *Purpose.* The purpose of the Contura Energy, Inc. 2018 Long-Term Incentive Plan (as amended from time to time, the “**Plan**”) is to advance the interests of Contura Energy, Inc. (the “**Company**”) and its stockholders by motivating and retaining employees and other selected individuals who contribute significantly to the strategic and long-term performance objectives and growth of the Company.

Section 2. *Definitions.* Certain capitalized terms applicable to the Plan are set forth in Appendix A.

Section 3. *Administration.*

(a) *Administration of the Plan.* The Plan shall be administered by the Committee. All decisions of the Committee shall be final, conclusive and binding upon all parties, including the Company, its stockholders, Eligible Persons and any Beneficiaries thereof. The Committee may issue rules and regulations for administration of the Plan. It shall meet at such times and places as it may determine.

(b) *Composition of Committee.* To the extent necessary or desirable to comply with applicable regulatory regimes, any action by the Committee shall require the approval of Committee members who are (i) independent, within the meaning of and to the extent required by applicable rulings and interpretations of the applicable stock market or exchange on which the Common Shares are quoted or traded; and (ii) non-employee Directors within the meaning of Rule 16b-3 under the Exchange Act. The Board may designate one or more Directors as alternate members of the Committee who may replace any absent or disqualified member at any meeting of the Committee. To the extent permitted by applicable law, including under Section 157(c) of the Delaware General Corporation Law, the Committee may delegate to one or more officers of the Company some or all of its authority under the Plan, including the authority to grant Options and Stock Appreciation Rights or other Awards in the form of Common Share rights (except that such delegation shall not be applicable to any Award for a Person then covered by Section 16 of the Exchange Act), and the Committee may delegate to one or more committees of the Board (which may consist of solely one Director) some or all of its authority under the Plan, including the authority to grant all types of Awards, in accordance with applicable law.

(c) *Authority of Committee.* Subject to the terms of the Plan and applicable law, the Committee (or its delegate) shall have full discretion and authority to: (i) designate Eligible Persons; (ii) determine the type or types of Awards (including Substitute Awards) to be granted to each Eligible Person under the Plan; (iii) determine the number of Common Shares to be covered by (or with respect to which payments, rights or other matters are to be calculated in connection with) Awards; (iv) determine the terms and conditions of any Award and prescribe the form of each Award Agreement which need not be identical for each Participant; (v) determine whether, to what extent

and under what circumstances Awards may be settled or exercised in cash, Common Shares, other Awards, other property, net settlement, or any combination thereof, or canceled, forfeited or suspended, and the method or methods by which Awards may be settled, exercised, canceled, forfeited or suspended; (vi) determine whether, to what extent and under what circumstances cash, Common Shares, other Awards, other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the holder thereof or of the Committee; (vii) amend terms or conditions of any outstanding Awards in a manner consistent with Section 5(b) hereof; (viii) correct any defect, supply any omission and reconcile any inconsistency in the Plan or any Award, in the manner and to the extent it shall deem desirable to carry the Plan into effect; (ix) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan; (x) establish, amend, suspend or waive such rules and regulations and appoint such agents, trustees, brokers, depositories and advisors and determine such terms of their engagement as it shall deem appropriate for the proper administration of the Plan and due compliance with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations; and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan and due compliance with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations. Notwithstanding anything to the contrary contained herein, the Board may, in its sole discretion, at any time and from time to time, grant Awards or administer the Plan. In any such case, the Board shall have all of the authority and responsibility granted to the Committee herein.

#### Section 4. *Participation.*

Consistent with the purposes of the Plan, the Committee shall have exclusive power to select the Eligible Persons who may participate in the Plan and be granted Awards under the Plan. Eligible Persons may be selected individually or by groups or categories, as determined by the Committee in its discretion.

#### Section 5. *Shares Available for Award.*

##### (a) *Share Reserve.*

(i) Subject to adjustment as provided in Section 5(b) and except for Substitute Awards, the maximum number of Common Shares available for issuance under the Plan is 1,000,000. The maximum number of Common Shares available for issuance with respect to Incentive Stock Options shall be 940,800.

(ii) If any Award, in whole or in part, is forfeited, cancelled, expires, terminates or otherwise lapses, or is settled in cash without the delivery of Common Shares, or Common Shares are withheld by the Company in respect of taxes, then the corresponding Common Shares shall again be available for grant under the Plan. For the avoidance of doubt, any Common Shares tendered or withheld to pay the exercise price of Options, or that are covered by a Stock Appreciation Right (to the extent that it is settled in Common Shares, without

regard to the number of Shares that are actually issued upon exercise), will not again become available for issuance under the Plan.

(iii) Common Shares issued pursuant to the Plan may be either authorized but unissued shares, treasury shares, reacquired shares or any combination thereof.

(b) *Adjustments.* In the event that the Committee determines that, as a result of any dividend or other distribution (other than an ordinary dividend or distribution), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, separation, rights offering, split-up, spin-off, combination, repurchase or exchange of Common Shares or other securities of the Company, issuance of warrants or other rights to purchase Common Shares or other securities of the Company, issuance of Common Shares pursuant to the anti-dilution provisions of securities of the Company, or other similar corporate transaction or event affecting the Common Shares, or changes in applicable laws, regulations or accounting principles, an adjustment is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, subject to compliance with Section 409A of the Code and other applicable law, adjust equitably so as to ensure no undue enrichment or harm (including, without limitation, by payment of cash) any or all of:

- (i) the number and type of Common Shares (or other securities) which thereafter may be made the subject of Awards, including the aggregate limit specified in Section 5(a) and the individual limits specified in Section 5(c);
- (ii) the number and type of Common Shares (or other securities) subject to outstanding Awards; and
- (iii) the grant, purchase, exercise or hurdle price with respect to any Award or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award;

*provided, however,* that the number of Common Shares subject to any Award denominated in Common Shares shall always be a whole number.

(c) *Non-Employee Director Limits.* No non-employee Director may be granted (i) Award(s) (denominated in Common Shares) in excess of 34,285 Common Shares (or if greater, in the case of Restricted Stock Units, Restricted Stock, Performance Awards and Other Stock-Based Awards, Common Shares with an aggregate Fair Market Value of \$300,000, as calculated on the grant date of the applicable Award) or (ii) Award(s) denominated in cash in excess of \$150,000 under the Plan in any one fiscal year of the Company.

#### Section 6. *Awards under the Plan.*

(a) *Types of Awards.* Awards under the Plan may include, but need not be limited to, one or more of the following types, either alone or in any combination thereof:



(i) Stock Options, (ii) Stock Appreciation Rights, (iii) Restricted Stock, (iv) Restricted Stock Units, (v) Performance Awards, (vi) Other Cash-Based Awards and (vii) Other Stock-Based Awards.

(b) *Rights with Respect to Common Shares and Other Securities.* Except as provided in Section 9(c) with respect to Awards of Restricted Stock and unless otherwise determined by the Committee in its discretion, a Participant to whom an Award is made (and any Person succeeding to such a Participant's rights pursuant to the Plan) shall have no rights as a stockholder with respect to any Common Shares or as a holder with respect to other securities, if any, issuable pursuant to any such Award until the date a stock certificate evidencing such Common Shares or other evidence of ownership is issued to such Participant or until such Participant's ownership of such Common Shares shall have been entered into the books of the registrar in the case of uncertificated shares.

(c) *Award Agreements.* Each Award granted or sold under the Plan shall be evidenced by an Award Agreement in such form as the Committee shall prescribe from time to time in accordance with the Plan and shall comply with the applicable terms and conditions of the Plan and applicable law, and with such other terms and conditions, including, but not limited to, treatment of the Award upon a Separation from Service and restrictions upon a Stock Option or the Common Shares issuable upon exercise thereof, as the Committee, in its discretion, shall establish.

Section 7. *Stock Options.* The Committee may grant Stock Options to Eligible Persons with the following terms and conditions and with such additional terms and conditions, in each case, not inconsistent with the provisions of the Plan, as the Committee shall determine; *provided* that an Incentive Stock Option may be granted only to Eligible Persons who are employees of the Company or any parent or subsidiary of the Company within the meaning of Sections 424(e) and (f) of the Code, including a subsidiary which becomes such after adoption of the Plan.

(a) The Committee shall determine the number of Common Shares to be subject to each Stock Option. The exercise price of a Stock Option shall not be less than the Fair Market Value of the Common Shares subject to such Stock Option on the date of grant, as determined by the Committee; *provided, however*, if an Incentive Stock Option is granted to a Ten Percent Employee, such exercise price shall not be less than 110% of such Fair Market Value at the time the Stock Option is granted.

(b) Any Stock Option may be exercised during its term only at such time or times and in such installments as the Committee may establish.

(c) A Stock Option shall not be exercisable:

(i) in the case of any Incentive Stock Option granted to a Ten Percent Employee, after the expiration of five years from the date it is granted, and, in the case of any other Stock Option, after the expiration of ten years from the date it is granted; and

(ii) no Common Shares shall be issued unless payment in full is made for the Common Shares being acquired under such Stock Option at the time of exercise as provided in Section 7(e).

(d) In the case of an Incentive Stock Option, the amount of the aggregate Fair Market Value of Common Shares (determined at the time of grant of the Stock Option) with respect to which Incentive Stock Options are exercisable for the first time by an employee of the Company or a Subsidiary during any calendar year (under all such plans of his or her employer corporation and its parent and subsidiary corporations within the meaning of Sections 424(e) and (f) of the Code) shall not exceed \$100,000 or such other amount as is specified in the Code. An Incentive Stock Option that is exercised at a time that is beyond the time an Incentive Stock Option may be exercised in order to qualify as such under the Code shall cease to be an Incentive Stock Option.

(e) The Committee shall determine the method or methods by which, and the form or forms, including cash, Common Shares, other Awards, other property, net settlement, broker-assisted cashless exercise or any combination thereof, having a Fair Market Value (if such form is other than cash) on the exercise date equal to the exercise price of the Common Shares as to which the Option shall be exercised, in which payment of the exercise price with respect thereto may be made or deemed to have been made.

(f) If the exercise of a Stock Option is prevented by Section 19(e), the Stock Option shall remain exercisable until thirty days after the date such exercise first would no longer be prevented by such provision, but in any event no later than the expiration date of such Stock Option.

Section 8. *Stock Appreciation Rights.* The Committee may grant Stock Appreciation Rights to Eligible Persons with the following terms and conditions, and with such additional terms and conditions in each case not inconsistent with the provisions of the Plan, as the Committee shall determine.

(a) The Committee shall determine the number of Common Shares to be subject to each Stock Appreciation Right. Stock Appreciation Rights shall have an exercise price no less than the Fair Market Value of the Common Shares subject to such Stock Appreciation Right on the date of grant, as determined by the Committee.

(b) Any Stock Appreciation Right may be exercised during its term only at such time or times and in such installments as the Committee may establish and shall not be exercisable after the expiration of ten years from the date it is granted.

(c) A Stock Appreciation Right shall entitle the holder to exercise such Award and to receive from the Company in exchange thereof, without payment to the Company, that number of Common Shares or cash having an aggregate value equal to the excess of the Fair Market Value of one Common Share, at the time of such exercise, over the exercise price, times the number of Common Shares subject to the Award, or portion thereof, that is so exercised or surrendered, as the case may be.

(d) If the exercise of a Stock Appreciation Right is prevented by Section 19(e), the Stock Appreciation Right shall remain exercisable until thirty days after the date such exercise first would no longer be prevented by such provision, but in any event no later than the expiration date of such Stock Appreciation Right.

Section 9. *Restricted Stock and Restricted Stock Units.* The Committee is authorized to grant Awards of Restricted Stock and Restricted Stock Units to Eligible Persons with the following terms and conditions, and with such additional terms and conditions in each case not inconsistent with the provisions of the Plan, as the Committee shall determine.

(a) The Committee shall determine the number of Common Shares to be issued to a Participant pursuant to the Award of Restricted Stock or Restricted Stock Units, and the extent, if any, to which they shall be issued in exchange for cash, other consideration, or both. The Award Agreement shall specify the applicable conditions and restrictions and, with respect to Restricted Stock Units, the delivery schedule (which may include deferred delivery later than an applicable vesting date).

(b) Until the expiration of such period as the Committee shall determine from the date on which the Award is granted and subject to such other terms and conditions as the Committee, in its discretion, shall establish (the “**Restricted Period**”), a Participant to whom an Award of Restricted Stock is made shall be issued, but shall not be entitled to the delivery of, a stock certificate or other evidence of ownership representing the Common Shares subject to such Award.

(c) Unless otherwise determined by the Committee in its discretion, a Participant to whom an Award of Restricted Stock has been made (and any Person succeeding to such a Participant’s rights pursuant to the Plan) shall have, after issuance of a certificate for the number of Common Shares awarded (or after the Participant’s ownership of such Common Shares shall have been entered into the books of the registrar in the case of uncertificated shares) and prior to the expiration of the Restricted Period, ownership of such Common Shares, including the right to vote such Common Shares and to receive dividends or other distributions made or paid with respect to such Common Shares, *provided* that, such Common Shares, and any new, additional or different shares, or Other Company Securities or property, or other forms of consideration that the Participant may be entitled to receive with respect to such Common Shares as a result of a stock split, stock dividend or any other change in the corporation or capital structure of the Company, shall be subject to the restrictions set forth in the Award Agreement. A Restricted Stock Unit shall not convey to the Participant the rights and privileges of a stockholder with respect to the Common Share subject to the Restricted Stock Unit, such as the right to vote or the right to receive dividends, unless and until a Common Share is issued to the Participant to settle the Restricted Stock Unit.

(d) The Committee may, in its discretion, specify in the applicable Award Agreement that any or all dividends, Dividend Equivalents or other distributions, as applicable, paid on Awards of Restricted Stock or Restricted Stock Units prior to vesting or settlement, as applicable, be paid either in cash or in additional Common Shares and

either on a current or deferred basis and that such dividends, dividend equivalents or other distributions may be reinvested in additional Common Shares, which may be subject to the same restrictions as the underlying Awards. Notwithstanding the foregoing, dividends and Dividend Equivalents with respect to Restricted Stock and Restricted Stock Units that are granted as Performance Awards shall vest only if and to the extent that the underlying Performance Award vests, as determined by the Committee.

Section 10. *Performance Awards.*

(a) *Grant.* The Committee may grant a Performance Award to Eligible Persons which shall consist of a right that is (i)denominated and/or payable in cash, Common Shares or any other form of Award issuable under the Plan (or any combination thereof) (other than Stock Options or Stock Appreciation Rights), (ii)valued, as determined by the Committee, in accordance with the achievement of such performance goals applicable to such performance periods as the Committee shall establish and (iii)payable at such time and in such form as the Committee shall determine.

(b) *Terms and Conditions.* Performance Awards may be conditioned upon the achievement of pre-established goals relating to one or more of the following performance measures, as determined by the Committee and subject to such modifications as specified by the Committee: cash flow; cash flow from operations; earnings (including, but not limited to, earnings before interest, taxes, depreciation and amortization or some variation thereof); earnings per share, diluted or basic; earnings per share from continuing operations; net asset turnover; inventory turnover; capital expenditures; debt; debt reduction; working capital; return on investment; return on sales; net or gross sales; market share; economic value added; cost of capital; change in assets; expense reduction levels; productivity; delivery performance; safety record and/or performance; environmental record and/or performance; stock price; return on equity; total or relative increases to stockholder return; return on invested capital; return on assets or net assets; revenue; income or net income; operating income or net operating income; operating profit or net operating profit; gross margin, operating margin or profit margin; and completion of acquisitions, business expansion, product diversification, new or expanded market penetration, and other non-financial operating and management performance objectives. The Committee may determine that certain adjustments shall apply, in whole or in part, to exclude or include the effect of specified events that occur during a performance period. Performance measures may be determined either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or subsidiary entity thereof, either individually, alternatively or in any combination, and measured over a period of time including any portion of a year, annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous fiscal years' results or to a designated comparison group, in each case as specified by the Committee.

(c) *Additional Restrictions/Exercise of Discretion.* The Committee, in its sole discretion, may also establish such additional restrictions or conditions that must be satisfied as a condition precedent to the payment of all or a portion of any Performance Awards. Such additional restrictions or conditions need not be performance-based and

may include, among other things, the receipt by a Participant of a specified annual performance rating, the continued employment by the Participant and/or the achievement of specified performance goals by the Company, business unit or Participant. Furthermore, and notwithstanding any provision of the Plan to the contrary, the Committee, in its sole discretion, may retain the discretion to adjust the amount of any Performance Award payable to a Participant if it concludes that such adjustment is necessary or appropriate.

(d) *Payment of Performance Awards.* Performance Awards may be paid in a lump sum or in installments following the close of the relevant Performance Period or, in accordance with procedures established by the Committee, on a deferred or accelerated basis.

Section 11. *Other Cash-Based Awards and Other Stock-Based Awards.* The Committee may grant Other Cash-Based Awards and Other Stock-Based Awards to Eligible Persons with the following terms and conditions, and with such additional terms and conditions in each case not inconsistent with the provisions of the Plan, as the Committee shall determine, which shall consist of any right that is (i) not an Award described in Sections 7 through 10 above and (ii) an Award of Common Shares or cash or an Award denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Common Shares (including, without limitation, securities convertible into Common Shares), as deemed by the Committee to be consistent with the purposes of the Plan. Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine the terms and conditions of any such Other Cash-Based Award or Other Stock-Based Award.

Section 12. *Effect of Separation from Service or a Change in Control on Awards.*

(a) The Committee may provide, by rule or regulation or in any applicable Award Agreement, or may determine in any individual case, the circumstances in which, and the extent to which, an Award may be exercised, settled, vested, paid or forfeited in the event of the Participant's Separation from Service prior to the end of a Performance Period or vesting, exercise or settlement of such Award.

(b) In the event of a Change in Control, the Committee may, in its sole discretion, and on such terms and conditions as it deems appropriate, take any one or more of the following actions with respect to any outstanding Award, which need not be uniform with respect to all Participants and/or Awards:

(i) continuation or assumption of such Award by the Company (if it is the surviving corporation) or by the successor or surviving corporation or its parent;

(ii) substitution or replacement of such Award by the successor or surviving corporation or its parent with cash, securities, rights or other property to be paid or issued, as the case may be, by the successor or surviving corporation

(or a parent or subsidiary thereof), with substantially the same terms and value as such Award (including, without limitation, any applicable performance targets or criteria with respect thereto);

(iii) acceleration of the vesting of such Award and the lapse of any restrictions thereon and, in the case of an Option or Stock Appreciation Right, acceleration of the right to exercise such Award during a specified period (and the termination of such Option or Stock Appreciation Right without payment of any consideration therefor to the extent such Award is not timely exercised), in each case, upon (A) the Participant's involuntary Separation from Service (including upon a termination of the Participant's employment by the Company (or a successor corporation or its parent) without "cause" or by the Participant for "good reason") as such terms may be defined in the applicable Award Agreement and/or the Participant's employment agreement or offer letter, as the case may be) on or within 24 months following such Change in Control or (B) the failure of the successor or surviving corporation (or its parent) to continue or assume such Award;

(iv) in the case of a Performance Award, determination of the level of attainment of the applicable performance condition(s); and

(v) cancellation of such Award in consideration of a payment, subject to the following: (A) such payment shall be made in cash, securities, rights and/or other property; (B) the amount of such payment shall equal the value of such Award, as determined by the Committee in its reasonable discretion; *provided* that, in the case of an Option or Stock Appreciation Right, if such value equals the Intrinsic Value of such Award, such value shall be deemed to be valid; *provided further* that, if the Intrinsic Value of an Option or Stock Appreciation Right is equal to or less than zero, the Committee may, in its sole discretion, provide for the cancellation of such Award without payment of any consideration therefor (for the avoidance of doubt, in the event of a Change in Control, the Committee may, in its sole discretion, terminate any Option or Stock Appreciation Right for which the exercise or hurdle price is equal to or exceeds the per Common Share value of the consideration to be paid in the Change in Control transaction without payment of consideration therefor); and (C) such payment shall be made promptly following such Change in Control or on a specified date or dates following such Change in Control; *provided* that the timing of such payment shall comply with Section 409A.

Section 13. *Section 409A*. Notwithstanding any provision of the Plan or an Award Agreement to the contrary, if any Award provided under the Plan is subject to the provisions of Section 409A, the provisions of the Plan and any applicable Award Agreement shall be administered, interpreted and construed in a manner necessary in order to comply with Section 409A or an exception thereto (or disregarded to the extent such provision cannot be so administered, interpreted or construed), and the following provisions shall apply, as applicable and as required by Section 409A:

(a) If a Participant is a Specified Employee for purposes of Section 409A and a payment subject to Section 409A (and not excepted therefrom) to the Participant is due upon Separation from Service, such payment shall be delayed for a period of six (6) months after the date the Participant Separates from Service (or, if earlier, the death of the Participant). Any payment that would otherwise have been due or owing during such six-month period will be paid immediately following the end of the six-month period unless another compliant date is specified in the applicable Award Agreement.

(b) For purposes of Section 409A, and to the extent applicable to any Award under the Plan, it is intended that distribution events qualify as permissible distribution events for purposes of Section 409A and shall be interpreted and construed accordingly. Whether a Participant has Separated from Service will be determined by the Committee based on all of the facts and circumstances and, to the extent applicable to any Award, in accordance with the guidance issued under Section 409A.

(c) The grant of Nonqualified Stock Options and Stock Appreciation Rights are intended to be granted under terms and conditions consistent with Treas. Reg. § 1.409A-1(b)(5) such that any such Award does not constitute a deferral of compensation under Section 409A.

Section 14. *Deferred Payment of Awards.* The Committee, in its discretion, may specify the conditions under which the payment of all or any portion of any cash compensation, or Common Shares or other form of payment under an Award, may be deferred until a later date. Deferrals shall be for such periods or until the occurrence of such events, and upon such terms and conditions, as the Committee shall determine in its discretion, in accordance with the provisions of Section 409A; *provided, however*, that no deferral shall be permitted with respect to Stock Options or Stock Appreciation Rights.

Section 15. *Transferability of Awards.* Except pursuant to the laws of descent and distribution, a Participant's rights and interest under the Plan or any Award may not be assigned or transferred, hypothecated or encumbered in whole or in part, including, but not by way of limitation, execution, levy, garnishment, attachment, pledge, bankruptcy or in any other manner; *provided, however*, the Committee may permit such transfer to a Permitted Transferee; and *provided, further*, that, unless otherwise permitted by the Code, any Incentive Stock Option granted pursuant to the Plan shall not be transferable other than by will or by the laws of descent and distribution, and shall be exercisable during the Participant's lifetime only by Participant.

Section 16. *Amendment or Substitution of Awards under the Plan.*

(a) The terms of any outstanding Award under the Plan may be amended or modified from time to time after grant by the Committee in its discretion in any manner that it deems appropriate (including, but not limited to, acceleration of the date of exercise of any Award and/or payments under any Award) in accordance with the terms of the Plan; provided that no such amendments or acceleration shall adversely affect in a material manner any right of a Participant under the Award without his or her written consent. The Committee may, in its discretion, permit holders of Awards under the Plan

to surrender outstanding Awards in order to exercise or realize the rights under other Awards, or in exchange for the grant of new Awards, or require holders of Awards to surrender outstanding Awards as a condition precedent to the grant of new Awards under the Plan.

(b) *No Repricing.* Notwithstanding the foregoing, except as provided in Section 5(b), no action (including the repurchase of Options or Stock Appreciation Right Awards (in each case, that are “out of the money”) for cash and/or other property) shall directly or indirectly, through cancellation and regrant or any other method, reduce, or have the effect of reducing, the exercise or hurdle price of any Award established at the time of grant thereof without approval of the Company’s stockholders.

Section 17. *Termination of a Participant.* For all purposes under the Plan, the Committee shall determine whether a Participant has Separated from Service, terminated employment with, or terminated the performance of services for, the Company or any Subsidiary; *provided, however*, an absence or leave approved by the Company, to the extent permitted by applicable provisions of the Code, shall not be considered an interruption of employment or performance of services for any purpose under the Plan.

Section 18. *Designation of Beneficiary by Participant.* A Participant may name a beneficiary to receive any payment to which such Participant may be entitled with respect to any Award under the Plan in the event of his or her death, on a written form to be provided by and filed with the Committee, and in a manner determined by the Committee in its discretion (a “**Beneficiary**”). The Committee reserves the right to review and approve Beneficiary designations. A Participant may change his or her Beneficiary from time to time in the same manner, unless such Participant has made an irrevocable designation. Any designation of a Beneficiary under the Plan (to the extent it is valid and enforceable under applicable law) shall be controlling over any other disposition, testamentary or otherwise, as determined by the Committee in its discretion. If no designated Beneficiary survives the Participant and is living on the date on which any amount becomes payable to such a Participant’s Beneficiary, such payment will be made to the legal representatives of the Participant’s estate, and the term “**Beneficiary**” as used in the Plan shall be deemed to include such Person or Persons. If there are any questions as to the legal right of any Beneficiary to receive a distribution under the Plan, the Committee in its discretion may determine that the amount in question be paid to the legal representatives of the estate of the Participant, in which event the Company, the Board, the Committee and the members thereof, will have no further liability to anyone with respect to such amount.

Section 19. *Miscellaneous Provisions.*

(a) Any proceeds from Awards shall constitute general funds of Company.

(b) No fractional shares may be delivered under an Award, but in lieu thereof a cash or other adjustment may be made as determined by the Committee in its discretion.



(c) No Eligible Person or other Person shall have any claim or right to be granted an Award under the Plan. Determinations made by the Committee under the Plan need not be uniform and may be made selectively among Eligible Persons under the Plan, whether or not such Eligible Persons are similarly situated. Neither the Plan nor any action taken under the Plan shall be construed as giving any Eligible Person any right to continue to be employed by or perform services for the Company, and the Company specifically reserves the right to terminate the employment of, or performance of services by, Eligible Persons at any time and for any reason.

(d) No Participant or other Person shall have any right with respect to the Plan or the Common Shares reserved for issuance under the Plan or in any Award, contingent or otherwise, until written evidence of the Award shall have been delivered to the Participant and all the terms, conditions and provisions of the Plan and the Award applicable to such Participant (and each Person claiming under or through him or her) have been met.

(e) Notwithstanding anything to the contrary contained in the Plan or in any Award agreement, each Award shall be subject to the requirement, if at any time the Committee shall determine, in its sole discretion, that such requirement shall apply, that the listing, registration or qualification of any Award under the Plan, or of the Common Shares, Other Company Securities or property or other forms of payment issuable pursuant to any Award under the Plan, on any stock exchange or other market quotation system or under any federal or state law, or the consent or approval of any government regulatory body, is necessary as a condition of, or in connection with, the granting of such Award or the exercise or settlement thereof, such Award shall not be granted, exercised or settled in whole or in part until such listing, registration, qualification, consent or approval shall have been effected, obtained and maintained free of any conditions not acceptable to the Committee. Notwithstanding anything to the contrary contained in the Plan or in any Award agreement, no Common Shares, Other Company Securities or property or other forms of payment shall be issued under the Plan with respect to any Award unless the Committee shall be satisfied that such issuance will be in compliance with applicable law and any applicable rules of any stock exchange or other market quotation system on which such Common Shares are listed. If the Committee determines that the exercise of any Stock Option or Stock Appreciation Right would fail to comply with any applicable law or any applicable rules of any stock exchange or other market quotation system on which Common Shares are listed, the Participant holding such Stock Option or Stock Appreciation Right shall have no right to exercise such Stock Option or Stock Appreciation Right until such time as the Committee shall have determined that such exercise will not violate any applicable law or any such applicable rule.

(f) Although it is the intent of Company that the Plan and Awards hereunder, to the extent the Committee deems appropriate and to the extent applicable, comply with Rule 16b-3 and Sections 409A and 422; (i) the Company does not warrant that any Award under the Plan will qualify for favorable tax treatment under any provision of federal, state, local or non-United States law; and (ii) in no event shall any member of the Committee or the Company (or its employees, officers or directors) have any liability to

any Participant (or any other Person) due to the failure of an Award to satisfy the requirements of Rule 16b-3 or Section 409A or 422 or, as applicable, for any tax, interest, or penalties the Participant might owe as a result of the grant, holding, vesting, exercise, or payment of any Award under the Plan.

(g) The Company shall have the right to deduct from any payment made under the Plan any federal, state, local or foreign income or other taxes required by law to be withheld with respect to such payment. It shall be a condition to the obligation of Company to issue Common Shares, Other Company Securities, other securities or property, or other forms of payment, or any combination thereof, upon exercise, settlement or payment of any Award under the Plan, that the Participant (or any Beneficiary or Person entitled to act) pay to the Company, upon its demand, such amount as may be required by the Company for the purpose of satisfying any liability to withhold federal, state, local or foreign income or other taxes. If the amount requested is not paid, the Company may refuse to issue Common Shares, Other Company Securities, other securities or property, or other forms of payment, or any combination thereof. Notwithstanding anything in the Plan to the contrary, the Committee may, in its discretion, permit an Eligible Person (or any Beneficiary or Person entitled to act) to elect to pay a portion or all of the amount requested by the Company for such taxes with respect to such Award, at such time and in such manner as the Committee shall deem to be appropriate (including, but not limited to, by authorizing the Company to withhold, or agreeing to surrender to the Company on or about the date such tax liability is determinable, Common Shares, Other Company Securities, other securities or property, or other forms of payment, or any combination thereof, owned by such Person or a portion of such forms of payment that would otherwise be distributed, or have been distributed, as the case may be, pursuant to such Award to such Person, having a Fair Market Value equal to the amount of such taxes); *provided, however*, that any broker-assisted cashless exercise shall comply with the requirements of Financial Accounting Standards Board, Accounting Standards Codification, Topic 718, and any withholding satisfied through a net-settlement of an Award shall be limited to the maximum statutory withholding requirements.

(h) The expenses of the Plan shall be borne by the Company.

(i) The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Award under the Plan, and rights to the payment of Awards shall be no greater than the rights of the Company's general creditors.

(j) By accepting any Award or other benefit under the Plan, each Participant (and each Person claiming under or through him or her) shall be conclusively deemed to have indicated his or her acceptance and ratification of, and consent to, any action taken under the Plan by the Company, the Board or the Committee.

(k) Records of the Company shall be conclusive for all purposes under the Plan or any Award, unless determined by the Committee to be incorrect.

(l) If any provision of the Plan or any Award is held to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of the Plan or any Award, but such provision shall be fully severable, and the Plan or Award, as applicable, shall be construed and enforced as if the illegal or invalid provision had never been included in the Plan or Award, as applicable.

(m) The terms of the Plan shall govern all Awards under the Plan and in no event shall the Committee have the power to grant any Award under the Plan that is contrary to any of the provisions of the Plan.

(n) Notwithstanding the foregoing, any Award granted under the Plan which is or becomes subject to recovery under any Company policy adopted after the Effective Date or required by law, regulation or stock exchange listing requirement, shall be subject to such deductions, recoupment, and clawback as may be required to be made pursuant to such Company policy (the “**Clawback Policy**”) or applicable law, regulation or stock exchange listing requirement. Upon the adoption of the Clawback Policy, the Committee is hereby granted the authority, in its discretion, to amend and/or terminate any similar recoupment and clawback provisions in outstanding Awards which are inconsistent with, similar to, or duplicative of, such Clawback Policy.

(o) The Committee may from time to time establish sub-plans under the Plan for purposes of satisfying securities, tax or other laws of various jurisdictions in which the Company intends to grant Awards. Any sub-plans shall contain such limitations and other terms and conditions as the Committee determines are necessary or desirable. All sub-plans shall be deemed a part of the Plan, but, if applicable, each sub-plan shall apply only to the Participants in the jurisdiction for which the sub-plan was designed. Awards may be granted to Participants who are non-United States nationals or employed or providing services outside the United States, or both, on such terms and conditions different from those applicable to Awards to Participants who are employed or providing services in the United States as may, in the judgment of the Committee, be necessary or desirable to recognize differences in local law, tax policy or custom.

Section 20. *Effective Date and Approval Date.* The Plan shall become effective upon the date of approval of the Plan by the Board (the “**Effective Date**”); *provided, however,* that the Plan shall be subject to the subsequent approval by the Company’s stockholders, such stockholder approval to be obtained not later than one year after the Effective Date. Any Awards granted under the Plan prior to such approval by stockholders shall be subject to such approval, and, in the absence of such approval, such Awards shall be null and void

Section 21. *Plan Amendment or Suspension.* The Plan may be amended or suspended in whole or in part at any time and/or from time to time by the Committee; provided that no such change or amendment shall be made without stockholder approval if such approval is necessary to qualify for or comply with any tax or regulatory requirement or other applicable law for which the Committee deems it necessary or desirable to qualify or comply. No amendment of the Plan shall adversely affect in a material manner any right of any Participant with respect to any Award previously

granted without such Participant's written consent, except as permitted under Section 5(b). Notwithstanding the foregoing or any provision of the Plan to the contrary, the Committee may at any time (without the consent of any Participant) modify, amend or terminate any or all of the provisions of the Plan or an Award to the extent necessary to conform the provisions of the Plan with Section 409A or any other provision of the Code or other applicable law, the regulations issued thereunder or an exception thereto, regardless of whether such modification, amendment or termination of the Plan shall adversely affect the rights of a Participant.

Section 22. *Term of the Plan.* No Awards shall be granted under the Plan after earlier of the following dates or events to occur:

- (a) upon the adoption of a resolution of the Board terminating the Plan; or
- (b) the tenth anniversary of the Effective Date.

Section 23. *Governing Law.* The Plan and any Award granted under the Plan as well as any determinations made or actions taken under the Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Delaware without regard to its choice or conflicts of laws principles.

## APPENDIX A

The following terms shall have the meaning indicated:

“**Affiliate**” means any entity that, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Company.

“**Award**” means an award of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Awards, Other Cash-Based Awards or Other Stock-Based Awards to an Eligible Person under the Plan.

“**Award Agreement**” means any agreement, contract or other instrument or document (including in electronic form) evidencing any Award granted under the Plan, which may, but need not, be executed or acknowledged by a Participant.

“**Beneficiary**” has the meaning set forth in Section 18.

“**Board**” means the Board of Directors of the Company.

“**Clawback Policy**” has the meaning set forth in Section 19(n).

“**Change in Control**” means the occurrence of any one or more of the following events:

(i) any Person, other than (A) any employee plan established by the Company or any Subsidiary, (B) the Company or any of its Affiliates, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) a corporation owned, directly or indirectly, by stockholders of the Company in substantially the same proportions as their ownership of the Company, is (or becomes, during any 12-month period) the beneficial owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates other than in connection with the acquisition by the Company or its Affiliates of a business) representing 50% or more of the total voting power of the stock of the Company; *provided* that the provisions of this subsection (i) are not intended to apply to or include as a Change in Control any transaction that is specifically excepted from the definition of Change in Control under subsection (iii) below;

(ii) a change in the composition of the Board such that, during any 12-month period, which shall in no event begin prior to the Initial Public Offering, the individuals who constitute the Board at the time of the Initial Public Offering (the “**Existing Board**”) cease for any reason to constitute at least 50% of the Board; *provided, however*, that any individual becoming a member of the Board subsequent to the Initial Public Offering whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the Directors immediately prior to the date of such appointment or election shall be considered as though such individual were a member of the Existing Board; *provided further*, that, notwithstanding the foregoing, no individual whose initial assumption of office occurs as a result of either an actual

or threatened election contest (as such terms are used in Rule 14a-11 or Regulation 14A promulgated under the Exchange Act or successor statutes or rules containing analogous concepts) or other actual or threatened solicitation of proxies or consents by or on behalf of an individual, corporation, partnership, group, associate or other entity or Person other than the Board, shall in any event be considered to be a member of the Existing Board;

(iii) the consummation of a merger or consolidation of the Company with any other corporation or other entity, or the issuance of voting securities in connection with a merger or consolidation of the Company pursuant to applicable stock exchange requirements; *provided* that immediately following such merger or consolidation the voting securities of the Company outstanding immediately prior thereto do not continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity of such merger or consolidation or parent entity thereof) 50% or more of the total voting power of the Company's stock (or, if the Company is not the surviving entity of such merger or consolidation, 50% or more of the total voting power of the stock of such surviving entity or parent entity thereof); and *provided, further*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates other than in connection with the acquisition by the Company or its Affiliates of a business) representing 50% or more of either the then-outstanding Common Shares or the combined voting power of the Company's then-outstanding voting securities shall not be considered a Change in Control; or

(iv) the sale or disposition by the Company of the Company's assets in which any Person acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person) assets from the Company that have a total gross fair market value equal to more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions.

Notwithstanding the foregoing, (A) no Change in Control shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the Common Shares immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns substantially all of the assets of the Company immediately prior to such transaction or series of transactions, (B) for purposes of any compensation that constitutes "nonqualified deferred compensation" pursuant to Section 409A, no event or circumstances described in any of clauses (i) through (iv) above shall constitute a Change in Control unless such event or circumstances also constitute a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets, in each case, as defined in

Section 409A. Terms used in the definition of a Change in Control shall be as defined or interpreted in a manner consistent with Section 409A of the Code.

“**Code**” shall mean the Internal Revenue Code of 1986, as it now exists or may be amended from time to time, and the rules and regulations promulgated thereunder, as they may exist or may be amended from time to time.

“**Committee**” shall mean the person or persons responsible for administering the Plan as appointed by the Board; *provided, however*, that at any time the Board may designate itself as the Committee or designate itself to administer certain of the Committee’s authority under the Plan, including administering certain Awards under the Plan.

“**Common Shares**” means shares of common stock, par value \$0.01 per share, of the Company and stock of any other class into which such shares may thereafter be changed.

“**Consultant**” means any individual, including an advisor, who is providing services to the Company or any Subsidiary or who has accepted an offer of service or consultancy from the Company or any Subsidiary.

“**Director**” means any member of the Board.

“**Dividend Equivalents**” means an award of cash or other property with a Fair Market Value equal to the dividends which would have been paid on the Common Shares underlying an outstanding Award of Restricted Stock Units had such Common Shares been outstanding.

“**Effective Date**” has the meaning set forth in Section 21.

“**Eligible Person(s)**” means those persons who are (i) full or part-time employees or Consultants of the Company or any Subsidiary or (ii) other individuals who perform services for the Company or any Subsidiary, including, without limitation, Directors who are not employees of the Company or any Subsidiary.

“**Exchange Act**” means the Securities Exchange Act of 1934, as it now exists or may be amended from time to time, and the rules promulgated thereunder, as they may exist or may be amended from time to time.

“**Fair Market Value**” means (i) with respect to the Common Shares, as of any date (A) if the Company’s Common Shares are listed on any established stock exchange, system or market, the closing market price of the Common Shares as quoted in such exchange, system or market on the day before such date as reported in the Wall Street Journal or such other source as the Committee deems reliable or (B) in the absence of an established market for the Common Shares, as determined in good faith by the Committee or (ii) with respect to property other than Common Shares, the value of such property, as determined by the Committee, in its sole discretion.

**“Incentive Stock Option”** means a Stock Option that is an incentive stock option as defined in Section 422 of the Code.

**“Intrinsic Value”** with respect to an Option or Stock Appreciation Right means (i) the excess, if any, of the price or implied price per Common Share in a Change in Control or other event *over* (ii) the exercise or hurdle price of such Award *multiplied by* (iii) the number of Common Shares covered by such Award.

**“Nonqualified Stock Option”** means a Stock Option that is not an incentive stock option as defined in Section 422 of the Code.

**“Option”** means an Incentive Stock Option or a Non-Qualified Stock Option.

**“Other Company Securities”** means Company securities (which may include, but need not be limited to, unbundled stock units or components thereof, debentures, preferred stock, warrants, securities convertible into Common Shares or other property) other than Common Shares.

**“Other Cash-Based Award”** means an Award granted pursuant to Section 11, including cash awarded as a bonus or upon the attainment of specified performance criteria or otherwise as permitted under the Plan.

**“Other Stock-Based Award”** means an Award granted pursuant to Section 11 that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Common Shares or factors that may influence the value of Common Shares, including convertible or exchangeable debt securities, other rights convertible or exchangeable into Common Shares, purchase rights for Common Shares, dividend rights or dividend equivalent rights or Awards with a value and payment contingent upon performance of the Company or business units thereof or any other factors designated by the Committee.

**“Participant”** means an Eligible Person to whom an Award has been granted under the Plan.

**“Performance Award”** means an Award subject, in part, to the terms, conditions and restrictions described in Section 10, pursuant to which the recipient may become entitled to receive cash, Common Shares, Other Company Securities or other property issuable under the Plan, or any combination thereof, as determined by the Committee.

**“Performance Period”** means the period established by the Committee with respect to any Performance Award during which the performance goals specified by the Committee with respect to such Award are to be measured.

**“Permitted Transferee”** means (i) any person defined as an employee in the Instructions to Registration Statement Form S-8 promulgated by the Securities and Exchange Commission, as such form may be amended from time to time, which persons include, as of the date of adoption of the Plan, executors, administrators or beneficiaries of the estates of deceased Participants, guardians or members of a committee for



incompetent former Participants, or similar persons duly authorized by law to administer the estate or assets of former Participants, and (ii) Participants' family members who acquire Awards from the Participant other than for value, including through a gift or a domestic relations order. For purposes of this definition, **"family member"** includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Participant's household (other than a tenant or employee), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty percent of the voting interests. For purposes of this definition, neither (i) a transfer under a domestic relations order in settlement of marital property rights, nor (ii) a transfer to an entity in which more than fifty percent of the voting or beneficial interests are owned by family members (or the Participant) in exchange for an interest in that entity is considered a transfer for "value".

**"Person"** means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental body or other entity of any kind.

**"Restricted Period"** has the meaning set forth in Section 9(b).

**"Restricted Stock"** means an Award of Common Shares that are issued subject, in part, to the terms, conditions and restrictions described in Section 9.

**"Restricted Stock Units"** means an Award of the right to receive either (as the Committee determines) Common Shares or cash equal to the Fair Market Value of a Common Share on the payment date, issued subject, in part, to the terms, conditions and restrictions described in Section 9.

**"Rule 16b-3"** means Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act and any successor rule.

**"Section 409A"** means Section 409A of the Code, any rules or regulations promulgated thereunder, as they may exist or may be amended from time to time, or any successor to such section.

**"Section 422"** means Section 422 of the Code, any rules or regulations promulgated thereunder, as they may exist or may be amended from time to time, or any successor to such section.

**"Separation from Service"** and **"Separate from Service"** means the Participant's death, retirement or other termination of employment or service with the Company (including all persons treated as a single employer under Sections 414(b) and 414(c) of the Code) that constitutes a "separation from service" (within the meaning of Section 409A).

“**Specified Employee**” means a key employee (as defined in Section 416(i) of the Code without regard to paragraph (5) thereof) of the Company as determined in accordance with Section 409A and the procedures established by the Company.

“**Stock Appreciation Right**” means an Award of a right to receive (without payment to the Company) cash, Common Shares, Other Company Securities or other property, or other forms of payment, or any combination thereof, as determined by the Committee, based on the increase in the value of the number of Common Shares specified in the Stock Appreciation Right. Stock Appreciation Rights are subject, in part, to the terms, conditions and restrictions described in Section 8.

“**Subsidiary**” means an entity of which the Company directly or indirectly holds at least a majority of the value of the outstanding equity interests of such entity or a majority of the voting power with respect to the voting securities of such entity.

“**Substitute Award**” means an Award granted in assumption of, or in substitution for, an outstanding award previously granted by a company or other business acquired by the Company or with which the Company combines.

“**Ten Percent Employee**” means an employee of the Company or any Subsidiary who owns stock representing more than ten percent of the voting power of all classes of stock of the Company or any parent or subsidiary of the Company within the meaning of Sections 424(e) and (f) of the Code.

“**Treasury Regulation**” means a final, proposed or temporary regulation of the Department of Treasury under the Code and any successor regulation.

**Exhibit D**

**Form of Record Owner Written Consent**

**CONTURA ENERGY, INC.**  
**(a Delaware corporation)**

**WRITTEN CONSENT OF STOCKHOLDERS**

[•], 2018

Pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (“**DGCL**”), the Amended and Restated Certificate of Incorporation (the “**Existing Certificate of Incorporation**”) of Contura Energy, Inc. (the “**Corporation**”) and the Amended and Restated Bylaws (the “**Existing Bylaws**”) of the Corporation, the undersigned stockholders (the “**Stockholders**”), who constitute the holders of not less than the minimum number of votes that would be necessary to authorize or take the following actions at a meeting at which all of the shares entitled to vote thereon were present, hereby consent to the adoption of the following resolutions and hereby waive any notice required by law, the Existing Certificate of Incorporation or the Existing Bylaws with respect thereto:

**Adoption of the Second Amended and Restated Certificate of Incorporation**

**WHEREAS**, the Board of Directors of the Corporation (the “**Board**”) has determined that it is advisable and in the best interest of the Corporation and its stockholders that, contingent on and effective immediately prior to the closing of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of April 29, 2018, by and between ANR, Inc. (“**ANR**”), a Delaware corporation, Alpha Natural Resources Holdings, Inc., a Delaware corporation, the Corporation (“**Holdings**”), Prime Acquisition I, Inc., a Delaware corporation and wholly owned Subsidiary of Contura (“**MergerSub 1**”), and Prime Acquisition II, Inc., a Delaware corporation and wholly owned Subsidiary of MergerSub 1 (the “**Merger Transaction**”), the Existing Certificate of Incorporation be amended and restated in substantially the form attached hereto as Exhibit A (the “**Second Amended and Restated Certificate of Incorporation**”), in order to, among other things, increase the number of shares of the Corporation’s common stock, par value \$0.01 per share (the “**Common Stock**”) and preferred stock, par value \$0.01 per share, authorized for issuance by the Corporation, and has recommended the approval of the Second Amended and Restated Certificate of Incorporation by the stockholders;

**NOW, THEREFORE, BE IT RESOLVED**, that the Second Amended and Restated Certificate of Incorporation, recommended by the Board and substantially in the form attached hereto as Exhibit A, is hereby adopted and approved in all respects, provided that the Second Amended and Restated Certificate of Incorporation shall not become effective until immediately prior to the closing of the Merger Transaction.

**Approval of the Indemnification Agreements**

**WHEREAS**, the Board has determined that it is advisable and in the best interest of the Corporation and its stockholders that, contingent on, and effective contemporaneously with, the effectiveness of the registration statement on Form S-4 filed in connection with the Merger Transaction (the “**Registration Statement**”), the Corporation enter into indemnification agreements with each of its directors and executive officers in substantially the form attached hereto as Exhibit B (the “**Indemnification Agreements**”);

**NOW, THEREFORE, BE IT RESOLVED**, that the Indemnification Agreements to be entered into with each the Corporation's directors and executive officers, substantially in the form attached hereto as Exhibit B, is hereby approved, contingent on, and effective contemporaneously with, the effectiveness of the Registration Statement.

**Adoption of the 2018 Long-Term Incentive Plan**

**WHEREAS**, the Board has determined that it is advisable and in the best interest of the Corporation and its stockholders to adopt the Contura Energy, Inc. 2018 Long-Term Incentive Plan, substantially in the form attached as Exhibit C hereto (the "**LTIP**").

**NOW, THEREFORE, BE IT RESOLVED**, the LTIP is hereby approved and adopted, and the Corporation is authorized to reserve up to 1,000,000 shares of the Corporation's common stock for issuance under the LTIP.

**General Authorizing Resolutions**

**FURTHER RESOLVED**, that the officers and directors of the Corporation be, and each acting alone is, hereby authorized, empowered and directed, for and on behalf of the Corporation, to take or cause to be taken any and all actions, including, without limitation, the execution, acknowledgement, filing, amendment and delivery of any and all papers, agreements, documents, instruments and certificates, and the payment of such sums, as such officers and directors may deem necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions and each of them, and that the performance of such acts by them shall be conclusive evidence of the approval thereof and the authority therefor by and from the Corporation; and

**FURTHER RESOLVED**, that all actions heretofore taken by any officer or director of the Corporation in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

[Signature Page Follows]

**Stockholder Signature Page**

IN WITNESS WHEREOF, the undersigned have executed this Written Consent of Stockholders of the Corporation as of the date first set forth above. By executing this Signature Page, the undersigned hereby represents and warrants that the undersigned holds of record the number of shares of Common Stock owned by the beneficial owner as set forth below.

Date: \_\_\_\_\_

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

Number of shares of Common Stock  
owned by the beneficial owner and  
held of record by such Stockholder:

Name:  
Title:

\_\_\_\_\_

Beneficial owner:

\_\_\_\_\_