

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-60907-CIV/MORENO

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

JEREMY LEE MARCUS, et al.,

Defendants.

**RECEIVER'S RESPONSE IN OPPOSITION TO TITAN FUNDING, LLC'S
MOTION TO VACATE THE MARCH 13, 2020 ORDER AND INITIAL RESPONSE
TO RECEIVER'S AMENDED EXPEDITED MOTION TO COMPEL TITAN FUNDING,
LLC TO COMPLY WITH THE PRELIMINARY INJUNCTION AND
EXECUTE AN ASSIGNMENT OF RECEIVERSHIP ASSETS**

Jonathan E. Perlman, as Permanent Receiver for the Receivership Defendants (the "Receiver"), by and through undersigned counsel, files this response in opposition to Titan Funding, LLC's ("Titan Funding") Motion to Vacate the March 13, 2020 Order and Initial Response to Receiver's Amended Expedited Motion to Compel Titan Funding to Comply with the Preliminary Injunction and Execute an Assignment of Receivership Assets (the "Motion to Vacate") [ECF No. 478], and states:

INTRODUCTION

Titan Funding's Motion to Vacate is nothing more than a misguided attempt to distract this Court from one very simple fact: the Receiver is unequivocally entitled to an assignment of his estate's interests in a Kentucky coal mine, pursuant to an injunction entered by this Court. After spending a significant amount of time (since September 2019) trying to voluntarily secure such an assignment, it is readily apparent that Titan Funding is not interested in providing the Receiver

with an assignment, as ordered by this Court, unless it gets some portion of the funds the Receiver will obtain from his agreement with a third party to assign the receivership estate's interests. In short, rather than comply with this Court's valid orders, Titan Funding is tortuously interfering with the Receiver's contractual rights.¹

The Motion to Vacate is yet another attempt by Titan Funding to interfere with the assignment of the receivership estate's interests in a Kentucky coal mine. The lengthy Motion to Vacate is full of distraction and noise completely irrelevant to the Court's March 13, 2020 Order, which properly ordered Titan Funding to assign to the Receiver the receivership estate's interests in the Kentucky coal mine. Additionally, there is no legal authority to support the Motion to Vacate. Accordingly, and for the reasons set forth below, the Motion to Vacate should be denied.

FACTUAL BACKGROUND

A. The Agreement

The Receiver is currently in the process of finalizing an agreement to assign the receivership estate's interests in, among other things, loan documents, final judgments, security interests, and guaranties associated with a Kentucky coal mining operation to a third-party (the "Agreement").² As described in Section 2.0 of the assignment to be executed by Titan Funding (attached hereto as Exhibit "2"),³ the Receiver's interests in the coal mine include: a \$2,300,000.00 Balloon Note and the First Balloon Note Amendment, a \$5,550,000.00 Balloon Note and the Third Balloon Note Amendment and the Kingdom RE & M Holdings Note and as security therefor,

¹ Titan Funding's tortuous conduct is nothing new. Titan Funding previously stole receivership estate funds and lied to the Receiver about monies received from the Kentucky coal mine. These matters were previously disclosed to this Court and will be the subject of future litigation.

² A copy of the Agreement is attached hereto as Exhibit "1."

³ Exhibit "2" represents the assignment negotiated by the Receiver and Titan Funding after this Court's March 13, 2020, which the Receiver believes in good faith addresses the concerns raised by Titan Funding that any assignment only assigns the Receiver's rights.

rights, titles and interests in the Mortgage and Security Agreement, the Security Agreement, the UCC's, the Pledge Agreement, the Royalty Agreement, the Guaranty Agreement, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge Agreement, the Mortgage First Amendment, the Security Agreement First Amendment, the Restated Royalty Agreement and the Guaranty Agreement First Amendment, the Settlement Agreement and all other related and underlying documents and instruments (hereinafter the "Receiver's Interest").

Pursuant to the Agreement (which is between KC Logistic Sales, LLC ("KC Logistics"), Kingdom Logistics, LLC ("KC Sales") and the Receiver), the Receiver shall make, execute and deliver the instrument of assignment to KC Logistics and KC Sales upon payment in full of the purchase price ("Purchase Price") to the Receiver. Specifically, the Agreement provides the following payment schedule:

- (a) The first payment on account of the Purchase Price in the amount of \$100,000.00 (the "First Payment") is to be made within 48 hours of the execution of the Agreement.
- (b) The balance of the purchase price, in the amount of \$2,650,000 (the "Purchase Price Balance"), shall be due and payable on or before 5:00 p.m. CST on March 16, 2020; provided however, in the event payment of the Purchase Price Balance does not occur on or before 5:00 p.m. CST on March 16, 2020, the Purchase Price Balance shall increase to \$3,650,000, and shall be due and payable on or before 5:00 p.m. CST on March 31, 2020.
- (c) In the event payment of the Purchase Price Balance as increased to \$3,650,000 does not occur on or before 5:00 p.m. CST on March 31, 2020, the Receiver shall be entitled the First Payment (as it is non-refundable) without claim, interest, entitlement or right of KC Logistics or KC Sales, jointly or severally, and the McBreyer Firm shall dispense

the First Payment to the account of the Receiver without claim, interest, entitlement or right of KC Logistics and KC Sales, jointly or severally.

On and subject to the Receiver's receipt of the First Payment and the Purchase Price Balance, the Receiver shall sell, assign, and transfer to KC Sales without recourse, and without warranties, the Receiver's Interest. A condition to the parties full performance under the Agreement is that the Receiver provide KC Parties (as defined in the Agreement) a fully executed copy of the Assignment of Notes, Mortgages, Security Agreements, Other Loan Documents from Titan Funding, or a Court order confirming that the Receiver holds Titan Funding's rights under the Agreement. Should the KC Parties (as defined in the Agreement), KC Sales, and KC Logistics fail to pay the First Payment and the Purchase Price Balance, the obligation of the Receiver to execute the assignment is terminated, and the Receiver shall retain all rights and interest in the assigned interest and rights.

This Agreement will bring over \$2.7 million in cash into the receivership estate for the ultimate benefit of victims. However, it cannot close without the executed assignment from Titan Funding of the Receiver's Interest, which the Receiver has previously repeatedly requested.

B. Titan Funding, LLC

Titan Funding is a privately held financial services firm through which Defendant Jeremy Marcus ("Marcus") and Receivership Defendants provided over \$14,000,000 of consumer funds for hard money loans and other investments, including in the Kentucky coal mine. Despite Marcus and Receivership Defendants funding the hard money loans and investments, it was the practice of Titan Funding and Marcus to title the loan agreements and related documents in the name of Titan Funding. Due to these practices, Titan Funding is currently in possession of receivership estate assets, including multiple loan agreements, which are undisputedly receivership property.

In fact, Titan Funding agrees that the Receiver “has an interest in the loans,” and concedes that the Receiver is entitled to the assignment that the Receiver seeks. *See* [ECF 478 at 1-2]. Notwithstanding Titan Funding’s concession, the Receiver’s continuous attempts to negotiate and address Titan Funding’s concerns regarding the assignment of the Receiver’s Interest, and the clear mandate of this Court’s Order, Titan Funding continues to delay the execution of the assignment in favor of the Receiver.

C. Procedural Background to the Motion to Vacate

As a result of Titan Funding’s actions and in an effort to finalize the Agreement, on March 9, 2020, the Receiver filed an Expedited Motion to Compel Titan Funding to Comply with the Preliminary Injunction and Execute an Assignment of Receivership Assets (the “Motion to Compel”) [ECF No. 470]. On March 13, 2020, this Court granted the Motion to Compel and ordered that Titan Funding comply with paragraph X.D of the Preliminary Injunction [ECF No. 21] by providing the Receiver with a fully-executed assignment—which was attached as Exhibit “A” to the Motion to Compel [ECF No. 470]—no later than March 14, 2020 (the “March 13, 2020 Order”). The Agreement was set to close in March 2020, and this assignment from Titan Funding was a condition precedent to the receivership estate recovering funds under the Agreement. Titan Funding was aware of this condition and requirement before it filed its Motion to Vacate. *See* [ECF. No. 478, Ex. A].

In an attempt to secure the needed assignment from Titan Funding without any future litigation, the Receiver agreed that Titan Funding could have additional time to comply with the March 13, 2020 Order. Thus, on March 14, 2020, Titan Funding filed an Unopposed Motion for Extension of Time to Comply with the March 13, 2020 Order Granting Receiver’s Expedited Motion to Compel Titan Funding to Comply with the Preliminary Injunction and Execute an

Assignment of Receivership Assets or To File a Motion Related to the Receiver's Amended Motion (the "Motion for Extension of Time") [ECF No. 477]. On March 16, 2020, however, before this Court ruled on the Motion for Extension of Time, Titan Funding filed the instant Motion to Vacate arguing that this Court's March 13, 2020 Order should be vacated. [ECF No. 478]. Thereafter, on March 19, 2020, this Court granted Titan Funding's Motion for Extension of Time allowing Titan Funding until March 30, 2020 to comply with the March 13, 2020 Order. [ECF No. 481]. To date, Titan Funding has not complied with the March 13, 2020 Order. It has become readily apparent to the Receiver that Titan Funding will not execute any assignment,⁴ and this Motion to Vacate is a further attempt to delay and interfere with the Agreement between the Receiver and the third-party.

MEMORANDUM OF LAW

A. Standard for Reconsideration⁵

The Court has broad discretion to reconsider its interlocutory orders "at any time prior to entry of final judgment." *Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F.3d 1231, 1242 (11th Cir. 2011) (citing *Harper v. Lawrence Cty.*, 592 F.3d 1227 (11th Cir. 2010)); *Hardin v. Hayes*, 52 F.3d 934, 938 (11th Cir. 1995) (same); *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1315 (11th Cir. 2000) (district court has plenary power over interlocutory orders to reconsider, revise, alter or amend). "Reconsideration of an interlocutory order is appropriate in three general circumstances: '(1) when a party presents the court with evidence of an intervening

⁴ The Receiver intends to file a Second Motion to Compel Titan Funding to comply with this Court's prior orders and execute an assignment of receivership estate assets.

⁵ While Titan Funding has filed its Motion to Vacate pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, Rule 60(b) has no application here as that rule only applies to final judgment and orders. *See Fed. R. Civ. P. 60*. Instead, Rule 54(b) of the Federal Rules of Civil Procedure—which applies to "any order or other form of decision"—governs the Motion. *See Fla. R. Civ. P. 54(b)*.

change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or manifest injustice.” *Arthur v. Thomas*, 2:11-CV-438-WKW, 2015 WL 224738, at *1 (M.D. Ala. Jan. 15, 2015) (citing *Am. Income Life Ins. Co. v. Google, Inc.*, No. 2:11-cv-4126-SLB, 2014 WL 4452679, at * 3 (N.D. Ala. Sept. 8, 2014).

B. The Court Should Deny Titan Funding’s Motion to Vacate Because It Fails to Meet the Standard for Reconsideration.

Titan Funding’s Motion to Vacate legally fails to meet the requisite standard for a motion for reconsideration of an interlocutory order. First, there has been no intervening change in controlling law. Indeed, Titan Funding does not argue that there is one. Second, Titan Funding has not presented any new evidence in support of its Motion to Vacate. Titan Funding does not dispute the Receiver’s Interest in the coal mine, nor that the Receiver is entitled to an assignment. While Titan Funding attempts to distract this Court with “new” facts relating to issues of priority and payment, these facts are not relevant to this Motion to Vacate or the March 13, 2020 Order. Titan Funding agrees that the Receiver is entitled to the relief sought. As such, Titan Funding has presented no new evidence relevant to the Motion to Vacate or the March 13, 2020 Order. Additionally, Titan Funding has failed to identify any clear error of fact or law or manifest injustice that needs to be corrected. In fact, it would be manifestly unjust if the Receiver was precluded from receiving the executed assignment of assets that Titan Funding agrees belong to the receivership estate. Accordingly, Titan Funding has failed to meet the requisite legal requirements for its Motion to Vacate and it should be denied.

C. The Court Should Deny Titan Funding’s Motion to Vacate Because the Receiver is Entitled to the Relief Sought.

This Court should deny Titan Funding’s Motion to Vacate because it is undisputed that the Receiver is entitled to the relief he seeks. Titan Funding does not contest the Receiver’s Interest in

the coal mine. In fact, in its Motion, Titan states that “it agrees that the Receiver has an interest in the loans.” [ECF No. 478 at 1-2]. Additionally, there is no dispute that the Injunction is valid and lawful. Titan Funding has never contested the Injunction, nor can it. In addition, the Injunction is clear and unambiguous. Pursuant to Paragraph X.D. of the Injunction, persons in possession, custody or control of property or records relating to the Receivership Defendants, upon receipt of a request from the Receiver, were/are to immediately transfer or deliver any such property or records to the Receiver. [ECF No. 21]. Titan Funding has never claimed that its non-compliance is based upon any misunderstanding, confusion or lack of notice about the requirements of the Injunction. Accordingly, the Receiver is entitled to an assignment of the Receiver’s Interest in the coal mine from Titan Funding.

Despite the above and this Court’s clear mandate in its March 13, 2020 Order, Titan Funding seeks to overcomplicate the issues before this Court and introduce facts irrelevant to the assignment of the Receiver’s Interests and this Court’s March 13, 2020 Order. For example, any issues surrounding the disposition of priority of liens are irrelevant. While the Receiver does dispute those contentions, the priority issues have nothing to do with the March 13, 2020 Order. The Receiver is undisputedly entitled to an assignment of the Receiver’s Interests and thus whatever rights and priorities Titan Funding is concerned about relating to the “New Loan” are irrelevant and misplaced for purposes of this assignment.⁶ Additionally, whether or not the third-party will be able to pay the \$2.7 million upon the closing of the Agreement is of no moment. The Receiver is entitled to an assignment of the Receiver’s Interest. What the Receiver decides to do with the receivership estate’s property interests is irrelevant to his entitlement to an assignment.

⁶ The Receiver and Titan Funding have previously agreed that the “New Loan” is not part of the purported assignment.

D. Titan Funding's Argument Regarding the Receiver's Improper Expedited Relief is Moot.

Titan Funding's argument regarding the Receiver's request for expedited relief is unavailing. The Receiver's counsel complied with the Local Rule for relief on an expedited basis and set forth the reason why a ruling on the Motion to Compel was needed by March 16, 2020. *See* S.D. Fla. L.R. 7.1(d)(2). Specifically, that the "Receiver is expected to close on the assignment of certain Receivership assets to a third party" on March 16, 2020. [ECF No. 470].

Additionally, Titan Funding complains that it was not afforded an adequate opportunity to respond to the Motion to Compel. However, Titan Funding filed this twenty-page Motion to Vacate in response to the Motion to Compel. This Court, having the benefit of the Motion to Vacate, granted Titan Funding an additional 16 days to comply with the March 13, 2020 Order, specifically indicating that it had considered the pertinent parts of the record in holding that the deadline to serve the executed assignment was the only deadline that was being extended. Thus, Titan Funding's arguments regarding the improper expedited relief are moot.

E. The Receiver Complied with Local Rule 7.1(A)(3).

Lastly, the Receiver and Titan Funding have been attempting to negotiate an assignment that is agreeable to both parties for months. Once it became apparent that Titan Funding would not execute the heavily negotiated assignment, the Receiver's counsel emailed Titan Funding's counsel requesting the assignment be executed so that the Receiver could close on its deal with the third party. Titan Funding did not respond to the request and the Receiver was forced to file a Motion to Compel. As such, the Receiver did confer in good faith in an attempt to resolve the issues now before this Court. *See* [ECF No. 470 at Ex. C.].

CONCLUSION

Titan Funding filed its lengthy Motion to Vacate for the purely tactical reasons of delay, rather than necessity. Not only does the Motion to Vacate fail to satisfy (or attempt to satisfy) any existing standard under the Federal Rules of Civil Procedure for reconsideration or vacatur of the March 13, 2020 Order, it is undisputed that the Receiver is entitled to an assignment of the Receiver's Interest in the coal mine. Accordingly, Titan Funding's Motion to Vacate should be denied.

WHEREFORE, the Receiver respectfully request that this Court deny Titan Funding, LLC's Motion to Vacate the March 13, 2020 Order and Initial Response to Receiver's Amended Expedited Motion to Compel Titan Funding to Comply with the Preliminary Injunction and Execute an Assignment of Receivership Assets and grant any other or further relief as this Court deems just and proper.

Respectfully submitted this 30th day of March, 2020.

GENOVESE JOBLOVE & BATTISTA, P.A.
*Attorneys for Jonathan E. Perlman,
Court-Appointed Receiver*
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
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By: /s/ Gregory M. Garno
Gregory M. Garno, Esq., FBN 87505
ggarno@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was served via CM/ECF Notification and/or U.S. Mail to all parties on the attached service list this 30th day of March, 2020.

By: /s/ Gregory M. Garno
Gregory M. Garno, Esq.

Exhibit “1”

AGREEMENT FOR ASSIGNMENT OF NOTES, MORTGAGES, SECURITY AGREEMENTS, OTHER LOAN DOCUMENTS AND RIGHTS, CLAIMS AND INTERESTS

This Agreement For Assignment of Notes, Mortgages, Security Agreements, Other Loan Documents and Rights, Claims and Interests ("Agreement"), is made and entered into as of March __, 2020 by and among KC Logistics Sales, LLC ("KC Logistics"), a Wyoming limited liability company and its parent Kingdom Logistics, LLC ("KCL Sales") whose addresses are 8650 Freeport Parkway, Suite 100, Irving, Texas 75063, Jonathan E. Perlman, Esq. ("Receiver"), as and in his capacity as Court Appointed Permanent Receiver for Halfpay International, LLC and other related entities (collectively the "Receivership Entities") by the Order entered May 17, 2017 ("Receivership Order"), by the United States District Court, Southern District of Florida in Federal Trade Commission, et al., v. Jeremy Lee Marcus, et al., Case No. 17-60907-CIV-Moreno/Seltzer, whose address is c/o Genovese, Joblove & Battista, 100SE 2nd Street, Suite 4400, Miami, FL 33131, and Kentucky River Properties LLC, a Delaware limited liability company, whose address is 360 E. Vine Street, Suite 310, Lexington, Kentucky 40507 ("KRP").

RECITALS

A. The "KC Parties" which are comprised of Kingdom Coal, LLC, a Wyoming limited liability company ("KC"), KC II, LLC, a Wyoming limited liability company ("KC II") Kingdom Resources, LLC, a Wyoming limited liability company ("KR"), KREG Equities, Ltd, a Texas limited partnership ("KREG"), Double Mining, LLC, a Wyoming limited liability company ("DMM"), Kingdom RE&M Holdings, LLC, a Wyoming limited liability company ("KREM"), Double Branch Energy, LLC ("DBE"), the "Titan Parties" comprised of Titan Funding, LLC, a Florida limited liability company ("Titan") and The Wolfe Group, LLC, a Michigan limited liability company ("TWG") and the Receiver are parties to Civil Action No. 17-CI-01143 now pending in the Division 3 of the Fayette Circuit Court, Commonwealth of Kentucky (the "Litigation"). For purposes of the releases set forth in Sections 5, 6, and 7, Michael A. Blubaugh, an individual resident of the State of Texas, shall be included as a KC Party

B. The Litigation arises by reason of defaults by the KC Parties under loan documents made by Titan, as former loan servicing agent for one or more of the Receivership Entities for the Receivership Entities.

C. The Receiver contends one or more of the Receivership Entities funded Five Million Five Hundred Thousand United States Dollars (\$5,500,000.00 U.S.D.) in principal of loans made by Titan of behalf of one or more of the Receivership Entities to the KC Parties and by reason thereof the Receiver is entitled to repayment from the KC Parties in the Litigation of the principal amount of Five Million Five Hundred Thousand United States Dollars (\$5,500,000.00 U.S.D., together with interest thereon and costs and attorneys fees and to exercise numerous other rights and remedies.

D. KCL Sales desires to acquire all of the Receiver's rights, title and interest in and to under the loan documents made by Titan, as former loan servicing agent for one or more of the Receivership Entities for the Receivership Entities, the Litigation, and all other and related documents and instruments, and rights, interests and claims as more fully described herein, and

the Receiver has agreed to sell and assign the same to KCL Sales on the terms and conditions hereof.

E. KRP owns the land and mineral rights for the Roxanna Mine (the "Roxanna Mining Property") and had leased certain coal mining rights on such property to one or more of the KC Parties ("KRP Lease"), but the parties to this Agreement acknowledge and agree that the KRP Lease has been terminated. KRP has made certain demands and claims against one or more of the KC Parties, including a claim for \$2,418,452.97, plus interest for unpaid royalties and taxes due under the KRP Lease, and has asserted a lien with respect to certain assets that may also be encumbered by the Receiver's rights, interest and claims, which assets appear on the list attached hereto as **Exhibit B** (the "Assets").

NOW THEREFORE, for and in consideration of the mutual promises, agreements, covenants, representations and obligations herein contained, and for such other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby irrevocably acknowledged the parties do hereby agree as follows:

1. Incorporation of Recitals. The recitals are incorporated herein and made a part hereof as if set forth at length.

2. Purchase Price For Assignments. For and in consideration of Receiver having made, executed and delivered on the date and upon payment in full of the purchase price ("Purchase Price") to the Receiver in care of McBrayer PLLC as counsel for the Receiver, according to the following schedule, the Receiver shall make execute and deliver the Instrument of Assignment, as hereinafter provided for, to KC Logistics and KCL Sales, jointly and severally:

A. The first payment ("First Payment") on account of the Purchase Price is in the amount of One Hundred Thousand United States Dollars (\$100,000.00 U.S.D.), is non-refundable and shall be made and paid within Forty-Eight (48) hours of the parties execution of this Agreement (the "First Payment"); and

B. The balance of the Purchase Price ("Purchase Price Balance") is in the amount of Two Million, Six Hundred Fifty Thousand United States Dollars (\$2,650,000.00 U.S.D.) and shall be due and payable on or before 5:00 pm, Central Daylight Savings Time on March 16, 2020; provided however, in the event payment of the Purchase Price Balance in the amount of Two Million, Six Hundred Fifty Thousand United States Dollars (\$2,650,000.00 U.S.D.) does not occur on or before 5:00 pm, Central Daylight Savings Time on March 16, 2020, the Purchase Price Balance shall increase to Three Million, Six Hundred Fifty Thousand United States Dollars (3,650,000.00 U.S.D.) and shall then be due and payable on or before 5:00 pm, Central Daylight Savings Time on March 31, 2020.

In the event payment of the Purchase Price Balance as increased to Three Million, Six Hundred Fifty Thousand United States Dollars (\$3,650,000.00 U.S.D.) does not occur by or before 5:00 pm, Central Daylight Savings Time on March 31, 2020, the First Payment is a non-refundable payment and the Receiver shall be entitled to said First Payment without claim, interest, entitlement or right of KC Logistics and KCL Sales, jointly or severally, and the McBrayer Firm

shall disperse the First Payment to the account of the Receiver without claim, interests, entitlement or right of KC Logistics and KCL Sales, jointly or severally.

3. **Agreement to Make Instrument of Assignment.** On and subject to the Receiver's receipt of the First Payment and the Purchase Price Balance dispersed by the McBrayer Firm to the account of the Receiver without claim, interests, entitlement or right of KC Logistics and KCL Sales and pursuant to the Instrument of Assignment in the form of Exhibit A, attached hereto and made a part hereof, the Receiver shall sell, assign and transfer to KCL Sales without recourse, and without warranties, including without limitation without any warranties of collectability, balance due and enforceability the Assigned Agreements and Rights as provided for and set forth in the Assignment. Notwithstanding any provision in this Agreement, a condition to the Parties full performance under this Agreement is the Receiver providing the KC Parties (a) a fully executed copy of the Assignment of Notes, Mortgages, Security Agreements, Other Loan Documents attached hereto as Exhibit C, or other Assignment document acceptable to the KC Parties and the Receiver or (b) a Court order confirming that the Receiver holds Titan's rights under the agreements referenced therein.

4. **KRP Payment.** Upon execution of this Agreement, KC Logistics and KCL Sales, jointly and severally shall pay to KRP the sum of One Hundred Thousand and No/100 Dollars (**\$100,000.00 U.S.D.**), which KRP shall use to request Kentucky Power Company ("KPC") to restore electrical service at the Roxanna Mining Property (the property on which the Assets are located) (the "Electric Payment") for the sole and limited purpose of allowing the KC Parties to enter the property to remove any Assets located thereon, but for no other purpose. KC Parties, KC Logistics and KCL Sales agree that they will pay for any repairs or replacement equipment required by KPC for the restoration of electrical service. KCL Sales will pay for any electric service charges in excess of \$100,000.00 in advance, promptly upon presentation of an estimate of the prospective bills (from KRP or from the electric service provider, if available) for same, and in the event KCL Sales fails to pay such bills when submitted by KRP, KRP shall instruct KPC to terminate the electrical service. In addition, on or before March 31, 2020, KC Logistics and KCL Sales, jointly and severally shall pay to KRP the sum of Five Hundred Thousand and No/100 Dollars (**\$500,000.00 U.S.D.**) (the "KRP Payment"); provided however, in the event payment of the KRP Payment in the amount of Five Hundred Thousand and No/100 Dollars (**\$500,000.00 U.S.D.**) does not occur on or before 5:00 pm, Central Daylight Savings Time on March 31, 2020, the KRP Payment shall increase to Seven Hundred Fifty Thousand and No/100 Dollars (**\$750,000.00 U.S.D.**) and shall then be due and payable on or before 5:00 pm, Central Daylight Savings Time on or before April 30, 2020, which KRP Payment must be received by KRP prior to removal of any Assets from the KRP Property and/or the Roxanna Mining Property. Upon receipt of the Electric Payment, KRP will permit KC Parties, KC Logistics and KCL Sales to enter upon the KRP property and/or Roxanna Mining property under an expressed revocable license for the sole and limited purpose of marshalling and securing the Assets on the KRP Property, but said Assets shall not be removed from the KRP property until KRP has received the KRP Payment. This license shall terminate on the earlier of (1) the discontinuance of electrical service; or (2) the removal of the Assets from the KRP property; or (3) April 30, 2020. The provisions of this Agreement to the contrary notwithstanding, nothing contained herein shall permit any party to mine or remove coal, fixtures, or mine infrastructure from the KRP property and/or Roxanna Mining Property..

5. **Receiver's Release.** Upon receipt by the Receiver for the Receiver's account of the

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First Payment and the Purchase Price Balance, the Receiver shall have no claim or cause of action whatsoever against any of the KC Logistics and the KC Parties, jointly or severally or any of their respective property(ies) arising under the Assigned Agreements and Rights. Upon execution by the Receiver of the Assignment, the Receiver shall have, and be deemed to have, released, discharged, and waived any claim, demand, or action against KRP of every kind or nature whatsoever, whether know or unknown, seen or unforeseen.

6. KRP's Release. Except for the obligations of the KC Parties, KCL Sales, and KR Logistics in paragraph 8 below, and subject to and conditioned upon the receipt by KRP of the Electric Payment and the KRP Payment, KRP shall release, and shall have no claim or cause of action whatsoever against any of the KC Parties, KC Logistics or KCL Sales, jointly or severally, or any of their respective property(ies), including but not limited to the Assets, arising under any lease or other agreement by or among KRP and such parties relating to the Roxanna Mining Property. In addition, simultaneously with receipt of the KRP Payment for any and all sales of the Assets or any of them individually, KRP agrees to release such Asset(s) as has been sold and paid for from any lien or other encumbrance it may hold against such Asset(s).

7. KC Logistics, KCL Sales and KC Parties Release. KC Logistics, KCL Sales and the KC Parties, jointly and severally, do hereby fully release and discharge the Receiver, KRP and their respective employees, agents, reinsurers, trustees, attorneys, insurers, third-party claim administrators, parent companies, subsidiary companies, affiliated companies and entities, predecessors and contractors, jointly and severally, of and from any and all claims, actions, causes of action, liabilities, demands, debts, obligations, rights, damages, costs, expenses, restitutions and controversies of every kind and description, and whether, known or unknown, existing in law or in equity, contingent or accrued, liquidated or unliquidated which are now existing or which may or shall hereafter exist or arise from or by reason of facts and circumstances now in existence.

8. KC Parties, KCL Sales and KC Logistics Indemnification Obligations. The KC Parties, KCL Sales and KC Logistics, jointly and severally shall and do hereby agree to indemnify and hold harmless the Receiver and KRP together with their respective present and former affiliates, officers, directors, managers, accountants, members, agents, employees, independent contractors, attorneys, investors, heirs, assignees, owners, shareholders, subsidiaries, and any successors in interest, of and from all causes of action, suits, debts, sums of money, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, known or unknown, that KC Parties, KCL Sales and KC Logistics ever had, now have, or to which the KC Parties', KCL Sales' and KC Logistics', respective officers, directors, employees, agents, successors or assigns hereafter can, will or may have for, upon, or by any reason of any matter, cause or thing from the beginning of the world to the date of these presents, including, without limitation, any claims or demands or actions arising from, related to, or in connection with the matters referred to, directly or indirectly, herein including but not limited to this Agreement and the assigned agreements and rights contemplated herein. The obligations under this paragraph shall survive the expiration or termination of any rights, duties and/or obligations under this Agreement.

9. Remedies Upon Failure by KC Logistics/KCL Sales. Should the KC Parties, KCL Sales and KC Logistics fail to pay

Handwritten signatures and initials:
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- (a) the First Payment and Purchase Price Balance as provided in Section 2, the obligation of the Receiver to execute the Assignment is terminated, and the Receiver shall retain all rights and interests to the Assigned Interests and Rights; and
- (b) the Electric Payment and KRP Payment as provided in Section 4, the releases and obligations of KRP set forth in this Agreement shall be null and void, *ab initio*.

10. Representations and Warranties. Each party hereby expressly warrants and represents that: (a) the party has full power and express authority to enter into this Agreement and perform its obligations as set forth herein; (b) except as set forth in this Agreement, there has not been made any assignment or transfer of the Assigned Agreements and Rights, in whole or in part, including but not limited to assignment or transfer by subrogation or by operation of law; (c) the party is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Agreement; (d) the party is represented and has been advised by counsel in connection with this Agreement, which such party executes wholly voluntarily and of its own choice, volition, judgment, belief and knowledge, after consultation with such counsel and not under coercion or duress; and (e) the party has made their own investigation of the facts and are relying solely upon their own knowledge and the advice of their counsel. The KC Parties, KC Logistics and KCL Sales jointly and severally represent and warrant to the Receiver and KRP that each is a sophisticated investor fully qualified and able to evaluate and make decisions as the transaction provided for herein, that each has made its own independent investigations and conducted its own due diligence as to the transaction provided for herein, that each can assume the complete loss of the investment made pursuant to this Agreement, that the transaction provided for herein is for the own account of the KC Parties, KC Logistics and KCL Sales and that each is not relying on any way or matter on the Receiver or KRP in making, entering into and performing this Agreement. Each of the parties agrees, stipulates, and acknowledges that they are relying upon these representations and warranties of the other parties in entering into this Agreement.

11.0 Miscellaneous Provisions.

11.1 Effectiveness; Amendments. . No modifications, amendments, or changes to this Agreement shall be binding or enforceable unless reduced to writing and signed by the party to be bound by such modification, amendment, or change.

11.2 GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM; VENUE. THIS AGREEMENT IS TO BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KENTUCKY APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each party hereto expressly and irrevocably agrees that any legal suit, claim, action, or proceeding arising out of or related to this Agreement shall be instituted and determined exclusively in the Knott County, Kentucky Circuit Court or the federal court located in the Eastern District of Kentucky. Each party hereby irrevocably submits with regard to any such suit, claim, action, or proceeding for themselves personally and also in respect to property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid court. For purposes of this Agreement, the parties consent to exclusive venue in the Knott Circuit Court or the federal court in the Eastern District of Kentucky and

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hereby waive any objection they may have now or hereafter to the venue of any such suit, claim, action, or proceeding arising out of or related to this Agreement proceeding in the Knott Circuit Court or the Eastern District of Kentucky . The parties further agree that, in the event of litigation arising out of in in connection with this Agreement, they will not contest or challenge the jurisdiction or venue of this court.

11.3 Interpretation. This Agreement is the product of joint drafting and negotiations between the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

11.4 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives.

11.5 Waiver. Except as expressly provided in this Agreement, nothing herein is intended to, or does, or shall be deemed in any manner to waive, limit, impair or restrict any past, current or future, claim or right or the ability of the parties to protect and preserve their respective rights, remedies and interests and the parties each fully reserves any and all of their respective rights and remedies.

11.6 Headings. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

11.7 Future Assurances. Each party shall execute any further documents and take all further actions as may be reasonably necessary to effectuate the terms and conditions of this Agreement.

11.8 Attorney Review. Each party has had a right to consult an attorney and has specifically consulted an attorney with respect to the terms and conditions of this Agreement and acknowledges that it fully understands this Agreement and the effect of signing and executing the Agreement.

11.9 Severability. Should any part of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties. Any partial performance of any duty or obligation by the KC Parties, KCL Sales or KC Logistics under this Agreement, shall not relieve the KC Parties, KCL Sales or KC Logistics of any other duty or obligation under this Agreement.

11.10 Notices. Whenever this Agreement requires or contemplates that one party shall or may give notice or communicate with another party, notice or communication can be provided by

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electronic mail and/or overnight mail and notice shall be deemed effective upon delivery to the overnight carrier, or successful transmission of the electronic mail.

11.11 Attorneys' Fees. Each party shall bear its own attorneys' fees and costs that were incurred in connection with the preparation of this Agreement..

11.12 WAIVER OF JURY TRIAL: IN ANY CIVIL ACTION, COUNTERCLAIM OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS OR RELATES TO THIS AGREEMENT, ANY TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT (STATUTORY, CONSTITUTIONAL, COMMON LAW OR OTHERWISE) IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER OF THE OTHER PARTIES' RIGHT TO TRIAL BY JURY. NO PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

11.13 Limitation of Liability of Receiver. Jonathan E. Perlman, Esq., makes, executes and delivers this Assignment only and solely in his capacity as Court Appointed Permanent Receiver and incurs no personal liability hereunder.

11.14 Entire Agreement. The parties each represent and warrant that no promise or inducement has been offered or made except as set forth herein and that the consideration stated herein is the sole consideration for this Agreement. This Agreement constitutes the complete understanding among the parties with respect to the subject matter described herein and supersedes any and all prior agreements, promises, or inducements, no matter its or their form, concerning its subject matter.

11.15 Modifications. No modifications, amendments, or changes to this Agreement shall be binding or enforceable unless reduced to writing and signed by the party to be bound by such modification, amendment, or change.

11.16 Counterparts. This Agreement may be executed and delivered (by facsimile, electronic mail or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement.

Handwritten signatures and initials:
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IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed this Agreement as of the date first above written.

KCL Sales, LLC

By: [Signature]
Printed Name: SCOTT A. HARRIS
Title: MANAGER

[Signature]
Jonathan E. Perlman, Esq., as and in his capacity as Court Appointed Permanent Receiver

KINGDOM COAL, LLC

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: MANAGER

KC II, LLC

By: [Signature]
Printed Name: CHRISTOPHER C. FLEMING
Title: MANAGER

KINGDOM RESOURCES, LLC

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: Manager

KREG EQUITIES, LTD

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: PRESIDENT OF
GENERAL PARTNER, KEYSTONE
REAL ESTATE GROUP, INC.

DOUBLE MOUNTAIN MINING, LLC

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: Manager

KINGDOM RE&M HOLDINGS, LLC

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: MANAGER

DOUBLE BRANCH ENERGY, LLC

By: [Signature]
Printed Name: Michael A. Blubaugh
Title: MANAGER

KENTUCKY RIVER PROPERTIES, LLC

By: [Signature]
Printed Name: STEPHEN G. BARKER
Title: PRESIDENT

[Signature]
Michael A. Blubaugh

Exhibit “2”

**ASSIGNMENT IN RATIFICATION OF RECEIVER'S OWNERSHIP AND INTEREST IN NOTES,
MORTGAGES, SECURITY AGREEMENTS AND OTHER LOAN DOCUMENTS**

This Assignment In Ratification of Receiver's Ownership and Interest in Notes, Mortgages, Security Agreements and Other Loan Documents ("Agreement") is made and entered into this 16th day of March, 2020 by, between and among **Titan Funding, LLC**, a Florida Limited Liability Company ("Titan Funding"), whose address is 2701 N.W. Boca Raton Blvd., Suite 105, Boca Raton, FL 33431 and **JONATHAN PERLMAN, Receiver for Halfpay NV, LLC**, successor by merger with Halfpay International, LLC, A Delaware Limited Liability Company and other related entities (collectively the "Receivership Entities"), c/o Genovese Joblove and Battista, P.A., 100 SE 2nd Street, 44th Floor, Miami, Florida 33131 ("Receiver" or "Assignee") by the Order entered May 17, 2017 ("Receivership Order") by the United States District Court, Southern District of Florida in *Federal Trade Commission, et al., v. Jeremy Lee Marcus, et al., Case No. 17-60907-CIV-Moreno/Seltzer*, a true copy of which is attached hereto and made a part hereof as **Exhibit 1**.

RECITALS

WHEREAS, the Balloon Promissory Note, dated January 12, 2017, in the principal amount of \$2,300,000.00 made by Kingdom Coal, LLC, a Wyoming Limited Liability Company dba Roxanna Prep Plant ("Kingdom Coal") to the order of Titan Funding, a true copy of which is attached hereto and made a part hereof as **Exhibit A** ("2,300,000.00 Balloon Note"), advanced and loaned the net funded amount of \$2,300,000.00 of moneys of the Receivership Entities and Titan, jointly and severally, to the order of Kingdom Coal;

WHEREAS, as collateral security for the \$2,300,000.00 Balloon Note, pursuant to the Mortgage and Security Agreement dated January 12, 2017, which appears of record in Mortgage Book 328 Page 143 et seq., in the office of the Letcher County, Kentucky Clerk, a true copy of which is attached hereto and made a part hereof as **Exhibit B** ("Mortgage and Security Agreement"), Kingdom Coal granted a mortgage and security interest in and to certain real and personal property;

WHEREAS, as collateral security for the \$2,300,000.00 Balloon Note, pursuant to the Security Agreement, dated January 12, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit C** ("Security Agreement"), Kingdom Coal granted a security interest in and to certain personal property as evidenced by the UCC financing statements filed in the Commonwealth of Kentucky, true copies of which are collectively attached hereto and made a part hereof as **Exhibit D** ("UCC's");

WHEREAS, as collateral security for the \$2,300,000.00 Balloon Note, Kingdom Resources, LLC, a Wyoming Limited Liability Company and the parent and controlling person of Kingdom Coal ("Kingdom Resources") pursuant to the First Loan Pledge and Security Agreement dated January 12, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit E** ("Pledge Agreement"); granted a pledge and security interest in and to Eighty Five Percent (85%) of the membership interests in Kingdom Coal;

WHEREAS, for and in consideration of the \$2,300,000.00 Balloon Note, pursuant to the Royalty Agreement, dated January 12, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit F** ("Royalty Agreement"), Kingdom Coal granted a royalty on certain coal production of Kingdom Coal;

WHEREAS, for and in consideration of the \$2,300,000.00 Balloon Note, Michael A. Blubaugh, personally and individually, Kingdom Resources, LLC and KREG Equities, Ltd., jointly and severally, pursuant to the Guaranty of Payment and Performance Agreement, dated January 12, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit G** ("Guaranty Agreement") guaranteed the performance and payment of the obligations of Kingdom Coal pursuant to the \$2,300,000.00 Balloon Note, the Mortgage and Security Agreement and the Security Agreement;

WHEREAS, the First Amendment to Balloon Promissory Note dated January 17, 2017, with Kingdom Coal, modified and amended the \$2,300,000.00 Balloon Note and a true copy of which is attached hereto and made a part hereof as **Exhibit H** ("First Balloon Note Amendment");

WHEREAS, the First Amendment to Pledge and Security Agreement dated January 31, 2017, with Kingdom Resources, LLC, modified and amended the Pledge Agreement and a true copy of which is attached hereto and made a part hereof as **Exhibit I** ("First Amendment to Pledge Agreement");

WHEREAS, as collateral security for the \$5,550,000.00 Balloon Note (as hereinafter defined), pursuant to the Pledge and Security Agreement dated February 2, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit J** ("Kingdom Resources Pledge Agreement"), Kingdom Resources granted a pledge and security interest in and to all of Kingdom Resources' right, title and interest of Kingdom RE & M Holdings, LLC, a subsidiary of Kingdom Resources and affiliate of Kingdom Coal (i.e., 99% of the interests of Kingdom RE & M Holdings, LLC);

WHEREAS, in connection with the Kingdom Resources Pledge Agreement, Kingdom RE & M Holdings, LLC made a promissory note in the principal amount of \$907,000.00 a true copy of which is attached hereto and made a part hereof as **Exhibit K** ("Kingdom RE & M Holdings Note");

WHEREAS, the First Restated and Second Amended Balloon Promissory Note, dated February 3, 2017, made by Kingdom Coal to the order of Titan Funding, a true copy of which is attached hereto and made a part hereof as **Exhibit L** ("5,500,000.00 Balloon Note"), modified the \$2,300,000.00 Balloon Note and additionally advanced and loaned the additional net funded amount of \$3,200,000.00 of monies of, and advanced by the Receivership Entities, jointly and severally, to Kingdom Coal such that the total indebtedness of Kingdom Coal to the order of Titan Funding, became and is in the net funded amount of \$5,550,000.00;

WHEREAS, the Third Amended Balloon Promissory Note with Kingdom Coal, made by Kingdom Coal to the order of Titan Funding, a true copy of which is attached hereto and made a part hereof as **Exhibit M** ("Third Balloon Note Amendment"), modified and amended the \$5,550,000.00 Balloon Note;

WHEREAS, the First Amendment to Mortgage and Security Agreement dated February 3, 2017, made by Kingdom Coal, which appears of record in Mortgage Book 329, Page 71 et seq. in the office of the Letcher County Clerk, a true copy of which is attached hereto and made a part hereof as **Exhibit N** ("Mortgage First Amendment") modified and amended the Mortgage and Security Agreement;

WHEREAS, the First Amendment to Security Agreement dated February 3, 2017 made by Kingdom Coal, a true copy of which is attached hereto and made a part hereof as **Exhibit O** ("Security Agreement First Amendment") modified and amended the Security Agreement;

WHEREAS, the Restated and Amended Royalty Agreement dated February 1, 2017 made by Kingdom Coal, a true copy of which is attached hereto and made a part hereof as **Exhibit P** ("Restated Royalty Agreement") modified, amended and restated the Royalty Agreement;

WHEREAS, for and in consideration of the \$5,550,000.00 Balloon Note, Michael A. Blubaugh, personally and individually, Kingdom Resources, LLC and KREG Equities, Ltd., jointly and severally, pursuant to the First Amendment To Guaranty of Payment and Performance Agreement dated February 1, 2017, a true copy of which is attached hereto and made a part hereof as **Exhibit Q** ("Guaranty Agreement First Amendment"), guaranteed the performance and payment of the obligations of Kingdom Coal pursuant to the \$2,300,000.00 Balloon Note, First Balloon Note Amendment, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge Agreement, the Kingdom RE & M Holdings Note, the \$5,550,000.00 Balloon Note, the Third Balloon Note Amendment, the Mortgage and Security Agreement, Mortgage First Amendment, the Security Agreement, the Security Agreement First Amendment, and the Guaranty Agreement,;

WHEREAS, on or about April 20, 2018, Titan Funding advanced a new loan in the principal amount of \$1.55 Million not utilizing any funds of the Receivership Entities ("New Loan") to Kingdom Coal and other Kingdom Coal related and affiliated parties and which loan is not the property of the Receiver;

WHEREAS, a Confidential Private Settlement and Release Agreement was made by reason of the defaults of Kingdom Coal and other Kingdom Coal related and affiliated parties under and pursuant to the aforesaid instruments, a true copy of which is attached hereto and made a part hereof as **Exhibit R** ("Settlement Agreement"); and

WHEREAS, the parties do by these presents desire to memorialize and ratify that the Receiver holds and owns certain rights, titles and ownership in and to the \$2,300,000.00 Balloon Note, the Mortgage and Security Agreement, the Security Agreement, the UCC's, the Pledge Agreement, the Royalty Agreement, the Guaranty Agreement, the First Balloon Note Amendment, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge Agreement, the \$5,500,000.00 Balloon Note, the Third Balloon Note Amendment, the Kingdom Re & M Holdings Note, the Mortgage First Amendment, the Security Agreement First Amendment, the Restated Royalty Agreement, the Guaranty Agreement First Amendment, the Settlement Agreement and any and all related and underlying documents and instruments.

NOW THEREFORE, in consideration of the above Recitals, which constitute part of this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties do hereby acknowledge, the parties do hereby agree as follows:

1.0 Incorporation of Recitals. The recitals to this Agreement are incorporated herein and made a part hereof as if set forth at length.

2.0 Assignment. Subject to Section 3.0, Titan Funding, in ratification of the Receiver's rights, titles and ownership, does hereby transfer, set over and assign unto the Receiver, without recourse, all right, title and interest in and to the \$2,300,000.00 Balloon Note and the First Balloon Note Amendment, the \$5,550,000.00 Balloon Note and the Third Balloon Note Amendment and the Kingdom RE & M Holdings Note and as security therefor, rights, titles and interests in the Mortgage and Security Agreement, the Security Agreement, the UCC's, the Pledge Agreement, the Royalty Agreement, the Guaranty Agreement, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge

Agreement, the Mortgage First Amendment, the Security Agreement First Amendment, the Restated Royalty Agreement and the Guaranty Agreement First Amendment, the Settlement Agreement and all other related and underlying documents and instruments.

3.0 Reservation of Claims for Loan Fees on the \$5,550,000.00 Balloon Note and New Loan.

Titan Funding does hereby reserve and does not assign, set over or transfer to the Receiver (i) all rights and claims for loan origination/placement fees/servicing fees against Kingdom Coal and its affiliated entities and persons on the \$5,550,000.00 Balloon Note, (ii) attorneys fees and costs incurred in enforcing and preserving the \$2,300,000.00 Balloon Note, the Mortgage and Security Agreement, the Security Agreement, the UCC's, the Pledge Agreement, the Royalty Agreement, the Guaranty Agreement, the First Balloon Note Amendment, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge Agreement, the \$5,500,000.00 Balloon Note, the Third Balloon Note Amendment, the Kingdom Re & M Holdings Note, the Mortgage First Amendment, the Security Agreement First Amendment, the Restated Royalty Agreement, the Guaranty Agreement First Amendment, the Settlement Agreement and any and all related and underlying documents and instruments, and (iii) its right, title and interests in the New Loan and any documents securing Titan Funding's rights under the New Loan.

4.0 Limitations of Warranties of Titan Funding and Titan Servicing. Titan Funding does not make any guarantees or warranties regarding the \$2,300,000.00 Balloon Note, the Mortgage and Security Agreement, the Security Agreement, the UCC's, the Pledge Agreement, the Royalty Agreement, the Guaranty Agreement, the First Balloon Note Amendment, the First Amendment to Pledge Agreement, the Kingdom Resources Pledge Agreement, the \$5,550,000.00 Balloon Note, the Third Balloon Note Amendment, the Mortgage First Amendment, the Security Agreement First Amendment, the Restated Royalty Agreement, the Guaranty Agreement First Amendment, the Kingdom RE & M Holdings Note, the Settlement Agreement and any and all related and underlying documents and instruments, or anything being assigned herein.

5.0 Miscellaneous Provisions.

5.1 Effectiveness; Amendments. This Agreement may not be modified, amended or supplemented except in writing signed by all parties.

5.2 Governing Law; Submission to Jurisdiction; Selection of Forum; Venue. This Agreement is to be governed and construed in accordance with the laws of the state of Kentucky without giving effect to the conflict of laws principles thereof. Each party hereto expressly and irrevocably agrees that any legal suit, claim, action or proceeding for the enforcement of this Agreement shall be instituted and determined exclusively in Knott or Letcher Counties, Kentucky Circuit Court or the federal court located in the Eastern District of Kentucky. Each party hereby irrevocably submits with regard to any such suit, claim, action, or proceeding for themselves personally and also in respect to property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid court. For purposes of this Agreement the parties consent to exclusive venue in the Knott or Letcher Counties or the federal court in the Eastern District of Kentucky and hereby waive any objection they may have or hereafter to the venue of any such suit, claim, action, or proceeding arising out of or related to this Agreement proceeding in the Knott or Letcher Counties or the federal court of the Eastern District of Kentucky. The parties further agree that in the event of litigation arising out of or in connection with this Agreement, they will not contest or challenge the jurisdiction or venue of the aforementioned courts.

5.3 Nothing contained in this Agreement is intended to, or does, or shall be deemed in any manner to waive, limit, impair or restrict any past, current or future claim or right or the ability of the parties to protect and preserve their rights, remedies and interests and the parties each fully reserve any and all of their respective rights and remedies relating to one another.

5.4 Interpretation and Further Assurances. This Agreement is the product of joint drafting and negotiations between the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. Each party shall undertake such further actions and execute and deliver such further instruments as may be reasonably necessary to effectuate and carry out this Agreement; provided however no alterations or changes to the terms of this Agreement shall be required.

5.5 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors, assigns, heirs, executors, administrators and representatives.

5.6 Waiver. Except as expressly provided in this Agreement, nothing herein is intended to, or does, or shall be deemed in any manner to waive, limit, impair or restrict any past, current or future, claim or right or the ability of the parties to protect and preserve their respective rights, remedies and interests and the parties each fully reserves any and all of their respective rights and remedies, including, but not limited to, any of Titan's interests in anything that is being assigned herein.

5.7 Headings. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

5.8 Attorney Review. Each party has had a right to consult an attorney and has specifically consulted an attorney with respect to the terms and conditions of this Agreement and acknowledges that it fully understands this Agreement and the effect of signing and executing the Agreement.

5.9 Severability. Should any part of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties.

6.0 Attorneys' Fees. Each party shall bear its own attorneys' fees and costs that were incurred in connection with the preparation of this Agreement; provided that the prevailing party in any action to enforce this Agreement or by reason of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

6.1 WAIVER OF JURY TRIAL: IN ANY CIVIL ACTION, COUNTERCLAIM OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS OR RELATES TO THIS AGREEMENT, ANY TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT (STATUTORY, CONSTITUTIONAL, COMMON LAW OR OTHERWISE) IT

MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER OF THE OTHER PARTIES' RIGHT TO TRIAL BY JURY. NO PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

In Witness Whereof the parties have made and entered into this Agreement as of the date first above written.

Jonathan E. Perlman, Esq., as and in his capacity as Court
Appointed Permanent Receiver

Titan Funding, LLC, a Florida Limited Liability
Company

By: _____
John M. Mansour, Chief Executive Officer

STATE OF _____)

)

COUNTY OF _____)

The foregoing Agreement was acknowledged, subscribed and sworn to before me by Jonathan E. Perlman, Esq., as and in his capacity as Court Appointed Permanent Receiver, on this the _____ day March, 2020.

NOTARY PUBLIC, STATE OF _____ AT LARGE

My commission expires: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing Agreement was acknowledged, subscribed and sworn to before me for and on behalf of Titan Funding, LLC, a Florida Limited Liability Company, by John M. Mansour, Chief Executive Officer, of said Titan Funding, LLC, on this the _____ day March, 2020.

NOTARY PUBLIC, STATE OF _____ AT LARGE, KY

My commission expires: _____

This instrument prepared without examination
or opinion of title by:

Robert E. Maclin, III
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, Kentucky 40507
(859)231-8780

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