NewLead Holdings Ltd. (NEWL)

20-F
Annual and transition report of foreign private issuers pursuant to sections 13 or 15(d)
Filed on 08/30/2013
Filed Period 12/31/2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 20-F

☐ **REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934**

OR

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

OR

☐ **SHELL COMPANY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of event requiring this shell company report

Commission file number
001-32520

NEWLEAD HOLDINGS LTD.

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

Bermuda
(Jurisdiction of incorporation or organization)

83 Akti Miaouli & Flessa Str., Piraeus Greece 185 38
(Address of principal executive offices)

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Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common shares, $0.01 par value	NASDAQ Global Market

Securities registered or to be registered pursuant to Section 12(g) of the Act: **None**

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: **None**

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

There were 397,118,378 and 614,833,099 of the registrant's common shares outstanding as of December 31, 2012 and August 30, 2013, respectively.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

Note-Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to

such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☒ International Financial Reporting Standards as issued by the International Accounting Standards ☐ Other ☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.
Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

TABLE OF CONTENTS

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

In this report, “we,” “us,” “our,” “NewLead” and the “Company” all refer to NewLead Holdings Ltd. and its subsidiaries. With respect to our coal business, “we,” “us,” “our,” “NewLead” and the “Company” all refer to NewLead Holdings Ltd., its subsidiaries, and its joint venture entities.

The Company desires to take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and is including this cautionary statement in connection therewith. This document and any other written or oral statements made by the Company or on its behalf may include forward-looking statements that reflect its current views with respect to future events and financial performance. This report includes assumptions, expectations, projections, intentions and beliefs about future events. These statements are intended as “forward-looking statements.” We caution that assumptions, expectations, projections, intentions and beliefs about future events may and often do vary from actual results and the differences can be material. When used in this document, the words “anticipate,” “estimate,” “project,” “forecast,” “plan,” “potential,” “may,” “should” and “expect” reflect forward-looking statements.

All statements in this document that are not statements of historical fact are forward-looking statements. Forward-looking statements include, but are not limited to, such matters as future operating or financial results; our liquidity position and cash flows, our ability to borrow additional amounts under our revolving credit facility and, if needed, to obtain waivers from our lenders and restructure our debt, our ability to come to a satisfactory resolution with our lenders in our ongoing debt restructuring process, and our ability to continue as a going concern; statements about planned, pending or recent vessel disposals and/or acquisitions, business strategy, future dividend payments and expected capital spending or operating expenses, including dry-docking and insurance costs; statements about trends in the product tanker and dry bulk vessel shipping segments, including charter rates and factors affecting supply and demand; expectations regarding the availability of vessel acquisitions; completion of repairs; length of off-hire; availability of charters; our ability to obtain coal supplies; the consummation of conditional contracts or of acquisition, disposition or financing transactions and the effects thereof on our business; the reliability of reserve reports and our assumptions concerning economically recoverable coal reserve estimates; our ability to extract coal and fulfill contracts; our potential inability to enter into new coal supply agreements with existing customers due to unfavorable results of competitive bid processes or the shutdown of a power facility due to new environmental legislation or regulations; our ability to obtain and renew permits necessary for our existing and planned operation in a timely manner; our production capabilities; availability of transportation; our ability to timely obtain necessary supplies and equipment; and trends and other factors relating to coal prices and the coal market; and anticipated developments with respect to any pending litigation.

The forward-looking statements in this report are based upon various assumptions, many of which are based, in turn, upon further assumptions, including, without limitation, management’s examination of historical operating trends, data contained in our records and other data available from third parties. Although NewLead believes that these assumptions were reasonable when made, because these assumptions are inherently subject to significant uncertainties and contingencies which are difficult or impossible to predict and are beyond our control, NewLead cannot assure you that it will achieve or accomplish these expectations, beliefs or projections described in the forward-looking statements contained in this report. Important factors that, in our view, could cause actual results to differ materially from those discussed in the forward-looking statements include our ability to come to a satisfactory resolution with our lenders in our ongoing debt restructuring process; the strength of world economies and currencies; general market conditions, including changes in charter rates and vessel values; failure of a seller to deliver one or more vessels; failure of a buyer to accept delivery of a vessel; inability to procure acquisition financing; default by one or more charterers of our vessels; our ability to complete documentation of agreements in principle; changes in demand for oil and oil products; the effect of changes in OPEC’s petroleum production levels; worldwide oil consumption and storage; changes in demand that may affect attitudes of time charterers; scheduled and unscheduled dry-docking; additional time spent in completing repairs; changes in NewLead’s voyage and operating expenses, including bunker prices, dry-docking and insurance costs; changes in governmental rules and regulations or actions taken by regulatory authorities; potential liability from pending or future litigation; domestic and international political conditions; potential disruption of shipping routes due to accidents, international hostilities and political events or acts by terrorists or pirates; material adverse events affecting NewLead; changes that may affect the price of coal and other factors relating to the coal market; the failure of our third-party suppliers to provide us with our coal supplies in accordance with our supply contracts; environmental concerns related to coal mining and combustion and the cost and perceived benefits of alternative sources of energy; inherent risks of coal mining beyond our control, including weather and geologic conditions or catastrophic weather-related damage; the market demand for coal and electricity; competition, including competition from alternative sources such as natural gas; our relationships with, and other conditions affecting, our customers; employee workforce factors; coal fired power plant capacity, including the impact of environmental regulations, energy policies and other factors that may cause utilities to phase out or close existing coal-fired power plants or reduce construction of any new coal fired power plants; the effect of Environmental Protection Agency inquiries and regulations on the operations of our customer’s power facilities; and other factors discussed in NewLead’s filings with the U.S. Securities and Exchange Commission, or the SEC, from time to time.

PART I

Item 1. Identity of Directors, Senior Management and Advisers

Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

Unless the context otherwise requires, as used in this report, the terms "the Company," "we," "us" and "our" refer to NewLead Holdings Ltd. and all of its subsidiaries and, with respect to our coal business, the terms "the Company," "we," "us" and "our" refer to NewLead Holdings Ltd., all of its subsidiaries, and its joint venture entities. We use the term deadweight tons, or dwt, in describing the size of vessels. Dwt, expressed in metric tons, each of which is equivalent to 1,000 kilograms, refers to the maximum weight of cargo and supplies that a vessel can carry.

We also use the metric system of weights and measures in relation to our coal business. The United States equivalent units of the most common metric units used by us are the following: 1 kilometer equals approximately 0.6214 miles, 1 meter equals approximately 3.2808 feet, 1 centimeter equals approximately 0.3937 inches, 1 hectare equals approximately 2.4710 acres, 1 short ton ("ST") equals 907 kilograms or approximately 2,000 pounds and 1 metric ton ("MT") equals 1,000 kilograms or approximately 2,205 pounds.

Recent Developments

The Fleet

As discussed elsewhere in this annual report, we have had a significant reduction in the size of our fleet. As of August 30, 2013, we own a fleet of two dry bulk vessels and manage two double-hulled oil tanker/asphalt carriers. During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with our restructuring.

During 2013, we agreed, through our wholly-owned subsidiary Newlead Shipping S.A. ("Newlead Shipping"), to perform part of the commercial, the technical and the operational management of three double-hulled oil tanker/asphalt carriers owned by a third party for a monthly fee of approximately $13,000 per vessel. We currently perform the management of two double-hulled oil tanker/asphalt carriers. Management of the third double-hulled oil tanker/asphalt carrier is expected to commence during September 2013.

We are currently in negotiations with Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) "Piraeus Bank (CPB loan)") to amend the terms of our loan agreement, whereby the agreement will be amended and restated to enable us to comply with certain of its covenants on an ongoing basis and enable the Newlead Markela, a dry bulk Panamax vessel, to remain in our fleet.

Completion of Restructuring of Our Indebtedness

Due to the previously disclosed economic and operational difficulties of the Company, we entered into restructuring discussions with each of the lenders under our facility and credit agreements, the holders of our 7% senior unsecured convertible notes (the "7% Notes") and the counterparties to our capital leases (collectively, the agreements governing such debt, the "Financing Documents"). As part of those discussions, we appointed Moelis & Company ("Moelis") to act as our financial advisors in respect of the overall restructuring. The aim of the restructuring was to increase liquidity, normalize trade vendor payments and deleverage the Company on a going forward basis.

Since June 2011, we have defaulted under each of our Financing Documents in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions). To date, we have restructured or obtained waivers of these defaults from each of the lenders under the Financing Documents (the "Restructuring"), except for the credit facility with Piraeus Bank (CPB loan). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank A.E. ("Piraeus Bank"), our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. However, there can be no assurance that a satisfactory final agreement will be reached with Piraeus Bank (CPB loan) in any future efforts outside of the Restructuring, or at all. Refer to "Item 5.—Operating and Financial Review and Prospects—Liquidity and Capital Resources" for a discussion of the various Financing Documents.

Since our Restructuring, which began on July 1, 2011, and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) and have issued an aggregate of approximately 421.0 million shares of our common stock in connection with our restructuring efforts. As a result of the Restructuring, our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interest payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Senior Convertible Note due in 2022 to Prime Shipping Holding Ltd ("Prime"), an affiliate of Lemissoler Maritime Company W.L.L. ("Lemissoler") (references to the Lemissoler Maritime Company W.L.L. Capital Lease Obligation, is a reference to the agreement entered into with Prime Mountain Shipping Ltd, Prime Lake Shipping Ltd, Prime Time Shipping Ltd and Prime Hill Shipping Ltd, the four affiliate companies of Lemissoler, in November 2010, for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi) (the "4.5% Note"), (iii) the issuance of the up to $1.0 million senior convertible promissory note to Good Faith Credit LLC ("Good Faith") and (iv) the issuance of the up to $1.7 million senior convertible promissory note to Tiger Equity Partners Ltd. ("Tiger") (the "Tiger Note"). As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the $0.04 million of unamortized beneficial conversion feature, or BCF, treated as a debt discount to the 7% Notes. To date, we are also in default under the terms of the Piraeus Bank (CPB loan) Credit Facility, the 4.5% Note, the Portigon AG Credit Facility, and the Mojave Finance Inc. Credit Facility. In addition, while we have completed our restructuring efforts with the lenders under our revolving credit facility with Bank of Scotland plc ("Bank of Scotland") and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent (the "Syndicate Facility Agreement"), we continue to have an outstanding liability of $0.1 million under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability. Refer to "Item 5.—Operating and Financial Review and Prospects—Liquidity and Capital Resources" for a discussion on our outstanding debt.

Entry into the Commodities Business

We have entered into a variety of transactions in order to develop a commodities sector of our business. We have entered into a joint venture arrangement and we have established a new entity with J Mining & Energy Group for the purchase and trading of coal.

On April 11, 2012, through one of our wholly-owned subsidiaries, NewLead Holdings (US) Corp., we entered into a Joint Venture Agreement with J Mining & Energy Group to establish New Lead JMEG LLC as a joint venture to engage in the business of purchasing and trading certain commodities, principally coal. We have joint control with J Mining & Energy Group of New Lead JMEG LLC and we are entitled to and are liable for the total net assets of the joint venture. NewLead Holdings (US) Corp. contributed to the capital of the joint venture $2.5 million cash and $1.0 million of value in coal sales agreements. In addition, we delivered to J Mining & Energy Group $0.3 million in cash and 731,140 shares of our common stock as a condition to the signing of the Joint Venture Agreement. As of August 30, 2013, through New Lead JMEG LLC, we have entered into several agreements with third parties for the purchase and sale of thermal coal located in Kentucky, USA. The commencement period of these agreements is considered to be the first shipment of coal thereunder, which is expected to take place during the fourth quarter of 2013 or as otherwise agreed.

On April 30, 2012, we and a third party, Mojave Finance Inc., established NewLead Mojave Holdings LLC (" NewLead Mojave"). We control 52% of NewLead Mojave (52% of the voting rights) and we are entitled to and are liable for the total net assets of NewLead Mojave according to this percentage of control. We contributed to the capital of the new entity 100% of NewLead Holdings (US) Corp.'s share capital, while Mojave Finance Inc. agreed to make available a loan facility of $3.0 million to NewLead Holdings (US) Corp.

For more information about the joint ventures for the purchase and trading of coal, please see "Item 5.—Operating and Financial Review and Prospects —Recent Developments".

Further, we have entered into agreements (i) to acquire title and mineral excavation rights to approximately 7,695 acres of land in Kentucky, USA (ii) to acquire ownership and leasehold interests in 18,335 acres in Tennessee, USA containing coal and natural gas and other natural resources and (iii) to supply coal to certain creditworthy counterparties. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. Certain parties to whom we owe obligations under these agreements previously agreed to forbear from pursuing the rights and remedies available to them under the terms of the agreements, subject to satisfactory completion of ongoing obligations to be performed by the Company. NewLead was required, among other things, to pay an aggregate of $0.85 million per month through May 2013, which payments were to be credited against a $66.0 million aggregate acquisition price . At that time, the initial aggregate acquisition price of the properties of approximately $40.0 million became payable in nine monthly installments. We have not been able to meet our obligations under these forbearance arrangements and are currently in default under such agreements. We are currently seeking financing for the $66.0 million aggregate acquisition price. While NewLead signed a preliminary term sheet with a lending party to fund this acquisition, no assurance can be provided that this or any other party will be able to provide the financing required in the timeline required under the forbearance documents, if at all. If appropriate financing is not secured, the transactions will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and any and all amounts owed. In connection with the potential acquisition of the two properties, we hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement. For more information about our coal business, please see "Item 5.—Operating and Financial Review and Prospects—Recent Developments ", "Item 4B.—Business Overview—Coal Business" and "Item 4D.—Properties, Plants and Equipment".

Lastly, on January 4, 2013, we acquired 3,750 grams of nickel wire in exchange for 258.5 million common shares of the Company. On May 24, 2013, the transaction was unwound whereby the nickel wire was returned to the seller and the shares issued in the transaction cancelled. For more information about the Company's purchase of nickel wire and subsequent unwinding of such purchase, please see " Item 5.—Operating and Financial Review and Prospects —Recent Developments".

Management Agreements

During 2013, we agreed, through our wholly-owned subsidiary Newlead Shipping, to perform part of the commercial, the technical and the operational management of three double-hulled oil tanker/asphalt carriers owned by a third party for a monthly fee of approximately $13,000 per vessel. We currently perform the management of two double-hulled oil tanker/asphalt carriers. Management of the third double-hulled oil tanker/asphalt carrier is expected to commence during September 2013.

Equity Incentive Plan

On March 13, 2013, the Second Amended and Restated 2005 Equity Incentive Plan (the "Plan") was amended to increase the number of common shares reserved for issuance from 2,083,334 to 37,209,590 to better enable us to offer equity incentives to our officers, directors, employees and consultants. In addition, the Plan provides for an annual increase in the total number of our common shares available for issuance under the Plan on the first day of each fiscal year of the Company, beginning in fiscal year 2014, by 5% of the number of outstanding common shares of the Company on such date.

A. Selected Financial Data

The NewLead historical successor information is derived from the audited consolidated financial statements of NewLead for the years ended December 31, 2012, 2011 and 2010 and for the period from October 14, 2009 to December 31, 2009. The NewLead historical predecessor information is derived from the audited consolidated financial statements as of and for the years ended December 31, 2008, and for the period from January 1, 2009 to October 13, 2009. The information is only a summary and should be read in conjunction with "Item 5.—Operating and Financial Review and Prospects" and our audited consolidated financial statements and the audited financial statements of our predecessor and notes thereto. "Predecessor" refers to NewLead Holdings Ltd. prior to the Company's $400 million recapitalization on October 13, 2009, and "Successor" refers to NewLead Holdings Ltd. after the recapitalization on October 13, 2009.

	Successor				Predecessor	
	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010	October 14 to December 31, 2009	January 1 to October 13, 2009	Year Ended December 31, 2008
Statement of Operations Data						
Operating revenues	8,928	12,220	17,438	3,261	14,509	31,618
Vessel operating expenses	(3,266)	(2,928)	(9,714)	(3,609)	(15,321)	(14,920)
Management fees	-	-	(715)	(132)	(584)	(973)
General & administrative expenses	(8,249)	(16,521)	(15,311)	(11,931)	(8,392)	(7,811)
Depreciation and amortization expenses	(6,564)	(8,180)	(4,237)	(644)	(6,331)	(7,969)
Impairment losses	(7,054)	(83,950)	(39,515)	-	(40,859)	-
Operating loss from continuing operations	(16,470)	(99,655)	(56,121)	(15,400)	(63,508)	(7,189)
Interest and finance expense	(86,549)	(22,672)	(18,550)	(19,024)	(6,624)	(6,348)
Loss on extinguishment of convertible notes	(293,109)	-	-	-	-	-
Other income, net	(3,528)	(1,457)	1	-	31	45
Loss before equity in net earnings in Joint Ventures	(399,656)	(123,716)	(72,546)	(33,820)	(67,080)	(13,276)
Net loss attributable to NewLead Holdings' Shareholders	(402,562)	(290,395)	(86,349)	(35,725)	(125,764)	(39,828)
Loss per share (basic and diluted) continuing operations	(2.50)	(16.69)	(10.42)	(6.05)	(28.00)	(5.56)
Loss per share (basic and diluted)	(2.51)	(39.18)	(12.41)	(6.39)	(52.49)	(16.69)
Cash dividends declared per share	-	-	-	-	-	1.20
Weighted average number of shares (basic and diluted)	160,921,728	7,411,600	6,958,903	5,588,937	2,395,858	2,386,182
Balance Sheet Data (at period end)						
Cash and cash equivalents	1,043	5,119	67,531	106,255	-	4,009
Restricted cash (current)	1,311	250	12,606	403	1,898	8,510
Total current assets	12,225	33,723	102,569	121,421	10,018	19,741
Restricted cash (non-current)	31	31	30,700	9,668	-	-
Total assets	61,799	396,752	761,733	485,369	196,849	317,777
Current portion of long-term debt	78,739	339,722	26,773	14,240	221,430	223,710
Total current liabilities	177,426	583,604	94,739	54,260	256,303	251,489
Long-term debt	-	-	543,591	262,313	-	-
Total liabilities	177,426	599,186	675,452	324,710	256,303	252,261
Total shareholders' (deficit) / equity	(114,264)	(202,434)	86,281	160,659	(59,454)	65,516
Other Financial Data (for period ending)						
Net cash (used in) / provided by operating activities	(11,084)	(3,089)	(9,685)	(5,869)	(10,557)	2,901
Net cash provided by / (used in) investing activities	81,836	(69,612)	(22,189)	-	2,216	61,083
Net cash (used in) / provided by financing activities	(74,828)	10,289	(6,850)	112,124	4,332	(72,419)
Net (decrease) / increase in cash and cash equivalents	(4,076)	(62,412)	(38,724)	106,255	(4,009)	(8,435)
Cash dividends paid	-	-	-	-	-	(2,862)
Fleet Data (at period end)						
Number of product tankers owned (1)	-	4	6	9	9	9
Number of container vessels owned (2)	-	-	-	2	2	3
Number of dry bulk vessels owned (3)	2	13	12	3	-	-

(1): Includes four tankers for 2011 and six tankers for 2010 and four for the other periods presented that considered to be discontinued operations for all periods presented.
(2): Considered discontinued operations for all periods presented.
(3): Includes thirteen dry bulk vessels for 2011 and twelve dry bulk vessels for 2010 and three dry bulk vessel for the October to December 2009 period that considered to be discontinued operations for all periods presented.

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

The following risks relate principally to the industries in which we operate and our business in general. Other risks relate to the securities market and ownership of our common shares. If any of the circumstances or events described below actually arises or occurs, our business, results of operations, cash flows, financial condition and ability to pay dividends in the future could be materially adversely affected. In any such case, the market price of our common shares could decline, and you may lose all or part of your investment.

Company Specific Risk Factors

There is substantial doubt about our ability to continue as a going concern.

Our financial statements were prepared using principles under Generally Accepted Accounting Principles in the United States of America (GAAP) applicable to a going concern. Because of our losses, working capital deficiencies, negative operating cash flow and shareholders' deficiency, we concluded that there is substantial doubt as to our ability to continue as a going concern.

Over the past two years, we have experienced losses, working capital deficiencies, negative operating cash flow and shareholders' deficiency, which has affected, and which we expect will continue to affect, our ability to satisfy our obligations, despite the Restructuring and our new business arrangements. Charter rates for bulkers have experienced a high degree of volatility. Charter hire rates for bulkers continue to be at historical lows.

In connection with our acquisition of ownership and mineral rights to approximately 7,695 acres of land in Kentucky, USA (the "Kentucky property"), on December 28, 2012, we issued promissory notes to RJLT Investments LLC, Williams Industries LLC ("Williams") and Kentucky Fuel Corporation ("Kentucky") in the amounts of $1,500, $2,000 and $7,500, respectively, payable in their entirety on January 29, 2013. We issued the promissory notes to help facilitate the sale of the Kentucky property from Kentucky to Williams, as we have agreed to acquire the Kentucky property from Williams on a closing date subsequent to December 31, 2012. The promissory notes that were issued on December 28, 2012 in the amount of $11,000 are reflected under Promissory notes payable in the consolidated balance sheet. Due to lack of financing, we have been unable to meet our obligations and we are currently in default under such agreements. To date, the noteholders have not initiated any actions against us based upon the continuing defaults. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, we may be liable for damages and for any and all amounts owed.

In addition, in connection with our acquisition of ownership and leasehold interests in 18,335 acres in Tennessee, USA (the "Tennessee property"), we are required to pay $55,000 ($30,000 was payable on or before February 15, 2013 and $25,000 payable on or before February 15, 2014.) Under the terms of the agreements governing the acquisition, we have also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the agreements. Pursuant to the terms of the agreements, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the agreements shall terminate and be of no further force or effect. We have been unable to meet the obligations under the agreements, we are currently in default under such agreements and no longer have the right to utilize the property. To date, the sellers have not initiated any actions against us based upon such continuing defaults. Because we have defaulted under the terms of agreements, in June 2013 we assigned all rights under permits, mining contracts or other mining assets on the property back to seller. While we intend to secure the financing to satisfy the agreements, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, we may be liable to the parties for damages or any and all amounts owed under the agreements, which may adversely affect our business.

Furthermore, due to our economic conditions and operational difficulties described elsewhere in this report, we entered into restructuring discussions with each of the lenders under the Financing Documents. As part of those discussions, we appointed Moelis to act as our financial advisors in respect of an overall restructuring proposal with respect to the Financing Documents. On November 8, 2011, we and Moelis presented to each of the lenders under the Financing Documents a commercial presentation which set out a comprehensive global restructuring proposal (the "Restructuring Proposal"), and which included, among other things, proposed amendments to the Financing Documents (including amortization relief and reset of financial covenants). We have been engaged in negotiations with our lenders under the Financing Documents regarding the terms of the Restructuring Proposal and as of the date of issuance of this report we have completed the restructuring efforts for the Syndicate Facility Agreement, Kamsarmax Syndicate Facility Agreements, Eurobank Credit Facility, Northern Shipping Fund LLC Capital Lease Obligation, Portigon AG (formerly, West LB Bank) Credit Facility, Piraeus Bank Credit Facilities, Handysize Syndicate Facility Agreement, Lemissoler Maritime Company W.L.L. Capital Lease Obligation and the 7% Notes, subject, in the case of the Syndicate Facility Agreement, final payment of outstanding fees. However, the Company was not able to restructure the credit facility with Piraeus Bank (CPB loan). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank, our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. We remain in restructuring negotiations with Piraeus Bank (CPB loan) outside of the Restructuring Proposal. In addition, while we have completed our restructuring efforts with the lenders under the Syndicate Facility Agreement, we continue to have an outstanding liability of $0.1 million under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability. See "Item 5.—Operating and Financial Review and Prospects—Recent Developments—Completion of Restructuring of our Indebtedness" for a discussion of the status of our restructuring negotiations.

As a further result of the economic conditions and operational difficulties described elsewhere in this report, as of December 31, 2012, we were also in default under our credit agreements with Piraeus Bank (CPB loan), Portigon AG, Piraeus Bank and the 4.5% Note, in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions), as those credit facilities had not yet been restructured and discharged. To date, we continue to be in default under the Piraeus Bank (CPB loan) Credit Facility, the Portigon AG Credit Facility, the 4.5% Note and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all.

Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of BCF related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interest payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Note, (iii) the issuance of the up to $1.0 million senior convertible promissory note to Good Faith (the “Good Faith Note”) and (iv) the issuance of the Tiger Note.

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by Investment Bank of Greece (“IBG”)
- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations. Although the Restructuring reduced our outstanding debt obligations, we issued significant additional common shares which diluted our existing shareholders and such additional issuances, individually or in the aggregate, significantly impacted the trading price of our common shares and may also impact our continued listing on NASDAQ.

As a result of the restructuring process, it will be difficult for us to incur additional debt on commercially reasonable terms, even if we are permitted to do so under our debt agreements. This may limit our ability to pursue activities that our management considers to be beneficial to us, which may further impair our financial condition.

All of the above raise substantial doubt regarding the Company’s ability to continue as a going concern.

Long-term debt and the 4.5% Note have been classified as current liabilities due to covenant violations. The covenant violations in long-term debt give lenders the right to call the debt at the balance sheet date, absent waivers. Accordingly, as of December 31, 2012, we have reclassified all of our long term debt and the 4.5% Note as current liabilities in our consolidated balance sheet, since we have not received waivers in respect of the covenants that were breached at such time. The financial statements have been prepared assuming that we will continue as a going concern and do not include any adjustments that might be necessary if we are unable to continue as a going concern. See also “Item 5.—Operating and Financial Review and Prospects—Overview—Operating Results—Going Concern” for more information.

Our existing debt agreements contain and our future debt agreements will contain restrictions and limitations that could significantly impact our ability to operate our business and if we receive waivers and/or restructure our remaining indebtedness, our lenders may impose additional restrictions on us and/or modify the terms of our loans. Any default or breach of the covenants in our debt agreements could have a material adverse effect on our operations and financial position.

Our facility agreements require us to maintain compliance with certain financial covenants as of the end of each fiscal quarter. They contain certain restrictions and limitations that could significantly limit our ability to operate our business. In the absence of a consent or waiver, these restrictions may limit our ability to, among other things:

- incur or guarantee additional indebtedness;
- create liens on our assets;
- make investments;
- engage in recapitalizations and acquisitions;
- redeem capital stock;
- make capital expenditures;
- change the management of our vessels or terminate the management agreements we have relating to our vessels;
- enter into long-term charter arrangements without the consent of the lender; and
- sell any of our vessels.

In addition, our existing credit facilities require us, among other things, to maintain compliance with financial covenants, including, but not limited to,the maintenance of the following ratios (all as defined in the respective credit facilities):

- specific ratios of shareholders' equity as a percentage of our total assets, adjusting the book value of our fleet to its market value;
- working capital of not less than zero dollars;
- maintenance of minimum liquidity requirements at five per cent of the outstanding loans;
- maintenance of ratio of EBITDA to interest payable to specific levels;
- maintenance of specific value to loan ratios;
- cash sweep on the earnings of the vessels;
- minimum interest coverage ratios; and
- minimum market adjusted equity ratios.

As a result of such covenants, we will need to seek permission from our lenders in order to engage in some corporate and commercial actions that we believe would be in the best interest of our business, and a denial of permission may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. As discussed elsewhere in this annual report, we are also in default under certain of our debt agreements and as a result, our lenders' interests may be different from our interests, our shareholders' interests or the interests of the holders of our notes, and we cannot guarantee that we will be able to obtain our lenders' permission when needed or at all. This may prevent us from taking actions that are in our best interest. Any future debt agreement, including debt agreements entered into in connection with financing our coal business, may include similar or more restrictive covenants.

Our ability to comply with the covenants and restrictions contained in our existing and future debt agreements and other indebtedness may be affected by economic, financial and industry conditions and other factors beyond our control. If we are not able to come to a resolution with our lenders regarding our existing defaults or, if we are able to come to a successful resolution, but default on our future debt obligations, and such defaults are not waived by the required lenders, the applicable creditors may accelerate such indebtedness and, in the absence of any agreement with the lenders, if such indebtedness is secured, such creditors could proceed against the collateral securing that indebtedness. In any such case, we may be unable to borrow under our credit facility agreements, if any are available at such time, and may not be able to repay the outstanding amounts due under our credit facility agreements and our outstanding notes. Furthermore, if any of our debt is accelerated, all of our other indebtedness may be accelerated pursuant to cross-acceleration or cross-default provisions. This could have serious consequences to our financial condition and results of operations and could cause us to become bankrupt or insolvent. Our ability to comply with these covenants will also depend substantially on the value of our assets, our charter rates, our success at keeping our costs low and our ability to successfully implement our overall business strategy. Any future credit agreement or amendment or debt instrument may contain similar or more restrictive covenants.

Furthermore, in connection with any waivers and/or restructuring of our remaining indebtedness, our lenders may impose additional requirements or restrictions on us. Such additional restrictions may further limit our ability to engage in actions that we believe would be in the best interest of our company. As discussed elsewhere in this annual report, we are currently in default under certain of our debt agreements and are in the process of restructuring certain of our remaining indebtedness. See "Item 5.—Operating and Financial Review and Prospects—Recent Developments—Completion of Restructuring of Our Indebtedness" for a discussion of the status of our Restructuring and the risk factor above titled "There is substantial doubt about our ability to continue as a going concern".

We are highly leveraged, anticipate that we will continue to have a high degree of leverage, and may incur substantial additional debt, which could materially adversely affect our financial health and our ability to obtain financing in the future, react to changes in our business and make debt service payments.

As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes. Despite our Restructuring efforts, as of August 30, 2013, we continue to have a high degree of indebtedness.

Although it is likely that any agreements governing our future indebtedness, including the terms of any indebtedness remaining outstanding as a result of the Restructuring, will contain limitations on our ability to incur indebtedness, the covenants in such debt agreements typically contain a number of exceptions. As such, we may still be able to incur a significant amount of additional indebtedness. Our high level of indebtedness could have important consequences to our shareholders.

As discussed elsewhere in this annual report, we are currently unable to meet certain of our debt service requirements and our indebtedness remains significant. In addition, subsequent to the Restructuring, our owned fleet consists of two dry bulk vessels and, as a result, we now have significantly fewer vessels from which we will be able to generate revenue. Furthermore, although we have entered into new business arrangements for the purchase and trading of coal, these business arrangements remain subject to significant risks and we have not yet commenced operations. See "Risks Relating to Our Coal Business" below. Since our relative leverage continues to remain high after our Restructuring, and since we have a diminished basis from which we can generate revenue, there is no assurance we will be able to service our significant indebtedness.

Because we are highly leveraged and expect to remain highly leveraged after the Restructuring, we will continue to remain subject to the following risks:

- our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, vessel or other acquisitions or general corporate purposes may be impaired in the future;

- if new debt is added to our debt levels, the related risks that we now face would increase and we may not be able to meet all of our debt obligations;

- a substantial portion of our cash flow from operations must be dedicated to the payment of principal and interest on our indebtedness, thereby reducing the funds available to us for other purposes, and there can be no assurance that our operations will generate sufficient cash flow to service this indebtedness;

- we will be exposed to the risk of increased interest rates because our borrowings under facility agreements will be at variable rates of interest;

- it may be more difficult for us to satisfy our obligations to our lenders, resulting in possible defaults on and acceleration of such indebtedness and the cross-acceleration or cross-default of our other indebtedness;

- we may be more vulnerable to general adverse economic and industry conditions;

- we may be at a competitive disadvantage compared to our competitors with less debt or comparable debt at more favorable interest rates;

- our ability to refinance indebtedness may be limited or the associated costs may increase; and

- our flexibility to adjust to changing market conditions and ability to withstand competitive pressures could be limited, or we may be prevented from carrying out capital spending that is necessary or important to our growth strategy and efforts to improve operating margins or our business.

Highly leveraged companies are significantly more vulnerable to unanticipated downturns and setbacks, whether directly related to their business or flowing from a general economic or industry condition, and therefore are more vulnerable to a business failure or bankruptcy. Accordingly, it also heightens the risk of owning our securities.

The market values of our vessels and the related charters, if applicable, have declined and may further decrease, which could lead to the loss of our vessels and/or we may incur a loss if we sell vessels following a decline in their market value.

The fair values of our vessels have generally experienced high volatility and have recently declined significantly and resulted in an impairment charge of $7.1 and $152.5 million (for vessels and other fixed assets, backlog assets and vessels under construction) for the years ended December 31, 2012 and 2011, respectively. If we sell one or more of our vessels at a time when vessel prices have fallen and before we have recorded an impairment adjustment to our consolidated financial statements, the sale may be less than the vessel's carrying value on our consolidated financial statements, resulting in a loss and a reduction in earnings. Furthermore, if vessel values fall significantly, we may have to record further impairment adjustments in our consolidated financial statements, which could materially adversely affect our financial results.

Furthermore, our existing debt agreements contain, and our future debt agreements may contain, financial covenants based on a security cover ratio. We are currently in breach of the security cover ratio under certain of our debt arrangements (see "Item 5. —Operating and Financial Review and Prospects —Liquidity and Capital Resources") and we may violate similar covenants in any future debt agreements if the value of our vessels decrease significantly. Any such violation would materially and adversely affect our financial condition.

We have sold, and might continue to sell, vessels as part of arrangements with our lenders to reduce and discharge our obligations. During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders 20 of our vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with our restructuring. To the extent that we have sold our vessels, the sales proceeds have been used to repay related debt. We are currently in negotiations with certain of our lenders, namely Piraeus Bank (CPB loan). Our negotiations with Piraeus Bank (CPB loan) aim to amend the terms of our loan agreement, whereby the agreement will be amended and restated to enable us to comply with certain of its covenants on an ongoing basis and enable the Newlead Markela, a dry bulk Panamax vessel, to remain in our fleet. There can be no assurance that we will be able to reach a final arrangement with Piraeus Bank (CPB loan) at acceptable terms or at all. Furthermore, the amended agreement with Portigon states that Portigon will have the option to demand the sale of the vessel Newlead Victoria at any time the market value of the vessel is at least equal to the amount of the loan outstanding on that date. Portigon will be entitled to 75% of the balance of the proceeds after repayment of the outstanding loan balance, any other amounts owned under the loan agreement (i.e. accrued interest), any direct sale costs approved by Portigon and any trade debt outside the owned fleet for an amount which will not exceed in aggregate $0.5 million.

For the years ended December 31, 2012, 2011 and 2010, we derived 100%, 100% and 56%, respectively, of our revenue from continuing operations from two or three charterers.

We have historically derived a significant part of our revenue from a small number of charterers. For the year ended December 31, 2012, 100% of our revenue from continuing operations was derived from two charterers (each of which comprised 70% and 30% of revenues, respectively). For the years ended December 31, 2011 and December 31, 2010, approximately 100% and 56%, respectively, of our revenue was derived from two and three charterers, respectively. The loss of charterers upon whom we have historically been dependent may adversely affect our results of operations, cash flows and financial condition.

Our charterers may terminate or default on their charters, which could materially affect our results of operations and cash flow. When the charter agreements expire or terminate, we will need to find new employment for the affected vessels in the currently depressed charter market, which may adversely affect our results of operations and cash flows.

Our charterers may terminate their charters earlier than the dates indicated in their charter agreements. The terms of our charters vary as to which events or occurrences will cause a charter to terminate or give the charterer the option to terminate the charter, but these generally include a total or constructive total loss of the related vessel, the requisition for hire of the related vessel or the failure of the related vessel to meet specified performance criteria. In addition, the ability of each of our charterers to perform its obligations under a charter will depend on a number of factors that are beyond our control. These factors may include general economic conditions, the condition of a specific shipping market sector, the charter rates received for specific types of vessels and various operating expenses. The costs and delays associated with the default by a charterer of a vessel may be considerable and may materially adversely affect our business, results of operations, cash flows and financial condition.

Recent economic conditions have caused certain of our charterers to experience financial difficulties. This has resulted in an increase in the time it takes for us to realize our receivables. In certain instances, our charterers have been unable to fulfill their obligations under their charters. One of our charterers, who previously chartered three of our vessels, was having difficulty performing its obligations and, during the period from March 2011 to March 2012, had been late on a number of payments, causing us to arrest vessels which were operated by the particular charterer and/or by such charterer's affiliated companies on two occasions during 2011 and one occasion during 2012 in order to collect payment. In connection thereto and due to delayed payments by this charterer, we withdrew two of our vessels from their employment during 2011, the third vessel during 2012, and filed claims for amounts already due as well as damages arising from the cancellation of those employment contracts. These vessels were chartered out at rates significantly above market, and since we were forced to reclaim and re-charter these vessels, we experienced a significant reduction in the cash flow from these vessels, which in turn further impaired our liquidity. These vessels were sold in connection with the Restructuring. We cannot predict whether our charterers will, upon the expiration of their charters, recharter our vessels on favorable terms or at all. If our charterers decide not to recharter our vessels, we may not be able to recharter them on terms similar to the terms of our current charters. In the future, we may also employ our vessels on the spot charter market, which is subject to greater rate fluctuation than the time charter market.

Currently, charter rates for bulkers, after showing signs of stabilization for a period, have declined to historical lows.

In addition, in depressed market conditions, our charterers may no longer need a vessel that is currently under charter or may be able to obtain a comparable vessel at lower rates. As a result, charterers may seek to renegotiate the terms of their existing charter parties or avoid their obligations under those contracts. Should counterparty fail to honor its obligations under agreements with us, we could sustain significant losses, which could have a material adverse effect on our business, results of operations, cash flows and financial condition.

The spot charter market is highly competitive and freight rates within this market are highly volatile, while longer-term charter contracts provide income at pre-determined rates over more extended periods of time. Furthermore, we cannot assure you that we will be successful in keeping our remaining vessels under long-term agreements or keeping them fully employed in the short-term markets, if needed, or that future spot rates will be sufficient to enable any of such vessels to be operated profitably. A significant decrease in spot market rates or our inability to fully employ our vessels by taking advantage of the spot market would reduce the incremental revenue received from spot chartering and adversely affect our results of operation, including our profitability and cash flows, which, in turn, could impair our ability to service our debt.

Our vessels may be subject to periods of off-hire, which could materially adversely affect our business, financial condition and results of operations.

Under the terms of the charter agreements under which our vessels operate, when a vessel is "off-hire," or not available for service or otherwise deficient in its condition or performance, the charterer generally is not required to pay the hire rate, and we will be responsible for all costs (including the cost of bunker fuel) unless the charterer is responsible for the circumstances giving rise to the lack of availability. A vessel generally will be deemed to be off-hire if there is an occurrence preventing the full working of the vessel due to, among other things:

- operational deficiencies;
- the removal of a vessel from the water for repairs, maintenance or inspection, which is referred to as dry-docking;
- equipment breakdowns;
- delays due to accidents or deviations from course;
- occurrence of hostilities in the vessel's flag state;
- crewing strikes, labor boycotts, certain vessel detentions or similar problems; or
- our failure to maintain the vessel in compliance with its specifications, contractual standards and applicable country of registry and international regulations or to provide the required crew.

Furthermore, while the vessel is seized by pirates, the charterer may withhold charter payments until the vessel is released. A charterer may also claim that a vessel seized by pirates was not "on-hire" for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. Despite the fact that our vessels are covered against such risks, we may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, any detention and/or hijacking of our vessels as a result of an act of piracy, or an increase in cost or unavailability of insurance for our vessels could have a material adverse impact on our business, financial condition, results of operations and ability to reinstate the payment of dividends.

We may be unable to attract and retain key management personnel and other employees in the shipping and mining industries, which may negatively impact the effectiveness of our management and our results of operations.

Our success depends to a significant extent upon the abilities and efforts of our management team. On January 2, 2012 and January 1, 2013, we entered into employment contracts with Michail S. Zolotas, our Chairman, Chief Executive Officer and member of our Board of Directors. Our success will depend upon our ability to retain key members of our management team and to hire new members as may be necessary. The loss of any of these individuals could adversely affect our business prospects and financial condition. Difficulty in hiring and retaining replacement personnel could have a similar effect. We do not maintain "key man" life insurance on any of our officers.

After the sale of all of our tanker vessels, we continue to have only part of the commercial, the technical and the operational management of this type of vessels and if we are unable to operate other tanker vessels that we may acquire efficiently, we may be unsuccessful in competing in the highly competitive international tanker market.

The operation of tanker vessels and transportation of petroleum products is extremely competitive. Competition arises primarily from tanker owners, including major oil companies as well as independent tanker companies, some of whom have substantially greater resources than our own. Competition for the transportation of oil and oil products can be intense and depends on price, location, size, age, condition and the acceptability of the tanker and its operators to the charterers. Due in part to the highly fragmented market, competitors with greater resources could enter the product tanker shipping markets and operate larger fleets through consolidations or acquisitions and may be able to offer lower charter rates and higher quality vessels than we are able to offer. We may not be able to compete profitably in new geographic regions or provide new services. New markets may require different skills, knowledge or strategies, and the competitors in those new markets may have greater financial strength and capital resources than we do.

The operation of tankers involves certain unique operational risks.

The operation of tankers has unique operational risks associated with the transportation of oil or asphalt. Compared to other types of vessels, tankers are exposed to a higher risk of damage and loss by fire, whether ignited by a terrorist attack, collision, or other cause, due to the high flammability and high volume of the oil or asphalt transported in tankers. If we are unable to maintain or safeguard the vessels under our operations adequately, we may be unable to prevent these events. Any of these circumstances or events could negatively impact our business. In addition, the loss of any of the tankers under our operations could harm our reputation as a safe and reliable vessel owner and operator.

We may not be able to grow or effectively manage our growth, which may negatively impact our cash flows and operating results

A part of our strategy may involve growth through expanding our fleet as opportunities are identified. Our future growth will depend on a number of factors. One of our potential growth strategies is to expand our fleet as opportunities are identified and the success of this strategy will depend on numerous factors. These factors include our ability to:

- identify vessels for acquisition;
- consummate acquisitions;
- integrate acquired vessels successfully with our existing operations;
- identify businesses engaged in managing, operating or owning vessels for acquisitions or joint ventures;
- hire, train and retain qualified personnel and crew to manage and operate our growing business and fleet;
- identify additional new markets;
- improve our operating, financial and accounting systems and controls; and
- obtain required financing for our existing and new operations.

A deficiency in any of these factors could adversely affect our ability to achieve growth. In addition, competition from other buyers could reduce our acquisition opportunities or cause us to pay a higher price than we might otherwise pay.

The process of integrating acquired vessels into our operations may result in unforeseen operating difficulties, may absorb significant management attention and may require significant financial resources that would otherwise be available for the ongoing development and expansion of our existing operations. Future acquisitions could result in the incurrence of additional indebtedness and liabilities that could have a material adverse effect on our business, results of operations, cash flows and financial condition. Further, if we issue additional common shares, your interest in our Company will be diluted.

Capital expenditures and other costs necessary to operate and maintain our vessels may increase due to changes in governmental regulations or safety or other equipment standards.

Changes in governmental regulations or safety or other equipment standards, as well as compliance with standards imposed by maritime self-regulatory organizations and customer requirements or competition, may require us to make additional expenditures to operate and maintain our vessels. These expenditures could increase as a result of changes in:

- the cost of our labor and materials;
- the cost of suitable replacement vessels;
- customer/market requirements;
- increases in the size of our fleet; and
- governmental regulations and maritime self-regulatory organization standards relating to safety, security or the environment.

In order to satisfy these requirements, we may, from time to time, be required to take our vessels out of service for extended periods of time, with corresponding losses of revenues. In the future, market conditions may not justify these expenditures or enable us to operate some or all of our vessels profitably during the remainder of their economic lives.

If we are unable to fund our capital expenditures, we may not be able to operate our vessels, which would have a material adverse effect on our business.

In order to fund our capital expenditures, we may be required to incur additional borrowings or raise capital through the sale of debt or equity securities. Our ability to access the capital markets through future offerings may be limited by our financial condition at the time of any such offering as well as by adverse market conditions resulting from, among other things, general economic conditions and contingencies and uncertainties that are beyond our control. Generally, significant capital expenditures are required to take delivery of future newbuilding vessels, if any. In addition, our existing vessels may require significant capital expenditures, such as expenditures for scheduled and unscheduled dry-docking and regulatory compliance, to continue operations. As a result, the failure to obtain the funds necessary for our capital expenditures could have a material adverse effect on our business, results of operations and financial condition.

Unless we set aside reserves or are able to borrow funds for vessel replacement, our revenue will decline at the end of a vessel's useful life, which would materially adversely affect our business, results of operations and financial condition.

Unless we maintain reserves or are able to borrow or raise funds for vessel replacement, we will be unable to replace the vessels in our fleet upon the expiration of their useful lives, which we estimate to be 25 years. Our cash flows and income are dependent on the revenues earned by the chartering of our vessels to customers. If we are unable to replace the vessels in our fleet upon the expiration of their useful lives, our business, results of operations and financial condition in the future will be materially and adversely affected. Any reserves set aside for vessel replacement may not be available for dividends, if any, in the future.

Exposure to currency exchange rate fluctuations will result in fluctuations in our cash flows and operating results.

Our vessel-owning subsidiaries generate revenues in U.S. dollars but incur certain expenses in other currencies, primarily Euros. During the year ended December 31, 2012, the value of the U.S. dollar reached a high of $1.34 and a low of $1.22 compared to the Euro. Due to the sovereign debt crisis in certain EU-member countries, the U.S. dollar-Euro exchange rate continues to experience volatility. An adverse or positive movement in these currencies could increase our expenses. During the year ended December 31, 2012, the effect was minimal.

Our incorporation under the laws of Bermuda may limit the ability of our shareholders to protect their interests.

We are a Bermuda company. Our memorandum of association and bye-laws and the Bermuda Companies Act of 1981, as amended (the "BCA"), govern our corporate affairs. Investors may have more difficulty in protecting their interests in the face of actions by management, directors or controlling shareholders than would shareholders of a corporation incorporated in a United States jurisdiction. Under Bermuda law, a director generally owes a fiduciary duty only to the company, not to the company's shareholders. Our shareholders may not have a direct cause of action against our directors. In addition, Bermuda law does not provide a mechanism for our shareholders to bring a class action lawsuit. Further, our bye-laws provide for the indemnification of our directors or officers against any liability arising out of any act or omission, except for an act or omission constituting fraud or dishonesty. There is a statutory remedy under Section 111 of the BCA, which provides that a shareholder may seek redress in the courts as long as such shareholder can establish that our affairs are being conducted, or have been conducted, in a manner oppressive or prejudicial to the interests of some of our shareholders, including such shareholder.

If the recent volatility in LIBOR continues, it could affect our profitability, earnings and cash flow.

LIBOR has recently been volatile, with the spread between LIBOR and the prime lending rate widening significantly at times. These conditions are the result of the recent disruptions in the international credit markets. Because the interest rates borne by our outstanding indebtedness fluctuate with changes in LIBOR, if this volatility were to continue, it would affect the amount of interest payable on our debt, which, in turn, could have an adverse effect on our profitability, earnings and cash flow. Recently, however, lenders have insisted on provisions that entitle the lenders, in their discretion, to replace published LIBOR as the base for the interest calculation with their cost-of-funds rate. If we are required to agree to such a provision in future loan agreements, our lending costs could increase significantly, which would have an adverse effect on our profitability, earnings and cash flow.

It may not be possible for investors to enforce U.S. judgments against us.

We and the majority of our subsidiaries are incorporated in jurisdictions outside the U.S. (with the exception of NewLead Holdings (US) Corp. and NewLead Mojave Holdings LLC, which are incorporated in Delaware), and part of our assets and those of our subsidiaries are located outside the U.S. In addition, all of our directors and officers are non-residents of the U.S., and all or a substantial portion of the assets of such officers and directors are located outside the U.S. As a result, it may be difficult or impossible for U.S. investors to serve process within the U.S. upon us, our subsidiaries or our directors and officers to enforce a judgment against us or our subsidiaries for civil liabilities in U.S. courts. In addition, you should not assume that courts in the countries in which we or our subsidiaries are incorporated or where our or the assets of our subsidiaries are located (1) would enforce judgments of U.S. courts obtained in actions against us or our subsidiaries based upon the civil liability provisions of applicable U.S. federal and state securities laws or (2) would enforce, in original actions, liabilities against us or our subsidiaries based on the laws of such jurisdictions.

U.S. tax authorities could treat us as a "passive foreign investment company," which could have adverse U.S. federal income tax consequences to U.S. shareholders.

A foreign corporation will be treated as a "passive foreign investment company," or PFIC, for U.S. federal income tax purposes if either (1) at least 75% of its gross income for any taxable year consists of certain types of "passive income" or (2) at least 50% of the average value of the corporation's assets (determined as of the end of each quarter of the foreign corporation's taxable year) produce or are held for the production of those types of "passive income." For purposes of these tests, "passive income" includes dividends, interest, and gains from the sale or exchange of investment property, rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business and the excess of gains over losses from transactions in any commodities (gains and losses from certain "qualified active sales" and qualified hedging transactions are excluded from "passive income"). For purposes of these tests, income derived from the performance of services does not constitute "passive income." U.S. shareholders of a PFIC are subject to a disadvantageous U.S. federal income tax regime applicable to the income derived by the PFIC, the distributions they receive from the PFIC, and the gain, if any, they derive from the sale or other disposition of their shares in the PFIC.

Based on our method of operation, through the end of 2012, we do not believe that we have been a PFIC. We may, however, be a PFIC in 2013 and/or in future taxable years. In this regard, we treat the gross income we derive or are deemed to derive from our chartering activities as services income, rather than rental income. Accordingly, we believe that our income from our chartering activities does not constitute "passive income," and the assets that we own and operate in connection with the production of that income do not constitute passive assets.

There is, however, no direct legal authority under the PFIC rules addressing our method of operation. Accordingly, no assurance can be given that the U.S. Internal Revenue Service, or IRS, or a court of law will accept our position, and there is a risk that the IRS or a court of law could determine that we are a PFIC. Moreover, no assurance can be given that we would not constitute a PFIC for 2013 or any future taxable year due to changes in the nature and extent of our assets and operations, including our entry into the commodities business. For example, we expect to purchase and trade coal commencing in the fourth quarter of 2013 and thereafter. If this activity gives use to at least 85% of our taxable income it would be considered active income under the "qualified active sales" exception; if not most likely passive income. As another example, in making the PFIC determination for 2013 under the 50% "assets" test, the fair market value of the nickel wire held in the first quarter of 2013 will have to be weighed relative to the fair market values of our vessels and other assets held through the end of each quarter in 2013 (noting that there has been a significant decline in the fair market value of these vessels).

If the IRS were to find that we are or have been a PFIC for any taxable year, our U.S. shareholders would face adverse and special U.S. tax consequences. Among other things, the distributions a shareholder received with respect to our shares and the gain, if any, a shareholder derived from his sale or other disposition of our shares would be taxable as ordinary income (rather than as qualified dividend income or capital gain, as the case may be), would be treated as realized ratably over his holding period in our common shares, and would be subject to an additional interest charge. However, a U.S. shareholder may be able to make certain tax elections that would ameliorate these consequences. See the discussion under "Item 10.—Additional Information—Taxation —United States Federal Income Taxation of U.S. Holders—Passive Foreign Investment Company Status and Significant Tax Consequences."

We may have to pay tax on U.S.-source income, which would reduce our earnings.

Under the United States Internal Revenue Code, referred to herein as the Code, 50% of the gross shipping income of a vessel-owning or chartering corporation, such as our Company and our subsidiaries, that is attributable to transportation that begins or ends, but that does not both begin and end, in the United States is characterized as U.S.-source shipping income and is subject to a 4% United States federal income tax without allowance for deduction, unless that corporation qualifies for exemption from tax under Section 883 of the Code and the related treasury regulations, referred to herein as "Treasury Regulations".

We expect that we and each of our subsidiaries qualify for this statutory tax exemption, and we take this position for United States federal income tax reporting purposes. However, there are factual circumstances beyond our control that could cause us to lose the benefit of this tax exemption and thereby become subject to United States federal income tax on our U.S.-source income. If we or our subsidiaries are not entitled to exemption under Section 883 of the Code for any taxable year, the imposition of a 4% U.S. federal income tax on our U.S.-source shipping income and that of our subsidiaries could have a negative effect on our business and would result in decreased earnings available for distribution to our shareholders. See the discussion under " Item 10. —Additional Information—Taxation—United States Federal Income Taxation of Our Company."

Industry Specific Risk Factors

Charter rates for dry bulk vessels are experiencing high volatility and, in view of the cyclical nature of the business, may decrease further in the future, which may adversely affect our earnings.

The degree of charter rate volatility among different types of dry bulk vessels has varied widely and after reaching historical highs in mid-2008, charter rates for dry bulk vessels have declined significantly. If the shipping industry is depressed when our charters expire or are otherwise terminated, our revenues, earnings and available cash flow may be adversely affected. In addition, a further decline in charter rates will likely cause the value of our vessels to further decline. Also, in case any of our charterers experience financial difficulties, it may result in an increase in time for us to realize our receivables and/or our charterers may be unable to fulfill their obligations under their charters. If any of our charterers are unable to perform their obligations, we may be forced to reclaim and re-charter the related vessel(s). Given the currently depressed market conditions, we may not be able to successfully charter these vessels in the future or renew our existing charters at rates sufficient to allow us to operate our business profitably. We anticipate that the future demand for our dry bulk carriers and dry bulk charter rates will be dependent upon demand for imported commodities, economic growth in the emerging markets, including the Asia Pacific region (including China), India, Brazil and Russia and the rest of the world, seasonal and regional changes in demand and changes to the capacity of the world fleet. Recent adverse economic, political, social or other developments have decreased demand and prospects for growth in the shipping industry and thereby could reduce revenue significantly. A decline in demand for commodities transported in dry bulk carriers or an increase in supply of dry bulk vessels could cause a further decline in charter rates, which could materially adversely affect our results of operations and financial condition. If we sell a vessel at a time when the market value of our vessels has fallen, the sale may be at less than the vessel's carrying amount, resulting in a loss.

Furthermore, the recent economic slowdown in the U.S. and Japan, together with the deteriorating economic situation in Europe caused by the sovereign debt crises in certain European Union ("EU") member countries, may further reduce demand for transportation, which may materially and adversely affect our future revenues.

The dry bulk vessel market is cyclical with high volatility in charter rates and industry profitability. The factors affecting the supply and demand for dry bulk vessels are outside of our control and are unpredictable. The nature, timing, direction and degree of changes in industry conditions are also unpredictable.

The factors that influence the demand for tonnage capacity include:

- demand for cargoes (e.g., coal, raw materials, agricultural products and steel products for bulkers);
- supply of cargoes;
- continuing growth of industrialization in the emerging countries;
- the globalization of manufacturing;
- global and regional economic and political conditions;
- armed conflicts, acts of piracy and terrorism;
- developments in international trade;
- changes in seaborne and other transportation patterns, including changes in the distances over which cargoes are transported;
- environmental and other regulatory developments;
- currency exchange rates; and
- weather.

The factors that influence the supply of vessel capacity include:

- the number of newbuilding deliveries;
- the scrapping activity and age of vessels in the existing world fleet;
- the price of steel;

- changes in environmental and other regulations that may limit the useful lives of vessels;
- the conversion of vessels from one type to another;
- vessel casualties;
- the number of vessels that are used for storage;
- the number of vessels that are in or out of service; and
- port or canal congestion and increased waiting days at port.

If the number of new vessels delivered exceeds the number of vessels being scrapped, lost and converted, tonnage capacity will increase. If the supply of tonnage capacity increases but the demand for tonnage capacity does not increase correspondingly, charter rates and vessel values could materially decline.

Downturns in the dry bulk vessels charter markets may have an adverse effect on our earnings, affect compliance with our existing and future loan covenants and our ability to pay dividends if reinstated in the future.

Charter rates for dry bulk vessels have declined sharply since the highs of 2008. The increase of supply (because of the newbuilding deliveries) and the decrease of demand (because of the decrease in world production and/or consumption) drove down charter rates during the period from 2009 to 2012. Freight rates started falling during the fourth quarter of 2008 and weakened gradually to the lowest level in September 2009 followed by a steady upturn in the fourth quarter of 2009; however freight rates remained at low levels during 2010, especially the second half of the year. The dry bulk market showed an even sharper drop during 2011 (with an average BDI of 1548 compared to 2758 in 2010). The dry bulk market further decreased during 2012, with an annual average BDI of 920. This decrease is reflected on the Panamax 4 Time Charter routes, which was at an average of about $7,684 per day during 2012, representing a fall of about 45% as compared with the average daily BPI index of 2011. If the market remains at or below these levels, it will have a negative effect on our earnings. We endeavor to charter vessels in our fleet under period charters with floor hire rates plus profit sharing elements in order to benefit from a potential increase in the charter market. However, we cannot assure you that we will be able to enter into such period charters with upside potential.

Our impairment analysis on long lived assets and goodwill performed for the years ended December 31, 2012 and 2011 resulted in impairment losses of $7.1 and $234.1 million (continuing and discontinued operations), respectively. However, the current assumptions used and the estimates made are highly subjective and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require us to record additional impairment charges in future periods, which may be material.

Disruptions in world financial markets, global economic weakness and the resulting governmental action in the United States and in other parts of the world could have a material adverse impact on our results of operations, financial condition and cash flows, and could cause the market price of our common shares to further decline.

Many parts of the world experienced deteriorating economic trends and were in a recession in 2008 and 2009 and continued to experience weakness in 2010, 2011 and 2012. Despite recent signs of recovery, the outlook for the world economy remains uncertain. General market volatility has resulted from uncertainty about sovereign debt and fears of countries such as Greece, Portugal, Cyprus, Spain and Ireland defaulting on their governments' financial obligations. In addition, continued hostilities in the Middle East and recent tensions in North Africa could adversely affect the economies of the United States and other countries.

The credit markets in the United States have experienced significant contraction, deleveraging and reduced liquidity, and the United States federal government and state governments have implemented and are considering a broad variety of governmental action and/or new regulation of the financial markets. Securities and futures markets and the credit markets are subject to comprehensive statutes, regulations and other requirements. The SEC, other regulators, self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies, and may affect changes in law or interpretations of existing laws.

Recently, a number of financial institutions have experienced serious financial difficulties and, in some cases, have entered bankruptcy proceedings or are in regulatory enforcement actions. The uncertainty surrounding the future of the credit markets in the United States and the rest of the world has resulted in reduced access to credit worldwide. Recently, operating businesses in the global economy have faced tightening credit, weakening demand for goods and services, deteriorating international liquidity conditions, and declining markets. There has been a general unwillingness by banks and other financial institutions to extend credit, particularly in the shipping industry, due to the historically volatile asset values of vessels. As the shipping industry is highly dependant on the availability of credit to finance its operations, it has been negatively affected by this decline. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

In addition, the future availability of borrowings under our credit facility with Piraeus Bank (CPB loan), which currently is restricted due to the Company's violation of certain covenants under the credit facility, may be affected by the agreement by the country of Cyprus in March 2013 to restructure and recapitalize its banks in connection with its rescue package from the European Commission, European Central Bank and International Monetary Fund. Among other provisions, it was agreed that certain assets and liabilities of Cyprus Popular Bank Public Co. Ltd., which, as previously discussed, was subsequently acquired by Piraeus Bank, would enter into receivership and the remaining assets and liabilities would be transferred to the Bank of Cyprus. If we are unable to borrow under this facility, we may need to seek other sources of financing which may be unavailable or may be more costly than our current facilities or subject us to more restrictions, which may have a material adverse impact on our ability to finance acquisitions of vessels or other assets or otherwise operate our business.

We anticipate that a significant number of the port calls made by our vessels will continue to involve the loading or discharging of commodities in ports in the Asia Pacific region. In recent years, China has been one of the world's fastest growing economies in terms of gross domestic product, which has had a significant impact on shipping demand. As a result, negative changes in economic conditions in any Asia Pacific country, particularly in China, may exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial condition and results of operations, as well as our future prospects. Moreover, the current economic weakness in the economies of the United States, the European Union and other Asian countries may further adversely affect economic growth in China and other emerging countries. Our business, financial condition and results of operations, as well as our future prospects, will likely be materially and adversely affected by a further economic downturn in any of these countries.

We face risks attendant to changes in economic environments, changes in interest rates, and instability in the banking and securities markets around the world, among other factors. Major market disruptions and the current adverse changes in market conditions and regulatory climate in the United States and worldwide may adversely affect our business or impair our ability to borrow amounts under any existing or future financial arrangements. We cannot predict how long the current market conditions will last. However, these recent and developing economic and governmental factors, together with the concurrent decline in charter rates and vessel values, may have a material adverse effect on our results of operations, financial condition or cash flows, have caused the trading price of our common shares on the NASDAQ Global Select Market to decline and could cause the price of our common shares to continue to decline.

The instability of the euro or the inability of countries to refinance their debts could have a material adverse effect on our revenue, profitability and financial position.

As a result of the credit crisis in Europe, in particular in Greece, Italy, Ireland, Cyprus, Portugal and Spain, the European Commission created the European Financial Stability Facility, or the EFSF, and the European Financial Stability Mechanism, or the EFSM, to provide funding to Eurozone countries in financial difficulties that seek such support. In March 2011, the European Council agreed on the need for Eurozone countries to establish a permanent stability mechanism, the European Stability Mechanism, or the ESM, which was established on September 27, 2012, to assume the roles of the EFSF and the EFSM in providing external financial assistance to Eurozone countries. Despite these measures, concerns persist regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations and the overall stability of the euro. An extended period of adverse development in the outlook for European countries could reduce the overall demand for oil and gas and for our services. These potential developments, or market perceptions concerning these and related issues, could affect our financial position, results of operations and cash flow.

Changes in the economic and political environment in China and policies adopted by the government to regulate its economy may have a material adverse effect on our business, financial condition and results of operations.

The Chinese economy differs from the economies of most countries belonging to the Organization for Economic Cooperation and Development (OECD) in such respects as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, rate of inflation and balance of payments position. Prior to 1978, the Chinese economy was a planned economy. Since 1978, increasing emphasis has been placed on the utilization of market forces in the development of the Chinese economy. Annual and five-year state plans are adopted by the Chinese government in connection with the development of the economy. Although state-owned enterprises still account for a substantial portion of the Chinese industrial output, in general, the Chinese government is reducing the level of direct control that it exercises over the economy through state plans and other measures. There is an increasing level of freedom and autonomy in areas such as allocation of resources, production, pricing and management and a gradual shift in emphasis to a "market economy" and enterprise reform. Limited price reforms were undertaken, with the result that prices for certain commodities are principally determined by market forces. Many of the reforms are unprecedented or experimental and may be subject to revision, change or abolition based upon the outcome of such experiments. Recently, China began appointing new members to its Politburo Standing Committee, who are replacing members of the committee who have served for periods of up to 10 years, which obscures the future policy plans of the country. If the Chinese government does not continue to pursue a policy of economic reform, the level of imports to and exports from China could be adversely affected by changes to these economic reforms by the Chinese government, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government, such as changes in laws, regulations or export and import restrictions, all of which could, adversely affect our business, operating results and financial condition.

The value of our vessels may fluctuate, which may adversely affect our liquidity.

Vessel values can fluctuate substantially over time due to a number of different factors, including:

- general economic and market conditions affecting the shipping industry;
- increase/decrease in demand for vessels' acquisitions;
- the types and sizes of available vessels;
- increase/decrease in the supply of tonnage capacity;
- expected newbuilding deliveries and future market expectations;
- the cost of newbuildings;
- scrap price (particularly for older vessels);
- availability of acquisition finance;
- prevailing charter rates; and
- technological advances in vessel design or equipment, changes in applicable environmental or other regulations or standards, or otherwise.

In addition, as vessels grow older, they generally decline in value. Due to the cyclical nature of the dry bulk vessel markets, if for any reason we sell vessels at a time when prices have fallen, we could incur a loss and our business, results of operations, cash flows, financial condition and ability to pay dividends in the future could be adversely affected. Furthermore, our existing debt agreements contain, and our future debt agreements may contain, financial covenants based on a security cover ratio. We are currently in breach of the security cover ratio under our debt arrangements (see "Item 5.—Operating and Financial Review and Prospects—Liquidity and Capital Resources") and we may violate similar covenants in any future debt agreements if the value of our vessels decrease significantly. Any such violation would materially and adversely affect our financial condition.

An oversupply of dry bulk vessel capacity may lead to further reductions in charter rates,and disproportionately affect older vessels, which could materially adversely affect our profitability.

The market supply of dry bulk vessels has been increasing, and the carrying capacity (measured in dwt) on order is at a historically high level. As of July 2013, approximately 126 million dwt of dry bulk vessels are on order, representing approximately 18% of the existing fleet. This may lead to an oversupply of dry bulk vessel capacity, resulting in a reduction of charter rates and a decrease in the value of our dry bulk vessels. Even in the case of high order cancellations and high delayed deliveries, new deliveries are expected to be higher than usual and it is unclear whether this increase of supply will be absorbed by the increase of demand. Significant fleet expansion would cap rate levels over the next couple of years. The reduction in rates may affect the ability of our customers who charter our dry bulk vessels to make charter hire payments to us. This and other factors affecting the supply and demand for dry bulk vessels are outside our control and the nature, timing and degree of changes in the industry may affect the ability of our charterers to make charter hire payments to us.

During periods when the shipping industry is experiencing excess capacity, falling demand and/or declining rates, older vessels are generally adversely affected in a disproportionate manner because newer vessels are generally preferred by customers. As the severity and length of such periods increase, the scrap rate for older vessels tends to rise because the costs for keeping an older vessel in the fleet may exceed the benefits. However, we may be unable to scrap some of our older vessels if, for example, such vessels have loan obligations that exceed their scrap values. In such a case, we may be restricted from taking the most economically prudent course of action, which may negatively affect our results of operations. See also "—The risks and costs associated with vessels increase as the vessels age."

Acts of piracy on ocean-going vessels have recently increased in frequency, which could adversely affect our business.

Acts of piracy have historically affected ocean-going vessels trading in certain regions of the world, such as the South China Sea and in the Gulf of Aden off the coast of Somalia. Throughout 2008 to 2013, the frequency of piracy incidents increased significantly, particularly in the Gulf of Aden off the coast of Somalia, the Arabian Sea, the Northern Indian Ocean and, in particular, West Africa, with dry bulk vessels and tankers particularly vulnerable to such attacks. No security incidents for the Company took place during 2012 or to date in 2013. A recent and significant example of the heightened level of piracy came in July 2013, when a boat claiming to be a Nigerian navy boat contacted a chemical tanker not affiliated with us in West Africa through the vessel's communication system (VHF) to ascertain details of the vessel's cargo and route. Subsequent to this contact, the boat approached the vessel to demand boarding. When boarding was denied, the boatmen opened fire into the air. The boat was deterred following the vessel's use of the alarm system. Additionally, in June 2013, a vessel not affiliated with us was reported hijacked in the Gulf of Aden and 14 crew members were taken hostage. For unknown reasons, the pirates released the vessel. Following the incident, the crew and vessel were reported to be safe. Further, in July 2013 and March 2013, a bulk carrier and an oil tanker, respectively, each of which not affiliated with us, were approached by skiffs in the Gulf of Aden. In each instance, alarms and warning shots deterred the skiffs from hijacking the vessels. In October 2012, the M/T Arowana United, a vessel not affiliated with us, was also hijacked while at port in Malaysia. Eight crew members were rescued near Pulau Natuna, Indonesia and 650,000 litres of marine fuel worth $400,000 USD was seized. In May 2012, pirates armed with automatic weapons chased a crude oil tanker, a vessel not affiliated with us, near 250nm SE of Ras Al Madrakah, Oman, successfully boarded and hijacked the vessel, and took 26 crew members hostage. If these piracy attacks result in regions in which our vessels are deployed being characterized as "war risk" zones by insurers, as the Gulf of Aden temporarily was in May 2008, or Joint War Committee (JWC) "war and strikes" listed areas, premiums payable for insurance coverage could increase significantly and such insurance coverage may be more difficult to obtain. In addition, crew costs, including costs due to employing onboard security guards, could increase in such circumstances. In addition, when the vessel is seized by pirates, the charterer may withhold charter payments until the vessel is released. A charterer may also claim that a vessel seized by pirates was not "on-hire" for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. Despite the fact that our vessels are covered against such risks, we may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, any detention and/or hijacking of our vessels as a result of an act of piracy, or an increase in cost or unavailability of insurance for our vessels, could have a material adverse impact on our business, financial condition, results of operations and ability to reinstate the payment of dividends.

It has also been observed that piracy incidents have increased dramatically in West Africa, where pirates and other criminals are often violent. In West Africa, pirates have attacked, hijacked and robbed vessels as well as kidnapped crews along the coast, rivers, anchorages, ports and surrounding waters. There have been 34 reported incidents in the region during the period of January 2013 to July 2013, compared to one reported incident during 2012, with attacks occurring as far as 120nm from the coast.

Increases in fuel, or bunker prices, may adversely affect profits.

While we generally do not bear the cost of fuel, or bunkers, under our time charters, fuel is a significant factor in negotiating charter rates. As a result, an increase in the price of fuel beyond our expectations may adversely affect our profitability at the time of charter negotiation or when our vessels trade in the spot market. Fuel is also a significant, if not our largest, expense in our shipping operations when vessels are under voyage charter. Increases in the price of fuel may adversely affect our profitability and may also affect our charterer's profitability where vessels are employed on time charter. As a result, it may be difficult for us to realize on our receivables and/or our charterers may be unable to fulfill their obligations under their charters. The price and supply of fuel is unpredictable and fluctuates based on events outside our control, including geopolitical developments, supply and demand for oil and gas, actions by OPEC and other oil and gas producers, war and unrest in oil producing countries and regions, regional production patterns and environmental concerns. Further, fuel may become much more expensive in the future, which may reduce the profitability and competitiveness of our business versus other forms of transportation, such as truck or rail.

We are subject to complex laws and regulations, including environmental and safety laws and regulations that can adversely affect the cost, manner or feasibility of doing business and consequently our results of operations.

The shipping business and vessel operations are materially affected by government regulation in the form of international conventions, national, state and local laws, and regulations in force in the jurisdictions in which vessels operate, as well as in the country or countries of their registration. Many of these requirements are designed to reduce the risk of oil spills, air emissions or other pollution. Because such conventions, laws and regulations are often revised, we cannot predict the ultimate cost of complying with such conventions, laws and regulations, or the impact thereof on the fair market price or useful life of our vessels. Compliance with these laws and regulations, as well as with standards imposed by maritime self-regulatory organizations and customer requirements or competition, may require us to make capital and other expenditures; affect the resale value or useful lives of our vessels; require reductions in cargo capacity, ship modifications or other operational changes or restrictions; lead to reduced availability of insurance coverage or increased policy costs; or result in denial of access to certain jurisdictional ports or waters, or detention in certain ports. In order to satisfy any such requirements, we may be required to take our vessels out of service for extended periods of time, with corresponding losses of revenues. In the future, market conditions may not justify these expenditures or enable us to operate our vessels profitably, particularly older vessels, during the remainder of their economic lives. This could lead to significant asset write-downs.

A failure to comply with applicable laws and regulations may result in administrative and civil penalties, criminal sanctions or suspension or termination of our operations. We are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses and certificates with respect to our operations. A decision by an agency to deny or delay issuing a new or renewed permit, license or certificate, or to revoke or substantially modify an existing one, could materially adversely affect our operations.

Government regulation of vessels, particularly environmental and safety requirements, may become stricter in the future and require us to incur significant capital expenditure on our vessels to keep them in compliance, or even to scrap or sell certain vessels altogether. Additional legislation or amendments to existing legislation is expected in areas such as ship recycling, garbage management, energy efficiency, sewage systems, air emission control (including emission of greenhouse gases) and ballast treatment and handling. For example, amendments to revise the regulations of the International Convention for the Prevention of Pollution from Ships, or MARPOL, regarding the prevention of air pollution from ships were approved and formally adopted by the Marine Environment Protection Committee, or MEPC, in October 2008. The amendments establish a series of progressive standards limiting the sulfur content in fuel oil and new tiers of nitrogen oxide emission standards for new marine diesel engines. The amendments entered into force in July 2010 and we incurred significant costs for compliance. The amendments implement a phased reduction of the sulfur content of fuel and allows for stricter sulfur limits in designated emission control areas ("ECAs"). Thus far, ECAs have been formally adopted for the Baltic Sea and the North Sea including the English Channel and the Turkish inland waters (when berthed at Turkish Ports). Waters off of the North American coast were established as an ECA on August 1, 2012, and the United States Caribbean Sea ECA came into force on January 1, 2013, with an effective date of January 1, 2014. These ECAs will limit sulfur oxide (SOx), nitrogen oxide (NOx) and particulate matter emissions.

In addition, various jurisdictions and regulatory organizations, including the International Maritime Organization, or the IMO, the U.S. and states within the U.S., have proposed or implemented requirements relating to the management of ballast water to prevent the introduction of foreign invasive species having adverse ecological impacts. Significant expenditures for the installation of new equipment or new systems on board our vessels and changes in operating procedure may be necessary to comply with future regulations regarding ballast water management. Such future regulations may also result in increased port disposal costs.

Additionally, as a result of marine accidents in recent years, safety regulation of the shipping industry is likely to continue to become more stringent and more expensive for us and our competitors. The IMO and the European Union have both accelerated their existing phase-out schedules for vessels without double hulls in response to highly publicized oil spills and shipping accidents involving companies unrelated to us. Legislation is also being discussed that would subject vessels to centralized routing. Future incidents may result in the adoption of even more stringent laws and regulations, which could limit our operations or our ability to do business, require capital expenditures or otherwise increase our cost of doing business, which may adversely affect our operations, as well as the shipping industry generally.

We could incur material liabilities, including cleanup obligations and natural resource damages, in the event there is a release of oil or other hazardous substances from our vessels or otherwise in connection with our operations.

For all vessels, including those operated under our fleet, at present, international liability for bunker oil pollution is governed by the International Convention on Civil Liability for Bunker Oil Pollution Damage, or the Bunker Convention. In 2001, the IMO adopted the Bunker Convention, which imposes strict liability on ship owners for pollution damage in jurisdictional waters of ratifying states caused by discharges of "bunker oil." The Bunker Convention defines "bunker oil" as "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil." The Bunker Convention also requires registered owners of ships over a certain size to maintain insurance for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime (but not exceeding the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims of 1976, as amended, or the 1976 Convention). The Bunker Convention entered into force on November 21, 2008, and as of July 31, 2013 was in effect in 72 countries. In other jurisdictions, liability for spills or releases of oil from ships' bunkers continues to be determined by the national or other domestic laws in the jurisdiction where the events or damages occur.

With respect to oil pollution liability, generally, many countries have ratified and follow the liability plan adopted by the IMO and set out in the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC. Under this convention, and depending on whether the country in which the damage results is a party to the CLC, a registered owner of a tanker that is carrying a cargo of "persistent oil" as defined by the CLC is strictly liable for pollution damage caused in the territorial waters of a contracting state by discharge of persistent oil, subject to certain complete defenses and liability limits. This liability is subject to a financial limit calculated by reference to the tonnage of the ship. The right to limit liability may be lost if the spill is caused by the owner's intentional or reckless conduct. Vessels trading to states that are parties to these conventions must provide evidence of insurance covering the liability of the owner. When a tanker is carrying clean oil products that do not constitute "persistent oil" for the purposes of CLC, liability for any pollution damage will generally fall outside the CLC and will depend on national or other domestic laws in the jurisdiction where the spillage occurs. The United States is not a party to the CLC. In jurisdictions where the CLC has not been adopted, various legislative schemes or common law govern, and liability is imposed either on the basis of fault or in a manner similar to that of the CLC.

The most widely applicable international regime limiting maritime pollution liability is the 1976 Convention referred to above. Rights to limit liability under the 1976 Convention are forfeited when a spill is caused by a shipowner's intentional or reckless conduct. Certain states have ratified the IMO's 1996 Protocol, or the 1996 LLMC Protocol, to the 1976 Convention. The 1996 LLMC Protocol provides for substantially higher the liability limits to apply in those jurisdictions than the limits set forth in the 1976 Convention. Finally, some jurisdictions are not a party to either the 1976 Convention or the 1996 LLMC Protocol, and, therefore, a shipowner's rights to limit liability for maritime pollution in such jurisdictions may be uncertain.

Environmental legislation in the United States merits particular mention as it is in many respects more onerous than international laws, representing a high-water mark of regulation with which ship owners and operators must comply, and of liability likely to be incurred in the event of non-compliance or an incident causing pollution. U.S. federal legislation, including notably the Oil Pollution Act of 1990, or the OPA, establishes an extensive regulatory and liability regime for the protection and cleanup of the environment from oil spills, including bunker oil spills from dry bulk vessels as well as cargo or bunker oil spills from tankers. The OPA affects all shipowners and operators whose vessels trade in the United States, its territories and possessions, or whose vessels operate in U.S. waters, which includes the United States' territorial sea and its 200-nautical-mile exclusive economic zone. Under the OPA, vessel owners, operators and bareboat charterers are "responsible parties" and are jointly, severally and strictly liable (unless the spill results solely from the act or omission of a third party, an act of God or an act of war) for all containment and clean-up costs and other damages arising from discharges or substantial threats of discharges of oil from their vessels. In response to the 2010 Deepwater Horizon oil incident in the Gulf of Mexico, the U.S. House of Representatives passed, and the U.S. Senate considered but did not pass a bill to strengthen certain requirements of the OPA; similar legislation may be introduced in future sessions of the Congress. In addition to potential liability under the OPA, vessel owners may in some instances incur liability on an even more stringent basis under state law in the particular state where the spillage occurred.

In some areas of regulation of ship-source pollution, the EU has introduced new laws without attempting to procure a corresponding amendment of international law. Notably, in 2005, it adopted a directive, as amended in 2009, on ship-source pollution, imposing criminal sanctions for pollution not only where this is caused by intent or recklessness (which would be an offence under the MARPOL), but also where it is caused by "serious negligence". The concept of "serious negligence" may be interpreted in practice to be little more than ordinary negligence. The directive could therefore result in criminal liability being incurred in circumstances where it would not be incurred under international law. Criminal liability for a pollution incident could not only result in us incurring substantial penalties or fines, but may also, in some jurisdictions, facilitate civil liability claims for greater compensation than would otherwise have been payable.

We currently maintain, for each of our owned vessels, insurance coverage against pollution liability risks in the amount of $1.0 billion per incident. The insured risks include penalties and fines as well as civil liabilities and expenses resulting from accidental pollution. However, this insurance coverage is subject to exclusions, deductibles and other terms and conditions. If any liabilities or expenses fall within an exclusion from coverage, or if damages from a catastrophic incident exceed the $1.0 billion limitation of coverage per incident, our cash flow, profitability and financial position could be adversely impacted.

Climate change and government laws and regulations related to climate change could negatively impact our financial condition.

In addition to other climate-related risks set forth in this "Risk Factors" section, w e are and will be, directly and indirectly, subject to the effects of climate change and may, directly or indirectly, be affected by government laws and regulations related to climate change. A number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions, such as carbon dioxide and methane. In the United States, the United States Environmental Protection Agency ("U.S. EPA") has declared greenhouse gases to be dangerous pollutants and has issued greenhouse gas reporting requirements for emissions sources in certain industries (which do not include the shipping industry). The U.S. EPA is also considering petitions to regulate greenhouse gas emissions from marine vessels.

In addition, while the emissions of greenhouse gases from international shipping are not subject to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ("UNFCCC"), which requires adopting countries to implement national programs to reduce greenhouse gas emissions, the IMO intends to develop limits on greenhouse gases from international shipping. It has responded to the global focus on climate change and greenhouse gas emissions by developing specific technical and operational efficiency measures and a work plan for market-based mechanisms in 2011. These include the mandatory measures of the ship energy efficiency management plan ("SEEMP"), outlined below, and an energy efficiency design index ("EEDI") for new ships. The IMO is also considering its position on market-based measures through an expert working group, which was expected to report back to its Marine Environment Protection Committee ("MEPC") in late 2012. Among the numerous proposals being considered by the working group are the following: a port state levy based on the amount of fuel consumed by the vessel on its voyage to the port in question; a global emissions trading scheme which would allocate emissions allowances and set an emissions cap; and an international fund establishing a global emissions reduction target for international shipping, to be set either by the UNFCCC or the IMO. At its 64th session in October 2012, the MEPC indicated that 2015 was the target year for Member States to identify market-based measures for international shipping.

In December 2011, UN climate change talks took place in Durban and concluded with an agreement referred to as the Durban Platform for Enhanced Action. The Durban Conference did not result in any proposals specifically addressing the shipping industry's role in climate change but the progress that has been made by the IMO in this area was widely acknowledged throughout the negotiating bodies of the UNFCCC process.

The European Union announced in April 2007 that it planned to expand the European Union emissions trading scheme by adding vessels, and a proposal from the European Commission was expected if no global regime for reduction of seaborne emissions had been agreed to by the end of 2011. That deadline has now expired and it remains to be seen what position the European Union will take in this regard in future. As of January 31, 2013 the European Commission has stopped short of proposing that emissions from ships be included in the European Union's emissions-trading scheme (ETS). However, on October 1, 2012 the European Commission announced that it would propose measures to monitor, verify and report on greenhouse-gas emissions from the shipping sector in early 2013. This may be seen as indicative of an intention to maintain pressure on the international negotiating process.

We cannot predict with any degree of certainty what effect, if any, possible climate change and government laws and regulations related to climate change will have on our operations, whether directly or indirectly. However, we believe that climate change, including the possible increase in severe weather events resulting from climate change, and government laws and regulations related to climate change may affect, directly or indirectly, (i) the cost of the vessels we may acquire in the future, (ii) our ability to continue to operate as we have in the past, (iii) the cost of operating our vessels, and (iv) insurance premiums, deductibles and the availability of coverage. As a result, our financial condition could be negatively impacted by significant climate change and related governmental regulation, and that impact could be material.

We are subject to international safety regulations and the failure to comply with these regulations may subject us to increased liability, may adversely affect our insurance coverage and may result in a denial of access to, or detention in, certain ports.

The operation of our vessels is affected by the requirements set forth in the IMO International Management Code for the Safe Operation of Ships and Pollution Prevention, or ISM Code. The ISM Code requires shipowners, ship managers and bareboat charterers to develop and maintain an extensive “Safety Management System” that includes the adoption of a safety and environmental protection policy setting forth instructions and procedures for safe operation and describing procedures for dealing with emergencies. The IMO is also introducing the first ever mandatory measures for an international greenhouse gas reduction regime for a global industry sector. The measures came into effect on January 1, 2013 and apply to all ships of 400 gross tonnage and above. These measures set a ship energy efficiency management plan (“SEEMP”) which is akin to a safety management plan, which the industry will have to comply with. The failure of a shipowner or bareboat charterer to comply with the ISM Codeor IMO measures may subject it to increased liability, may invalidate existing insurance or decrease available insurance coverage for the affected vessels and may result in a denial of access to, or detention in, certain ports. For example, the United States Coast Guard and European Union authorities have indicated that vessels not in compliance with the ISM Code will be prohibited from trading in ports in the United States and European Union. As of the date of this report, each of our vessels is ISM code-certified. However, there can be no assurance that such certification will be maintained indefinitely.

Our vessels and/or the cargoes carried on board our vessels may suffer damage due to the inherent operational risks of the seaborne transportation industry and we may experience unexpected dry-docking costs, which could adversely affect our business and financial condition.

Our vessels and their cargoes will be at risk of being damaged or lost because of events such as marine disasters, bad weather, business interruptions caused by mechanical failures, grounding, fire, explosions and collisions, human error, war, terrorism, piracy and other circumstances or events. These hazards may result in death or injury to persons, loss of revenues or property, environmental damage, higher insurance rates, damage to our customer relationships, delay or rerouting. Any resulting legal proceedings may be complex, lengthy, costly and, if decided against us, any of these proceedings or other proceedings involving similar claims or claims for substantial damages may harm our reputation and have a material adverse effect on our business, results of operations, cash flow and financial position. In addition, the legal systems and law enforcement mechanisms in certain countries in which we operate may expose us to risk and uncertainty. Further, we may be required to devote substantial time and cost defending these proceedings, which could divert the attention of management from our business. If our vessels suffer damage, they may need to be repaired at a dry-docking facility. The costs of dry-dock repairs are unpredictable and may be substantial. We may have to pay dry-docking costs that our insurance does not cover in full. The loss of revenue while these vessels are being repaired and repositioned, as well as the actual cost of these repairs, would decrease our earnings. In addition, space at dry-docking facilities is sometimes limited and not all dry-docking facilities are conveniently located. We may be unable to find space at a suitable dry-docking facility or our vessels may be forced to travel to a dry-docking facility that is not conveniently located to our vessels' positions. The loss of revenue while these vessels are forced to wait for space or to steam to more distant dry-docking facilities would decrease our earnings. For example, on October 8, 2010, the Grand Rodosi, one of our bulk carriers, which has since been redelivered to Lemissoler, was involved in a collision with a docked fishing vessel at Port Lincoln, Australia. While no personal injuries or environmental damages were incurred, the collision resulted in physical damage to the two vessels. The damage was fully covered by our insurance. The total loss or damage of any of our vessels or cargoes could harm our reputation as a safe and reliable vessel owner and operator. If we are unable to adequately maintain or safeguard our vessels, we may be unable to prevent any such damage, costs, or loss that could negatively impact our business, financial condition, results of operations, cash flows and ability to reinstate the payment of dividends.

Our insurance may not be adequate to cover our losses that may result from our operations, which are subject to the inherent operational risks of the seaborne transportation industry.

We carry insurance to protect us against most of the accident-related risks involved in the conduct of our business, including marine hull and machinery insurance, protection and indemnity insurance, which includes pollution risks, crew insurance and war risk insurance. However, we may not be adequately insured to cover losses from all of our operational risks, which could have a material adverse effect on us. Even if our insurance coverage is adequate to cover our losses, we may not be able to obtain a timely replacement, which may result in the loss of revenue. Additionally, our insurers may refuse to pay particular claims and our insurance may be voidable by the insurers if we take, or fail to take, certain action, such as failing to maintain certification of our vessels with applicable maritime regulatory organizations. Any significant uninsured or under-insured loss or liability could have a material adverse effect on our business, results of operations, cash flows and financial condition. In addition, we may not be able to obtain adequate insurance coverage at reasonable rates in the future during adverse insurance market conditions.

As a result of the September 11, 2001 attacks, the U.S. response to the attacks and the related concerns regarding terrorism, insurers have increased premiums and reduced or restricted coverage for losses caused by terrorist acts generally. Accordingly, premiums payable for terrorist coverage have increased substantially and the level of terrorist coverage has been significantly reduced.

In addition, while we carry loss of hire insurance to cover 100% of our fleet, we may not be able to maintain this level of coverage. Accordingly, any loss of a vessel or extended vessel off-hire, due to an accident or otherwise, could have a material adverse effect on our business, results of operations, financial condition and our ability to pay dividends, if reinstated to our shareholders in the future.

Because we obtain some of our insurance through protection and indemnity associations, we may also be subject to calls in amounts based not only on our own claim records, but also on the claim records of other members of the protection and indemnity associations.

We may be subject to calls in amounts based not only on our claim records but also on the claim records of other members of the protection and indemnity associations through which we receive insurance coverage for tort liability, including pollution-related liability. Our payment of these calls could result in significant expense to us, which could have a material adverse effect on our business, results of operations, cash flows and financial condition.

In addition, in some jurisdictions, such as South Africa, under the "sister ship" theory of liability, a claimant may arrest both the vessel that is subject to the claimant's maritime lien and any "associated" vessel, which is any vessel owned or controlled by the same owner. Claimants could try to assert "sister ship" liability against one vessel in our fleet for claims relating to another of our vessels.

The risks and costs associated with vessels increase as the vessels age.

The costs to operate and maintain a vessel in operation increase with the age of the vessel. The average age of our dry bulker fleet is 17.5 years. Most dry bulk vessels have an expected life ranging between 25 to 30 years, subject to market conditions and employment status of the vessels. In some instances, charterers prefer newer vessels that are more fuel efficient than older vessels. Cargo insurance rates also increase with the age of a vessel, making older vessels less desirable to charterers as well. In addition, older vessels could have loan obligations in excess of their scrap value. Governmental regulations, safety or other equipment standards related to the age of the vessels may require expenditures for alterations or the addition of new equipment to vessels and may restrict the type of activities in which these vessels may engage. We cannot assure you that, as our vessels age, market conditions will justify those expenditures or enable us to operate our vessels profitably during the remainder of their useful lives. If we sell vessels, we may have to sell them at a loss, and if charterers no longer charter-out vessels due to their age, our earnings could be materially adversely affected.

A failure to pass inspection by classification societies could result in one or more vessels being unemployable unless and until they pass inspection, resulting in a loss of revenues from such vessels for that period and a corresponding decrease in operating cash flows.

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and with International Convention for the Safety of Life at Sea, or SOLAS. Our fleet is currently enrolled with Bureau Veritas and Registro Italiano Navale ("RINA").

A vessel must undergo an annual survey, an intermediate survey and a special survey. In lieu of a special survey, a vessel's machinery may be on a continuous survey cycle, under which the machinery would be surveyed periodically over a five-year period. Our vessels are on special survey cycles for hull inspection and continuous survey cycles for machinery inspection. Every vessel may be also required to be dry-docked every two to three years for inspection of the underwater parts of such vessel.

If any vessel fails any annual survey, intermediate survey or special survey, the vessel may be unable to trade between ports and, therefore, would be unemployable, potentially causing a negative impact on our revenues due to the loss of revenues from such vessel until she is able to trade again.

If we purchase any newbuilding vessels, delays, cancellations or non-completion of deliveries of newbuilding vessels could harm our operating results.

If we purchase any newbuilding vessels, the shipbuilder could fail to deliver the newbuilding vessel as agreed or their counterparty could cancel the purchase contract if the shipbuilder fails to meet its obligations. In addition, under charters we may enter into that are related to a newbuilding vessel, if our delivery of the newbuilding vessel to our customer is delayed, we may be required to pay liquidated damages during the delay. For prolonged delays, the customer may terminate the charter and, in addition to the resulting loss of revenues, we may be responsible for additional, substantial liquidated damages.

The completion and delivery of newbuilding vessels could be delayed, cancelled or otherwise not completed because of:

- quality or engineering problems;
- changes in governmental regulations or maritime self-regulatory organization standards;
- work stoppages or other labor disturbances at the shipyard;
- bankruptcy or other financial crisis of the shipbuilder;
- a backlog of orders at the shipyard;
- political or economic disturbances;
- weather interference or catastrophic event, such as a major earthquake or fire;
- requests for changes to the original vessel specifications;
- shortages of or delays in the receipt of necessary construction materials, such as steel;
- inability to finance the construction or conversion of the vessels; or
- inability to obtain requisite permits or approvals.

Labor interruptions could disrupt our business.

Our vessels are manned by masters, officers and crews that are employed by third parties. If not resolved in a timely and cost-effective manner, industrial action or other labor unrest could prevent or hinder our operations from being carried out as we expect and could have a material adverse effect on our business, results of operations, cash flows, financial condition and ability to pay dividends, if reinstated in the future.

Maritime claimants could arrest our vessels through foreclosure proceedings, which would interrupt our business.

Crew members, suppliers of goods and services to a vessel, shippers of cargo and other parties may be entitled to a maritime lien against a vessel for unsatisfied debts, claims or damages. In many jurisdictions, a maritime lien holder may enforce its lien by arresting or attaching a vessel through foreclosure proceedings. The arrest or attachment of one or more of our vessels could interrupt our business or require us to pay large sums of money to have the arrest lifted, which would have a negative effect on our cash flows. In addition, in some jurisdictions, such as South Africa, under the "sister ship" theory of liability, a claimant may arrest both the vessel which is subject to the claimant's maritime lien and any "associated" vessel, which is any vessel owned or controlled by the same owner. As a result, claimants could try to assert "sister ship" liability against one vessel in our fleet for claims relating to another vessel in our fleet.

Governments could requisition our vessels during a period of war or emergency without adequate compensation.

A government could requisition or seize our vessels. Under requisition for title, a government takes control of a vessel and becomes its owner. Under requisition for hire, a government takes control of a vessel and effectively becomes its charterer at dictated charter rates. Generally, requisitions occur during periods of war or emergency. Although we would be entitled to compensation in the event of a requisition, the amount and timing of payment would be uncertain. Government requisition of one or more of our vessels may negatively impact our business, financial condition and results of operations.

We operate our vessels worldwide and, as a result, our vessels are exposed to international risks that could reduce revenue or increase expenses.

The international shipping industry is an inherently risky business involving global operations. Our vessels are at risk of damage or loss because of events such as mechanical failure, collision, human error, war, terrorism, piracy, cargo loss, natural disasters and bad weather. In addition, changing economic, regulatory and political conditions in some countries, including political and military conflicts, have from time to time resulted in attacks on vessels, mining of waterways, piracy, terrorism, labor strikes and boycotts. These sorts of events could interfere with shipping routes and result in market disruptions that may reduce our revenue or increase our expenses.

Terrorist attacks, international hostilities and political instability can affect the seaborne transportation industry, which could adversely affect our business and results of operations.

We conduct our operations worldwide, and our business, results of operations, cash flows and financial condition may be adversely affected by changing economic, political and government conditions in the countries and regions where our vessels are employed or registered. Moreover, we operate in a sector of the economy that is likely to be adversely impacted by the effects of political instability, terrorist or other attacks, war or international hostilities. Terrorist attacks such as the attacks on the United States on September 11, 2001, in London on July 7, 2005 and in Mumbai on November 26, 2008 and the continuing response of the United States and others to these attacks, as well as the threat of future terrorist attacks in the United States or elsewhere, continue to cause uncertainty in the world financial markets and may affect our business, operating results and financial condition. The continuing presence of the United States and other armed forces in Iraq and Afghanistan may lead to additional acts of terrorism and armed conflict around the world, which may contribute to further economic instability in the global financial markets. These uncertainties could also adversely affect our ability to obtain additional financing on terms acceptable to us or at all. In the past, political conflicts have also resulted in attacks on vessels, mining of waterways and other efforts to disrupt international shipping, particularly in the Arabian Gulf region. Acts of terrorism and piracy have also affected vessels trading in regions such as the South China Sea and the Gulf of Aden off the coast of Somalia. In addition, continuing conflicts and recent developments in North Africa and the Middle East and future hostilities or other political instability in regions where our vessels trade could affect our trade patterns and adversely affect our operations by causing delays in shipping on certain routes or making shipping impossible on such routes, thereby causing a decrease in revenues. Any of these occurrences could have a material adverse impact on our operating results, revenues and costs.

Terrorist attacks on vessels, such as the October 2002 attack on the M/V Limburg, a very large crude carrier not related to us, may in the future also negatively affect our operations and financial condition and directly impact our vessels or our customers. Future terrorist attacks could result in increased volatility and turmoil in the financial markets in the United States and globally. Any of these occurrences could have a material adverse impact on our revenues and costs.

We are subject to vessel security regulations and will incur costs to comply with recently adopted regulations and may be subject to costs to comply with similar regulations which may be adopted in the future in response to terrorism.

Since the terrorist attacks of September 11, 2001, there have been a variety of initiatives intended to enhance vessel security. On November 25, 2002, the Maritime Transportation Security Act of 2002, or MTSA, came into effect. To implement certain portions of the MTSA, in July 2003, the U.S. Coast Guard issued regulations requiring the implementation of certain security requirements aboard vessels operating in waters subject to the jurisdiction of the United States. Similarly, in December 2002, amendments to SOLAS created a new chapter of the convention dealing specifically with maritime security. The new chapter went into effect in July 2004, and imposes various detailed security obligations on vessels and port authorities, most of which are contained in the newly created ISPS Code. Among the various requirements are:

- on-board installation of automatic information systems, or AIS, to enhance vessel-to-vessel and vessel-to-shore communications;
- on-board installation of ship security alert systems;
- the development of vessel security plans; and
- compliance with flag state security certification requirements.

Furthermore, additional security measures could be required in the future which could have a significant financial impact on us. The U.S. Coast Guard regulations, intended to be aligned with international maritime security standards, exempt non-U.S. vessels from MTSA vessel security measures, provided such vessels had on board, by July 1, 2004, a valid International Ship Security Certificate, or ISSC, that attests to the vessel's compliance with SOLAS security requirements and the ISPS Code. We have implemented and will continue implement the various security measures addressed by the MTSA, SOLAS and the ISPS Code and take measures for the vessels to attain compliance with all applicable security requirements within the prescribed time periods. Although management does not believe these additional requirements will have a material financial impact on our operations, there can be no assurance that there will not be an interruption in operations to bring vessels into compliance with the applicable requirements and any such interruption could cause a decrease in charter revenues. The cost of vessel security measures has also been affected by the dramatic escalation in recent years in the frequency and seriousness of acts of piracy against ships, notably off the coast of Somalia, including the Gulf of Aden and Arabian Sea area, which could have a significant financial impact on us. Attacks of this kind have commonly resulted in vessels and their crews being detained for several months, and being released only on payment of large ransoms. Substantial loss of revenue and other costs may be incurred as a result of such detention. We insure against these losses to the extent practicable, but the risk remains that uninsured losses could significantly affect our business. Costs are incurred in taking additional security measures in accordance with Best Management Practices to Deter Piracy, notably those contained in the BMP3 industry standard. A number of flag states have signed the 2009 New York Declaration, which expresses commitment to Best Management Practices in relation to piracy and calls for compliance with them as an essential part of compliance with the ISPS Code.

Economic sanctions and other international trade restrictions imposed by the United States, the European Union, and other jurisdictions could increase the legal compliance risks and costs associated with our international activities.

Economic sanctions and/or other trade restrictions imposed by the United States or other governments or organizations, including the United Nations, the European Union and its member states, could increase the legal costs of, and risks associated with, our international operations. Our compliance with the prohibitions of economic sanctions and foregoing business with countries subject to sanctions could also lead to loss of revenue.

Under economic sanctions and related trade laws, governments may impose modifications to business activities and practices and modifications to compliance programs, which may increase compliance costs, increase the risk of violations of law, and, in the event of a violation of such laws, may subject us to fines and other penalties. Engaging in sanctions-triggering activity, such as that outlined under the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA"), could also result in the imposition of sanctions against us.

Recently, the scope of sanctions imposed against Iran and persons engaging in certain activities or doing certain business with or involving Iran has been expanded by a number of jurisdictions, including the United States, the EU, and Canada. The EU has strengthened sanctions against Iran by prohibiting a wider universe of transactions and activities involving Iran. The EU sanctions against Iran now prohibit the transportation of petroleum as well as petrochemical products from Iran. CISADA, enacted by the United States, also strengthens existing U.S. sanctions against Iran, and, *inter alia,* provides for the imposition of sanctions against foreign (non-U.S.) entities that transport or otherwise supply refined petroleum products ("RPP") to Iran. U.S. Executive Order 13590 expands and adds to the universe of activity triggering sanctions under CISADA.

In addition, on May 1, 2012, President Obama signed Executive Order 13608 which prohibits foreign persons from violating or attempting to violate, or causing a violation of any sanctions in effect against Iran or facilitating any deceptive transactions for or on behalf of any person subject to U.S. sanctions. Any persons found to be in violation of Executive Order 13608 will be deemed a foreign sanctions evader and will be banned from all contacts with the United States, including conducting business in U.S. dollars. Also in 2012, president Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012, or the Iran Threat Reduction Act, which created new sanctions and strengthened existing sanctions. Among other things, the Iran Threat Reduction Act intensifies existing sanctions regarding the provision of goods, services, infrastructure or technology to Iran's petroleum or petrochemical sector. The Iran Threat Reduction Act also includes a provision requiring the President of the United States to impose five or more sanctions from Section 6(a) of the Iran Sanctions Act, as amended, on a person the President determines is a controlling beneficial owner of, or otherwise owns, operates or controls or insures a vessel that was used to transport crude oil from Iran to another country and (1) if the person is a controlling beneficial owner of the vessel, the person had actual knowledge the vessel was so used or (2) if the person otherwise owns, operates, or controls, or insures the vessel, the person knew or should have known the vessel was so used. Such a person could be subject to a variety of sanctions, including exclusion from U.S. capital markets, exclusion from financial transactions subject to U.S. jurisdiction, and exclusion of that person's vessels from U.S. ports for up to two years.

We are monitoring developments in the United States, the EU and other jurisdictions that maintain sanctions programs, including developments in implementation and enforcement of such sanctions programs. Expansion of sanctions programs, embargoes and other restrictions in the future (including additional designations of countries or entities subject to sanctions), or modifications in how existing sanctions are interpreted or enforced, could prevent tankers from calling on ports in sanctioned countries or could limit their cargoes and could also expose us to sanctions based on the activities of the vessels while the vessels are chartered out to third parties, even though we do not control such third parties.

We constantly keep abreast of legal developments in the economic sanctions and trade restrictions area, and we adjust our compliance programs and internal policies accordingly. We believe that we are and have been in compliance with all applicable laws, including all laws impacting the trade of our vessels with Iran and other countries identified by the United States as state sponsors of terrorism or as engaging in activities related to nuclear proliferation, and we intend to maintain such compliance. Our vessels are not authorized to engage in unlawful trade, or, save for vessels acquired while already on charter, any sanctions-triggering activity. Moreover, our vessels' trade with the foregoing countries is infrequent, and the revenue we derive from such activity is de minimus. Additionally, our vessels are not chartered to entities that have been designated as sanctions targets by the United States or the European Union. The Company has not been involved in business to and from Cuba, Syria or the Sudan during the period of January 1 through December 31, 2012.

In an affirmative step to guard against violations and to prevent our vessels from engaging in any sanctions-triggering trade, we now include provisions in all of our new charters designed to prevent our charter parties from violating applicable laws relating to existing sanctions and from engaging in sanctions-triggering activity.

As it relates to Iran, the provisions in the charter parties/contracts for our vessels contain exclusions that prohibit the use of our vessels in unlawful and/or sanctions-triggering trade with Iran, or requesting our prior confirmation, not to be unreasonably withheld. Therefore, should any vessel be instructed by her time charterers to call in Iran and our confirmation is required, we ask our charterers to provide clear evidence that neither the transportation, loading nor discharge of the cargo, nor the parties involved, will result in or be subject to any sanctions, respectively. Furthermore, we provide this information to the vessel's Protection & Indemnity Association ("P&I Association"), a third party liability insurer, asking for legal and/or expert advice.

During 2013, the Newlead Markela, which was already subject to a long-term charter signed in 2007 before our 2010 acquisition of the vessel, and which did not contain the provisions/exclusions to prohibit the use of the vessel in sanctions-triggering trade with Iran, was instructed by her time charterers, who are disponent owners, to call at a port of Iran once and a port of Sudan once. In both cases, the charterers conducted the relevant due diligence in cooperation with their P&I Association in order to confirm that the loading, discharge and transportation of the cargo and the parties involved would not result in, or would not be subject to, any sanctions, respectively. Following this review, on January 24, 2013 the Newlead Markela arrived at Iran's Bandar Abbas port to load a cargo of about 54,304 MT of iron ore which was discharged to China, and departed on February 3, 2013. Neither the loading, discharge nor transportation of the cargo, nor the parties involved, were subject to any sanctions. Furthermore, on June 15, 2013, this same vessel called Port Sudan to discharge a cargo of about 62,984 MT of wheat which had been loaded at the port of Prince Rupert, Canada. Neither the loading, discharge nor transportation of the cargo, nor the parties involved, were subject to any sanctions. During 2012, the same vessel was instructed by her time charterers to call Iran twice. After the time charterers instructed the vessel to call Iran, we asked them to provide us with all necessary information regarding the ports of call, cargo and parties involved, in order to conduct the relevant due diligence. Furthermore, we referred to our P&I Association in order to confirm that the loading, discharge or transportation of the cargo and parties involved would not result in, or would not be subject to, any sanctions, respectively. The information was provided to our P&I Association and the facts were reviewed by a legal expert, appointed by the P&I Association, who advised that neither the transportation, loading nor discharge of the cargo nor the parties involved were subject to any sanctions. Furthermore, we presented all relevant information to our War Risks Association (in the form of a standard questionnaire), who, after reviewing the facts, insured the vessel for the proposed voyages. Therefore, on October 14, 2012, the vessel arrived at Bandar Imam Khomeini in order to discharge a cargo of 61,602,90 tons of maize in bulk which had been loaded in Paranagua, Brazil. The vessel departed from Bandar Imam Khomeini on October 23, 2012. On October 26, 2012, the vessel arrived at Bandar Abbas in order to load a cargo of 70,351,648 MT of iron ore in bulk and departed on the October 31, 2012. The vessel discharged the cargo of iron ore in Lianyungang, China. Neither the transport, loading nor discharge, nor the parties involved, were subject to any sanctions. In addition, during 2011, the same vessel was instructed by her time charterers to arrive in Iran from June 4 to June 14, 2011 in order to discharge approximately 60,000 tons of soya beans. Although this vessel arrived in Iran, neither the transportation nor discharge of the soya beans, nor the parties involved, were subject to any sanctions.

Despite the fact that we avoid any sanctioned activity with Iran and all other countries which are subject to sanctions, there is nevertheless some risk that the charter parties may engage in activity that could (indirectly) cause us to violate applicable law, expose us to sanctions under CISADA and any similar laws, and, as a consequence, cause reputational and other damage that could have a material adverse impact on our business and operations. Any such violation could result in fines, penalties, or other sanctions that could severely impact our ability to access U.S. capital markets and conduct our business, and could result in some investors deciding, or being required, to divest their interest, or not invest in us. Additionally, some investors may decide not to invest in our company simply because we do business with companies that do business in sanctioned countries. The determination by these investors not to invest in, or to divest from, our common shares may adversely affect the price at which our common shares trade. Moreover, our charterers may violate applicable sanctions and embargo laws and regulations as a result of actions that do not involve us or our vessels, and those violations could in turn negatively affect our reputation. In addition, our reputation and the market for our securities may be adversely affected if we engage in certain other activities, such as entering into charters with individuals or entities in countries subject to U.S. sanctions and embargo laws that are not controlled by the governments of those countries, or engaging in operations associated with those countries pursuant to contracts with third parties that are unrelated to those countries or entities controlled by their governments. Investor perception of the value of our common stock may be adversely affected by the consequences of war, the effects of terrorism, civil unrest and governmental actions in these and surrounding countries.

Where trade exclusions with respect to Iran do not exist in our charter parties, we affirmatively notify charterers of our vessels that they themselves could face sanctions if they use our vessels in sanctions triggering trade with Iran.

Because our management team has no experience in corporate ventures outside of the shipping industry, there is a risk that new business arrangements may fail.

The members of our management team have no experience operating a company outside of the shipping industry. As a result, our management's decisions and choices may not take into account standard approaches that companies in other industries in which we may try to enter commonly use. For example, management's inexperience in the commodities industry led to errors in the transaction in which we acquired 3,750 grams of nickel wire in exchange for common shares of the Company, which was subsequently unwound. For more information about our purchase of nickel wire, please see "Item 5.−Operating and Financial Review and Prospects−Recent Developments." Consequently, our operations, earnings and ultimate financial success could suffer irreparable harm due to management's lack of experience in business ventures outside of the shipping industry.

Risks Relating to Our Coal Business

During 2012, we entered into a variety of transactions in order to develop a commodities sector of our business. We have entered into a joint venture arrangement and we have established a new entity with J Mining & Energy Group for the purchase and trading of coal. As of August 30, 2013, our coal operations have not yet commenced.

Further, we have entered into agreements (i) to acquire title and mineral excavation rights to 7,695 acres of land in Kentucky, USA (ii) to acquire ownership and leasehold interests in 18,335 acres in Tennessee, USA containing coal and natural gas and other natural resources and (iii) to supply coal to certain creditworthy counterparties. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. As a result, our coal mining business has not yet commenced operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement. While we hope to finalize the acquisitions and begin mining operations as soon as possible, there is no assurance that our coal business will begin operating in the near future, or at all.

Our coal distribution business is operated as a joint venture. Our joint venture is restricted in operational flexibility and actions taken by our joint venture partners may negatively affect us and our ability to realize benefits from our joint venture.

In April 2012, our U.S. subsidiary entered into a joint venture arrangement with J Mining & Energy Group to purchase thermal coal (used in power plants for electricity generation and other industrial uses) located in Kentucky, USA. The joint venture has entered into agreements to purchase certain quantities of thermal coal with specified minimum qualities (after processing at the mine by the mine operator) over a five-year period. One of our subsidiaries and our joint venture partner each hold a 50% interest in the joint venture.

The joint venture agreement requires the joint venture to be managed by a board of managers that includes one representative from each of us and our joint venture partner. Since the managers representing a majority of the interests in the joint venture have the authority to constitute a valid act of the board, unless we acquire additional interests in the joint venture, the joint venture will only be able to take actions in which both we and our joint venture partner agree. Actions that would require such board action include, without limitation, the incurrence of debt, the issuance of securities, the sale of assets or the purchase of assets, and the determination of a budget and strategic business plan. As such, we will not have the flexibility to control the actions of the joint venture, even if we believe that taking such actions would be in the best interest of us and our joint venture.

Furthermore, we are limited in our ability to dispose of our interest in the joint venture. Prior to transferring our equity contribution in the joint venture, we would be required to comply with certain rights of first refusal of our joint venture partner. Upon the occurrence of certain events, such as our breach of the joint venture agreement or our being subject to bankruptcy proceedings, our partners will have the ability to require us to sell our interest to them.

Such limitations may have a negative effect on us and our joint venture. We may also enter into other joint venture arrangements in the future which could pose risks similar to risks described above.

We partially rely on third parties for the coal that we will sell to our customers. Disruptions in the quantities of coal produced by our coal suppliers could impair our ability to fill customer orders.

We partially rely on third party suppliers to source the coal that we will sell to our customers. Operational difficulties at mines operated by third parties from whom we purchase coal, changes in demand for contract miners from other coal producers and other factors beyond our control could affect the availability, pricing, and quality of coal produced for or purchased by us. Although our contractual agreements are long term in nature, such contractual arrangements by themselves cannot fully mitigate such risks related to sourcing our coal from third parties. Disruptions in the quantities of coal produced for or purchased by us could impair our ability to fill our customer orders or require us to purchase coal from other sources in order to satisfy those orders. If we are unable to fill a customer order or if we are required to purchase coal from other sources in order to satisfy a customer order, we could lose customers and our operating costs could increase.

We have not received the necessary financing to satisfy payment under our agreements to acquire the Kentucky and Tennessee properties, and there is no assurance we will do so in the near future, or at all.

We have entered into agreements (i) to acquire title and mineral excavation rights to approximately 7,695 acres of land in Kentucky, USA and (ii) to acquire ownership and leasehold interests in 18,335 acres in Tennessee, USA containing coal and natural gas and other natural resources. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. Certain parties to whom we owe obligations under these agreements previously agreed to forbear from pursuing the rights and remedies available to them under the terms of the agreements, subject to satisfactory completion of ongoing obligations to be performed by the Company. NewLead was required, among other things, to pay an aggregate of $0.85 million per month through May 2013, which payments were to be credited against a $66.0 million aggregate acquisition price. At that time, the initial aggregate acquisition price of the properties of approximately $40.0 million became payable in nine monthly installments. We have been unable to meet our obligations under these forbearance arrangements and are currently in default under such agreements. If such continued forbearance is not secured, the noteholders and/or sellers, as applicable, shall have the right to enforce any and all rights available to them, including recovery of the full amount of the obligations owed and foreclosure on collateral thereunder. The Company is currently seeking financing for the $66.0 million aggregate acquisition price. While NewLead signed a preliminary term sheet with a lending party to fund this acquisition, no assurance can be provided that this or any other party will be able to provide the financing required on favorable terms or in the timeline required under the forbearance arrangements, if at all. If appropriate financing is not secured, the transactions will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and any and all amounts owed.

We may be liable for the actions of third parties who may in the future extract commodities from properties owned by us.

The properties located in Kentucky and Tennessee include resources such as natural gas, timber, sand, gravel, fly ash and dimension stone. We expect third parties to extract some of these commodities on the properties and pay royalties to NewLead. If NewLead should enter into an agreement to acquire ownership of the properties, NewLead may liable for actions of third parties extracting commodities on NewLead's properties. If NewLead extracts the commodities itself, it would be liable for its activities related to its extraction operations.

Coal prices are subject to change and a substantial or extended decline in prices could materially and adversely affect our business, results of operations and financial position.

Our profitability depends upon the prices we receive for the coal we sell and the prices we pay for the coal we purchase. The contract prices for our purchases and sales of coal depend upon factors beyond our control, including the following:

- the domestic and foreign supply and demand for coal;
- the quantity and quality of coal available from coal producers;
- competition for production of electricity from non-coal sources, including the price and availability of alternative fuels;
- domestic and international air emission standards for coal-fueled power plants and the ability of coal-fueled power plants to meet these standards by installing scrubbers or other means;
- adverse weather, climatic or other natural conditions, including natural disasters;
- domestic and foreign economic conditions, including economic slowdowns;
- legislative, regulatory and judicial developments, environmental regulatory changes or changes in energy policy and energy conservation measures that would adversely affect the coal industry, such as legislation limiting carbon emissions or providing for increased funding and incentives for alternative energy sources;
- the proximity of our coal sources to, the capacity of and the cost of transportation and port facilities; and
- market price fluctuations for sulfur dioxide emission allowances.

A substantial or extended decline in the prices we receive for our future coal purchase and sales contracts could materially and adversely affect our business, results of operations and financial position.

Trends within the coal industry could put downward pressure on coal prices and, as a result, materially and adversely affect our revenues and profitability.

There are a number of coal producers in the United States for domestic sales. International demand for U.S. coal also affects the U.S. coal industry. The demand for U.S. coal exports depends upon a number of factors outside our control, including the overall demand for electricity in foreign markets, currency exchange rates, ocean freight rates, port and shipping capacity, the demand for foreign-priced steel, both in foreign markets and in the U.S. market, general economic conditions in foreign countries, technological developments and environmental and other governmental regulations. Foreign demand for U.S. coal has increased in recent periods. If foreign demand for U.S. coal were to decline, this decline could cause competition among coal producers for the sale of coal in the United States to intensify, potentially resulting in significant downward pressure on domestic coal prices.

In addition, during the mid-1970s and early 1980s, increased demand for coal attracted new investors to the coal industry, spurred the development of new mines and resulted in additional production capacity throughout the industry, all of which led to increased competition and lower coal prices. Increases in coal prices over the past several years have encouraged the development of expanded capacity by coal producers and may continue to do so. Any resulting overcapacity and increased production could materially reduce coal prices and therefore materially reduce our revenues and profitability.

Because the demand and pricing for coal is greatly influenced by consumption patterns of the domestic electricity generation industry and the worldwide steel industry, a reduction in the demand for coal by these industries would likely cause our revenues and profitability to decline significantly.

Demand for our coal and the prices that we will be able to obtain primarily will depend upon coal consumption patterns of the electric utility industry and the worldwide steel industry. Consumption by the utility industry is affected by the demand for electricity, environmental and other governmental regulations, technological developments and the price of competing coal and alternative fuel supplies including nuclear, natural gas, oil and renewable energy sources, including hydroelectric power. Demand by the electricity industry is impacted by weather patterns, overall economic activity and the associated demand for power by industrial users. Demand by the steel industry is primarily affected by economic growth and the demand for steel used in construction as well as appliances and automobiles. Any downward pressure on coal prices could have a negative impact on our business, results of operation and financial condition.

Electric utility deregulation is expected to provide incentives to generators of electricity to minimize their fuel costs and is believed to have caused electric generators to be more aggressive in negotiating prices with coal suppliers. To the extent utility deregulation causes our customers to be more cost-sensitive, deregulation may have a negative effect on our profitability.

The mining business is capital intensive and we may not be able to commence operations or have access to the capital required to reach full productive capacity at our future mines, should they become operational.

Our future mining operations, if any, are expected to be capital intensive due to construction of new infrastructure and maintenance of existing operations. Specifically, the exploration, permitting and development of coal reserves, mining costs, the maintenance of machinery and equipment and compliance with applicable laws and regulations may require substantial capital expenditures. We cannot assure you that we will be able to successfully commence any mining operations or be able to generate sufficient production levels or generate sufficient cash flow, or that we will have access to sufficient financing to commence or continue our production, exploration, permitting and development activities and we may be required to defer all or a portion of our future capital expenditures. The Company is currently seeking financing for the aggregate acquisition price of the Kentucky and Tennessee properties, and there is no assurance that we will secure the required financing to finalize the acquisitions or fund required capital intensive activities on a timely basis, or at all. Our results of operations, business and financial condition may be materially adversely affected if we cannot make such capital expenditures.

The use of alternative energy sources for power generation could reduce coal consumption by U.S. electric power generators, which could result in lower prices for our coal, which could negatively affect our business and results of operations.

The amount of coal consumed for U.S. electric power generation is affected by, among other things:

- the location, availability, quality and price of alternative energy sources for power generation, such as natural gas, fuel oil, nuclear, hydroelectric, wind, biomass and solar power; and
- technological developments, including those related to alternative energy sources.

Gas-fueled generation has the potential to displace coal-fueled generation, particularly from older, less efficient coal-powered generators. We expect that many of the new power plants needed to meet increasing demand for electricity generation will be fueled by natural gas because gas-fired plants are cheaper to construct and permits to construct these plants are easier to obtain as natural gas is seen as having a lower environmental impact than coal-fueled generators. In addition, state and federal mandates for increased use of electricity from renewable energy sources could have an impact on the market for our coal. Many states have enacted legislative mandates requiring electricity suppliers to use renewable energy sources to generate a certain percentage of power. There have been numerous proposals to establish a similar uniform, national standard although none of these proposals have been enacted to date. Possible advances in technologies and incentives, such as tax credits, to enhance the economics of renewable energy sources could make these sources more competitive with coal.

Any reduction in the amount of coal consumed by domestic electric power generators could reduce the price of coal that we sell, thereby reducing our revenues and materially and adversely affecting our business and results of operations.

Changes in the export and import markets for coal products could affect the demand for our coal, our pricing and our profitability.

We compete in a worldwide market. The pricing and demand for our coal is affected by a number of factors beyond our control. These factors include:

- currency exchange rates;
- growth of economic development;
- price of alternative sources of electricity or steel;
- worldwide demand; and
- ocean freight rates.

Any decrease in the amount of coal exported from the United States, or any increase in the amount of coal imported into the United States, could have a material adverse impact on the demand for our coal, our pricing and our profitability.

The availability and reliability of transportation facilities and fluctuations in transportation costs could affect the demand for our coal or impair our ability to supply coal to our customers.

We depend upon barge, ship, rail, truck and belt transportation systems, as well as seaborne vessels and port facilities, to receive coal from our coal supplier and to deliver coal to our customers. Disruptions in transportation services due to weather-related problems, mechanical difficulties, strikes, lockouts, bottlenecks, and other events could impair our ability to supply coal to our customers. We do not have long-term contracts with most of our transportation providers to ensure consistent and reliable service. Decreased performance levels over longer periods of time could cause our customers to look to other sources for their coal needs. In addition, increases in transportation costs, including the price of gasoline and diesel fuel, could make coal a less competitive source of energy when compared to alternative fuels or could make coal produced in one region of the United States less competitive than coal produced in other regions of the United States or abroad. If we experience disruptions in our transportation services or if transportation costs increase significantly and we are unable to find alternative transportation providers, our coal supply and delivery may be disrupted, and our profitability could decrease significantly.

Our profitability in part depends upon the coal supply agreements we have with our customers. Changes in purchasing patterns in the coal industry could make it difficult for us to extend our existing coal supply agreements or to enter into new agreements in the future.

We intend to sell a portion of our coal under longer-term coal supply agreements with terms greater than one year. We anticipate that such agreements may include terms that fix the prices of coal shipped during the initial year with adjustment provisions for the prices for later years. As a result, at any given time the market prices for similar-quality coal may exceed the prices for coal shipped under these arrangements. If we enter into such arrangements, changes in the coal industry may cause some of our customers not to renew or extend such long-term agreements or enter into new long-term coal supply agreements with us or to enter into agreements to purchase fewer tons of coal than in the past or on different terms or prices. In addition, uncertainty caused by federal and state regulations, including the Clean Air Act, could deter our customers from entering into long-term coal supply agreements.

If we sell a portion of our coal production under long-term coal supply agreements, our ability to capitalize on more favorable market prices may be limited. Conversely, at any given time we may be subject to fluctuations in market prices for the quantities of coal that we will produce without commitments. As described above in the risk factor titled "Coal prices are subject to change and a substantial or extended decline in prices could materially and adversely affect our business, results of operations and financial position," the market prices for coal may be volatile and may depend upon factors beyond our control. Our profitability may be adversely affected if we are unable to sell any of the coal we have sourced under our supply arrangements at favorable prices or at all.

Failure to meet certain provisions in our coal supply agreements could result in economic penalties.

Most of our coal supply agreements contain provisions requiring us to deliver coal meeting quality thresholds for certain characteristics such as heat value, sulfur content, ash content, hardness and ash fusion temperature. Failure to meet these specifications could result in economic penalties, including price adjustments, purchasing replacement coal in a higher priced open market, the rejection of deliveries or termination of the contracts. In some of the contract price adjustment provisions, failure of the parties to agree on price adjustments may allow either party to terminate the contract. Many agreements also contain provisions that permit the parties to adjust the contract price upward or downward for specific events, including inflation or deflation, and changes in the laws regulating the timing, production, sale or use of coal. Moreover, a limited number of these agreements permit the customer to adjust the price of the contract in the event of market changes in the coal industry, which would increase the price of coal beyond specified amounts.

Unexpected decreases in availability of supplies, such as equipment or raw materials, or increases in the costs thereof, could significantly impair our operating results.

Our operations are dependent on reliable supplies of mining equipment, replacement parts, explosives, diesel fuel, tires, magnetite and steel-related products (including roof bolts). If the cost of any mining equipment or key supplies increases significantly, or if they should become unavailable due to higher industry-wide demand or less production by suppliers, there could be an adverse impact on our cash flows, results of operations or financial condition.

Coal mining is subject to inherent risks and our operations may be affected by conditions or events beyond our control, which could cause our quarterly or annual results to deteriorate.

Our future coal mining operations will be subject to conditions or events beyond our control that could disrupt operations, affect production and the cost of mining for varying lengths of time and have a significant impact on our operating results. These conditions or events include:

- variations in thickness of the layer, or seam, of coal;
- variations in geological conditions;
- amounts of rock and other natural materials intruding into the coal seam;
- equipment failures and unexpected major repairs;
- unexpected maintenance problems;
- fires and explosions from methane and other sources;
- accidental mine water discharges or other environmental accidents;
- other accidents or natural disasters; and
- weather conditions.

A shutdown of the mines we intend to acquire or prolonged disruption of production or transportation of our coal to customers would result in a decrease in our revenues and profitability, which could be material. Our insurance does not cover every potential risk associated with our operations. Adequate coverage at reasonable rates is not always obtainable. In addition, our insurance may not fully cover our liability or the consequences of any business interruptions such as equipment failure or labor disputes. The occurrence of a significant event not fully covered by insurance could have an adverse effect on our business, results of operations, financial condition and prospects.

We face numerous uncertainties in estimating our economically recoverable coal reserves and inaccuracies in our estimates could result in lower than expected revenues, higher than expected costs and decreased profitability.

Forecasts of our future performance are based on, among other things, estimates of our future recoverable coal reserves, if any, on the properties we seek to acquire. Reserve information is typically based upon on engineering, economic and geological data assembled and analyzed by third parties. Reserve estimates as to both quantity and quality are generally updated from time to time to reflect production of coal from the reserves and new drilling or other data received. There are numerous uncertainties inherent in estimating quantities and qualities of coal and costs to mine recoverable reserves, including many factors beyond our control. Estimates of economically recoverable coal reserves necessarily depend upon a number of variable factors and assumptions, any one of which may, if incorrect, result in an estimate that varies considerably from actual results. These factors and assumptions include:

- Geologic and mining conditions, which may not be fully identified by available exploration data;
- Future coal prices, operating costs and capital expenditures;
- Severance and excise taxes, royalties and development;
- Future mining technology improvements;
- The effects of regulation by governmental agencies;
- Ability to obtain, maintain and renew all required permits;
- Employee health and safety; and
- Historical production from the area compared with production from other producing areas.

As a result, actual coal tonnage recovered from identified reserve areas or properties and revenues and expenditures with respect to our reserves may vary materially from estimates. These estimates thus may not accurately reflect our actual reserves. Any material inaccuracy in our estimates related to our reserves could result in lower than expected revenues, higher than expected costs or decreased profitability which could materially adversely affect our ability to pay distributions to our shareholders.

The success of our operations depends upon our ability to obtain necessary permits to mine all of our coal reserves.

These include permits issued by various federal, state and local agencies and regulatory bodies. The permitting rules, and the interpretations of these rules, are complex, change frequently, and are often subject to discretionary interpretations by the regulators, all of which may make compliance more difficult or impractical, and may possibly preclude the continuance of ongoing mine development or operations or the development of future mining operations. The public, including non-governmental organizations, anti-mining groups and individuals, have certain statutory rights to comment upon and submit objections to requested permits and environmental impact statements prepared in connection with applicable regulatory processes, and otherwise engage in the permitting process, including bringing citizens' claims to challenge the issuance or renewal of permits, the validity of environmental impact statements or performance of mining activities. Accordingly, required permits may not be issued in a timely fashion or renewed at all, or permits issued or renewed may not be maintained, may be challenged or may be conditioned in a manner that may restrict our ability to efficiently and economically conduct our mining activities, any of which would have a material adverse effect on our results of operations, business and financial position, as well as the ability to pay distributions to our shareholders.

Our operations could be adversely affected if we are unable to obtain required surety bonds.

Federal and state laws require bonds to secure our obligations to reclaim lands used for mining, to pay federal and state workers' compensation and to satisfy other miscellaneous obligations. Certain insurance companies, along with other participants in the coal industry, no longer provide surety bonds for workers' compensation and other post-employment benefits without collateral. We intend to satisfy our obligations under these statutes and regulations by providing letters of credit, cash collateral or other assurances of payment. However, letters of credit can be significantly more costly to us than surety bonds. If we are unable to secure surety bonds for these obligations in the future, and are forced to secure letters of credit indefinitely, our profitability may be negatively affected. On May 1, 2012, the Federal Office of Surface Mining Reclamation notified the State of Kentucky that it believes Kentucky's bonding program is insufficient. The resolution of this issue could cause bonding costs for new or existing operations to increase.

Extensive environmental regulations, including existing and potential future regulatory requirements relating to air emissions, affect our customers and could reduce the demand for coal as a fuel source and cause coal prices and sales of our coal to materially decline.

Coal contains impurities, including but not limited to sulfur, mercury, chlorine, carbon and other elements or compounds, many of which are released into the air when coal is burned. The operations of our customers are subject to extensive environmental regulation particularly with respect to air emissions. For example, the federal Clean Air Act and similar state and local laws extensively regulate the amount of sulfur dioxide, particulate matter, nitrogen oxides, and other compounds emitted into the air from electric power plants. A series of more stringent requirements relating to particulate matter, ozone, haze, mercury, sulfur dioxide, nitrogen oxide and other air pollutants are expected to be proposed or become effective in coming years. In addition, concerted conservation efforts that result in reduced electricity consumption could cause coal prices and sales of our coal to materially decline.

Considerable uncertainty is associated with these air emissions initiatives. The content of regulatory requirements in the United States is in the process of being developed, and many new regulatory initiatives remain subject to review by federal or state agencies or the courts. Stringent air emissions limitations are either in place or are likely to be imposed in the short to medium term, and these limitations will likely require significant emissions control expenditures for many coal-fueled power plants and other traditional users of coal. As a result, these power plants and other users of coal may switch to other fuels that generate fewer of these emissions or may install more effective pollution control equipment that reduces the need for low sulfur coal, possibly reducing future demand for coal and a reduced need to construct new coal-fueled power plants and other facilities that use coal. The EIA's expectations for the coal industry assume there will be a significant number of as yet unplanned coal-fired plants built in the future which may not occur. Any switching of fuel sources away from coal, closure of existing coal-fired plants, or reduced construction of new plants could have a material adverse effect on demand for and prices received for our coal.

Increased regulation relating to environmental protection , health and safety and other matters may impose significant costs on us, and future requirements could limit our ability to produce coal at a competitive price.

Our future mining operations will be subject to extensive federal, state and local regulations with respect to matters such as:

- employee health and safety;
- permitting and licensing requirements;
- air quality standards;
- water quality standards;
- plant, wildlife and wetland protection;
- blasting operations;

- the management and disposal of hazardous and non-hazardous materials generated by mining operations;
- the storage of petroleum products and other hazardous substances;
- reclamation and restoration of properties after mining operations are completed;
- discharge of materials into the environment, including air emissions and wastewater discharge;
- surface subsidence from underground mining; and
- the effects of mining operations on groundwater quality and availability.

Within the last few years the industry has seen enactment of the federal Mine Improvement and New Emergency Reponse Act ("MINER Act") and subsequent additional legislation and regulation imposing significant new safety initiatives and the Dodd-Frank Act imposing new mine safety information reporting requirements. Various states also have enacted their own new laws and regulations imposing additional requirements related to mine safety. The coal industry is also affected by significant legislation mandating specified benefits for retired miners. These new laws and regulations will cause us to incur substantial additional costs, which will adversely impact our operating performance.

Regulation of greenhouse gas emissions as well as uncertainty concerning such regulation could adversely impact the market for coal and the regulation of greenhouse gas emissions may increase our future operating costs and negatively affect us.

While climate change legislation in the U.S. is unlikely in the next several years, the issue of global climate change continues to attract considerable public and scientific attention with widespread concern about the impacts of human activity, especially the emissions of greenhouse gases (GHGs), such as carbon dioxide and methane. Combustion of fossil fuels, such as the coal and gas we produce, results in the creation of carbon dioxide emissions into the atmosphere by coal and gas end users, such as coal-fired electric power generation plants. Numerous proposals have been made and are likely to continue to be made at the international, national, regional and state levels of government that are intended to limit emissions of GHGs. Several states have already adopted measures requiring reduction of GHGs within state boundaries. Internationally, the Kyoto Protocol, which set binding emission targets for developed countries. Although the United States has not ratified the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change ("UNFCCC"), which became effective for many countries in 2005 and establishes a binding set of emission targets for greenhouse gases, the United States is actively participating in various international initiatives within and outside of the UNFCCC process to negotiate developed and developing nation commitments for GHG emission reductions and related financing. Regulation of GHGs could occur in the United States pursuant to the Environmental Protection Agency (EPA) regulation under the Clean Air Act. On December 23, 2010 the EPA announced that it will propose standards for GHG emissions for gas, oil and coal fired power plants in July 2011 and issue final standards in May 2012. These proposed standards were published in March 2012. Congress actively considered in the past, and may consider in the future, legislation that would establish a nationwide GHG emissions cap-and-trade or other market-based program to reduce GHG emissions. In advance of federal action, state and regional climate change initiatives, such as the Regional Greenhouse Gas Initiative of eastern states, the Western Regional Climate Action Initiative, and recently enacted legislation in California and other states are taking effect before federal action. In addition, some states and municipalities in the United States have adopted or may adopt in the future regulations on GHG emissions. Some states and municipal entities have commenced litigation in different jurisdictions seeking to have certain utilities reduce their emission of CO2.

Apart from governmental regulation, on February 4, 2008, three of Wall Street's largest investment banks announced that they had adopted climate change guidelines for lenders. The guidelines require the evaluation of carbon risks in the financing of electric power generation plants which may make it more difficult for utilities to obtain financing for coal-fired plants.

If comprehensive regulation focusing on GHGs emission reductions is adopted for the United States by the EPA or in other countries where we sell coal, or if utilities were to have difficulty obtaining financing in connection with coal-fired plants, it may make it more costly to operate fossil fuel fired (especially coal-fired) electric power generation plants and make fossil fuels less attractive for electric utility power plants in the future. Depending on the nature of the regulation or legislation, power generation through natural gas or other means could become more economically attractive than coal-fueled power generation. Apart from actual regulation, uncertainty over the regulation of GHG emissions may inhibit utilities from investing in the building of new coal-fired plants to replace older plants or investing in the upgrading of existing coal-fired plants. Any reduction in the amount of coal or possibly natural gas consumed by domestic electric power generators as a result of actual or potential regulation of greenhouse gas emissions could decrease demand for fossil fuels we intend to provide, thereby reducing our future revenues and materially and adversely affecting our business and results of operations. Our customers may also have to invest in carbon dioxide capture and storage technologies in order to burn coal or natural gas and comply with future GHG emission standards.

Our future mining operations may adversely impact the environment which could result in material liabilities to us.

The processes required to mine coal may cause certain impacts or generate certain materials that might adversely affect the environment from time to time. Certain of our future mining operations may use hazardous and other regulated materials and may generate hazardous wastes. We may be subject to claims under federal and state statutes and/or common law doctrines for penalties, toxic torts and other damages, as well as for natural resource damages and for the investigation and remediation of soil, surface water, groundwater, and other media under laws such as the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), commonly known as Superfund, or the Clean Water Act.

Liability may be strict, joint and several, so that we, regardless of whether we caused contamination, may be held responsible for more than our share of the contamination or other damages, or even for the entire share. These and other similar unforeseen impacts that our operations may have on the environment, as well as exposures to regulated materials or wastes associated with our operations, could result in costs and liabilities that could adversely affect us.

Because our management team has no experience in mineral exploration and does not have formal training specific to the technicalities of mineral exploration, there is a risk that our coal business may fail.

The members of our management team have no experience operating a mining company and do not have formal training as geologists, engineers or in the technical aspects of management of a mining company. As a result, our management's decisions and choices may not take into account standard engineering or managerial approaches that mining companies commonly use. In addition, we will have to rely on the technical services of others with expertise in mining in order for us to exploit our properties. If we are unable to contract for the services of such individuals, it will make it difficult and maybe impossible to pursue our business plan. Consequently, our operations, earnings and ultimate financial success could suffer irreparable harm due to management's lack of experience in this industry.

Certain of our customers may seek to defer contracted shipments of coal, which could affect our results of operations and liquidity.

In an economic downturn, certain customers may seek to delay shipments or request deferrals under existing agreements. There is no assurance that we will be able to resolve existing and potential deferrals on favorable terms, or at all. Any such deferrals may have an adverse effect on our business, results of operations and financial condition.

Our ability to collect payments from our customers could be impaired if their creditworthiness deteriorates.

Our ability to receive payment for coal sold and delivered depends on the continued creditworthiness of our customers. Many utilities have sold their power plants to non-regulated affiliates or third parties that may be less creditworthy, thereby increasing the risk we bear on payment default. These new power plant owners may have credit ratings that are below investment grade. In addition, some of our customers may be affected by the current economic downturn, which may impact their ability to fulfill their contractual obligations. Competition with other coal suppliers could force us to extend credit to customers and on terms that could increase the risk we bear on payment default. We may also enter into contracts to supply coal to energy trading and brokering companies under which those companies sell coal to end users. If the creditworthiness of the energy trading and brokering companies declines, this would increase the risk that we may not be able to collect payment for all coal sold and delivered to or on behalf of these energy trading and brokering companies. An inability to collect payment from these counterparties may materially adversely affect our results of operations, business and financial condition, as well as our ability to pay distributions to our shareholders.

We intend to operate our mines with a limited work force. Our ability to operate a mine efficiently and profitably could be impaired if we lose key personnel or fail to continue to attract qualified contractors.

We will manage our business with a number of key personnel at each location, including key contractors. In addition, to the extend and as our business develops and expands, we believe that our future success will depend greatly on our continued ability to attract and retain highly skilled and qualified personnel and contractors. We cannot be certain that we will be able to attract and retain qualified personnel and contractors in the future. Failure to retain or attract key personnel could have a material adverse effect on our results of operations, business and financial condition, as well as our ability to pay distributions to our shareholders.

We will operate our future mines with a work force that will be contracted through our operators. We do not expect our contractors' employees to be members of unions, but that work force may not remain non-union in the future.

We do not expect our contractors' employees to be represented under collective bargaining agreements. However, that work force may not remain non-union in the future, and proposed legislation such as the Employee Free Choice Act, could, if enacted, make union organization more likely. If some or all of our future operations were to become unionized, it could adversely affect our productivity, increase our labor costs and increase the risk of work stoppages at our mining complexes. In addition, even if we were to remain non-union, our operations may still be adversely affected by work stoppages at our facilities or at unionized companies, particularly if union workers were to orchestrate boycotts against our operations.

A shortage of skilled mining labor in the United States could decrease our future labor productivity and increase labor costs, which would adversely affect our future profitability.

Efficient coal mining using complex and sophisticated techniques and equipment requires skilled laborers, preferably with at least one year of experience, and proficiency in multiple mining tasks, including mining equipment maintenance. Any shortage of skilled mining labor reduces the productivity of experienced employees who must assist in training unskilled employees. If a shortage of experienced labor occurs, it could have an adverse impact on our labor productivity and costs and our ability to expand production in the event there is an increase in the demand for our coal, which could adversely affect our results of operations, business and financial condition, as well as our ability to pay distributions to our shareholders.

Failures of contractor-operated sources to fulfill the delivery terms of their contracts with us could adversely affect our operations and reduce our profitability.

Within our normal mining operations, we will utilize contract miners for all of our coal. If any of the contract miners with whom we contract went bankrupt or were otherwise unavailable to provide their services, our results of operations, business and financial condition, as well as our ability to pay distributions to our shareholders could be materially adversely affected. We expect that our future contract miners will pass their costs to us. Our profitability or exposure to loss on transactions or relationships such as these is dependent upon a variety of factors, including the reliability of the third-party; the price and financial viability of the third-party; our willingness to reimburse temporary cost increases experienced by the third-party; our ability to pass on cost increases to customers; our ability to substitute, when economical, third-party coal sources with internal production or coal purchased in the market; and other factors.

Competition within the coal industry may adversely affect our ability to sell coal and excess production capacity in the industry could put downward pressure on coal prices.

We will compete with other producers primarily on the basis of price, coal quality, transportation cost and reliability of delivery. We cannot assure you that competition from other producers will not adversely affect us in the future. The coal industry has experienced consolidation in recent years, including consolidation among some of our major competitors. As a result, a substantial portion of coal production is from companies that have significantly greater resources than we do. We cannot assure you that the result of current or further consolidation in the industry will not adversely affect us. In addition, potential changes to international trade agreements, trade concessions or other political and economic arrangements may benefit coal producers operating in countries other than the United States, where our mining operations will be located. We cannot assure you that we will be able to compete on the basis of price or other factors with companies that in the future may benefit from favorable trading or other arrangements. We compete directly for United States and international coal sales with numerous other coal producers located in the United States and internationally, in countries such as Australia, China, India, South Africa, Indonesia, Russia and Colombia. Increases in coal prices could encourage the development of expanded capacity by new or existing coal producers, which could result in lower coal prices. As a result, our results of operations, business and financial condition, as well as our ability to pay distributions to our shareholders may be materially adversely affected.

Major equipment and plant failures could reduce our ability to produce and ship coal and materially and adversely affect our results of operations.

We will depend on several major pieces of equipment and plants to produce and ship our coal, including, but not limited to, preparation plants and loadout facilities. If any of these pieces of equipment or facilities suffered major damage or were destroyed by fire, abnormal wear, flooding, incorrect operation, or otherwise, we may be unable to replace or repair them in a timely manner or at a reasonable cost which would impact our ability to produce and ship coal and materially and adversely affect our results of operations, business and financial condition and our ability to pay distributions to our shareholders.

Risks Relating to Our Common Shares

Our common shares could be delisted from the NASDAQ Global Select Market, which could negatively impact the price of our common shares and our ability to access the capital markets.

Our common shares are currently listed on the NASDAQ Global Select Market, or NASDAQ. Our ability to retain our listing is contingent upon compliance with NASDAQ listing requirements. The listing standards of NASDAQ provide, among other things, that a company may be delisted if the bid price of its stock decreases below $1.00 for a period of 30 consecutive business days and the company is unable to meet the minimum bid requirement within the period provided by NASDAQ Global Select Market.

As previously announced by us, on April 4, 2013, we received a letter from the NASDAQ Listing Qualifications Department notifying us that the minimum bid price per share for our common stock fell below $1.00 for a period of 30 consecutive business days and therefore we did not meet the minimum bid price requirement set forth in NASDAQ Listing Rule 5450(a)(1). We have been provided 180 calendar days, or until October 1, 2013, to regain compliance with the minimum bid price requirement. We can regain compliance if at any time during the 180-day period the closing bid price of our common stock is at least $1.00 for a minimum of 10 consecutive business days.

If we do not regain compliance with the minimum bid price rule by October 1, 2013, NASDAQ will provide written notification to us that our common stock will be delisted. At that time, we may appeal NASDAQ's delisting determination. Alternatively, we may be eligible for an additional grace period of 180 days if we satisfy all of the requirements, other than the minimum bid price requirement, for listing on the NASDAQ Capital Market set forth in NASDAQ Listing Rule 5505. We continue to monitor the closing bid price of our common stock and may, if appropriate, consider implementing available options to regain compliance with the minimum bid price requirement.

If our common stock is delisted by NASDAQ, our common stock may be eligible to trade on the OTC Bulletin Board or another over-the-counter market. Any such alternative would likely result in it being more difficult for us to raise additional capital through the public or private sale of equity securities and for investors to dispose of, or obtain accurate quotations as to the market value of, our common stock. In addition, there can be no assurance that our common stock would be eligible for trading on any such alternative exchange or markets. There can be no assurance that we will meet the requirements for continued listing on the NASDAQ or whether any application to the NASDAQ Capital Market will be approved or that any appeal would be granted by the Listing Qualifications Panel.

Further declines in the trading price of our common stock may cause us to fail to meet certain of the continuing listing standards of the NASDAQ, which could result in the delisting of our common shares. If our shares cease to be traded on the NASDAQ or on another national securities exchange, the price at which you may be able to sell your common shares of the company may be significantly less than their current trading price or you may not be able to sell them at all.

Our failure to prepare and file timely our periodic reports with the SEC limits us from accessing the public markets to raise debt or equity capital.

We did not file this Annual Report on Form 20-F for the fiscal year ended December 31, 2012 (the "Form 20-F") within the time frame required by the SEC. Following our entry into a Nickel Purchase Agreement with N.M. Kandilis S.A., PricewaterhouseCoopers Auditing Company S.A. ("PwC"), asked our audit committee to commence an independent investigation with the following scope: (i) conduct an investigation of the transaction between us and N.M. Kandilis S.A. within the scope of Section 10A of the Securities Exchange Act of 1934, as amended, (ii) investigate the origin of the 3,750 grams of nickel wire acquired by us (the "Nickel"), including its transfer from a Russian entity, its importation into the United Kingdom, the manner of its clearance through UK customs and whether N.M. Kandilis S.A. had proper title to the Nickel to effect the transaction, (iii) assess and report on the integrity of our management regarding the acquisition of the Nickel, (iv) assess whether we acquired legal ownership and good title of the Nickel and (v) advise as to any appropriate remedial action to be taken. The audit committee agreed with PwC's request, and hired Debevoise & Plimpton LLP ("Debevoise") to conduct the investigation. See "Item 5. Operating and Financial Review and Prospects—Recent Developments— Nickel Wire Transaction". Our and Debevoise's investigation into the transaction precluded us from filing our annual report on this As a result of our failure to file ourForm 20-F by the filing date required by the SEC (including the grace period permitted by Rule 12b-25 under the Securities Exchange Act of 1934, as amended). As a result, we are not eligible to use our current shelf registration statement on Form F-3 (or file a new Form F-3 registration statement) to conduct registered public offerings until our filings with the SEC have been timely made for a full year (assuming the other eligibility criteria are satisfied at that time). Our ineligibility to use Form F-3 during this time period will have a negative impact on our ability to quickly access the public capital markets because, if we wanted to raise capital on a registered basis, we would be required to file a long-form registration statement and wait for the SEC to declare such registration statement effective.

We may not be able to maintain our NASDAQ Global Select Market listing due to non-filing and/or late filing of periodic reports.

We had not filed our Form 20-F before the due date of April 30, 2013 and therefore did not comply with Nasdaq Listing Rule 5250(c)(1) for continued listing. Consequently, on May 16, 2013, we received a notice from NASDAQ (the "NASDAQ Letter") stating that we were not in compliance with NASDAQ Listing Rule 5250(c)(1) (the "Rule") because we did not timely file our Form 20-F with the SEC. NASDAQ Listing Rule 5250(c)(1), in pertinent part, requires us to timely file all required periodic reports and other documents with the SEC. The NASDAQ Letter requested that we submit a plan to regain compliance with the Rule by July 15, 2013.

On July 10, 2013, we submitted to NASDAQ a plan to regain compliance with the Rule. After reviewing the Company's plan to regain compliance, on August 5, 2013, NASDAQ granted an exception to enable the Company to regain compliance with the Rule. Under the terms of the exception, the Company must file its Form 20-F on or before September 2, 2013. As we are filing the Form 20-F before that date, we did not receive a notice of delisting of our common stock from NASDAQ.

Our restructuring efforts to strengthen our financial position and reduce our debt may adversely affect our common shareholders through dilution or complete loss in value.

We may continue to effect various transactions to restructure our capital structure and reduce our debt service obligations, which may include additional issuances of equity securities in exchange for our indebtedness. In addition, as part of the restructuring, certain of our indebtedness continues to remain outstanding, and the agreements relating to such indebtedness contain various restrictive covenants. Any debt that remains outstanding or we may incur as part of the continued restructuring will remain senior in right of payment over our common shares.

In connection with our restructuring efforts, we have issued an aggregate of approximately 421.0 million common shares from January 1, 2012 until August 30, 2013. At our option, subject to certain conditions, certain interest and principal payments of our indebtedness may be satisfied by issuing additional common shares of the Company (rather than in cash). Specifically, the 4.5% Note, which was issued to Prime in connection with the settlement of outstanding liabilities with Lemissoler, may be so satisfied. The 4.5% Note will bear interest at an annual rate of 4.5%, which is payable quarterly on March 1, June 1, September 1 and December 1 of each year (beginning on March 1, 2013), until maturity in December 2022 or upon earlier redemption, repurchase or conversion in accordance with its terms. The issuance of additional shares of our common stock may be dilutive to our stockholders, including holders who received common shares in any restructuring. We cannot predict the extent to which this dilution and the possibility of additional issuances and sales of our common shares will negatively affect the trading price or the liquidity of our common shares.

There may not be an active market for our common shares, which may cause our common shares to trade at a discount and make it difficult to sell the common shares you purchase.

We cannot assure you that an active trading market for our common shares will be sustained. We cannot assure you of the price at which our common shares will trade in the public market in the future or that the price of our shares in the public market will reflect our actual financial performance. You may not be able to resell your common shares at or above their current market price. Additionally, a lack of liquidity may result in wide bid-ask spreads, contribute to significant fluctuations in the market price of our common shares and limit the number of investors who are able to buy the common shares. The dry bulk market has been highly unpredictable and volatile. The market price of our common shares may be similarly volatile.

In preparing our consolidated financial statements for the fiscal year ended December 31, 2012, we and our independent public accounting firm identified material weaknesses in our internal control over financial reporting. If we fail to achieve or maintain effective internal control over financial reporting, we may be unable to accurately and timely report our financial results or prevent fraud, and our business, investor confidence and the market price of our shares may be adversely impacted.

In the course of the preparation and audit of our consolidated financial statements for the fiscal year ended December 31, 2012, we and our independent registered public accounting firm identified a number of deficiencies in our internal control over financial reporting, including three “material weaknesses” as defined in the standards established by the U.S. Public Company Accounting Oversight Board Standard. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. As a result of the material weaknesses, management also concluded that our internal control over financial reporting was not effective as of December 31, 2012.

The material weaknesses identified for the fiscal year ended December 31, 2012 were that (i) our failure to maintain sufficient accounting resources with adequate training in the application of GAAP commensurate with our financial reporting and the complexity of certain transactions relating to our restructuring and entering into new business, (ii) we did not have effective processes and controls to timely identify, capture and communicate relevant and financially significant information to the appropriate accounting personnel on a timely basis, resulting in an ineffective system for internal control over our financial statement closing process and creating a reasonable possibility of a material misstatement in our significant accounts and disclosures, and (iii) we did not follow proper due diligence controls when entering into transactions outside of the shipping industry, resulting in a material adjustment to our disclosures in the initial drafts of the financial statements.

We have, and we plan to initiate the following corrective actions, which management believes are reasonably likely to remediate the material weaknesses identified above:

- We are in the process of further enhancing our internal finance and accounting organizational structure and we have retained consultants with the necessary technical expertise.

- We are in the process of enhancing the supervisory procedures to include additional levels and quality control reviews within the accounting and financing functions.

- We are in the process of expanding and clarifying existing controls regarding accumulation of significant information and its dissemination to the accounting function, as well as creating checklists to ensure completeness, accuracy, and timeliness of such information.

- We are in the process of expanding and clarifying existing controls regarding acquisitions outside the shipping business by creating detailed checklists that need to be followed before management enters in such transactions.

We are not in position at this time to assess if all of the above plans will be implemented and operate successfully by year-end. We may not be successful in our efforts to enhance our systems, accounting, controls and reporting performance and there can be no assurance that our disclosure controls and procedures will be effective in preventing a material weakness or significant deficiency in internal control over financial reporting from occurring in the future. This could impact the reliability of our financial statements and prevent us from complying with SEC rules and regulations and the requirements of the Sarbanes-Oxley Act of 2002. Any such lapses or deficiencies may materially and adversely affect our business and results of operations or financial condition, restrict our ability to access the capital markets, affect the price of our stock, require us to expend resources to correct the lapses or deficiencies, expose us to regulatory or legal proceedings, harm our reputation, or otherwise cause a decline in investor confidence.

Michail S. Zolotas, our Chairman and Chief Executive Officer, beneficially owns approximately 47.0% of our outstanding common shares and, as a result, he is able to influence the outcome of shareholder votes.

As of August 30, 2013, Michail S. Zolotas, our Chairman, Chief Executive Officer and member of our Board of Directors, beneficially owns approximately 47.0% of our outstanding common shares through his ownership of common shares directly and indirectly through Focus Maritime Corp., Grandunion Inc., or "Grandunion", and other entities affiliated with Mr. Zolotas. For so long as Mr. Zolotas beneficially owns a significant percentage of our outstanding common shares, he will be able to control or influence the outcome of any shareholder vote, including the election of directors, the adoption or amendment of provisions in our memorandum of association or bye-laws and possible recapitalizations, amalgamations, mergers, corporate control contests and other significant corporate transactions. This concentration of beneficial ownership may have the effect of delaying, deferring or preventing a change in control, recapitalization, amalgamation, merger, consolidation, takeover or other business combination. This concentration of beneficial ownership could also discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, which could in turn have an adverse effect on the market price of our common shares. In addition, this concentration of beneficial ownership has had, and may continue to have, an adverse effect on the liquidity of our common shares.

Anti-takeover provisions in our constitutional documents and in our loan/financing agreements could have the effect of discouraging, delaying or preventing a recapitalization, amalgamation, merger or acquisition or other business combination, which could adversely affect the market price of our common shares.

Several provisions of our bye-laws and/or the loan/financing agreements to which we are party could discourage, delay or prevent a recapitalization or acquisition that shareholders may consider favorable. These include provisions:

- authorizing our board of directors to issue "blank check" preference shares without shareholder approval;

- establishing a classified board of directors with staggered, three-year terms;

- prohibiting us from engaging in a "business combination" with an "interested shareholder" for a period of three years after the date of the transaction in which the person becomes an interested shareholder unless certain conditions are met;

- not permitting cumulative voting in the election of directors;

- authorizing the removal of directors only for cause and only upon the affirmative vote of the holders of at least 80% of our outstanding common shares;

- limiting the persons who may call special meetings of shareholders to our board of directors, subject to certain rights guaranteed to shareholders under the BCA;

- requiring Grandunion, or our former chairman Nicholas Fistes and Michail Zolotas, to maintain directly or indirectly, legal and beneficial ownership of not less than 10% of the issued and outstanding share capital of the Company (whereas in two loan agreements the requirement is for Michail Zolotas and Nicholas Fistes to maintain, directly or indirectly, legal and beneficial ownership of not less than 33.3% of the issued and outstanding share capital of the Company);

- requiring our former chairman Nicholas Fistes and Michail Zolotas to be at any given time the beneficial owners of at least 50.1% of the voting share capital of Grandunion;

- requiring our former chairman Nicholas Fistes and Michail Zolotas to remain at any given time the Chairman, and the President and Chief Executive Officer of the Company, respectively;

- establishing advance notice requirements for nominations for election to our board of directors and for proposing matters that can be acted on by shareholders at our shareholder meetings; and

- requiring Michail Zolotas to be at any given time the beneficial owner of at least 20% of the issued and outstanding shares of the Company, requiring Michail Zolotas to remain at any given time the Chief Executive Officer of the Company and requiring that the current Chief Financial Officer of the Company remain in such position.

Despite our efforts to restructure our credit facility with Piraeus Bank (CPB loan), we have not been able to do so successfully. As a result, the resignation of Nicholas Fistes, among other actions, has caused us to default under certain of the provisions under this credit facility, as described above. While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness , and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations. These provisions could have the effect of discouraging, delaying or preventing a recapitalization, amalgamation, merger or acquisition, which could adversely affect the market price of our common shares.

Our board of directors has determined to suspend the payment of cash dividends in order to preserve capital and to allow management to focus on improving our operating results, and until conditions improve in the international shipping industry and credit markets, management will continue to evaluate whether to reinstate the payment of dividends.

On September 12, 2008, our board of directors determined to immediately suspend payment of our quarterly dividend. The decision followed our management's strategic review of our business and reflected our focus on improving our long-term strength and operational results. We will make dividend payments to our shareholders only if our board of directors, acting in its sole discretion, determines that such payments would be in our best interest and in compliance with relevant legal and contractual requirements. The principal business factors that our board of directors expects to consider when determining the timing and amount of dividend payments will be our earnings, financial condition and cash requirements at the time. Currently, the principal contractual and legal restrictions on our ability to make dividend payments are those contained in various credit facilities and those required by Bermuda law.

Our debt agreements contain covenants that limit our ability to pay dividends. For example, our credit facility with Piraeus Bank (CPB loan) prohibits us from paying dividends without our lender's consent. Our facility agreements further require us to maintain financial ratios and minimum liquidity and working capital amounts.

Under Bermuda law, we may not declare or pay dividends if there are reasonable grounds for believing that (1) we are, or would after the payment be, unable to pay our liabilities as they become due or (2) the realizable value of our assets would thereby be less than our liabilities. Consequently, events beyond our control, such as a reduction in the realizable value of our assets, could cause us to be unable to make dividend payments.

We may incur other expenses or liabilities that would reduce or eliminate the cash available for distribution as dividends in the future. We may also enter into new agreements or new legal provisions may be adopted that will restrict our ability to pay dividends in the future. As a result, we cannot assure you that we will be able to reinstate the payment of dividends.

Item 4. Information on the Company

A. History and Development of the Company

The legal and commercial name of the Company is NewLead Holdings Ltd., a company incorporated under the BCA on January 12, 2005. NewLead's principal place of business is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38 and its telephone number is (+30) 213-014-8600.

NewLead has historically been an international shipping company, and is now an international, vertically integrated shipping and commodity company. NewLead engages in the transportation of refined products, such as gasoline and jet fuel, and dry bulk goods, such as iron ore, coal and grain. We conduct our operations through vessel-owning companies whose principal activity is the ownership and/or operation of product tankers and dry bulk vessels. In addition, under specific management agreements, we perform part of the commercial, technical and operational management of vessels outside of our owned fleet. NewLead currently owns a fleet of two dry bulk carriers with a combined carrying capacity of approximately 0.15 million dwt and manages two double-hulled oil tanker/asphalt carriers. We seek to provide our customers with safe, reliable and environmentally sound seaborne transportation services that meet stringent internal and external standards while endeavoring to capitalize on the dynamics of the shipping industry.

In addition, NewLead has recently launched a commodities unit in order to take advantage of emerging dynamics in the maritime industry. We engage in the business of purchasing, trading and transporting commodities, principally coal, through certain joint venture affiliates. NewLead has also entered into agreements for the ownership of certain title and mineral excavation rights to land in Kentucky, as well as rights, title, permits and leases in coal mines in Tennessee. The Company is currently in default under such agreements. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. The properties in Kentucky and Tennessee also include natural gas wells and projects relating to extraction of timber, sand, gravel, fly ash and dimension stone. We expect third parties to extract some of these commodities on the properties and pay royalties. In connection with the potential acquisition of the two properties, the Company hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement. As of August 30, 2013, our coal mining business has not yet commenced operations. While we hope to finalize the acquisitions and begin mining operations as soon as possible, there is no assurance that our coal business will begin operating in the near future, or at all.

Furthermore, on January 4, 2013, we acquired 3,750 grams of nickel wire (the "Nickel") in exchange for 258.5 million common shares of the Company.We intended to use the Nickel as collateral for funding our capital-intensive activities and to provide a platform upon which to execute our diversified growth strategy. On May 24, 2013, the transaction was unwound whereby the nickel wire was returned to the seller and the shares issued in the transaction cancelled. (See "Item 3.—Key Information—Recent Developments" and "Item 5.—Operating and Financial Review and Prospects—Recent Developments" for a detailed discussion of the specific transaction).

Due to the economic conditions and operational difficulties of the Company, we entered into restructuring discussions with each of the lenders under our facility and credit agreements, the holders of our 7% Notes and the counterparties to our capital leases. See "Item 5.—Operating and Financial Review and Prospects—Liquidity and Capital Resources" for a detailed discussion. To date, we have completed our Restructuring, except for the credit facility with Piraeus Bank (CPB loan). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank, our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. As such, there can be no assurance that a satisfactory final agreement will be reached Piraeus Bank (CPB loan) in any future efforts outside of the Restructuring, or at all. To date, we are also in default under the terms of the 4.5% Note, the Portigon AG Credit Facility and in the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders. During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring. As a result, as of August 30, 2013, we own two dry bulk carriers.

Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of beneficial conversion feature, or BCF, related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interests payable and including (i) the facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Note, (iii) the issuance of the up to $1.0 million Good Faith Note and (iv) the issuance of the Tiger Note.

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by Investment Bank of Greece ("IBG")
- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations.

2009 Recapitalization

On October 13, 2009, we completed an approximately $400.0 million recapitalization, which resulted in Grandunion acquiring control of the Company. Pursuant to the Stock Purchase Agreement entered into on September 16, 2009, Grandunion, a company controlled by Michail S. Zolotas, acquired 1,581,483 newly issued common shares of the Company in exchange for three dry bulk carriers. Of such shares, 222,223 were transferred to Rocket Marine, a company controlled by two former directors, in exchange for Rocket Marine and its affiliates entering into a voting agreement with Grandunion.

The voting agreement between Rocket Marine Inc. and Grandunion expired on February 29, 2012. As a result, these shares of Rocket Marine Inc. are no longer included in the beneficial ownership of Mr. Zolotas or Grandunion. In connection with the recapitalization, the Company issued $145.0 million in aggregate principal amount of 7% Notes. The 7% Notes were convertible into common shares at a conversion price of $9.00 per share, subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin offs and other events. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, the Company's Chairman, Chief Executive Officer and member of our Board of Directors, converted $20.0 million of the 7% Notes into approximately 2.2 million new common shares. On July 2, 2012, we entered into an agreement with Focus Maritime Corp. for the conversion of its remaining $124.9 million of the 7% Notes, together with interest accrued thereon and future interest payments of approximately $199.8 million in the aggregate, and an additional fee of $17.5 million payable to Focus Maritime Corp. as an inducement for the conversion, into approximately 264.9 million common shares of the Company. The shares were issued on July 16, 2012. As a result, in the aggregate, $0.1 million of the 7% Notes held by IBG remain outstanding. Upon the successful completion of the recapitalization and the appointment of new management, we subsequently changed our name to NewLead Holdings Ltd.

Name Change and Amended Bye-Laws

NewLead Holdings Ltd. was incorporated on January 12, 2005 under the name "Aries Maritime Transport Limited" and, on December 21, 2009, upon the receipt of shareholder approval, the Company changed its name to NewLead Holdings Ltd. at which time the Company changed its trading symbol on the NASDAQ Stock Market to "NEWL." In addition, upon the receipt of shareholder approval at the same special general meeting, the Company adopted a change to its bye-laws to permit written resolutions to be approved by a majority of the shareholders rather than unanimously.

B. Business Overview

Owned Fleet

We have long-established charter relationships which we believe are well regarded within the international shipping community. Our management's assessment of a charterer's financial condition and reliability is an important factor in negotiating employment of our vessels. The Company has established stringent requirements for selecting qualified charterers that are being practiced and adhered to.

As discussed in more detail elsewhere in this annual report, we have completed our Restructuring, except for the credit facility with Piraeus Bank (CPB loan). During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring. The fleet of two vessels consists of dry bulk carriers totaling 0.15 million dwt. with an average age of 17.5 years. As of December 31, 2012, we had contracted a minimum of 65%, 55%, 79% and 22% of our available days on a charter-out-basis for 2013, 2014, 2015 and thereafter, respectively. As a result, as of such date, we had a minimum of $26.3 million of total contracted revenue through 2018. The employment profile of the fleet as of August 30, 2013 is reflected in the table below:

Vessel Name	Size (dwt)	Vessel Type	Year Built	Charter Expiration	Net Daily Charter Hire Rate	
Dry bulk Vessels						
Newlead Victoria	75,966	Panamax	2002	June 2018	Fixed rate at $11,700 per day until December 29, 2014; $12,724 from December 30, 2014 until December 29, 2015; $12,919 from December 30, 2015 until December 29, 2017; and $13,016 from December 30, 2017 until June 29, 2018	(1)
Newlead Markela	71,733	Panamax	1990	min: February 2014 max: June 2014	Fixed rate at $7,800 per day	(2)

(1) Profit sharing 60% based on open book accounting on actual earnings and to be paid quarterly. Owners have the right of earlier redelivery of the vessel, provided that they have given charterers 120 days notice.

(2) Profit sharing 50% based on open book accounting on actual earnings and to be paid yearly.

Coal Sale Purchase Agreements (Sale Agreements)

As of December 31, 2012, excluding any Sale Purchase Agreements which existed on December 31, 2012, but which were cancelled prior to the date of the filing of this annual report, New Lead JMEG LLC, a joint venture affiliate of the Company, has entered into a Sale Purchase Agreement with a third party to sell 0.8 million tons of thermal coal, or approximately $69.4 million of total contracted revenue (subject to a variation of 10% in agreed tonnage supply), for a period of one year after the commencement date of this agreement, which is considered to be the first shipment of coal under the agreement. Shipments of coal under this Sale Purchase Agreement are expected to commence during the fourth quarter of 2013 or as otherwise agreed.

In January and February 2013, New Lead JMEG LLC also entered into three Sale Purchase Agreements with two third parties to supply approximately $806.1 million of thermal coal, which were subject to a variation of 5-10% in agreed tonnage supply, located in Kentucky, USA. In May and July 2013, New Lead JMEG LLC received notices of termination on the two of those Sale Purchase Agreements to supply approximately $245.1 million of thermal coal to one of the third parties due to ongoing defaults by New Lead JMEG LLC under the agreements. The third Sale Purchase Agreement was orally terminated by both parties due to ongoing defaults by New Lead JMEG LLC under the agreement. As of August 30, 2013, the buyers of all three Sale Purchase Agreements have not initiated any actions against New Lead JMEG LLC based upon such defaults.

Coal Sale Purchase Agreements (Purchase Agreements)

As of December 31, 2012, New Lead JMEG LLC entered into two Sale Purchase Agreements with a third party to purchase thermal coal from Kentucky, USA. The commencement period of the agreements, which were revised on March 17, 2013, is considered to be the first shipment of coal, which is expected to take place during the fourth quarter of 2013 or as otherwise agreed.

The commitments as of December 31, 2012 were (in millions):

BTU	Year	Amount
12,300	1	$ 47.0
12,300	2	64.4
12,300	3	64.4
12,300	4	64.4
12,300	5	64.4
		304.6
10,800	1	40.2
10,800	2	54.9
10,800	3	54.9
10,800	4	54.9
10,800	5	54.9
		259.8

	$	564.4

THE SHIPPING INDUSTRY

Fleet Management

Newlead Shipping S.A. (“Newlead Shipping”), a subsidiary of NewLead, and certain of its subsidiaries provide technical and commercial management services to product tanker vessels. Newlead Bulkers S.A. (“Newlead Bulkers”), which is a subsidiary of Newlead Shipping, provides technical and commercial management services to our dry bulk vessels. As of December 31, 2012 and August 30, 2013, the commercial and technical management services of all of our owned vessels are managed in-house. In addition, under specific management agreements, we perform part of the commercial, the technical and the operational management of vessels outside of our owned fleet.

The vessel-owning companies of the vessels Newlead Avra (formerly Altius), Newlead Fortune (formerly Fortius), High Land, High Rider and Ostria had technical ship management agreements with International Tanker Management Limited (” ITM”). The agreed annual management fees were approximately $0.165 million per vessel for 2010. During the year ended December 31, 2010, the vessel owning companies of Newlead Avra and Newlead Fortune terminated their ship management agreements with ITM. Accordingly, the vessel owning companies of such vessels have signed agreements for the provision of both technical and commercial ship management services with Newlead Shipping.

The Chinook had a technical ship management agreement with Ernst Jacob, which was terminated upon the sale of the vessel on April 15, 2010. In January 2010, the vessel owning company of the Nordanvind also signed a technical ship management agreement with Ernst Jacob, which was terminated upon the sale of the vessel on September 7, 2010. The annual management fees per vessel for 2010 was approximately €153,000 (equal to approximately $0.2 million per vessel).

The Australia had a commercial and technical ship management agreement with Stamford Navigation Inc., or Stamford, and the China and the Brazil each had a commercial and technical ship management agreement with Newfront Shipping S.A., or Newfront. During the first quarter of 2010, these agreements were terminated. Accordingly, the vessel owning companies signed agreements for the provision of commercial and technical ship management services with Newlead Bulkers.

Crewing and Employees

As of December 31, 2012, all of our employees (except for Mr. Zolotas, our Chairman, Chief Executive Officer and member of our Board of Directors who is employed by NewLead Holdings Ltd.) were employed by our wholly-owned subsidiaries, Newlead Shipping and Newlead Bulkers, which employed 16 persons and 15 persons, respectively, all of whom are shore-based. We employ an average of 22 crew members per vessel owned.

Our technical managers ensure that all seamen have the qualifications and licenses required to comply with international regulations and shipping conventions and that our vessels employ experienced and competent personnel. All of the employees of our managers are subject to a general collective bargaining agreement covering employees of shipping management companies. These agreements set industry-wide minimum standards.

Inspection by a Classification Society

Our vessels have been certified as being “in class” by Bureau Veritas and RINA, each of which is a member of the International Association of Classification Societies. Every commercial vessel’s hull and machinery is evaluated by a classification society authorized by its country of registry. The classification society certifies that the vessel has been built and maintained in accordance with the rules of the classification society and complies with applicable rules and regulations of the vessel’s country of registry and the international conventions of which that country is a member. Each vessel is inspected by a surveyor of the classification society in three surveys of varying frequency and thoroughness: every year for the annual survey, every two to three years for intermediate surveys and every four to five years for special surveys. Should any defects be found, the classification surveyor will issue a “recommendation” for appropriate repairs, which have to be made by the shipowner within the time limit prescribed. Vessels may be required, as part of the annual and intermediate survey process, to be dry-docked for inspection of the underwater portions of the vessel and for necessary repair stemming from the inspection. Special surveys always require dry-docking. Our fleet is currently enrolled with Bureau Veritas and RINA.

Competition

We operate in shipping markets that are diversified, highly competitive and highly fragmented. Our business fluctuates in line with the main patterns of trade of the major dry bulk cargoes and varies according to changes in the supply and demand for these items. We compete for charters on the basis of price, vessel location, size, age and condition of the vessel, as well as on our reputation as an operator. We typically arrange our charters in the period market through the use of brokers, who negotiate the terms of the charters based on market conditions. We compete primarily with owners of dry bulk ships. As of July 2013, the world’s active dry bulk fleet consists of approximately 9,700 vessels, aggregating approximately 702 million dwt. To the extent we seek to charter out our vessels, it is likely that we will face substantial competition for long term charter business from a number of experienced companies. Many of these competitors will have significantly greater financial resources than we do. It is also likely that we will face increased numbers of competitors entering into our transportation sectors, including in the dry bulk sector. Many of these competitors have strong reputations and extensive resources and experience. Increased competition may cause greater price competition, especially for long term charters.

Environmental and Other Regulations

Government regulation significantly affects the ownership and operation of our fleet. We are subject to various international conventions, laws and regulations in force in the countries in which our vessels may operate or are registered. Compliance with such laws, regulations and other requirements can entail significant expense, including vessel modification and implementation of certain operating procedures. Noncompliance with such regulations and requirements could result in the imposition of substantial penalties or require us to incur substantial costs or temporarily suspend operations of one or more of the vessels in our fleet.

A variety of governmental and private entities subject our vessels to both scheduled and unscheduled inspections. These entities include the local port authorities (applicable national authorities, such as the U.S. Coast Guard and harbor masters), classification societies, flag state administration (country of registry) and charterers, particularly terminal operators, and oil companies. Some of these entities require us to obtain permits, licenses, certificates and other authorizations for the operation of our fleet. Our failure to maintain necessary permits or approvals could result in imposition of substantial penalties or require us to incur substantial costs or temporarily suspend operation of one or more of the vessels in our fleet.

Heightened levels of environmental and quality concerns among insurance underwriters, regulators and charterers have led to greater inspection and safety requirements on all vessels and may accelerate the scrapping of older vessels throughout the industry. Increasing environmental concerns have created a demand for vessels that conform to stricter environmental standards. We are required to maintain operating standards for all of our vessels emphasizing operational safety, quality maintenance, continuous training of our officers and crews and compliance with applicable local, national and international environmental laws and regulations. We believe that the operation of our vessels is in compliance with applicable environmental laws and regulations and that our vessels have all material permits, licenses, certificates or other authorizations necessary for the conduct of our operations; however, because such laws and regulations are frequently changed and may impose increasingly stricter requirements, we cannot predict the ultimate cost of complying with these requirements, or the impact of these requirements on the resale value or useful lives of our vessels. In addition, a future serious marine incident that results in significant oil pollution or otherwise causes significant adverse environmental impact could result in additional legislation or regulation that could negatively affect our business, results of operations and financial condition.

International Maritime Organization

The IMO has negotiated a number of international conventions concerned with preventing, reducing or controlling pollution from ships. These fall into two main categories, consisting firstly of those concerned generally with ship safety standards, and secondly of those specifically concerned with measures to prevent pollution. The primary IMO regulations are discussed below.

The IMO continues to review and introduce new regulations. It is difficult to accurately predict what additional regulations, if any, may be passed by the IMO in the future and what effect, if any, such regulations might have on our operations.

Vessel Construction and Safety Requirements

The IMO has adopted MARPOL, which implements standards for the control, minimization or elimination of accidental, deliberate, or negligent discharge of oil, garbage, noxious liquids, harmful substances in packaged forms, sewage and air emissions. MARPOL contains regulations for the prevention of pollution by oil (Annex I), by noxious liquid substances in bulk (Annex II), by harmful substances in packaged forms within the scope of the International Maritime Dangerous Goods Code (Annex III), by sewage (Annex IV), by garbage (Annex V), and by air emissions (Annex VI). These regulations, which have been implemented in many jurisdictions in which our vessels operate, provide, in part, that:

- 25-year-old tankers must be of double-hull construction or of a mid-deck design with double-sided construction, unless:

  (1) they have wing tanks or double-bottom spaces not used for the carriage of oil which cover at least 30% of the length of the cargo tank section of the hull or bottom; or

  (2) they are capable of hydrostatically balanced loading (loading less cargo into a tanker so that in the event of a breach of the hull, water flows into the tanker, displacing oil upwards instead of into the sea);

- 30-year-old tankers must be of double-hull construction or mid-deck design with double-sided construction; and

- all tankers will be subject to enhanced inspections.

Also, under IMO regulations, a newbuild tanker of 5,000 dwt and above must be of double-hull construction or a mid-deck design with double-sided construction or be of another approved design ensuring the same level of protection against oil pollution if the tanker:

- is the subject of a contract for a major conversion or original construction on or after July 6, 1993;

- commences a major conversion or has its keel laid on or after January 6, 1994; or

- completes a major conversion or is a newbuilding delivered on or after July 6, 1996.

Effective September 2002, the IMO accelerated its existing timetable for the phase-out of single-hull oil tankers. At the time, these regulations required the phase-out of most single-hull oil tankers by 2015 or earlier, depending on the age of the tanker and whether it has segregated ballast tanks. Under the regulations, the flag state may allow for some newer single-hull ships registered in its country that conform to certain technical specifications to continue operating until the 25th anniversary of their delivery. Any port state, however, may deny entry of those single-hull tankers that are allowed to operate until their 25th anniversary to ports or offshore terminals.

However, as a result of the oil spill in November 2002 relating to the loss of the MT Prestige, which was owned by a company not affiliated with us, in December 2003, the Marine Environmental Protection Committee of the IMO, or MEPC, adopted an amendment to the MARPOL Convention, which became effective in April 2005. The amendment revised an existing Regulation 13G accelerating the phase-out of single-hull oil tankers and adopted a new Regulation 13H on the prevention of oil pollution from oil tankers when carrying heavy grade oil.

Under the revised regulations, a flag state may permit continued operation of certain Category 2 or 3 tankers beyond their phase-out date in accordance with the above schedule. Under Regulation 13G, the flag state may allow for some newer single-hull oil tankers registered in its country that conform to certain technical specifications to continue operating until the earlier of the anniversary of the date of delivery of the vessel in 2015 or the 25th anniversary of their delivery. Under Regulations 13G and 13H, as described below, certain Category 2 and 3 tankers fitted only with double bottoms or double sides may be allowed by the flag state to continue operations until their 25th anniversary of delivery. Any port state, however, may deny entry of those single-hull oil tankers that are allowed to operate under any of the flag state exemptions.

In October 2004, the MEPC adopted a unified interpretation of Regulation 13G that clarified the delivery date for converted tankers. Under the interpretation, where an oil tanker has undergone a major conversion that has resulted in the replacement of the fore-body, including the entire cargo carrying section, the major conversion completion date shall be deemed to be the date of delivery of the ship, provided that:

- the oil tanker conversion was completed before July 6, 1996;

- the conversion included the replacement of the entire cargo section and fore-body and the tanker complies with all the relevant provisions of the MARPOL Convention applicable at the date of completion of the major conversion; and

- the original delivery date of the oil tanker will apply when considering the 15 years of age threshold relating to the first technical specifications survey to be completed in accordance with the MARPOL Convention.

In December 2003, the MEPC adopted a new Regulation 13H on the prevention of oil pollution from oil tankers when carrying heavy grade oil, or HGO, which includes most grades of marine fuel. The new regulation bans the carriage of HGO in single-hull oil tankers of 5,000 dwt and above after April 5, 2005, and in single-hull oil tankers of 600 dwt and above but less than 5,000 dwt, no later than the anniversary of their delivery in 2008.

Under Regulation 13H, HGO means any of the following:

- crude oils having a density at 15˚C higher than 900 kg/m3;

- fuel oils having either a density at 15˚C higher than 900 kg/m3 or a kinematic viscosity at 50˚C higher than 180 mm2/s; or

- bitumen, tar and their emulsions.

Under Regulation 13H, the flag state may allow continued operation of oil tankers of 5,000 dwt and above, carrying crude oil with a density at 15˚C higher than 900 kg/m3 but lower than 945 kg/m3, that conform to certain technical specifications and if, in the opinion of the flag state, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship, provided that the continued operation shall not go beyond the date that is 25 years after the date of its delivery. The flag state may also allow continued operation of a single-hull oil tanker of 600 dwt and above but less than 5,000 dwt, carrying HGO as cargo, if, in the opinion of the flag state, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship, provided that the operation shall not go beyond the date that is 25 years after the date of its delivery.

The flag state may also exempt an oil tanker of 600 dwt and above carrying HGO as cargo if the ship is either engaged in voyages exclusively within an area under its jurisdiction, or is engaged in voyages exclusively within an area under the jurisdiction of another party, provided the party within whose jurisdiction the ship will be operating agrees. The same applies to vessels operating as floating storage units of HGO.

Any port state, however, can deny entry of single-hull tankers carrying HGO that have been allowed to continue operation under the exemptions mentioned above, into the ports or offshore terminals under its jurisdiction, or deny ship-to-ship transfer of HGO in areas under its jurisdiction except when this is necessary for the purpose of securing the safety of a ship or saving life at sea.

Revised Annex I to the MARPOL Convention entered into force in January 2007. Revised Annex I incorporates various amendments adopted since the MARPOL Convention entered into force in 1983, including the amendments to Regulation 13G (Regulation 20 in the revised Annex I) and Regulation 13H (regulation 21 in the revised Annex I). Revised Annex I also imposes construction requirements for oil tankers delivered on or after January 1, 2010. A further amendment to revised Annex I includes an amendment to the definition of HGO that will broaden the scope of Regulation 21. On August 1, 2007, regulation 12A (an amendment to Annex I) came into force requiring oil fuel tanks to be located inside the double hull in all ships with an aggregate oil fuel capacity of 600 m 3 and above, which are delivered on or after August 1, 2010, including ships for which the building contract is entered into on or after August 1, 2007 or, in the absence of a contract, for which the keel is laid on or after February 1, 2008.

All of the tankers under our management are double-hulled. The phasing out of single-hull tankers in accordance with the MARPOL Convention and its amendments is expected to decrease tanker supply, which may help to prevent further decline in charter rates in the product tanker market.

Ballast Water Requirements

The IMO adopted an International Convention for the Control and Management of Ships' Ballast Water and Sediments, or the BWM Convention, in February 2004. The BWM Convention's implementing regulations call for a phased introduction of mandatory ballast water exchange requirements (beginning in 2009), to be replaced in time with mandatory concentration limits. The BWM Convention will not enter into force until 12 months after it has been adopted by 30 states, the combined merchant fleets of which represent not less than 35% of the gross tonnage of the world's merchant shipping. To date, there has not been sufficient adoption of this standard by governments that are members of the convention for it to take force. As of July 2013, the Convention has been ratified by 37 states representing 30.32% of the global merchant shipping fleet's tonnage, and its entry into force with attendant compliance costs may therefore be anticipated in the foreseeable future.

According to IMO Resolution MEPC 207(62), 2011 Guidelines for the Control and Management of Ship's Biofouling to Minimize the Transfer of Invasive Aquatic Species adopted on July 15, 2011, Member States of the IMO made a clear commitment to minimizing the transfer of invasive aquatic species through shipping. Studies have shown that biofouling can also be a significant vector for the transfer of invasive aquatic species. Biofouling on ships entering the waters of Member States may result in the establishment of invasive aquatic species which may pose threats to human, animal and plant life, economic and cultural activities and the aquatic environment.

Air Emissions

In September 1997, the IMO adopted Annex VI to the MARPOL Convention to address air pollution from ships. Effective in May 2005, Annex VI sets limits on sulfur oxide and nitrogen oxide emissions from all commercial vessel exhausts and prohibits deliberate emissions of ozone depleting substances (such as halons and chlorofluorocarbons), emissions of volatile compounds from cargo tanks, and the shipboard incineration of specific substances. Annex VI also includes a global cap on the sulfur content of fuel oil. We believe that all our vessels are currently compliant in all material respects with these existing regulations. Additional or new conventions, laws and regulations may be also adopted that could require the installation of expensive emission control systems. Such future emission control requirements could adversely affect our business, cash flows, results of operations and financial condition.

In October 2008, the IMO adopted amendments to Annex VI regarding particulate matter, nitrogen oxide and sulfur oxide emission standards that entered into force on July 1, 2010. The amended Annex VI aims to reduce air pollution from vessels by, among other things, (i) implementing a progressive reduction of sulfur oxide emissions from ships, with the global sulfur cap reduced initially to 3.5% (from the current cap of 4.5%), effective from January 1, 2012, then progressively reduced to 0.50%, effective from January 1, 2020, subject to a feasibility review to be completed no later than 2018; and (ii) establishing new tiers of stringent nitrogen oxide emissions standards for marine engines, depending on their date of installation. We incurred significant costs to comply with these revised standards.

The revised Annex VI also allows for designation, in response to proposals from member parties, of Emission Control Areas (ECAs) that impose accelerated and/or more stringent requirements for control of sulfur oxide, particulate matter, and nitrogen oxide emissions. Such ECAs have been formally adopted for the Baltic Sea, the North Sea including the English Channel. The North American coast has also been established as an ECA, where NOx, SOx and particulate matter emissions are regulated, from August 1, 2012, and the United States Caribbean Sea ECA came into force on January 1, 2013, with an effective date of January 1, 2014. For the currently-designated ECAs, much lower sulfur limits on fuel oil content are being phased in (1% in July 2010 for the Baltic and North Sea ECAs and beginning in 2012 for the North American ECA; and 0.1% in these ECAs beginning in 2015), as well as nitrogen oxide after treatment requirements that will become applicable in 2016. These more stringent fuel standards, when fully in effect, are expected to require measures such as fuel switching, vessel modification adding distillate fuel storage capacity, or addition of exhaust gas cleaning scrubbers, to achieve compliance, and may require installation and operation of further control equipment at significant increased cost.

Safety Requirements

The IMO has also adopted the International Convention for the Safety of Life at Sea, or SOLAS Convention, and the International Convention on Load Lines, 1966, or LL Convention, which impose a variety of standards to regulate design and operational features of ships. SOLAS Convention and LL Convention standards are revised periodically. We believe that all our vessels are in substantial compliance with SOLAS Convention and LL Convention standards.

Under Chapter IX of SOLAS, the requirements contained in the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention, or ISM Code, promulgated by the IMO, the party with operational control of a vessel is required to develop an extensive safety management system that includes, among other things, the adoption of a safety and environmental protection policy setting forth instructions and procedures for operating its vessels safely and describing procedures for responding to emergencies. In 1998, the ISM Code became mandatory with the adoption of Chapter IX of SOLAS. We intend to rely upon the safety management systems that our ship management companies, Newlead Shipping and Newlead Bulkers, have developed.

The ISM Code requires that vessel operators obtain a safety management certificate for each vessel they operate. This certificate evidences compliance by a vessel’s management with ISM Code requirements for a safety management system. No vessel can obtain a safety management certificate unless its operator has been awarded a document of compliance, issued by each flag state, under the ISM Code. Our ship management companies, Newlead Shipping and Newlead Bulkers, have obtained documents of compliance for their offices and safety management certificates for the vessels in our fleet for which such certificates are required by the IMO. These documents of compliance and safety management certificates are renewed as required.

Non-compliance with the ISM Code and other IMO regulations, such as the mandatory ship energy efficiency management plan (“SEEMP”) which is akin to a safety management plan and was effected on January 1, 2013, may subject the shipowner or bareboat charterer to increased liability, may lead to decreases in available insurance coverage for affected vessels and may result in the denial of access to, or detention in, some ports. For example, the U.S. Coast Guard and European Union (EU) authorities have indicated that vessels not in compliance with the ISM Code will be prohibited from trading in U.S. and EU ports.

Another amendment of SOLAS, made after the terrorist attacks in the United States on September 11, 2001, introduced special measures to enhance maritime security, including the International Ship and Port Facilities Security Code, or ISPS Code. Our fleet maintains ISM and ISPS certifications for safety and security of operations.

Oil Pollution Liability

With respect to oil pollution liability, many countries have ratified and follow the liability plan adopted by the IMO and set out in the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC. Under this convention and depending on whether the country in which the damage results is a party to the CLC, a vessel’s registered owner is strictly liable for pollution damage caused in the territorial waters of a contracting state by discharge of persistent oil, subject to certain complete defenses. The limits on liability outlined in the IMO Protocol of 1992, or 1992 Protocol, use the International Monetary Fund currency unit of Special Drawing Rights, or SDR. Under an amendment to the 1992 Protocol that became effective on November 1, 2003 for vessels of 5,000 to 140,000 gross tons (a unit of measurement for the total enclosed spaces within a vessel), liability will be limited to approximately 4.51 million SDR, or $6.833 million, plus 631 SDR, or $956, for each additional gross ton over 5,000. For vessels over 140,000 gross tons, liability will be limited to 89.77 million SDR, or $136.015 million. The exchange rate between SDRs and U.S. dollars was 0.66 SDR per U.S. dollar on August 29, 2013. The right to limit liability is forfeited under the CLC where the spill is caused by the owner’s actual fault and under the 1992 Protocol where the spill is caused by the owner’s intentional or reckless conduct. Vessels trading to states that are parties to these conventions must provide evidence of insurance covering the liability of the owner. The CLC applies in over 100 states around the world, but it does not apply in the United States of America, where the corresponding liability laws such as the OPA are particularly stringent. In jurisdictions where the CLC has not been adopted, various legislative schemes or common law govern, and liability is imposed either on the basis of fault or in a manner similar to that of the CLC. We believe that our insurance will cover the liability under the plan adopted by the IMO.

The most widely applicable international regime limiting maritime pollution liability is the 1976 Convention. Rights to limit liability under the 1976 Convention are forfeited where a spill is caused by a shipowner’s intentional or reckless conduct. Some jurisdictions have ratified the 1996 LLMC Protocol to the 1976 Convention, which provides for liability limits substantially higher than those set forth in the 1976 Convention to apply in such states. Finally, some jurisdictions are not a party to the CLC, the 1976 Convention or the 1996 LLMC Protocol, and, therefore, shipowners’ rights to limit liability for maritime pollution in such jurisdictions may be uncertain.

International laws governing Bunker Oil Pollution

In 2001, the IMO adopted the Bunker Convention, which imposes strict liability on ship owners for pollution damage in jurisdictional waters of ratifying states caused by discharges of "bunker oil." The Bunker Convention defines "bunker oil" as "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil." The Bunker Convention also requires registered owners of ships over a certain size to maintain insurance for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime (but not exceeding the amount calculated in accordance with the 1976 Convention, discussed above). The Bunker Convention entered into force on November 21, 2008, and as of July 31, 2013 it was in effect in 72 states. In other jurisdictions liability for spills or releases of oil from ships' bunkers continues to be determined by the national or other domestic laws in the jurisdiction where the events or damages occur. Outside the United States, national laws generally provide for the owner to bear strict liability for pollution, subject to a right to limit liability under applicable national or international regimes for limitation of liability.

United States Requirements

The U.S. Oil Pollution Act of 1990 and Comprehensive Environmental Response, Compensation and Liability Act

In 1990, the U.S. Congress enacted the OPA, to establish an extensive regulatory and liability regime for environmental protection and cleanup of oil spills. OPA affects all owners and operators whose vessels trade with the U.S. or its territories or possessions, or whose vessels operate in the waters of the U.S., which include the U.S. territorial sea and the 200 nautical mile exclusive economic zone around the U.S. The Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, imposes liability for clean-up and natural resource damage from the release of hazardous substances (other than oil) whether on land or at sea. Both OPA and CERCLA are potentially applicable to our operations in the U.S.

Under OPA, vessel owners, operators and bareboat charterers are responsible parties who are jointly, severally and strictly liable (unless the spill results solely from the act or omission of a third party, an act of God or an act of war) for all containment and clean-up costs and other damages arising from oil spills from their vessels. These other damages are defined broadly to include:

- natural resource damages and related assessment costs;
- real and personal property damages;
- net loss of taxes, royalties, rents, profits or earnings capacity;
- net cost of public services necessitated by a spill response, such as protection from fire, safety or health hazards;
- loss of profits or impairment of earning capacity due to injury, destruction or loss of real property, personal property and natural resources; and
- loss of subsistence use of natural resources.

Effective July 31, 2009, the U.S. Coast Guard adjusted the limits of OPA liability with respect to tanker vessels with a qualifying double hull, to the greater of $2,000 per gross ton or $17.088 million per vessel that is over 3,000 gross tons, and with respect to non-tanker vessels, to the greater of $1,000 per gross ton or $854,400 per vessel (subject to periodic adjustment for inflation). OPA specifically permits individual states to impose their own liability regimes with regard to oil pollution incidents occurring within their boundaries, and some state environmental laws impose for unlimited liability for discharge of pollutants including oil, within their waters. CERCLA, which applies to owners and operators of vessels, contains a similar liability regime and provides for clean-up, removal and natural resource damages relating to the discharge of hazardous substances (other than oil). Liability under CERCLA is limited to the greater of $300 per gross ton or $5.0 million for vessels carrying a hazardous substance as cargo or residue and the greater of $300 per gross ton or $0.5 million for any other vessel.

These limits of liability do not apply, however, where the incident is caused by violation of applicable U.S. federal safety, construction or operating regulations, or by the responsible party's gross negligence or willful misconduct. These limits also do not apply if the responsible party fails or refuses to report the incident or to cooperate and assist in connection with the substance removal activities. OPA and CERCLA each preserve the right to recover damages under existing law, including maritime tort law. We currently have no OPA or CERCLA claims pending against us. However, in the event of an oil spill or release of hazardous substances from our vessels, we could be subject to such claims, which could adversely affect our cash flow, profitability and financial position.

Under OPA, an owner or operator of a fleet of vessels is required only to demonstrate evidence of financial responsibility in an amount sufficient to meet its potential liabilities under OPA and CERCLA. Under the regulations, evidence of financial responsibility may be demonstrated by insurance, surety bond, self-insurance or guaranty. Under the self-insurance provisions, the ship owner or operator must have a net worth and working capital, measured in assets located in the U.S. against liabilities located anywhere in the world, that exceeds the applicable amount of financial responsibility. We have complied with the U.S. Coast Guard regulations by providing a certificate of responsibility from third party entities that are acceptable to the U.S. Coast Guard evidencing sufficient self-insurance. The U.S. Coast Guard's regulations concerning certificates of financial responsibility provide, in accordance with OPA, that claimants may bring suit directly against an insurer or guarantor that furnishes certificates of financial responsibility. In the event that such insurer or guarantor is sued directly, it is prohibited from asserting any contractual defense that it may have had against the responsible party and is limited to asserting those defenses available to the responsible party and the defense that the incident was caused by the willful misconduct of the responsible party. Certain organizations, which had typically provided certificates of financial responsibility under pre-OPA laws, including the major protection and indemnity organizations, have declined to furnish evidence of insurance for vessel owners and operators if they are subject to direct actions or required to waive insurance policy defenses. This requirement may have the effect of limiting the availability of the type of coverage required by the U.S. Coast Guard and could increase our costs of obtaining this insurance as well as the costs of our competitors that also require such coverage.

We have arranged insurance for our vessels with pollution liability insurance in the maximum commercially available amount of $1.0 billion per incident. The insured risks include penalties and fines as well as civil liabilities and expenses resulting from accidental pollution. However, this insurance coverage is subject to exclusions, deductibles and other terms and conditions. If any liabilities or expenses fall within an exclusion from coverage, or if damages from a catastrophic incident exceed the $1.0 billion limitation of coverage per incident, our cash flow, profitability and financial position would be adversely impacted.

Under OPA, with certain limited exceptions, all newly-built or converted vessels operating in U.S. waters must be built with double hulls, and existing vessels that do not comply with the double-hull requirement will be prohibited from trading in U.S. waters over a 20-year period (1995-2015) based on size, age and place of discharge, unless retrofitted with double hulls. All of the tankers under our management are double-hulled. Owners or operators of tankers operating in the waters of the U.S. must file vessel response plans with the U.S. Coast Guard, and their tankers are required to operate in compliance with their U.S. Coast Guard approved plans. These response plans must, among other things:

- address a "worst case" scenario and identify and ensure, through contract or other approved means, the availability of necessary private response resources to respond to a "worst case discharge";
- describe crew training and drills; and
- identify a qualified individual with full authority to implement removal actions.

We have obtained vessel response plans approved by the U.S. Coast Guard for our vessels operating in the waters of the U.S. In addition, we conduct regular oil spill response drills in accordance with the guidelines set out in OPA.

In response to the 2010 Deepwater Horizon incident in the Gulf of Mexico, the U.S. Congress proposed, but did not formally adopt legislation that would amend OPA to mandate stronger safety standards and increased liability and financial responsibility for offshore drilling operations. The bill did not seek to change the OPA liability limits applicable to vessels. While Congressional activity on this topic is expected to continue to focus on offshore facilities rather than on vessels generally, it cannot be known with certainty what form any such new legislative initiatives may take.

As discussed above, OPA does not prevent individual states from imposing their own liability regimes with respect to oil pollution incidents occurring within their boundaries, including adjacent coastal waters. In fact, most U.S. states that border a navigable waterway have enacted environmental pollution laws that impose strict liability on a person for removal costs and damages resulting from a discharge of oil or a release of a hazardous substance. These laws may be more stringent than U.S. federal law.

Additional U.S. Environmental Requirements

The U.S. Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1977 and 1990, or the CAA, requires the U.S. Environmental Protection Agency, or EPA, to promulgate standards applicable to emissions of volatile organic compounds and other air contaminants. Under the CAA, EPA regulations require to vapor control systems ("VCSs") for certain cargoes when loading, unloading, ballasting, cleaning and conducting other operations in regulated port areas. The CAA also requires states to adopt State Implementation Plans, or SIPs, designed to attain national health-based air quality standards in primarily major metropolitan and/or industrial areas. Several SIPs regulate emissions resulting from vessel loading and unloading operations by requiring the installation of vapor control equipment. Also under the CAA, the U.S. Coast Guard has since 1990 regulated the safety of VCSs that are required under EPA and state rules. Our vessels operating in regulated port areas have installed VCSs that are compliant with EPA, state and U.S. Coast Guard requirements. In October 2010, the U.S. Coast Guard proposed a rule that would make its VCS requirements more compatible with new EPA and State regulations, reflect changes in VCS technology, and codify existing U.S. Coast Guard guidelines. It appears unlikely that the updated U.S. Coast Guard rule when finalized will impose a material increase in costs.

In April 2010, U.S. EPA adopted regulations implementing the provisions of MARPOL Annex VI. Under these regulations, both U.S. and foreign-flagged ships subject to the engine and fuel standards of MARPOL Annex VI must comply with the applicable Annex VI provisions including the stricter North America Emission Control Area (ECA) standards which took effect in August 2012 when they enter U.S. ports or operate in most internal U.S. waters, including the Great Lakes. MARPOL Annex VI requirements are discussed in greater detail above under "Air Emissions."

The Clean Water Act, or CWA, prohibits the discharge of oil or hazardous substances into navigable waters and imposes strict liability in the form of penalties for any unauthorized discharges. The CWA also imposes substantial liability for the costs of removal, remediation and damages. State laws for the control of water pollution also provide varying civil, criminal and administrative penalties in the case of a discharge of petroleum or hazardous materials into state waters.

Effective February 6, 2009, the EPA regulates the discharge of ballast water and other substances incidental to the normal operation of vessels in U.S. waters using a Vessel General Permit, or VGP, system pursuant to the CWA, in order to combat the risk of harmful foreign organisms that can travel in ballast water carried from foreign ports. Compliance with the conditions of the VGP is required for commercial vessels 79 feet in length or longer (other than commercial fishing vessels). On March 28, 2013, the EPA issued the 2013 Vessel General Permit (VGP), which will become effective on December 19, 2013. This new VGP imposes a numeric standard to control the release of non-indigenous invasive species in ballast water discharges. In addition, through the CWA certification provisions that allow U.S. states to place additional conditions on use of the VGP within state waters, a number of states have proposed or implemented a variety of stricter ballast water requirements including, in some states, specific treatment standards. Compliance with new U.S. federal and state requirements could require the installation of equipment on our vessels to treat ballast water before it is discharged or the implementation of other port facility disposal arrangements or procedures at potentially substantial cost, and/or otherwise restrict our vessels from entering U.S. waters.

Ballast water is also addressed under the U.S. National Invasive Species Act, or NISA. U.S. Coast Guard regulations adopted under NISA impose mandatory ballast water management practices for all vessels equipped with ballast water tanks entering U.S. waters.

European Union Restrictions

European regulations in the maritime sector are in general based on international law. However, since the Erika incident in 1999, the European Union has become increasingly active in the field of regulation of maritime safety and protection of the environment. It has been the driving force behind a number of amendments of MARPOL (including, for example, changes to accelerate the time-table for the phase-out of single-hull tankers, and to prohibit the carriage in such tankers of heavy grades of oil). If dissatisfied either with the extent of such amendments or with the time-table for their introduction, the European Union has been prepared to legislate on a unilateral basis. In some instances where it has done so, international regulations have subsequently been amended to the same level of stringency as that introduced in Europe. However, European Union regulations may from time to time impose burdens and costs on ship owners and operators that are additional to those involved in complying with international rules and standards. In some areas of regulation, the European Union has introduced new laws without attempting to procure a corresponding amendment of international law. Notably, it adopted in 2005 the 2005/35/EC Directive on ship-source pollution, as amended by 2009/123/EC Directive, imposing criminal sanctions for pollution not only where this is caused by intent or recklessness (which would be an offence under MARPOL), but also where it is caused by "serious negligence". The concept of "serious negligence" may be interpreted in practice to be little more than ordinary negligence. The directive could therefore result in criminal liability being incurred in circumstances where it would not be incurred under international law. Criminal liability for a pollution incident could not only result in us incurring substantial penalties or fines but may also, in some jurisdictions, facilitate civil liability claims for greater compensation than would otherwise have been payable.

In response to the MT Prestige oil spill in November 2002, the European Union adopted legislation that prohibits all single-hull tankers from entering into its ports or offshore terminals by June 2010 or earlier depending on age. The European Union has also banned all single-hull tankers carrying heavy grades of oil from entering or leaving its ports or offshore terminals or anchoring in areas under its jurisdiction. Certain single-hull tankers above 15 years of age are also restricted from entering or leaving European Union ports or offshore terminals and anchoring in areas under European Union jurisdiction.

The European Union has also adopted legislation that: (1) strengthens regulation against manifestly sub-standard vessels (defined as those over 15 years old that have been detained by port authorities at least twice in a six-month period) from European waters and creates an obligation of port states to inspect vessels posing a high risk to maritime safety or the marine environment and (2) provides the European Union with greater authority and control over classification societies, including the ability to seek to suspend or revoke the authority of negligent societies. It is difficult to accurately predict what legislation or additional regulations, if any, may be promulgated by the European Union or any other constituent country or authority in Europe.

Greenhouse Gas Regulation

In February 2005, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which we refer to as the Kyoto Protocol, entered into force. Pursuant to the Kyoto Protocol, adopting countries are required to implement national programs to reduce emissions of certain gases, generally referred to as greenhouse gases, which are suspected of contributing to global warming. Currently, the emissions of greenhouse gases from international shipping are not subject to the Kyoto Protocol. In December 2011, UN climate change talks took place in Durban and concluded with an agreement referred to as the Durban Platform for Enhanced Action. In preparation for the Durban Conference, the International Chamber of Shipping ("ICS") produced a briefing document, confirming the shipping industry's commitment to cut shipping emissions by 20% by 2020, with significant further reductions thereafter. The ICS called on the participants in the Durban Conference to give the IMO a clear mandate to deliver emissions reductions through market-based measures, for example a shipping industry environmental compensation fund. Notwithstanding the ICS' request for global regulation of the shipping industry, the Durban Conference did not result in any proposals specifically addressing the shipping industry's role in climate change. The European Union announced in April 2007 that it planned to expand the European Union emissions trading scheme by adding vessels, and a proposal from the European Commission was expected if no global regime for reduction of seaborne emissions had been agreed to by the end of 2011. That deadline has now expired and it remains to be seen what position the EU takes in this regard in period ahead. As of January 31, 2013, the Commission stopped short of proposing that emissions from ships be included in the EU's emissions-trading scheme ("ETS"). However, on October 1, 2012, the Commission announced that it would propose measures to monitor, verify and report on greenhouse gas emissions from the shipping sector in early 2013. This may be seen as indicative of an intention to maintain pressure on the international negotiating process. In the United States, in 2007 the California Attorney General and a coalition of environmental groups petitioned the U.S. Environmental Protection Agency ("EPA") in October 2007 to regulate greenhouse gas emissions from ocean-going ships under the Clean Air Act, and in 2010 another coalition of environmental groups filed suit to require the EPA to do the same. Any passage of climate control legislation or other regulatory initiatives by the IMO, European Union, or individual countries where we operate, including the U.S. that restrict emissions of greenhouse gases from vessels could require us to make significant financial expenditures we cannot predict with certainty at this time.

Vessel Security Regulations

Since the terrorist attacks of September 11, 2001, there have been a variety of initiatives intended to enhance vessel security. On November 25, 2002, the U.S. Maritime Transportation Security Act of 2002, or MTSA, came into effect. To implement certain portions of the MTSA, in July 2003, the U.S. Coast Guard issued regulations requiring the implementation of certain security requirements aboard vessels operating in waters subject to the jurisdiction of the U.S. Similarly, in December 2002, amendments to SOLAS created a new chapter of the convention dealing specifically with maritime security. The new chapter became effective in July 2004 and imposes various detailed security obligations on vessels and port authorities, most of which are contained in the International Ship and Port Facilities Security Code, or the ISPS Code. The objective of the ISPS Code is to establish the framework that allows detection of security threats and implementation of preventive measures against security incidents that can affect ships or port facilities used in international trade. To trade internationally, a vessel must attain an International Ship Security Certificate, or ISSC, from a recognized security organization approved by the vessel's flag state. Among the various requirements are:

- on-board installation of automatic identification systems to provide a means for the automatic transmission of safety-related information from among similarly equipped ships and shore stations, including information on a ship's identity, position, course, speed and navigational status;
- on-board installation of ship security alert systems, which do not sound on the vessel and instead only alert the authorities on shore;
- the development of vessel security plans;
- a ship identification number to be permanently marked on a vessel's hull;
- a continuous synopsis record kept onboard showing a vessel's history, including the name of the ship and of the state whose flag the ship is entitled to fly, the date on which the ship was registered with that state, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address; and

- compliance with flag state security certification requirements.

The U.S. Coast Guard regulations, intended to align with international maritime security standards, exempt from MTSA vessel security measures for non-U.S. vessels that have on board, as of July 1, 2004, a valid ISSC attesting to the vessel's compliance with SOLAS security requirements and the ISPS Code. We have implemented the various security measures addressed by MTSA, SOLAS and the ISPS Code, and our fleet is in compliance with applicable security requirements.

Risk of Loss and Insurance

The operation of any cargo vessel includes risks such as mechanical failure, physical damage, collision, property loss, cargo loss or damage and business interruption due to political circumstances in foreign countries, hostilities and labor strikes. In addition, there is always an inherent possibility of marine disaster, including oil spills and other environmental mishaps, and the liabilities arising from owning and operating vessels in international trade. OPA, which imposes virtually unlimited liability upon owners, operators and charterers of any vessel trading in the United States' exclusive economic zone for certain oil pollution accidents in the United States, has made liability insurance more expensive for ship owners and operators trading in the U.S. market. While we believe that our present insurance coverage is adequate, not all risks can be insured against, and there can be no guarantee that any specific claim will be paid, or that we will always be able to obtain adequate insurance coverage at reasonable rates.

On October 8, 2010, Grand Rodosi, one of our bulk carriers, which has since been redelivered to Lemissoler, was involved in a collision with a docked fishing vessel at Port Lincoln, Australia. While no personal injuries or environmental damage were sustained, the collision resulted in physical damage to the two vessels. The damage was fully covered by our insurance.

We have obtained marine hull and machinery and war risk insurance, which includes the risk of actual or constructive total loss, for all our vessels. The vessels are each covered up to at least fair market value.

We also arranged increased value insurance for most of our vessels. Under the increased value insurance, in case of total loss of the vessel, we will be able to recover the sum insured under the policy in addition to the sum insured under our hull and machinery policy. Increased value insurance also covers excess liabilities that are not recoverable in full by the hull and machinery policies by reason of under-insurance.

Protection and indemnity insurance, which covers our third-party liabilities in connection with our shipping activities, is provided by mutual protection and indemnity associations, or P&I Associations. This insurance covers third-party liability and other related expenses of injury or death of crew, passengers and other third parties, loss or damage to cargo, claims arising from collisions with other vessels, damage to other third-party property, pollution arising from oil or other substances, and salvage, towing and other related costs, including wreck removal. Protection and indemnity insurance is a form of mutual indemnity insurance, extended by protection and indemnity mutual associations, or "clubs". Our coverage, except for pollution, is unlimited.

Our current protection and indemnity insurance coverage for pollution is $1.0 billion per vessel per incident. The 13 P&I Associations that compose the International Group insure approximately 90% of the world's commercial tonnage and have entered into a pooling agreement to reinsure each association's liabilities. All qualifying claims in excess of $8 million up to, currently, approximately $60.0 million are shared between the P&I Associations in accordance with the terms of the pooling agreement. Any claim in excess of $60.0 million is reinsured by the International Group under the General Excess of Loss Reinsurance Contract. This policy currently provides an additional $2.0 billion of coverage for non-oil pollution claims. Further to this, overspill protection has been placed by the International Group for claims up to $1 billion in excess of $2.06 billion, or $3.06 billion in total. For passengers and crew claims, the overall limit is $3.0 billion for any one event relating to any one vessel with a sub-limit of $2.0 billion for passengers. As a member of a P&I Association that is a member of the International Group, we are subject to calls payable to the associations based on our claim records as well as the claim records of all other members of the individual associations and members of the International Group.

The International Bulker Shipping Industry

The dry bulk shipping market is the primary provider of global commodities transportation since dry bulk cargoes comprise approximately one third of seaborne trade. Dry bulk cargoes are divided into two main categories–major bulk cargoes and minor bulk cargoes. Major bulk cargos consist of iron ore, coal and grains, while minor bulk cargoes include, among others, bauxite/alumina, sugar, fertilizers, steel products, forest products and cement.

The global dry bulk carrier fleet may be divided into the following categories based on a vessel's carrying capacity:

- *Capesize vessels* have carrying capacities of more than 130,000 dwt. These vessels generally operate along long haul iron ore and coal trade routes. There are relatively few ports around the world with the infrastructure to accommodate vessels of this size.

- *Mini cape vessels* have dwt from 110,000 to 130,000 dwt.

- *Postpanamax vessels* have dwt from 85,000 to 110,000 dwt and the beams of these vessels exceed the Panama canal limitations.

- *Kamsarmax:* are approximately 82,000 dwt Panamax vessels with increased length overall (the length of a vessel, referred to herein as "LOA") of 229 meters ("m") and are named for Port Kamsar in Equatorial Guinea.

- *Panamax vessels* have a carrying capacity of between 60,000 and 85,000 dwt. These vessels carry coal, grains, and, to a lesser extent, minor bulks, including steel products, forest products and fertilizers. Panamax vessels are able to pass through the Panama Canal making them more versatile than larger vessels.

- *Handymax vessels* have a carrying capacity of between 35,000 and 60,000 dwt. These vessels operate along a large number of geographically dispersed global trade routes mainly carrying grains and minor bulks. Vessels below 60,000 dwt are sometimes built with on-board cranes enabling them to load and discharge cargo in countries and ports with limited infrastructure.

- *Handysize vessels* have a carrying capacity of up to 35,000 dwt. These vessels carry exclusively minor bulk cargo. Increasingly, these vessels have operated along regional trading routes. Handysize vessels are well suited for small ports with length and draft restrictions that may lack the infrastructure for cargo loading and unloading.

After three consecutive years in which demand for seaborne trade grew faster than supply, the situation was reversed in mid-2005. While demand growth slowed, a new all-time high for newbuilding deliveries, together with minimal scrapping, resulted in a weaker market in 2005 which continued in the first half of 2006. Beginning with the second half of 2006, the market showed signs of significant strength which continued in 2007 with the BDI closing the year 2007 at 9,143. The market remained at high levels until May 20, 2008 when the BDI reached an all-time high.

Following May 2008, the BDI fell over 90% from May 2008 through December 16, 2008 and almost 75% during the fourth quarter of 2008 through December 16, 2008, reaching a low of 663, or 94% below the May 2008 high point. The BDI recovered during 2009, at a rate of 350%, to close the year at 3,005 points. From January 2009 through December 2009, the BDI reached a high of 4,661, or 700% above the December 2008 low point, in November 2009.

The recuperated charter market in 2009 was a good setting for a fundamentally more stable 2010, although significant order book influx put pressure on overall fleet utilization. In 2010, the BDI traded in a broad range between a high of 4,209 points in May and a low of 1,700 points in July, overall averaging 2,758 points in 2010 or 5% over the 2009 BDI average.

In 2011, the dry bulk market experienced a decline, with BDI averaging 1,548 points or 44% below the previous year's average, reaching its lowest point in February 2011 at 1,043 points, which moderately reverted in October 2011 to reach a high of 2,173 points. On December 23, 2011, the BDI was at 1,738 points. The general decline in the dry bulk charter market has resulted in lower charter rates for vessels exposed to the spot market and time charters linked to the indices of BDI.

The dry bulk market experienced a further decline in 2012 with BDI averaging 920 points or 40.6% lower than the average in 2011, reaching its lowest point in February 2012 at 647 points after it had reached a high of 1624 points during January 2012. This decrease is reflected on the Panamax 4 Time Charter routes, which had an average of $7,684 per day during 2012, representing a fall of approximately 45% as compared with the average BPI index of 2011.

Panamax rates, which averaged $75,248 per day in June 2008 and fell to approximately $4,100 per day in December 2008,surging thereafter to an average $25,040 for the year 2010, averaged $14,000 per day in 2011, approximately 44% lower than the previous year. The lowest Panamax rate in 2011 was at $10,372 per day on February 2 and the highest at $17,115 per day on March 11. Volatility in the dry bulk market remained very high during 2012. The Panamax rate was $13,798 per day on April 26, 2012, about 70% higher than the levels of the same index at the beginning of the same month. The dry bulk market has remained low during the first quarter of 2013, with the average of the Panamax 4 Time Charter routes estimated at $7,055 per day. Further, the average of the Panamax 4 Time Charter routes has not yet exceeded $10,000 per day so far during the first half of 2013.

The decline of the dry bulk market has primarily been attributable to vessel oversupply gradually taking its toll on the market. The increased demand for dry bulk commodities has been unable to fully absorb the approximately 237 million of new deadweight tonnage that has entered the market since January 2011 through July 2013, despite almost record high scrapping levels of approximately 71 million deadweight tonnage and a high delivery slippage. 2012 was the third consecutive year of double-digit growth in the global dry bulk fleet, as indicated by the fleet's 14.7% increase in deadweight tonnage carrying capacity for the year.

On the demand side, in 2012, India, China, Brazil and Europe experienced a slower growth in steel consumption. Steel consumption increased 2.1% in 2012, compared to an increase of 6.2% in 2011. China's GDP growth of about 7.8% in 2012, somewhat lower than the 9.2% growth in 2011, the GDP recession of about 0.4% in 2012 for the Euro zone and the 2.1% growth rate of GDP in the United States have been reflective of the weaker economic conditions these regions experienced in 2012.China remained the world's largest iron ore importer in 2012, showing an increase of approximately 8.7% in its imports of the commodity as compared to 2011,yet growth was still slower than the 10% growth experienced during 2011. South American countries reported record high iron ore export levels in 2012, which were 1.2% higher than levels in 2011.

In the coal trade segment, global thermal coal trade remained firm in 2011, underpinned by an increase on imports of approximately 14% and 15% in Asian countries and Europe, respectively. On the other hand, coking coal trade has also shown a growth on imports of about 6% mainly due to an increase of imports of the Asian countries.

While global trade is likely to continue to grow, we expect the overcapacity in the shipping market to continue to exert considerable pressure on charter rates, negating any upward trends possibly arising from any favorable price and volume developments in the underlying markets. There can be no assurance as to how long charter rates will remain at low levels or whether they will improve or deteriorate and, if so, when and to what degree.

As a result of the volatility and rate decline witnessed in the charter markets, the continued lack of availability of credit to finance vessel acquisitions and an overwhelming order book during 2011 to 2012, vessel values have remained under severe pressure. Indicatively, as of December 2012, values of five-year Panamax vessels with 76,000 deadweight ton carrying capacity have reportedly decreased by about 32% compared to the same values in December 2011, whereas five-year modern Capesize vessels of 170,000 to 180,000 deadweight ton carrying capacity were valued about 10% less compared to December 2011. Ship prices have slightly increased recently since there is some expectation that the market is currently at its lowest point. Therefore, ship prices for a five year old 76,000 dwt panama bulker has increased by about 19% as compared with the relevant prices at December 2012. However, the freight market continues to remain at very low levels.

COAL BUSINESS

Business Strategy

Our primary business strategy with respect to our emerging coal business is to create sustainable, capital-efficient growth in available cash to maximize distributions to our shareholders by:

- expanding our operations by adding and developing mines and coal reserves in existing, adjacent or neighboring properties;
- extending the lives of our future mining operations through acquisition and development of coal reserves;
- continuing to make productivity improvements to remain a low-cost producer in each region in which we will operate;
- strengthening our position with existing and future customers by offering a broad range of coal qualities, transportation alternatives and customized services; and
- developing strategic relationships to take advantage of opportunities within the coal industry.

Coal Characteristics

Coal is generally classified as either metallurgical coal or thermal coal (also known as steam or industrial coal). Sulfur, ash and moisture content as well as coking characteristics are key attributes in grading metallurgical coal while heat value, ash and sulfur content are important variables in rating thermal coal. We intend to mine, process, market and ship coal with the characteristics described below.

Heat Value: The heating value of coal is supplied by its carbon content and volatile matter and commonly measured in British thermal units ("Btus"). A Btu is the amount of heat needed to raise the temperature of one pound of water by one degree Fahrenheit. Coal deposits are generally classified into four categories—lignite, subbituminous, bituminous and anthracite—reflecting their response to increasing heat and pressure. We intend to mine bituminous and anthracite coal, which is used to make coke for the steel industry or to generate electricity, with a heating value ranging between 10,500 and 15,500 Btus per pound.

Sulfur Content: Sulfur content can differ from seam to seam. Low sulfur coals have a sulfur content of 1.5% or less. Coal produces undesirable sulfur dioxide when it burns, the amount of which depends on the concentration of sulfur in the coal as well as the chemical composition of the coal itself.

Ash and Moisture Content: Ash residue is what remains after the combustion of coal. Low ash is desirable because businesses must dispose of ash after the coal is used. High moisture content decreases the heat value of the coal which is undesirable and increases the coal's weight which is also negative because higher weight increases transportation charges.

Coking Characteristics (metallurgical coal only): Two important coking characteristics are coke strength and volatility. Measuring the expansion and contraction of coal when heated determines the strength of coke that could be produced from the coal. When coal is heated in the absence of air, the loss in mass less moisture is volatility. Volatility of metallurgical coal is used to determine the percentage of coal that becomes coke. This measure is known as coke yield. A low volatility results in a higher coke yield.

Types of Coal

Metallurgical coal is classified into three major categories: hard coking coal ("HCC"), semi-soft coking coal, and pulverized coal injection coal ("PCI"). Coking coals are the basic ingredients for the manufacture of metallurgical coke. PCI coal is not used in coke making, but is injected directly into the lower region of blast furnaces to supply both energy and carbon for iron reduction, thus replacing some of the metallurgical coke that may otherwise have been used.

Thermal coal is the most abundant form of coal. It has relatively high heat value and has long been used for steam generation in electric power and industrial boiler plants.

Anthracite coal is commonly used as a reduction agent for various applications such as briquetting, charcoal and iron ore pellets. The primary use of our anthracite coal will be as a domestic fuel in either hand fired stoker or automatic stoker furnaces. However, our intent is to sell anthracite coal into the PCI coal market. Anthracite is a crossover coal and has been successfully used in the PCI coal market.

The Coal Industry

Background

Coal is one of the most abundant and important energy sources in the world, providing approximately 30% of the world's primary energy needs according to the World Coal Association ("WCA"). Per the WCA, the most significant uses for coal are electricity generation, steel production, cement manufacturing and as a liquid fuel. Coal is traded globally and can be transported to demand centers by ship, rail, barge or truck. World coal production reached a record 8.4 billion tons in 2011 according to The International Energy Agency (IEA) and the WCA. Total hard coal production increased 8% to an estimated 7.4 billion tons in 2011 from 2010 levels, while global production of brown coal was relatively flat at 1.1 billion tons. Also according to IEA estimates, China remained the largest producer of coal in the world, producing over 3.8 billion tons in 2011. The United States and India follow China with hard coal production of over 1.1 billion tons and 639 million tons, respectively, in 2011.

Cross-border coal trade of hard coal was close to 1.3 billion tons in 2012 according to preliminary information. China remained the largest importer of globally traded coal in 2012, taking over 242 million tons of hard coal, having surpassed Japan in 2011. Japan imported more than 198 million tons in 2012, followed by South Korea with nearly 143 million tons, both exhibiting growth. OECD Europe was on pace throughout 2012 to surpass 2011 import levels of 249 million tons.

Among the nations principally supplying coal to the global power and steel markets are Australia, historically the world's largest coal exporter, as well as Indonesia, Russia, the United States, Columbia and South Africa. Australia has significant reserves, however growing environmental constraints, higher labor and capital costs, and the development of reserves farther from export facilities are increasing development and production costs. Indonesia continues to exhibit substantial growth in its coal exports; however its growing domestic energy demand, together with recent regulatory requirements, may result in a decrease in exports as it moves toward greater self-sufficiency. Increasing calls to bolster domestic power supply, together with pressure to improve wages for miners, may also limit South African exports in the future.

Properties and Uses of Coal

Coal is a combustible, sedimentary, organic rock composed mainly of carbon, hydrogen and oxygen. Coal seams are formed from vegetation that has been consolidated between rock strata and altered by the effects of pressure and heat over millions of years. Coal quality varies depending on the pressure, heat and length of time in formation. The higher the carbon content in the coal, the more energy the coal contains. Anthracite is the highest value coal; it contains 86% - 97% carbon and has heat value of over 15,000 Btu per pound. Bituminous coal is the most abundant coal in the world; it contains 45% - 86% carbon and has heat values of 11,000–15,000 Btu per pound. Bituminous coal includes thermal coal used to generate electricity and metallurgical coal used by the steel and iron industries.

Metallurgical coal, also known as coking coal, is processed into coke and used in the production of steel and iron ore. Coke is a fuel with few impurities and high carbon content. The high temperatures produced by the use of coke give steel its strength and flexibility so it can be used in the construction of bridges, and buildings, and the assembly of automobiles. While metallurgical coal is primarily used by steel companies, it is also used by a variety of other industrial users to heat and power foundries, cement plants, paper mills, chemical plants and other manufacturing and processing facilities.

Global Coal Supply and Demand

Europe's ongoing sovereign debt problems continued to strain the global economy in 2012. Within Europe, this economic uncertainty lowered demand for imported finished goods, which led to reduced steel consumption and therefore lower demand for metallurgical coal. In addition, inflation control measures enacted by China, which restricted lending and investment, combined with strong hydro-electric generation and slower growth in the developed world reduced Chinese exports, which in turn had an impact on thermal and metallurgical coal demand in China.

In addition to the strain on global demand, Australia's recovery from flooding in 2011, together with the increasing expansion of Indonesian coal production, created a situation in which global coal supply growth outpaced demand growth in 2012. This was seen in the United States as well, primarily as a result of the unseasonably warm winter that caused coal stockpiles to build at coal-fueled power plants and low natural gas prices.

Despite these challenges in 2012, there were some positive trends. Demand for thermal coal imports in Europe grew as coal-powered generation realized substantial cost advantages to natural gas. That, combined with pressure to reduce subsidized domestic coal production in Europe, could indicate a growing demand for imported coal in Europe. Additionally, toward the end of 2012, global production began to recede while China increased imports of both metallurgical and thermal coal, and total United States exports continued to grow in 2012, up approximately 17 million tons to 124 million tons, or 15% over 2011 levels, according to preliminary data. The IEA in its medium-term coal market report for 2012 indicates coal demand is again expected to rise through 2017.

U.S. Coal Consumption

In the United States, coal is used primarily by power plants to generate electricity, by steel companies to produce coke for use in blast furnaces and by a variety of industrial users to heat and power foundries, cement plants, paper mills, chemical plants and other manufacturing or processing facilities. Although final data is not yet available, coal consumption in the United States is estimated to be approximately 894 million tons in 2012, according to the Energy Information Administration's (EIA) Short Term Energy Outlook. Coal consumption has improved month on month after last year's warm winter decreased overall electricity generation requirements and impacted generation fuels, including coal and natural gas.

U.S. Coal Production

The United States is the second-largest coal producer in the world, exceeded only by China. According to the EIA, there is over 200 billion tons of recoverable coal in the United States. The U.S. Department of Energy estimates that current recoverable coal in the United States reserves could supply enough electricity to satisfy demand in the United States for over 150 years.

Coal is mined from coal fields throughout the United States, with the major production centers located in the western United States, the Appalachian region and the Interior. According to the EIA, U.S. coal production declined an estimated 75 million tons in 2012, to 1.02 billion tons, primarily due to the decline in domestic utility demand.

The EIA subdivides United States coal production into three major areas: Western, Appalachia and Interior. The Western area includes the Powder River Basin and the Western Bituminous region. According to the EIA, coal produced in the western United States declined from an estimated 587 million tons in 2011 to 540 million tons in 2012 as reduced demand for power generation and lower natural gas prices negatively affected coal demand. The Powder River Basin is located in northeastern Wyoming and southeastern Montana and is the largest producing region in the United States. Coal from this region is sub-bituminous coal with low sulfur content ranging from 0.2% to 0.9% and heating values ranging from 8,000 to 9,500 Btu. The price of Powder River Basin coal is generally less than that of coal produced in other regions because Powder River Basin coal exists in greater abundance and is easier to mine and, thus, has a lower cost of production. The Western Bituminous region includes Colorado, Utah and southern Wyoming. Coal from this region typically has low sulfur content ranging from 0.4% to 0.8% and heating values ranging from 10,000 to 12,200 Btu.

The Appalachia region is further dividend into north, central and southern regions. According to the EIA, coal produced in the Appalachian region decreased from 337 million tons in 2011 to 304 million tons in 2012, primarily as a result of natural gas displacement but also because of the depletion of economically attractive reserves, permitting issues, and increasing costs of production. Central Appalachia includes eastern Kentucky, Tennessee, Virginia and southern West Virginia. Coal mined from this region generally has a high heat value ranging from 11,400 to 13,200 Btu and a low sulfur content ranging from 0.2% to 2.0%. Northern Appalachia includes Maryland, Ohio, Pennsylvania and northern West Virginia. Coal from this region generally has a high heat value ranging from 10,300 to 13,500 Btu and a high sulfur content ranging from 0.8% to 4.0%. Southern Appalachia primarily covers Alabama and generally has a heat content ranging from 11,300 to 12,300 Btu and a sulfur content ranging from 0.7% to 3.0%.

The Interior region includes the Illinois Basin, Gulf Lignite production in Texas and Louisiana, and a small producing area in Kansas, Oklahoma, Missouri and Arkansas. The Illinois Basin is the largest producing region in the Interior and consists of Illinois, Indiana and western Kentucky. According to the EIA, coal produced in the Interior region decreased from 180 million tons in 1994 to approximately 171 and 176 million tons in 2011 and 2012, respectively. Coal from the Illinois Basin generally has a heat value ranging from 10,100 to 12,600 Btu and has a high sulfur content ranging from 1.0% to 4.3%. Despite its high sulfur content, coal from the Illinois Basin can generally be used by electric power generation facilities that have installed pollution control devices, such as scrubbers, to reduce emissions.

U.S. Coal Exports and Imports

Coal exports grew almost 17 million tons to 124 million in 2012, a record for the United States. A significant factor for this increase was the demand growth in Europe on fuel-on-fuel competition. We expect this trend to continue as demand for United States coal grows in the seaborne market. Interest in access to the coal markets overseas by producers in the United States, along with increased international consumer interest in United States coal, has fueled considerable growth in developing new port capacity in the United States.

Historically, coal imported outside of the United States has represented a relatively small share of total coal consumption in the United States, and this remained the case in 2012. Imports reached close to 36 million tons in 2007, but have fallen since then. According to the EIA, coal imports declined from 13.1 million tons in 2011 to 9.6 million in 2012. The decline is mostly attributable to more competitive pricing for United States coal and stronger demand from international markets for seaborne coal. The majority of the coal imported into the United States originates from Columbia. We expect imports into the United States to continue to decrease in the near-term as more global coal will likely be directed to Asia.

Coal Pricing Trends, Uncertainties and Outlook

Near-term, the global economic slowdown has lowered demand for thermal coal which has resulted in a general decline in coal prices. Looking forward, several factors are exerting downward pressure on thermal coal prices, including lower demand for coal to generate electricity, lower natural gas prices, and concerns about the effects of recent and proposed U.S. Environmental Protection Agency (EPA) rules such at the Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards rule.

Our results of operations will be dependent upon the prices we will obtain for our coal as well as our ability to improve productivity and control costs. Principal goods and services we intend to use in our operations include maintenance and repair parts and services, electricity, fuel, roof control and support items, explosives, tires, conveyance structures, ventilation supplies, and lubricants.

Our management will strive to aggressively control costs and improve operating performance to mitigate external cost pressures. We may experience volatility in operating costs related to fuel, explosives, steel, tires, contract services, and healthcare, and may take measures to mitigate the increases in these costs at all operations. We intend to promote competition between suppliers and seek to develop relationships with suppliers that focus on lowering our costs. We intend to seek suppliers who identify and concentrate on implementing continuous improvement opportunities within their area of expertise. To the extent upward pressure on costs exceeds our ability to realize sales increases, or if we experience unanticipated operating or transportation difficulties, our operating margins would be negatively impacted. Employee labor costs have historically increased primarily due to the demands associated with attracting and retaining a workforce; however, recent stability in the marketplace has helped ease this situation. We may also experience difficult geologic conditions, delays in obtaining permits, labor shortages, unforeseen equipment problems, and shortages of critical materials such as tires and explosives that may result in adverse cost increases and limit our ability to produce at forecasted levels.

While the prospects for coal demand worldwide are favorable, any global treaties that restrict carbon dioxide emissions or favor renewable energy sources over coal will reduce demand for coal.

In addition to coal prices and demand, our profitability may be affected by our production costs. We expect these costs to remain relatively high for the next several years, due to a number of factors, including increased governmental regulations, high prices in worldwide commodity markets, and a highly competitive market for a limited supply of skilled mining personnel.

Growth in international coal import demand has resulted primarily from increased demand for thermal coal for electricity generation by emerging global economies, particularly by Asian countries in the Pacific market where coal is the primary fuel source for new power generation. We believe that the widening of the Panama Canal in 2014 should lower freight rates which would enhance coal exports to Asia.

In Europe, domestic coal supply has declined due to reduction in domestic production as a result of the region's declining coal reserve base and a reduction in government subsidies for coal mining, particularly in Poland, Germany and Spain. Additionally, the International Atomic Energy Agency projects slower global growth in nuclear power capacity following the 2011 earthquake in Japan and related nuclear incident. Germany, in particular, has closed certain older facilities and is planning to shut down its remaining nuclear plants by 2022. Coal-fired generation is expected to meet a large portion of this additional demand. We believe that the decline in domestic production in Europe, coupled with an expected increase in coal-fired power generation, will result in an increase in thermal coal imports.

Refer to "Item 3D.—Risk Factors" for additional information regarding some of the risks and uncertainties that affect our coal business.

Coal Mining Methods

The geological characteristics of our coal largely determine the coal mining method we intend to employ. We anticipate that our primary future method of mining coal will be surface mining.

Surface Mining.

The majority of the coal we intend to produce will come from surface mining operations. Surface mining involves removing the topsoil then drilling and blasting the overburden (earth and rock covering the coal) with explosives. We will then remove the overburden with heavy earth-moving equipment, such as draglines, power shovels, excavators and loaders. Once exposed, we will drill, fracture and systematically remove the coal using haul trucks or conveyors to transport the coal to a preparation plant or to a loadout facility. We will reclaim disturbed areas as part of our normal mining activities. After final coal removal, we will use draglines, power shovels, excavators or loaders to backfill the remaining pits with the overburden removed at the beginning of the process. Once we have replaced the overburden and topsoil, we would reestablish vegetation and plant life into the natural habitat and make other improvements that have local community and environmental benefits.

Coal Preparation and Blending

Coal to be mined from our mining complexes in Kentucky and Tennessee will be shipped directly to the customer. Typically, no additional preparation is required for a saleable product. Coal extracted from some of our mining operations contains impurities, such as rock, shale and clay in a wide range of particle sizes. The majority of our intended mining operations in the Appalachia region and a few of the mines we intend to acquire in the Western Bituminous region will use a coal preparation plant located near the mine or connected to the mine by a conveyor. These coal preparation plants will allow us to treat the coal we will extract from those mines to ensure a consistent quality and to enhance its suitability for particular end-users. In addition, depending on coal quality and customer requirements, we may blend coal mined from different locations, including coal produced by third parties, in order to achieve a more suitable product.

The treatments we intend to employ at our preparation plants depend on the size of the raw coal and any impurities contained in the raw coal. For coarse material, the separation process relies on the difference in the density between coal and waste rock where, for the very fine fractions, the separation process relies on the difference in surface chemical properties between coal and the waste minerals. To remove impurities, we will first crush the raw coal and classify it into various sizes. For the largest size fractions, we intend to use dense media vessel separation techniques in which we will float coal in a tank containing a liquid of a pre-determined specific gravity. Since coal is lighter than its impurities, it floats, and we would separate it from rock and shale. We intend to treat intermediate sized particles with dense medium cyclones, in which a liquid is spun at high speeds to separate coal from rock. Fine coal is treated in spirals, in which the differences in density between coal and rock allow them, when suspended in water, to be separated. Ultra fine coal is recovered in column flotation cells utilizing the differences in surface chemistry between coal and rock. By injecting stable air bubbles through a suspension of ultra fine coal and rock, the coal particles adhere to the bubbles and rise to the surface of the column where they are removed. To minimize the moisture content in coal, we intend to process most coal sizes through centrifuges. A centrifuge spins coal very quickly, causing water accompanying the coal to separate.

Our Mining Operations - Coal and Natural Gas Reserve Acquisitions

On December 18, 2012, the Company entered into an agreement with Cypress Camon Energy, LLC ("Cypress"), Cypress Camon Investment Management, LLC ("CCIM") the minority owners of Cypress and certain third parties (together the "Owners") to purchase:

i) the ownership and mineral rights to approximately 7,695 acres of land in Kentucky (the "Kentucky Property"), as successor-in-interest to a prior Asset Purchase Agreement entered into by Cypress (the "Kentucky Agreement"); and

ii) 18,335 acres in Tennessee (the "Tennessee Property") and certain leasehold interests, as successor-in-interest to a prior Asset Purchase Agreement entered into by Cypress (the "Tennessee Agreement").

The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. The Tennessee and Kentucky Properties also include natural gas wells and projects relating to extraction of timber, sand, gravel, fly ash and dimension stone. We intend to have third parties extract these commodities, but we may also extract these commodities ourselves.

In connection with the potential acquisition of the two properties, the Company hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement.

Kentucky Property

The acquisition of the Kentucky Property is subject to execution of certain definitive agreements and other closing conditions. Consideration of $11.0 million was paid in the form of notes maturing on January 29, 2013 (the "notes"). The notes did not accrue interest, but remained subject to a guaranty by the initial purchaser and were secured by a mortgage lien and a security interest in the assets being purchased (the "Collateral Security Package").

On January 29, 2013, the maturity date of the notes, the Company had not yet obtained the necessary financing to satisfy the notes and, as a result, the transaction did not close. On January 29, 2013, the parties agreed to extend the closing date of the Kentucky Agreement to February 15, 2013 (the "Initial Extension") in exchange for a $100,000 non-refundable deposit by the Company. The Company was again unable to obtain the necessary financing to satisfy the notes and, as a result, on February 12, 2013, the parties agreed to further extend the closing date of the Kentucky Agreement to March 6, 2013 (the "Second Extension"). As consideration for the Second Extension, the Company agreed to (i) the immediate release to the noteholders of the $100,000 deposit provided in connection with the Initial Extension and (ii) the issuance of $175,000 of the Company's common stock. The stock issuance was not completed. On March 6, 2013, the sale was unable to close due to a lack of financing.

On March 18, 2013, the parties entered into a subsequent amendment to the Kentucky Agreement (the "Kentucky Amendment"), pursuant to which the parties agreed to further extend the closing date of the Kentucky Agreement, subject to the execution of certain definitive agreements and continued compliance by the Company with certain conditions. Under the terms of the Kentucky Amendment, the closing date was extended to February 18, 2014, but in no case later than promptly following a final commitment and closing of loans from a funding source to finance the remaining payments due by the Company. As consideration for this extension, the Company committed to (i) make and pay for certain improvements to the property in a minimum amount of $300,000, (ii) execute forbearance agreements with certain of the noteholders (the "Forbearance Agreements"), pursuant to which payments on the notes will be paid directly by the Company on a monthly basis, as discussed below, (iii) provide a non-refundable deposit of $400,000, (iv) provide a $175,000 cash payment in lieu of the Company common stock not previously delivered in connection with the Second Extension and (v) deliver $175,000 of the Company's stock.

The Forbearance Agreements provide that such noteholders will forbear from pursuing the rights and remedies available to them under the notes and the Collateral Security Package until the earliest to occur of (a) the Company's failure to comply in any respect with the obligations under the Forbearance Agreements, (b) the occurrence or discovery of an event of default under the Kentucky Agreement, as amended (the period beginning March 18, 2013 to the earliest of such dates in clauses (a) and (b) being the "Forbearance Period") or (c) February 18, 2014. Under the Forbearance Agreements, the Company was to pay to such noteholders monthly payments for a period of one year, with an aggregate of $400,000 per month due for the a three-month period, and approximately $1.1 million due per month for the nine-month period thereafter. Interest will accrue on these payments, until all principal on such notes have been paid, at rate of 10% per annum. Accumulated interest is not payable until the earlier of (i) the date of early payment of the principal amount of such notes or (ii) February 18, 2014. All amounts then-owing under the Kentucky Agreement, as amended, and the Forbearance Agreements will be accelerated and due in full upon the closing of a credit facility by the Company with a lending institution. The Company has been unable to meet the obligations under the Forbearance Agreements and the Kentucky Amendment, and is currently in default under such agreements. To date, the noteholders have not initiated any actions against the Company based upon such defaults.

Except with respect to the specific existing events of default contemplated under the Forbearance Agreements, the Forbearance Agreements do not constitute a forbearance or waiver of the noteholders' rights at any time, including during the term of the Forbearance Agreements, to enforce any and all rights and remedies held under the Kentucky Agreement, as amended, the notes, the Collateral Security Package, or any other related document between the parties. Following the end of the Forbearance Period, or following any actions taken by the noteholders based on the continuing default of the Company, continued forbearance will only occur upon written agreement by the noteholders, upon terms and conditions satisfactory to the noteholders and in their sole discretion. If such continued forbearance is not secured, the noteholders shall have the right to enforce any and all rights available to them, including recovery of the full amount of the obligations owed and foreclosure on collateral thereunder. The Company is seeking the financing to consummate this transaction to satisfy its obligations as soon as possible. However, the Company has already missed the original expected closing date, and there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and for any and all amounts owed.

Tennessee Property

The Tennessee Agreement contemplates that the Company will acquire rights, title, permits and leases to coal mines. The transaction was subject to execution and delivery of certain definitive agreements and other closing conditions, and was expected to close in February 2013. The agreement provided that consideration of approximately \$55.0 million would be payable in cash in two installments; \$30.0 million at closing and the remaining approximately \$25.0 million on the first anniversary of the closing. As the Company has not obtained the necessary financing to satisfy its payment obligations under the Tennessee Agreement, the transaction has not closed.

On March 14, 2013, the Company entered into an amendment to the Tennessee Agreement (the "Tennessee Amendment") pursuant to which the Company was permitted to utilize the property through a one-year lease agreement, terminating February 15, 2014. The lease payments were to be \$450,000 per month for a three-month period, followed by approximately \$3.2 million per month for the nine month period thereafter. The lease payments were applied towards reducing the amount of consideration owed by the Company under the Tennessee Agreement, as amended. The lease was to be terminated if any lease payment was not timely made. Further, upon any default under the lease, the Company was to assign all rights under permits, mining contracts or other mining assets on the property to the seller of the property. The seller of the property was also be granted membership interests in the leasing party, our wholly-owned U.S. subsidiary, in order to secure obligations owed under the lease. Further, a portion of the Company's obligation was evidenced by an approximate \$23.0 million promissory note with a maturity date of February 15, 2015.

Under the terms of the Tennessee Amendment, the Company has also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the Tennessee Amendment. Pursuant to the terms of the Tennessee Agreement, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the Tennessee Agreement, and any amendments thereto, shall terminate and be of no further force in effect. The Company has been unable to meet the obligations under the Tennessee Amendment, is currently in default under such agreement and no longer has the right to utilize the property. To date, the seller has not initiated any actions against the Company based upon such defaults. Because the Company has defaulted under the terms of the Tennessee Amendment, on June 7, 2013, the Company assigned all rights under permits, mining contracts or other mining assets on the property back to the seller. While the Company intends to secure the financing to satisfy the Tennessee Agreement, as amended, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable to the parties for damages or any and all amounts owed under the agreements.

Sales, Marketing and Trading

Overview

Coal prices are influenced by a number of factors and can vary materially by region. The price of coal within a region is influenced by market conditions, coal quality, transportation costs involved in moving coal from the mine to the point of use and mine operating costs. For example, higher carbon and lower ash content generally result in higher prices, and higher sulfur and higher ash content generally result in lower prices within a given geographic region.

The cost of coal at the mine is also influenced by geologic characteristics such as seam thickness, overburden ratios and depth of underground reserves. It is generally less expensive to mine coal seams that are thick and located close to the surface than to mine thin underground seams. Within a particular geographic region, underground mining is generally more expensive than surface mining, which is the mining method we intend to use in our mines.

Our sales, marketing and trading functions are principally based in Charlotte, North Carolina, and will consist of sales and trading, transportation and distribution, quality control and contract administration personnel as well as revenue management. In addition to selling coal produced in our mining complexes, from time to time we intend to purchase and sell coal mined by others, some of which we will blend with coal produced from our mines. We intend to focus on meeting the needs and specifications of our customers rather than just selling our coal production.

Customers

The Company currently markets its steam and metallurgical coal to utilities, steel producers and other industrial facilities both in and outside the United States and will continue to target contracts within the United States in the future.

Competition

The coal industry is intensely competitive. The most important factors on which we intend to compete are coal quality, delivered costs to the customer and reliability of supply. Our principal competitors include James River Coal Company, Alpha Natural Resources, Inc. and Apex Coal Sales Inc.

Additionally, coal competes with other fuels, such as natural gas, nuclear energy, hydropower, wind, solar and petroleum, for steam and electrical power generation. Costs and other factors relating to these alternative fuels, such as safety and environmental considerations, affect the overall demand for coal as a fuel.

Transportation

Our coal will be transported to our customers by rail, truck, barge and vessels. The availability and cost of transportation constitute important factors in the marketability of coal. We believe the mines we intend to acquire and operate are located in favorable geographic locations that minimize transportation costs for our future customers, and in many cases we would be able to accommodate multiple transportation options. We expect that our customers will pay the transportation costs from the mining complex to the destination, which is the standard practice in the industry. The practices of, and rates set by, the transportation company serving a particular mine or customer may affect, either adversely or favorably, our marketing efforts with respect to coal produced from the relevant mine.

Suppliers

We may incur substantial expenses per year to procure goods and services in support of our intended business activities in addition to capital expenditures. Principal goods and services include maintenance and repair parts and services, electricity, and contract mining services.

We intend to have a centralized sourcing group, which would set sourcing policy and strategy focusing primarily on major supplier contract negotiation and administration, including but not limited to the purchase of major capital goods in support of the mining operations. We will not be dependent on any one supplier. We will promote competition between suppliers and seek to develop relationships with suppliers that focus on lowering our costs while improving quality and service. We will seek suppliers who identify and concentrate on implementing continuous improvement opportunities within their area of expertise.

Environmental and Other Regulatory Matters

The coal mining industry is subject to extensive regulation by federal, state and local authorities on matters such as:

- employee health and safety;
- permitting and licensing requirements;
- air quality standards;
- water quality standards;
- plant, wildlife and wetland protection;
- blasting operations;
- the management and disposal of hazardous and non-hazardous materials generated by mining operations;
- the storage of petroleum products and other hazardous substances;
- reclamation and restoration of properties after mining operations are completed;
- discharge of materials into the environment, including air emissions and wastewater discharge;
- surface subsidence from underground mining; and
- the effects of mining operations on groundwater quality and availability.

We will endeavor to conduct our mining operations in compliance with all applicable federal, state and local laws and regulations. However, due in part to the extensive, comprehensive and changing regulatory requirements, violations during mining operations may occur from time to time. We cannot assure you that we will be at all times in complete compliance with such laws and regulations. While it is not possible to accurately quantify the expenditures we may incur to maintain compliance with all applicable federal and state laws, those costs are expected to be significant. Federal and state mining laws and regulations will require us to obtain surety bonds to guarantee performance or payment of certain long-term obligations, including mine closure and reclamation costs, federal and state workers' compensation benefits, coal leases and other miscellaneous obligations. Compliance with these laws has substantially increased the cost of coal mining for U.S. coal producers.

Future laws, regulations or orders, as well as future interpretations and more rigorous enforcement of existing laws, regulations or orders, may require substantial increases in equipment and operating costs and delays, interruptions or a termination of operations, the extent to which we cannot predict. In addition, the utility industry, which is the most significant end-user of coal, is subject to extensive regulation regarding the environmental impact of its power generation activities, which could adversely affect our mining operations, cost structure or our customers' demand for coal.

The following is a summary of the various federal and state environmental and similar regulations that have a material impact on our business:

Mining Permits and Approvals

Numerous governmental permits or approvals are required for mining operations. When we apply for these permits and approvals, we may be required to prepare and present to federal, state or local authorities' data pertaining to the effect or impact that any proposed production or processing of coal may have upon the environment. For example, in order to obtain a federal coal lease, an environmental impact statement must be prepared to assist the Bureau of Land Management ("BLM") in determining the potential environmental impact of lease issuance, including any collateral effects from the mining, transportation and burning of coal. The authorization, permitting and implementation requirements imposed by federal, state and local authorities may be costly and time consuming and may delay commencement or continuation of mining operations. In the states where we will operate, the applicable laws and regulations also provide that a mining permit or modification can be delayed, refused or revoked if officers, directors, shareholders with specified interests or certain other affiliated entities with specified interests in the applicant or permittee have, or are affiliated with another entity that has, outstanding permit violations. Thus, violations of applicable laws and regulations could provide a basis to revoke or deny the issuance of future permits.

In order to obtain mining permits and approvals from federal and state regulatory authorities, mine operators must submit a reclamation plan for restoring, upon the completion of mining operations, the mined property to its prior condition or other authorized use. Refer to "Item 4D.—Properties, Plants and Equipment" for additional details regarding our permits. Permit applications are typically submitted several months or even years before a plan to begin mining a new area. Some of our required permits may become increasingly more difficult and expensive to obtain, and the application review processes may take longer to complete and become increasingly subject to challenge, even after a permit has been issued. Under some circumstances, substantial fines and penalties, including revocation or suspension of mining permits and criminal sanctions, may be imposed under the laws described above.

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Surface Mining Control and Reclamation Act

The Surface Mining Control and Reclamation Act ("SMCRA") establishes mining, environmental protection, reclamation and closure standards for all aspects of surface mining as well as many aspects of underground mining. Mining operators must obtain SMCRA permits and permit renewals from the Office of Surface Mining ("OSM") or from the applicable state agency if the state agency has obtained regulatory primacy. A state agency may achieve primacy if the state regulatory agency develops a mining regulatory program that is no less stringent than the federal mining regulatory program under SMCRA.

In 1999, a federal court in West Virginia ruled that the stream buffer zone rule issued under SMCRA prohibited most excess spoil fills. While the decision was later reversed on jurisdictional grounds, the extent to which the rule applied to fills was left unaddressed. On December 12, 2008, OSM finalized a rulemaking regarding the interpretation of the stream buffer zone provisions of SMCRA which confirmed that excess spoil from mining and refuse from coal preparation could be placed in permitted areas of a mine site that constitute waters of the United States. On November 30, 2009, OSM announced that it would re-examine and reinterpret the regulations finalized eleven months earlier. The new rule has not yet been proposed or finalized, but OSM is currently developing an environmental impact statement for use in drafting the anticipated stream protection rule. We are unable to predict the impact, if any, of these actions by the OSM, although the actions potentially could result in additional delays and costs associated with obtaining permits, prohibitions or restrictions relating to mining activities near streams, and additional enforcement actions.

SMCRA permit provisions include a complex set of requirements which include, among other things, coal prospecting; mine plan development; topsoil or growth medium removal and replacement; selective handling of overburden materials; mine pit backfilling and grading; disposal of excess spoil; protection of the hydrologic balance; subsidence control for underground mines; surface runoff and drainage control; establishment of suitable post mining land uses; and revegetation. The process of preparing a mining permit application begins by collecting baseline data to adequately characterize the pre-mining environmental conditions of the permit area. This work is typically conducted by third-party consultants with specialized expertise and includes surveys and/or assessments of the following: cultural and historical resources; geology; soils; vegetation; aquatic organisms; wildlife; potential for threatened, endangered or other special status species; surface and ground water hydrology; climatology; riverine and riparian habitat; and wetlands. The geologic data and information derived from the other surveys and/or assessments are used to develop the mining and reclamation plans presented in the permit application. The mining and reclamation plans address the provisions and performance standards of the state's equivalent SMCRA regulatory program, and are also used to support applications for other authorizations and/or permits required to conduct coal mining activities. Also included in the permit application is information used for documenting surface and mineral ownership, variance requests, access roads, bonding information, mining methods, mining phases, other agreements that may relate to coal, other minerals, oil and gas rights, water rights, permitted areas, and ownership and control information required to determine compliance with OSM's Applicant Violator System, including the mining and compliance history of officers, directors and principal owners of the entity.

Once a permit application is prepared and submitted to the regulatory agency, it goes through an administrative completeness review and a thorough technical review. Also, before a SMCRA permit is issued, a mine operator must submit a bond or otherwise secure the performance of all reclamation obligations. The earliest a reclamation bond can be fully released is five years after reclamation has been achieved. On May 1, 2012, OSM notified the state of Kentucky that OSM believes Kentucky's bonding program is insufficient. The resolution of this issue could cause bonding costs for new or existing operations to increase.

After the application is submitted, a public notice or advertisement of the proposed permit is required to be given, which begins a notice period that is followed by a public comment period before a permit can be issued. It is not uncommon for a SMCRA mine permit application to take over a year to prepare, depending on the size and complexity of the mine, and anywhere from six months to two years or even longer for the permit to be issued. The variability in time frame required to prepare the application and issue the permit can be attributed primarily to the various regulatory authorities' discretion in the handling of comments and objections relating to the project received from the general public and other agencies. Also, it is not uncommon for a permit to be delayed as a result of litigation related to the specific permit or another related company's permit.

In addition to the bond requirement for an active or proposed permit, the Abandoned Mine Land Fund, which was created by SMCRA, requires a fee on all coal produced. The proceeds of the fee are used to restore mines closed or abandoned prior to SMCRA's adoption in 1977. The current fee is $0.28 per ton of coal produced from surface mines and $0.12 per ton of coal produced from underground mines. We intend that our future operating costs relating to reclamation expenses will be paid for by our contract miners under the agreements we will have with them. If we decide to operate the mines, we will pay the operating costs related to reclamation expenses.

Surety Bonds

Mine operators are often required by federal and/or state laws, including SMCRA, to assure, usually through the use of surety bonds, payment of certain long-term obligations including mine closure or reclamation costs, federal and state workers' compensation costs, coal leases and other miscellaneous obligations. Although surety bonds are usually noncancelable during their term, many of these bonds are renewable on an annual basis.

The costs of these bonds have fluctuated in recent years while the market terms of surety bonds have generally become more unfavorable to mine operators. These changes in the terms of the bonds have been accompanied at times by a decrease in the number of companies willing to issue surety bonds.

Mine Safety and Health

The Federal Mine Safety and Health Administration ("MSHA") is the primary regulating agency for safety and health matters and issues rules and regulations addressing mine safety and health. Stringent safety and health standards have been imposed by federal legislation since Congress adopted the Federal Mine Safety and Health Act of 1969 ("FMSHA"). The Mine Safety and Health Act of 1977 significantly expanded the enforcement of safety and health standards and imposed comprehensive safety and health standards on all aspects of mining operations. The FMSHA has been construed as authorizing MSHA to issue citations and orders pursuant to the legal doctrine of strict liability, or liability without fault, and FMSHA requires imposition of a civil penalty for each cited violation. Negligence and gravity assessments, and other factors can result in the issuance of various types of orders, including orders requiring withdrawal from the mine or the affected area, and some orders can also result in the imposition of civil penalties. The FMSHA also contains criminal liability provisions. For example, criminal liability may be imposed upon corporate operators who knowingly and willfully authorize, order or carry out violations of the FMSHA, or its mandatory health and safety standards.

In addition to federal regulatory programs, all of the states in which we intend to operate also have programs aimed at improving mine safety and health. Collectively, federal and state safety and health regulation in the coal mining industry is among the most comprehensive and pervasive systems for the protection of employee health and safety affecting any segment of U.S. industry. In reaction to recent mine accidents, federal and state legislatures and regulatory authorities have increased scrutiny of mine safety matters and passed more stringent laws governing mining. For example, in 2006, Congress enacted the Mine Improvement and New Emergency Response Act ("MINER Act"). The MINER Act imposes additional obligations on coal operators including, among other things, the following:

- development of new emergency response plans that address post-accident communications, tracking of miners, breathable air, lifelines,
- training and communication with local emergency response personnel;
- establishment of additional requirements for mine rescue teams;
- notification of federal authorities in the event of certain events;
- increased penalties for violations of the applicable federal laws and regulations; and
- requirement that standards be implemented regarding the manner in which closed areas of underground mines are sealed.

The MSHA final rule revising MSHA's Pattern of Violations regulations ("POV") became effective on March 25, 2013. The final rule allows MSHA to issue a POV notice without first issuing a potential POV notice and eliminates the existing requirement that MSHA can consider only final orders in its POV review. Under this new POV regulation, MSHA will eliminate the ninety (90) day window, during which mine operators meeting certain initial POV screening criteria could take corrective action and engage in mitigation efforts to avoid being placed on POV status. The final rule restates the statutory requirement that, for mines in POV status, each significant and substantial ("S&S") citations will result in a withdrawal order until a complete inspection finds no S&S violations. Under the final rule, MSHA will review at least once a year the compliance and accident, injury and illness records of mines to determine if any mines meet the POV criteria. Several mining associations have already challenged MSHA's final POV standards rule in the 6th Circuit Court of Appeals.

On June 21, 2011, MSHA issued a final rule requiring that the total incombustible content ("TIC") of the combined coal, rock and other dusts in underground coal mines be at least 80%. In addition, the final rule requires that where methane is present in any ventilating current, the TIC of such combined dust shall be increased 0.4% for each 0.1% of methane. The new rule revised the existing standard, which permitted TIC of combined dusts to be 65% in areas of a mine other than return air courses.

On October 19, 2010, MSHA issued a proposed rule to prevent black lung disease which would gradually lower the current 2.0 mg/m3 dust standard to 1.0 mg/m3 over a two-year period from the effective date, and to 0.5 mg/m3 in intake air. The proposed rule also addresses extended work shifts, redefines normal production shifts, requires additional medical surveillance examinations for miners, and provides for the use of a single, full-shift sample to determine compliance rather than averaging multiple dust samples of different miners' exposures per current requirements. In addition, the proposed rule would phase in the required use of the Continuous Personal Dust Monitor ("CPDM"), which would electronically store all respirable dust sampling data. The CPDMs would be optional for surface coal mines and for non-production areas of underground coal mines (such as outby areas). Federal legislation was enacted in 2011 to prevent MSHA from implementing or enforcing the proposed rule until such time as the General Accounting Office ("GAO") performed an independent assessment of MSHA's data and methodology used in creating the rule. Although the GAO performed this assessment in 2012, MSHA has not yet finalized the rule.

On April 6, 2012, MSHA issued a final rule to revise the requirements for pre-shift, supplemental, on-shift and weekly examinations of underground coal mines. The final rule adds the requirement that operators identify violations of mandatory health or safety standards and requires the mine operator to record and correct these violations, note the actions taken to correct the conditions and review with mine examiners on a quarterly basis all citations and orders issued in areas where pre-shift, supplemental, on-shift and weekly examinations are required.

On August 31, 2011, MSHA published proposed rules that, if finalized, will require mine operators to install proximity detection systems on continuous mining machines. The proximity detection systems initiate a warning or shutdown the continuous miner depending on the proximity of the machine to a miner. MSHA has not yet finalized the rule.

Black Lung Legislation

The Black Lung Benefits Act of 1977 and the Black Lung Benefits Reform Act of 1977, as amended in 1981 ("BLBA") requires businesses that conduct current mining operations to make payments of black lung benefits to current and former coal miners with black lung disease and to some survivors of a miner who dies from this disease. The BLBA levies a tax on production of $1.10 per ton for underground-mined coal and $0.55 per ton for surface-mined coal, but not to exceed 4.4% of the applicable sales price, in order to compensate miners who are totally disabled due to black lung disease and some survivors of miners who died from this disease, and who were last employed as miners prior to 1970 or subsequently where no responsible coal mine operator has been identified for claims. The excise tax does not apply to coal shipped outside the United States. Revised BLBA regulations took effect in January 2001, relaxing the stringent award criteria established under previous regulations and thus potentially allowing more new federal claims to be awarded and allowing previously denied claimants to re-file under the revised criteria. These regulations may also increase black lung related medical costs by broadening the scope of conditions for which medical costs are reimbursable and increase legal costs by shifting more of the burden of proof to the employer.

The Patient Protection and Affordable Care Act of 2010 (the "Act") includes a black-lung provision that creates a rebuttable presumption that a miner with at least 15 years of service, with totally disabling pulmonary or respiratory lung impairment and negative radiographic chest x-ray evidence is disabled due to pneumoconiosis and is eligible for black lung benefits. The Act also makes it easier for widows of miners to become eligible for benefits. This legislation could significantly impact future payments for black lung benefits.

In addition to federal black lung legislation, we would also be liable under various state statutes for black lung claims. Also, in recent years, further legislation on black lung reform has been introduced but not enacted in Congress and in state legislatures; legislation may continue to be introduced and some may be enacted. If any of the proposals included in this or similar legislation is passed, the number of claimants who are awarded benefits could significantly increase. Any such changes in black lung legislation, if approved, may adversely affect our business, financial condition and results of future operations.

In 2008, the U.S. House of Representatives approved additional federal legislation which would have required new regulations on a variety of mine safety issues such as underground refuges, mine ventilation and communication systems. Although the U.S. Senate failed to pass that legislation, it is possible that similar legislation may be proposed in the future. Various states, including Kentucky, have also enacted laws to address many of the same subjects. The costs of implementing these safety and health regulations at the federal and state level will be substantial. In addition to the cost of implementation, there are increased penalties for violations which may also be substantial. Expanded enforcement has resulted in a proliferation of litigation regarding citations and orders issued as a result of the regulations.

Clean Air Act

The federal Clean Air Act and similar state and local laws that regulate air emissions affect coal mining directly and indirectly. Direct impacts on coal mining and processing operations include Clean Air Act permitting requirements and emissions control requirements relating to particulate matter which may include controlling fugitive dust. The Clean Air Act also indirectly affects coal mining operations by extensively regulating the emissions of particulate matter, sulfur dioxide, nitrogen oxides, mercury and other compounds emitted by coal-fueled power plants and industrial boilers, which are the largest end-users of our coal. Continued tightening of the already stringent regulation of emissions is likely, such as the Mercury and Air Toxics Standard ("MATS") (the Clean Air Act as it relates to climate change are discussed in the next section), finalized in 2011 and discussed in more detail below. These regulations may require additional pollution control equipment or lead to premature retirement of older coal-fired generating unit, both of which would likely reduce the demand for coal. These Clean Air Act regulations include, but are not limited to, the following.

- *Acid Rain.* Title IV of the Clean Air Act, promulgated in 1990, imposed a two-phase reduction of sulfur dioxide emissions by electric utilities. Phase II became effective in 2000 and applies to all coal-fueled power plants with a capacity of more than 25-megawatts. Generally, the affected power plants have sought to comply with these requirements by switching to lower sulfur fuels, installing pollution control devices, reducing electricity generating levels or purchasing or trading sulfur dioxide emissions allowances. Although we cannot accurately predict the future effect of this Clean Air Act provision on our operations, we believe that implementation of Phase II has been factored into the pricing of the coal market.

- *Particulate Matter.* The Clean Air Act requires the Environmental Protection Agency ("EPA") to set national ambient air quality standards ("NAAQS"), for certain pollutants associated with the combustion of coal, including sulfur dioxide, particulate matter, nitrogen oxides and ozone. Areas that are not in compliance with these standards, referred to as non-attainment areas, must take steps to reduce emissions levels. On March 18, 2013, the revised NAAQS for particulate matter became effective and reduced the amount of particulate matter that can be emitted by a wide variety of sources including power plants and industrial facilities. Industry has already challenged the rule. If the rule is upheld, states would be required to make recommendations on nonattainment designations for the new NAAQS, and then in late 2013, states would identify the sources of emissions and develop state or regional-specific emission reduction plans. Future regulation and enforcement of the new particular matter standard will affect many power plants, especially coal-fueled power plants, and all plants in non-attainment areas.

- *Ozone.* The EPA was scheduled to propose a revision of their existing NAAQS for ozone, but EPA missed its March 2013 deadline, and it is unclear when the standards will be updated. Significant additional emission control expenditures will likely be required at coal-fueled power plants to meet the new NAAQS. Nitrogen oxides, which are a byproduct of coal combustion, are classified as an ozone precursor. As a result, emissions control requirements for new and expanded coal-fueled power plants and industrial boilers will continue to become more demanding in the years ahead.

- *NOx SIP Call. T*he Nitrogen Oxides State Implementation Plan ("NOx SIP") Call program was established by the EPA in October 1998 to reduce the transport of ozone on prevailing winds from the Midwest and South to states in the Northeast, which said that they could not meet federal air quality standards because of migrating pollution. The program was designed to reduce nitrous oxide emissions by one million tons per year in 22 eastern states and the District of Columbia. Phase II reductions were required by May 2007. As a result of the program, many power plants were required to install additional emission control measures, such as selective catalytic reduction devices.

- *Clean Air Interstate Rule*. The EPA finalized the Clean Air Interstate Rule ("CAIR"), in March 2005. CAIR called for power plants in 28 Eastern states and the District of Columbia to reduce emission levels of sulfur dioxide and nitrous oxide pursuant to a cap and trade program similar to the system now in effect for acid deposition control and to that proposed by the Clean Skies Initiative. In December 2008, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court") vacated CAIR, and remanded the rule to the EPA. On July 6, 2011, the EPA revised the rule as the Cross State Air Pollution Rule ("CSAPR"), but that rule was also challenged and on August 21, 2012, the D.C. Circuit Court vacated CSAPR. In its decision, the D.C. Circuit Court ordered the EPA to continue to administer CAIR, but to proceed expeditiously to promulgate a replacement rule. The Supreme Court agreed to hear the EPA's appeal and will decide the matter in 2014.

- *Mercury.*On March 28, 2013, the EPA issued the final Mercury and Air Toxics Standards ("MATS") rule, which sets technology-based emission limitation standards for mercury and other toxic air pollutants from coal and oil fired electric generating units with a capacity of 25 megawatts ("MW") or more. EPA had originally published the MATS rule in February 2012 but had agreed to reconsider provisions in August 2012. Legal challenges to MATS rule are anticipated.

- *Utility Boiler Maximum Achievable Control Technology ("Boiler MACT") Rule.* EPA issued final the Utility Boiler Maximum Achievable Control Technology ("Boiler MACT") Rule standards on January 31, 2013 requiring stringent acid gases, mercury and particulate matter emission limits on coal- and oil-fired electric utility steam generating units. An earlier version of the Boiler MACT rule had been stayed by EPA in response to litigation by several utilities and interested parties. Legal challenges to the Boiler MACT are anticipated. If the Boiler MACT is upheld, however, EPA estimates the rule will affect 1,700 existing major source facilities.

- *Regional Haze.* The EPA has initiated a regional haze program designed to protect and improve visibility at and around national parks, national wilderness areas and international parks, particularly those located in the southwest and southeast United States. Under the Regional Haze Rule, affected states were required to submit regional haze SIP's by December 17, 2007, that, among other things, was to identify facilities that would have to reduce emissions and comply with stricter emission limitations. The majority of states failed to submit their plans by December 17, 2007, and the EPA issued a Finding of Failure to Submit plans on January 15, 2009. Many states did not meet the deadline and environmental groups filed a lawsuit against the EPA, which resulted in a November 2011 consent decree in which the EPA agreed to a timeline to either approve the remaining SIPs or to implement Federal Implementation Plans (FIPs) in the states that did not comply. Also, in December 2011, EPA had proposed a rule allowing states to rely on the CSAPR trading program to meet some of the requirements in the regional haze program. Because, as noted above, CSAPR has been invalidated by the courts, EPA has indicated in a February 2013 proposed rule to approve four SIPS that it would allow states to rely on the Clean Air Interstate Rule (CAIR) to meet some of the requirements of the regional haze program.This program may result in additional emissions restrictions from new coal-fueled power plants whose operations may impair visibility at and around federally protected areas. This program may also require certain existing coal-fueled power plants to install additional control measures designed to limit haze-causing emissions, such as sulfur dioxide, nitrogen oxides, volatile organic chemicals and particulate matter. These limitations could affect the future market for coal.

Climate Change

Considerable and increasing government attention in the United States and other countries is being paid to reducing greenhouse gas ("GHG") emissions, including carbon dioxide ("CO2") emissions from coal-fired power plants and methane emissions from mining operations. Although the United States has not ratified the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change ("UNFCCC"), which became effective for many countries in 2005 and establishes a binding set of emission targets for greenhouse gases, the United States is actively participating in various international initiatives within and outside of the UNFCCC process to negotiate developed and developing nation commitments for GHG emission reductions and related financing. If the United States participates in any international GHG agreement, it could adversely affect the price and demand for coal.

In addition to possible future U.S. treaty obligations, further regulation of GHG in the United States could occur pursuant to new or amended federal or state legislation, including but not limited to regulatory changes under the Clean Air Act, Public Utility Regulatory Policies Act, state initiatives, or otherwise. At the federal level, Congress actively considered in the past, and may consider in the future, legislation that would establish a nationwide GHG emissions cap-and-trade or other market-based program to reduce GHG emissions. There are other types of legislative proposals that would promote clean energy that Congress has also considered in the past, and is currently considering. Many of these proposals favor fuels with a lower carbon content than coal, but such proposals also incent the construction and development of carbon capture and sequestration plants as well as other advanced coal technologies. We cannot predict the financial impact of future GHG or clean energy legislation on our operations or our customers at this time.

The EPA also is implementing plans to regulate GHG emissions. In October 2009, the EPA published its final Mandatory Greenhouse Gas Reporting Rule, which requires power plants and other large sources of GHGs to file reports disclosing GHG emissions. In November 2011, the EPA delayed to April 1, 2013 the reporting deadline for underground coal mines and certain other source categories to file their first annual reports disclosing GHG emissions.

In December 2009, the EPA issued a Final Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, wherein the EPA concluded that GHGs endanger the public health and welfare. In April 2010, the EPA issued, along with the Department of Transportation, a rule to regulate GHG emissions from new cars and trucks. This rule took effect in January 2011, and according to EPA, established GHG emissions as "regulated pollutants" under the Clean Air Act. As a consequence, and in conjunction with an EPA Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, new sources that emit at least 100,000 tons per year of GHG and existing facilities that increase their emissions of GHGs by at least 75,000 tons per year must meet Best Available Control Technology for GHG emissions.

On March 27, 2012, the EPA proposed a New Source Performance Standard rule that limits CO2 emissions from new fossil fuel burning power plants to 1,000 pounds of carbon dioxide emissions for every one megawatt hour of power generated. This standard is achievable by most natural gas-fired power plants but is not economically achievable given current technology for coal-fired power generation. This rule, if effective, will likely prevent the construction of new coal-fired power generation for the foreseeable future. Although the Clean Air Act required the EPA to finalize the rule by April 13, 2013, the EPA has not announced any planned revisions to the proposed GHG NSPS, nor has the Agency announced a timetable for finalizing the rule. Federal legislation that would variously suspend or eliminate the EPA's regulatory authority over GHGs has been introduced in both the House and Senate.

In addition to federal GHG regulations, there are several new state programs to limit GHG emissions and others have been proposed. State and regional climate change initiatives are taking effect before federal action. On January 1, 2009, ten Northeastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) began to comply with the Regional Greenhouse Gas Initiative, a regional GHG cap-and-trade program calling for a ten percent reduction of emissions by 2018. In October 2011, the California Air Resources Board adopted regulations that establish a statewide cap and trade program to control GHG emissions. The program took effect on January 1, 2013.

Predicting the economic effects of greenhouse gas legislation is difficult given the various alternatives proposed and the complexities of the interactions between economic and environmental issues. Coal-fired generators could switch to other fuels that generate less of these emissions, possibly reducing the construction of coal-fired power plants or causing some users of our coal to switch to a lower CO_2 generating fuel, or more generally reducing the demand for coal-fired electricity generation. This could result in an indeterminate decrease in demand for coal nationally, and various mechanisms proposed to limit GHG emissions could impact the price of coal and the cost of coal-fired generation. The majority of our coal supply agreements contain provisions that allow a purchaser to terminate its contract if legislation is passed that either restricts the use or type of coal permissible at the purchaser's plant or results in specified increases in the cost of coal or its use to comply with applicable ambient air quality standards. In addition, if future regulation of GHG emissions does not exempt the release of coalbed methane, we may have to curtail future coal production, pay higher taxes, or incur costs to purchase credits that permit us to operate coal mines.

There have been numerous protests of and challenges to the permitting of new coal-fired power plants by environmental organizations and state regulators for concerns related to greenhouse gas emissions. For instance, various state regulatory authorities have rejected the construction of new coal-fueled power plants based on the uncertainty surrounding the potential costs associated with greenhouse gas emissions from these plants under future laws limiting the emissions of carbon dioxide. In addition, several permits issued to new coal-fueled power plants without limits on greenhouse gas emissions have been appealed to the EPA's Environmental Appeals Board.

In addition, over thirty states have currently adopted "renewable energy standards" or "renewable portfolio standards," which encourage or require electric utilities to obtain a certain percentage of their electric generation portfolio from renewable resources by a certain date. These standards range generally from 10% to 30%, over time periods that generally extend from the present until between 2020 and 2030. Other states may adopt similar requirements, and federal legislation is a possibility in this area. To the extent these requirements affect our future customers, they may reduce the demand for coal-fired power, and may affect long-term demand for its coal.

Clean Water Act

The federal Clean Water Act and corresponding state and local laws and regulations affect coal mining operations by restricting the discharge of pollutants, including dredged and fill materials, into waters of the United States. The Clean Water Act provisions and associated state and federal regulations are complex and subject to amendments, legal challenges and changes in implementation. Recent court decisions and regulatory actions have created uncertainty over Clean Water Act jurisdiction and permitting requirements that could variously increase or decrease the cost and time we may expend on Clean Water Act compliance.

Clean Water Act requirements that may directly or indirectly affect our operations include the following:

- *Water Discharge.* Section 402 of the Clean Water Act creates a process for establishing effluent limitations for discharges to streams that are protective of water quality standards through the National Pollutant Discharge Elimination System ("NPDES") or an equally stringent program delegated to a state regulatory agency. Regular monitoring, reporting and compliance with performance standards are preconditions for the issuance and renewal of NPDES permits that govern discharges into waters of the United States, especially on selenium, sulfate and specific conductance. Discharges that exceed the effluent limits specified under NPDES permits can lead to the imposition of penalties, and persistent non-compliance could lead to significant penalties, compliance costs and delays in coal production. On April 19, 2012, the EPA released a proposed regulation updating the Effluent Limitation Guidelines (ELGs) for all electric generating units that produce steam, including units powered by nuclear, coal, oil and natural gas, which have been unchanged since 1982. These new restrictions could increase the difficulty of obtaining and complying with NPDES permits, which could impose additional time and cost burdens on our operations.

  Discharges of pollutants into waters that states have designated as impaired (i.e., as not meeting present water quality standards) are subject to Total Maximum Daily Load ("TMDL") regulations. The TMDL regulations establish a process for calculating the maximum amount of a pollutant that a water body can receive while maintaining state water quality standards. Pollutant loads are allocated among the various sources that discharge pollutants into that water body. Mine operations that discharge into water bodies designated as impaired will be required to meet new TMDL allocations. The adoption of more stringent TMDL-related allocations for our coal mines could require more costly water treatment and could adversely affect our coal production. The Clean Water Act also requires states to develop anti-degradation policies to ensure that non-impaired water bodies continue to meet water quality standards. The issuance and renewal of permits for the discharge of pollutants to waters that have been designated as "high quality" are subject to anti-degradation review that may increase the costs, time and difficulty associated with obtaining and complying with NPDES permits.

• *Dredge and Fill Permits.* Permits under Section 404 of the Clean Water Act are required for coal companies to conduct dredging or filling activities in jurisdictional waters for the purpose of creating slurry ponds, water impoundments, refuse disposal areas, valley fills or other mining activities. The U.S. Army Corps of Engineers ("COE") only has jurisdiction over the "navigable waters" of the United States, a term that has been highly litigated and outside these waters there is arguably no need to get a 404 permit. The United States Supreme Court ruled in 2006 that upper reaches of streams which are intermittent or do not flow might not be navigable waters requiring 404 permits. The case did not involve disposal of mining refuse, but has implications for the mining industry. Subsequently, in June 2007, the COE and EPA issued a joint guidance document to attempt to develop a policy that will apply the jurisdictional standards imposed by the Supreme Court. The guidance requires a case-by-case analysis of whether the area to be filled has a sufficient nexus to downstream navigable waters so as to require 404 permits. Review and implementation of this guidance by the COE field offices remains inconsistent. In April 2011, EPA and COE proposed updated non-binding guidance, which would expand the scope of federal agency review under the CWA. EPA sent the guidance to the White House Office of Management and Budget ("OMB") in February 2012 for final review. To date, OMB has not completed its review of the 2011 Guidance and EPA has not published a proposed rule. Review and implementation of the 2008 guidance has been inconsistent, and if the new guidance is made final, it is unclear how it will be implemented or which decisions made pursuant to the guidance will be challenged.

The COE's issuance of 404 permits is subject to the National Environmental Policy Act ("NEPA"). NEPA defines the procedures by which a federal agency must administer its permitting programs. The law requires that a federal agency must take a "hard look" at any activity that may "significantly affect the quality of the human environment". The COE typically conducts an initial Environmental Assessment ("EA") to determine whether the project's effects are significant enough to require an Environmental Impact Statement ("EIS"), which involves a very lengthy data collection and review process. In most cases, the COE issues a Finding of No Significant Impact ("FONSI") at the conclusion of the EA and does not require an EIS to determine the impacts from impoundments, fills and other activities associated with coal mining. However, in some cases the full EIS process is being required for mining projects. Should a full EIS be required for every permit instead of, or in addition to, the less detailed EA, significant permitting delays could affect future mining costs or cause operations not to be opened in the first instance, or to be idled or closed.

The COE is authorized to issue general "nationwide" permits for specific categories of activities that are similar in nature and that are determined to have minimal adverse effects on the environment. Permits issued pursuant to Nationwide Permit 21("NWP 21") had generally authorized the disposal of dredged and fill material from surface coal mining activities into waters of the United States, subject to certain restrictions. The latest NWP 21, which was issued in February 2012, was invalidated by the Sixth Circuit on April 22, 2013. The 2012 NWP 21 imposed significant new limitations: the NWP 21 could not be used to construct valley fills and it only authorized impacts to one-half acre of surface water and no more than 300 linear feet of stream bed. The 2012 NWP 21 also allowed operations at about 70 facilities previously-permitted under the 2007 version of NPW 21 to be "re-certified" for up to five years, even if the activities would not qualify for 2012 version of NWP 21. The Sixth Circuit objected to this reauthorization and invalidated 2012 NWP 21, but stayed the ruling for 60 days so a federal district court in Kentucky and the parties to the lawsuit can determine the effect on existing projects. It is unclear what affect the ruling will have on either the re-certified projects or on all general permits for surface mining activities.

EPA published guidance in a July 21, 2011 Final Memorandum entitled "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" ("EPA Mining Guidance"). The EPA Mining Guidance establishes threshold conductivity levels to be used as a basis for evaluating compliance with narrative water quality standards. Conductivity is a measure that reflects levels of various salts present in water. The EPA Administrator stated that these water quality standards may be difficult for most mining operations to meet. The Mining Guidance was challenged in court by the National Mining Association and by several states. On October 6, 2011, a federal court vacated the ECP. Likewise, the EPA Mining Guidance was vacated on July 31, 2012, by a federal district court. The EPA is appealing the decision invalidating the EPA Mining Guidance.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act ("RCRA") may affect coal mining operations through its requirements for the management, handling, transportation and disposal of hazardous wastes. Currently, certain coal mine wastes, such as overburden and coal cleaning wastes, are exempted from hazardous waste management. In addition, Subtitle C of RCRA exempted fossil fuel combustion wastes from hazardous waste regulation until the EPA completed a report to Congress and made a determination on whether the wastes should be regulated as hazardous. In its 1993 regulatory determination, the EPA addressed some high volume-low toxicity coal combustion products generated at electric utility and independent power producing facilities, such as coal ash, and left the exemption in place. In May 2000, the EPA concluded that coal combustion products do not warrant regulation as hazardous waste under RCRA and again retained the hazardous waste exemption for these wastes. The EPA also determined that national non-hazardous waste regulations under RCRA Subtitle D are needed for coal combustion products disposed in surface impoundments and landfills and used as mine-fill. In March of 2007, the Office of Surface Mining and the EPA proposed regulations regarding the management of coal combustion products. The EPA concluded that beneficial uses of these wastes, other than for mine-filling, pose no significant risk and no additional national regulations are needed.

As long as this exemption remains in effect, it is not anticipated that regulation of coal combustion waste will have any material effect on the amount of coal used by electricity generators. A final rule has not been promulgated. Most state hazardous waste laws also exempt coal combustion products, and instead treat it as either a solid waste or a special waste. Any costs associated with handling or disposal of hazardous wastes would increase our future customers' operating costs and potentially reduce their ability to purchase coal. In addition, contamination caused by the past disposal of ash can lead to material liability, but following a massive coal ash spill in Tennessee in 2008, the EPA contractors began conducting site assessments at many impoundments and the EPA is requiring appropriate remedial action at any facility that was found to have a unit posing a risk for potential failure. On June 21, 2010, the EPA released a proposed rule to regulate the disposal of certain coal combustion by-products ("CCBs"). The proposed rule included two different approaches. On approach would keep CCBs regulated as non-hazardous materials under Subtitle D and the other would regulate CCBs as hazardous materials under Subtitle C. The proposed rule would keep the exemption for beneficial use of CCBs.

Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and similar state laws affect coal mining operations by, among other things, imposing cleanup requirements for threatened or actual releases of hazardous substances that may endanger public health or welfare or the environment. Under CERCLA and similar state laws, joint and several liability may be imposed on waste generators, site owners and lessees and others regardless of fault or the legality of the original disposal activity. Although the EPA excludes most wastes generated by coal mining and processing operations from the hazardous waste laws, such wastes can, in certain circumstances, constitute hazardous substances for the purposes of CERCLA. In addition, the disposal, release or spilling of some products used by coal companies in operations, such as chemicals, could trigger the liability provisions of the statute. Thus, coal mines that we will own, and sites to which we will send waste materials, may be subject to liability under CERCLA and similar state laws. In particular, we may be liable under CERCLA or similar state laws for the cleanup of hazardous substance contamination at sites where we own surface rights.

The magnitude of the liability and the cost of complying with environmental laws with respect to particular sites cannot be predicted with certainty due to the lack of specific information available, the potential for new or changed laws and regulations, the development of new remediation technologies, and the uncertainty regarding the timing of remedial work. As a result, we may incur material liabilities or costs related to environmental matters in the future and such environmental liabilities or costs could adversely affect our results and financial condition. In addition, changes in laws or regulations may result in additional costs and affect the manner in which we are required to conduct our operations.

Use of Explosives

Our future surface mining operations will be subject to numerous regulations relating to blasting activities. Pursuant to these regulations, we or our contract miners will incur costs to design and implement blast schedules and to conduct pre-blast surveys and blast monitoring. In addition, the storage of explosives is subject to strict regulatory requirements established by four different federal regulatory agencies. For example, pursuant to a rule issued by the Department of Homeland Security in 2007, facilities in possession of chemicals of interest, including ammonium nitrate at certain threshold levels, must complete a screening review in order to help determine whether there is a high level of security risk such that a security vulnerability assessment and site security plan will be required.

Endangered Species

The Endangered Species Act and other related federal and state statutes protect species threatened or endangered with possible extinction. Protection of threatened, endangered and other special status species may have the effect of prohibiting or delaying us from obtaining mining permits and may include restrictions on timber harvesting, road building and other mining or agricultural activities in areas containing the affected species. A number of species indigenous to our properties are protected under the Endangered Species Act or other related laws or regulations. Based on the species that have been identified to date and the current application of applicable laws and regulations, however, we do not believe there are any species protected under the Endangered Species Act that would materially and adversely affect our ability to mine coal from our properties in accordance with current mining plans. We intend to operate within the existing spatial, temporal and other restrictions associated with special status species. Should more stringent protective measures be applied to threatened, endangered or other special status species or to their critical habitat, then we could experience increased operating costs or difficulty in obtaining future mining permits.

Other Environmental Laws.

We will be required to comply with numerous other federal, state and local environmental laws in addition to those previously discussed. These additional laws include, for example, the Safe Drinking Water Act, the Toxic Substance Control Act and the Emergency Planning and Community Right-to-Know Act.

Glossary of selected mining terms

Certain terms that we use in this document are specific to the coal mining industry and may be technical in nature. The following is a list of selected mining terms and the definitions we attribute to them.

Ash. Impurities consisting of iron, alumina and other incombustible matter that are contained in coal. Since ash increases the weight of coal, it adds to the cost of handling and can affect the burning characteristics of coal.

Bituminous coal. A common type of coal with moisture content less than 20% by weight and heating value of 9,500 to 14,000 Btus per pound. It is dense and black and often has well-defined bands of bright and dull material.

British thermal unit, or Btu: A measure of the thermal energy required to raise the temperature of one pound of pure liquid water one degree Fahrenheit at the temperature at which water has its greatest density (39 degrees Fahrenheit).

Brown coal: Coal of gross calorific value of less than 5700 kilocalories per kilogramme (kcal/kg), which includes lignite and sub-bituminous coal where lignite has a gross calorific value of less than 4165 kcal/kg and sub-bituminous coal has a gross calorific value between 4165 kcal/kg and 5700 kcal/kg.

Central Appalachia. Coal producing area in eastern Kentucky, Virginia, southern West Virginia and a portion of eastern Tennessee.

Coal seam: Coal deposits occur in layers. Each layer is called a "seam."

Coke: A hard, dry carbon substance produced by heating coal to a very high temperature in the absence of air. Coke is used in the manufacture of iron and steel. Its production results in a number of useful byproducts.

Continuous miner: A machine used in underground mining to cut coal from the seam and load it onto conveyors or into shuttle cars in a continuous operation.

Dragline: A large machine used in surface mining to remove the overburden, or layers of earth and rock, covering a coal seam. The dragline has a large bucket, suspended by cables from the end of a long boom, which is able to scoop up large amounts of overburden as it is dragged across the excavation area and redeposit the overburden in another area.

High Btu coal: Coal which has an average heat content of 12,500 Btus per pound or greater.

Hard coal: Coal of gross calorific value greater than 5700 kcal/kg on an ashfree but moist basis and further disaggregated into anthracite, coking coal and other bituminous coal.

Low-sulfur coal: Coal which, when burned, emits 1.6 pounds or less of sulfur dioxide per million Btus.

Metallurgical coal: The various grades of coal suitable for carbonization to make coke for steel manufacture. Also known as "met" coal, its quality depends on four important criteria: volatility, which affects coke yield; the level of impurities including sulfur and ash, which affect coke quality; composition, which affects coke strength; and basic characteristics, which affect coke oven safety. Met coal typically has a particularly high Btu but low ash and sulfur content.

Overburden: Layers of earth and rock covering a coal seam. In surface mining operations, overburden is removed prior to coal extraction.

Preparation plant: A facility used for crushing, sizing and washing coal to remove impurities and to prepare it for use by a particular customer.

Probable reserves: Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven reserves, but the sites for inspection, sampling and measurement are farther apart or are otherwise less adequately spaced.

Proven reserves: Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth and mineral content of reserves are well established.

Reclamation: The restoration of land and environmental values to a mining site after the coal is extracted. The process commonly includes "recontouring" or shaping the land to its approximate original appearance, restoring topsoil and planting native grass and ground covers.

Recoverable reserves: The amount of proven and probable reserves that can actually be recovered from the reserve base taking into account all mining and preparation losses involved in producing a saleable product using existing methods and under current law.

Reserves: That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination.

Steam coal: Coal used by power plants and industrial steam boilers to produce electricity, steam or both. It generally is lower in Btu heat content and higher in volatile matter than metallurgical coal.

Sub-bituminous coal: Dull coal that ranks between lignite and bituminous coal. Its moisture content is between 20% and 30% by weight and its heat content ranges from 7,800 to 9,500 Btus per pound of coal.

Sulfur: One of the elements present in varying quantities in coal that contributes to environmental degradation when coal is burned. Sulfur dioxide is produced as a gaseous by-product of coal combustion.

Surface mine: A mine in which the coal lies near the surface and can be extracted by removing the covering layer of soil (see “Overburden”). About 68% of total U.S. coal production comes from surface mines.

Tons: A “short” or net ton is equal to 2,000 pounds. A “long” or British ton is equal to 2,240 pounds; a “metric” tonne is approximately 2,205 pounds. The short ton is the unit of measure referred to in this document.

C. Organizational Structure

NewLead is the sole owner of all outstanding shares of the subsidiaries listed in Note 2 of our consolidated financial statements included in this report, except for Newlead Trading, Inc. We also have an investment in a joint venture arrangement and we, with J Mining & Energy Group, established a new entity for the purchase and trading of coal. In connection with these new business arrangements, NewLead owns a 52% interest in NewLead Mojave Holdings LLC, which owns an 100% interest in NewLead Holdings (US) Corp., which in turn owns a 50% interest in New Lead JMEG LLC. See “Item 5.—Operating and Financial Review and Prospects—Recent Developments”.

D. Properties, Plants and Equipment

Kentucky Property

Project Location, Access and Areas of Operation

The Kentucky Property consists of a group of 42 surface and mineral leases located at Canoe Quadrangle, Breathitt County, Kentucky, approximately 2.1 miles NW of Copeland and 1.8 miles west of the North Fork of the Kentucky River off Kentucky highway 1110. The total acreage under lease is approximately 7,695 acres. Primary access to the property is at Howard’s Creek Road off highway Kentucky 1110 to the project’s main access at Howard’s Creek Road. Transportation of the coal to purchasers is available through a rail terminal approximately one mile from the property.

The Kentucky Property already has permits related to the operation of the mine and the Andy Terminal Unit Train Loadout. The mine on the Kentucky Property is not operating, but NewLead intends to obtain the right to excavate the mine under an agreement with the current permit holder. These permits will be transferred to NewLead when it acquires ownership of the Kentucky Property. NewLead, or its contract miners, may acquire additional permits at the Kentucky Property. The necessary permits at the Kentucky Property related to the operation of the mine will be obtained and complied with in the future.

Agreements for Surface/Mineral Rights

As of December 18, 2012, we entered into an agreement to acquire title and mineral excavation rights to the Kentucky Property (the “Kentucky Agreement”). The transaction is subject to execution of certain definitive agreements and other closing conditions. As further explained in “Item 5.—Operating and Financial Review and Prospects– Recent Developments”, the Kentucky Agreement has been amended and its closing date has been extended to February 18, 2014, but in no case later than promptly following a final commitment and closing of loans from a funding source. We are currently in default under the Kentucky Agreement, but to date, the noteholders have not initiated any actions against us based on such defaults.

Equipment, Infrastructure and Other Facilities

The Andy Terminal Unit Train Loadout and CSX Rail Siding that we will use to transport our coal are located near Haddix, Breathitt County, Kentucky and can load a unit train in approximately 4.5 – 6 hours at an average rate of 1800 TPH (tons per hour). A rail siding is a short railroad track connected with the main track. At this location, the rail siding and the connecting railway are part of the railroad operated by CSX Corporation, Inc. The terminal facility was constructed in 2005 by Taggert Global for Bluestone Coal Company and is most recently owned by Kentucky Fuel Corporation. The terminal consists of one truck scale, two stockpile areas, two tunnels with feeders, one crusher, three conveyors, one electromagnet, one belt sampler, one control room and circular rail siding on the CSX Railway, which is the adjoining railroad operated by CSX Corporation, Inc.

Previous Operations

The Kentucky Property is a so-called “greenfield property,” meaning there have been no previous operations on the property.

Property Condition, Exploration and Development

Although the Kentucky Property is a greenfield property, access roads and haul roads are under construction. The mine on this property will be an open-pit mine. Our mining plan for the property is consistent with industry practice and will entail contour mining as well as auger/highwall mining for lower seams. We intend to use contract miners who will be responsible for conducting water studies and geophysical surveys of potential aquifers and supplying water to the property. If we operate the mine, we will conduct the water studies and geophysical surveys of potential aquifers and supply water to the property. We will work with local power authorities and suppliers to provide power to the mines and associated facilities on the property. At this time it is not known what the estimated cost associated with these projects will be.

As of August 30, 2013, we have incurred approximately $0.4 million for development costs related to the Kentucky Property in addition to the costs incurred related to its acquisition, which has not yet been finalized.

Rock Formations, Mineralization and Reserves:

The Kentucky Property encompasses at least nine seams. The mineable reserves we expect to mine are in the Hazard 7 through 11 seams as well as Skyline seams 1 through 4. These seams are included in the areas between Howards Creek and Middle Fork on the east and west sides of the property and Howards Creek to Lick Branch on the north and south sides of the property. Historically, these seams contain low to high quality bituminous steam coal which has been mined from the Pre-Civil War era until the present. Available geological mapping from the United States Geological Survey (U.S.G.S.) shows the site to be underlain by the Breathitt formation which consists of cyclic sequences of sandstone, shale, coals and fireclays.

<u>Tennessee Property</u>

Project Location, Access and Areas of Operation

The Tennessee Property consists of approximately 18,335 acres located in Campbell and Scott Counties, Tennessee. The property lies within the Appalachian Province of the southeastern United States and in the East Grand Division of Tennessee,west of Interstate 75 and Pine Mountain. Major highway access to the property is provided by State Highway 297 which runs north to south between Pioneer and Jellico, being accessible from exits off Interstate 75. Additional access into the property is provided by numerous secondary roads, private roads and trails.

There are eight distinct tracts of land that comprise the Tennessee Property. The 'Elk Valley' tract is located in both Scott and Campbell Counties, and is the largest of the eight tracts spanning approximately 7,178 acres. There is a permitted coal mine on the tract that is not in operation and 11 horizontal natural gas wells. The permit will be transferred to us, or to a contract miner, when we acquire the Tennessee Property. The 'Westbourne' tract is located in Campbell County, Tennessee and encompasses 4,115 acres. There are four coal mines on this tract that allow for the extraction of coal. Two of these mines are permitted and the permits will be transferred to us, or to a contract miner, when we acquire the Tennessee Property. One of the two permitted mines is currently being operated by a third party. We plan to permit additional reserves on the tract over the next few years. The 'Big Mars' tract is located in Campbell County, Tennessee and contains 1,976 acres. There are commercial sand mining operations on other properties in the area and we expect this tract to contain silica sand. There is currently no coal mining or natural gas activity on this tract. The 'Pine Mountain' tract is adjacent to NewLead's 'Spradlin-England' tract. Pine Mountain contains 1,953 acres and is located in Scott County, Tennessee. The 'Buffalo' tract is located in Scott County, Tennessee, and includes 1,273 acres. There is a major natural gas pipeline that runs across the property, and there are 15 producing natural gas wells located on this tract. The 'Lawson' tract is comprised of 892 acres and is located in Scott County, Tennessee. There is currently no active mining on the tract as the permitting process is underway, but has not yet been completed. The 'Spradlin-England' tract is located in Campbell County, Tennessee and contains 588 acres. The Company is undergoing additional prospecting on this tract to better understand the total reserves in place. The 'Little Mars' is the smallest of the tracts, and is comprised of 360 acres and is located in Scott County, Tennessee. At this point, no prospecting has been completed on this parcel to determine the potential reserves that may be in place.

The necessary permits have been obtained for the only mine that is currently operating by a third party on the Tennessee Property. For the mines that NewLead intends to operate on the Tennessee Property, the appropriate permits will be obtained by NewLead or its contract miners and complied with in the future.

Agreements for Surface/Mineral Rights

We have entered into an agreement to acquire ownership and leasehold interests in the Tennessee Property (the "Tennessee Agreement"), which contemplates that we will acquire rights, title, permits and leases to coal mines. As further explained in "Item 5.—Operating and Financial Review and Prospects– Recent Developments", we have not obtained the necessary financing to satisfy our payment obligations under the Tennessee Agreement and the transaction has not closed. On March 14, 2013, we entered into an amendment to the Tennessee Agreement (the "Tennessee Amendment") pursuant to which we were to be permitted to utilize the property through a one-year lease agreement, terminating February 15, 2014. Upon any default under the lease, we were to assign all rights under permits, mining contracts or other mining assets on the property to the seller of the property. We are currently in default under the Tennessee Agreement and Tennessee Amendment and no longer have the rights to utilize the property. Because the Company has defaulted under the terms of the Tennessee Amendment, on June 7, 2013, the Company assigned all rights under permits, mining contracts or other mining assets on the property back to the seller. To date, the seller has not initiated any actions against us based on such defaults.

Equipment, Infrastructure and Other Facilities

Current operations on the Tennessee Property are undertaken by Kopper Glo Fuel, Inc., who leases the rights to the coal and uses their own equipment. Consequently, there are no significant items of equipment and facilities located on the property with the exception of one crusher. NewLead currently intends to operate the mines by using contract miners, but it may mine the Tennessee Property directly in the future. We intend to use contract miners who will be responsible for conducting water studies and geophysical surveys of potential aquifers and supplying water to the property. If we operate the mine, we will conduct the water studies and geophysical surveys of potential aquifers and supply water to the property. We will work with local power authorities and suppliers to provide power to the mines and associated facilities on the property. At this time it is not known what the estimated cost associated with these projects will be.

Previous operations

The most recent operations on the Tennessee Property began in 1992 when the prior owners sought to buy properties in Tennessee for development of the abundant natural resources found in Campbell and Scott Counties. Land resource management efforts escalated into a total natural resource development concept to include timber management, coal mining operations, natural gas shale management, and other land resources extraction. Operations on the Elk Valley tract began in 2001 by the Robert Clear Coal Corporation and were later transferred in 2004 to the National Coal Corporation, then transferred to National Coal, LLC. In addition, production on the Westbourne tracts began in 2006 by Blue Gem Coal Company, Inc. and was later continued by Alden Resources, LLC. In 2010, Kopper Glo Fuel, Inc. also began production on the Westbourne tracts.

Property Condition, Exploration and Development

Since 1992, exploration efforts on the Tennessee Property have been undertaken by mining companies in connection with various applications for mining permits. Additionally, significant capital has been spent to develop access roads, haul roads, ponds and other reclamation infrastructures over the past twenty years. The property has been maintained in an effort to restore land responsibly including the use of drainage, soil types, Native American chestnut trees, lagoons and seasonal grasses to better accommodate natural wildlife in accordance with common standards of conservation. The permits for the property are maintained in good standing with the Tennessee Department of Environment and Conservation as well as the Office of Surface Mining. Permit issuance and renewal, which occurs after five years, have proceeded smoothly to date.

Rock Formations, Mineralization and Reserves

The Tennessee Property is located in northeastern Tennessee, which is part of the Central Appalachian region. The Central Appalachian region includes parts of West Virginia, Virginia, Kentucky, and Tennessee. Appalachia has been mined for coal since the mid 1800's and continues to be an important source of the natural resource today. Tennessee has the nearest coal reserves to the enormous TVA energy system, Southern Company Services, Inc. and the entire Southeastern United States where coal is the leading energy source for electricity. Coal previously mined from the Tennessee Property is a sub-bituminous B coal characterized by high BTU (13,500 BTU) with low sulfur which is ideal in the Southern United States steam market. Additionally, there are seams on the property where very rare coal has been previously mined, known as the Blue Gem and Rich Mountain seams. The coals from these seams are used in the production of Ferro-Silica metals.

The consistency of the geologic formations and other characteristics of the Tennessee Property have led in the past to successful coal bed extraction. Extensive surface mining at and in the vicinity of the property from around 1963 through 1984 recovered coal reserves with a varying degree of reclamation success due mostly to the lack of regulatory requirements. All mining within the targeted zones of the Tennessee Property conducted under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") has been successful in terms of coal zone quality and enhanced geologic reclamation stability.

There are nine mineable seams located on the Tennessee Property, the majority of which have yielded higher quality coals suitable for electricity generation (steam coal). However, the Red Ash and Blue Gem seams have yielded coals suitable for use as metallurgical coal which can command a large price premium in comparison to steam coal. Two of the active permits (OSM Permit Nos. 3207 and 3217) are approved for mining the Blue Gem seam. The third active permit (OSM Permit No. 3249) overlies the Blue Gem seam which could help expedite the process of permitting the Blue Gem seam in that area.

In addition to coal, the Tennessee Property has been the site of oil and natural gas reserves. Tennessee was one of the first states in Appalachia to have a large-scale shale gas exploration in the Devonian Shale. Natural Gas exploration in Tennessee Property began in 2006 by Ariana Energy, LLC. This lease was assigned to Vinland Energy Eastern, LLC and later to Atlas America, LLC in 2008. Presently 27 wells have been drilled under this lease. We intend to lease the rights to extract oil and gas from the Tennessee Property to third parties. The Company does not currently intend to extract the oil and gas reserves directly, but may do so in the future.

As of August 30, 2013, we have not incurred any development costs related to the Tennessee Property. The only costs incurred have been related to its acquisition, which has not yet been finalized.

Item 4A. Unresolved Staff Comments

Not applicable.

Item 5. Operating and Financial Review and Prospects

The following is a discussion of NewLead Holdings Ltd., as of and for the years ended December 31, 2012, 2011 and 2010. All of these financial statements have been prepared in accordance with U.S. GAAP. You should read this section together with the consolidated financial statements including the notes to those financial statements for the years and periods mentioned above, which are included elsewhere in this document.

This report contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Reform Act of 1995. These forward-looking statements are based on our current expectations and observations. The factors that, in management's view, could cause actual results to differ materially from the forward-looking statements include, among others, those discussed in "Item 3D.—Risk Factors", and such differences may be material. For additional information regarding forward-looking statements used in this report please refer to the section "Cautionary Statement Regarding Forward-Looking Statements."

Recent Developments

The Fleet

As discussed elsewhere in this annual report, we have had a significant reduction in the size of our fleet. As of August 30, 2013, we own a fleet of two dry bulk vessels and manage two double-hulled oil tanker/asphalt carriers . During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with our restructuring.

During 2013, we agreed, through our wholly-owned subsidiary Newlead Shipping S.A. ("Newlead Shipping"), to perform part of the commercial, the technical and the operational management of three double-hulled oil tanker/asphalt carriers owned by a third party for a monthly fee of approximately $13,000 per vessel. We currently perform the management of two double-hulled oil tanker/asphalt carriers. Management of the third double-hulled oil tanker/asphalt carrier is expected to commence during September 2013.

We are currently in negotiations with Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (CPB loan)") to amend the terms of our loan agreement, whereby the agreement will be amended and restated to enable us to comply with certain of its covenants on an ongoing basis and enable the Newlead Markela, a dry bulk Panamax vessel, to remain in our fleet.

Completion of Restructuring of Our Indebtedness

Due to the previously disclosed economic and operational difficulties of the Company, we entered into restructuring discussions with each of the lenders under our facility and credit agreements, the holders of our 7% senior unsecured convertible notes (the "7% Notes") and the counterparties to our capital leases (collectively, the agreements governing such debt, the "Financing Documents"). See "Item 5. —Operating and Financial Review and Prospects—Liquidity and Capital Resources" for a discussion of the various Financing Documents. As part of those discussions, we appointed Moelis & Company ("Moelis") to act as our financial advisors in respect of the overall restructuring described below. The aim of the Restructuring (as defined below) was to increase liquidity, normalize trade vendor payments and deleverage the Company on a going forward basis.

Since June 2011, we have defaulted under each of our Financing Documents in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions). To date, we have restructured or obtained waivers of these defaults from each of the lenders under the Financing Documents (the "Restructuring"), except for the credit facility with Piraeus Bank (CPB loan). To date, we are also in default under the terms of the 4.5% Note (as defined below), the Portigon AG Credit Facility, and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders. In addition, while we have completed our restructuring efforts with the lenders under our revolving credit facility with Bank of Scotland plc ("Bank of Scotland") and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent (the "Syndicate Facility Agreement"), we continue to have an outstanding liability of $0.1 million under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability.

On November 8, 2011, we and Moelis presented to each of the lenders under the Financing Documents a commercial presentation which set out a comprehensive global restructuring proposal (the "Restructuring Proposal"). The Restructuring Proposal included, among other things, proposed amendments to the Financing Documents (including amortization relief and reset of financial covenants).

During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring. Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of beneficial conversion feature, or BCF, related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interest payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Senior Convertible Note due in 2022 to Prime Shipping Holding Ltd ("Prime") (an affiliate of Lemissoler Maritime Company W.L.L. ("Lemissoler")) ("4.5% Note"), (iii) the issuance of the up to $1.0 million senior convertible promissory note to Good Faith Credit LLC ("Good Faith") (the "Good Faith Note") and (iv) the issuance of the up to $1.7 million senior convertible promissory note to Tiger Equity Partners Ltd. ("Tiger") ("the "Tiger Note").

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by Investment Bank of Greece
- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations.

The terms of the Restructuring completed to date are described below.

Syndicate Facility Agreement

On December 21, 2011, with the consent of the lenders under the Syndicate Facility Agreement, we successfully completed the sale of the Newlead Fortune and the Newlead Avra for an aggregate selling price of approximately $64.5 million. On January 31, 2012, with the consent of the lenders under our Syndicate Facility Agreement, we successfully completed the sale of the Newlead Compass and the Newlead Compassion for an aggregate selling price of approximately $80.2 million. Such proceeds were applied towards the satisfaction of liabilities owed to the lenders under the Syndicate Facility Agreement. As of December 31, 2012, the outstanding balance due to the syndicate lenders was $0.1 million, relating to loan fees outstanding. While the proceeds from the sale of the four LR1vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability. As a result of the sale of the four vessels our overall indebtedness was decreased by an aggregate amount of approximately $147.9 million.

Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd.(formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (CPB loan)")) Credit Facility and 7% Notes

On April 5, 2012, with the consent of Piraeus Bank (CPB loan), we entered into an agreement for the sale of the Newlead Venetico, which was delivered to the buyer on May 8, 2012 for proceeds of approximately $9.5 million. Piraeus Bank (CPB loan) applied the proceeds of such sale towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the Newlead Venetico, (b) interest payable and (c) the payment of outstanding trade and vendor payments. As of December 31, 2012, the outstanding balance on such loan facility was $32.5 million. As a result of such sale, our overall indebtedness was decreased by an aggregate amount of $6.7 million.

On July 2, 2012, we entered into an agreement with Focus Maritime Corp. ("Focus"), a related party controlled by Mr. Zolotas, for the conversion of its remaining $124.9 million of the 7% Notes, together with interest accrued thereon and future interest payments (aggregating to approximately $199.8 million), and an additional fee of $17.5 million payable to Focus as an inducement for the conversion, into approximately 264.9 million common shares of the Company. The shares were issued on July 16, 2012. As of December 31, 2012, and as a result of this transaction, our overall indebtedness was decreased by $124.9 million, excluding BCF. As of August 30, 2013, $0.1 million of 7% Notes remained outstanding, held by Investment Bank of Greece.

Portigon AG (formerly, West LB Bank) Credit Facility

On March 28, 2013, we agreed with Portigon AG ("Portigon") to certain amendments to the credit facility, which include, among others, that: (a) the outstanding balance of $25.3 million is to be payable in 3 quarterly installments of $0.3 million, followed by 5 quarterly installments of $0.375 million, followed by 15 quarterly installments of $0.475 million, followed by a balloon payment of $15.35 million due on the last payment date (the first repayment installment shall be repaid on June 30, 2013 and the balloon installment shall be repaid on January 31, 2019), (b) we are waived from the application of the minimum security cover provisions set out in the original agreement as of the date of the amendment until the earlier of (i) the date on which Portigon is satisfied that the security cover ratio is not less than 100 % and (ii) December 31, 2013 (inclusive), and (c) we were waived from the application of the financial covenants as of the date of the amendment until June 30, 2013 (inclusive). In addition, we will pay to Portigon a non-refundable restructuring fee of $0.25 million on or before September 30, 2013. Furthermore, it was agreed that Portigon will have the option to demand the sale of the vessel Newlead Victoria at any time the market value of the vessel is at least equal to the amount of the loan outstanding on that date. Portigon will be entitled to 75% of the balance of the proceeds after repayment of the outstanding loan balance, any other amounts owned under the loan agreement (i.e. accrued interest), any direct sale costs approved by Portigon and any trade debt outside the owned fleet for an amount which will not exceed in aggregate $0.5 million. Moreover, t he vessel's excess cash must be applied towards the prepayment of the balloon installment, in accordance with the following, all as described in the amended loan facility: (i) if we are in compliance with the value to loan ratio, 50% of the excess cash must be applied towards prepayment of the loan facility; and (ii) if we are not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. As of August 30, 2013, we were in default under certain covenants in this facility and the outstanding balance was $25.0 million.

Piraeus Bank Credit Facilities

On December 29, 2011, with the consent of Piraeus Bank A.E. ("Piraeus Bank"), we entered into an agreement for the sale of the Grand Ocean and that vessel was delivered to the buyer on January 11, 2012 for proceeds of approximately $8.2 million. Piraeus Bank applied the proceeds of such sale towards (a) the prepayment of $6.5 million of the total outstanding amounts due under the loan agreement for the Grand Ocean (b) interest payable and (c) the payment of outstanding trade and vendor payments. As of December 31, 2012, the outstanding balance was $10.8 million.

On June 20, 2012, we entered into an agreement with Piraeus Bank, that was subsequently amended on April 10 , 2013, to proceed with the sale of two tanker vessels, Hiona and Hiotissa, for an aggregate amount of approximately $57.0 million, and to convert the remaining outstanding debt of Hiona, Hiotissa and Grand Ocean, subject to the satisfaction of certain conditions precedent by the Company, into common shares of the Company. The Hiona and Hiotissa were sold during July 2012 and the proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the two vessels in an aggregate amount of approximately $51.1 million, (b) interest payable and (c) the payment of outstanding trade and vendor payments. On April 11, 2013, 46.3 million common shares of the Company were issued to Piraeus Bank. As of December 31, 2012, the outstanding balance under the loan agreements with Piraeus Bank was $7.2 million. On April 25, 2013, the Company was fully discharged and released from any and all obligations to Piraeus Bank under these credit facilities.

As a result of these transactions, as of August 30, 2013, no outstanding balance remained, and our overall indebtedness was decreased by an aggregate amount of $75.6 million.

Kamsarmax Syndicate Facility Agreements

On February 24, 2012, the Bank of Scotland issued notices of enforcement and notices of default and acceleration in relation to the senior loan agreement and the junior loan agreement, each dated April 15, 2010 (collectively, the "Kamsarmax Syndicate Facility Agreements"), between Ayasha Trading Corporation ("Ayasha") and Bethune Properties S.A. ("Bethune"), as borrowers, and the Bank of Scotland, BMTU Capital Corporation, and the Bank of Ireland, as lenders. In addition, the Bank of Scotland filed claim forms in the High Court of England and Wales against the borrowers representing claims for approximately $62.7 million and $13.9 million under the Kamsarmax Syndicate Facility Agreements and sought a declaration, that, among other things, the Bank of Scotland was entitled to make a demand against the Company in respect of sums owed under the Kamsarmax Syndicate Facility Agreements. Ayasha and Bethune were the shipowning companies of the motor vessels Newlead Tomi and Newlead Gujarat, respectively. Pursuant to such notices, the Bank of Scotland, as the agent and security trustee under each of the Kamsarmax Syndicate Facility Agreements, exercised its rights to foreclose on the shares of Ayasha and Bethune, which secured the loans under the Kamsarmax Syndicate Facility Agreements and the vessels were handed over to the lenders control. On August 1, 2012, we were fully discharged and released from any and all obligations in respect of the Kamsarmax Syndicate Facility Agreements. As of December 31, 2012, no outstanding balance remained. As a result of the transaction, our overall indebtedness was decreased by an aggregate amount of approximately $75.1 million.

First Business Bank (FBB) Credit Facility

On August 12, 2011, we entered into an agreement with FBB-First Business Bank S.A. ("FBB") for the sale of two vessels, the Newlead Spartounta and the Newlead Prosperity (the "FBB Vessel Agreement"), with the net proceeds of such sales to be applied towards (a) the full and final satisfaction of all indebtedness owed to FBB under the credit facilities relating to the Newlead Spartounta and the Newlead Prosperity, and (b) the payment of outstanding trade and vendor payments. As of September 2011, the sale of these vessels was completed. On April 27, 2012, the Company was fully discharged and released of any and all of its obligations to FBB outstanding under the FBB loan agreements. As of December 31, 2011, no outstanding balance remained. As a result of the sale of the two vessels our overall indebtedness was decreased by an aggregate amount of approximately $33.7 million.

Eurobank Credit Facility

On February 10, 2012, with the consent of Eurobank, we agreed to the sale of the Newlead Esmeralda for proceeds of approximately $11.4 million. The proceeds of the sale were applied towards (a) the full and final satisfaction of all indebtedness owed to Eurobank under our loan agreement with Eurobank and (b) the payment of outstanding trade and vendor payments. On February 16, 2012, the sale of this vessel was completed and we were fully discharged and released from any and all obligations to Eurobank under the credit facility and related documents. As of December 31, 2012, no outstanding balance remained. As result of such sale, our overall indebtedness was decreased by an aggregate amount of $11.0 million.

Handysize Syndicate Facility Agreement

On March 21, 2012, with the consent of the lenders, we entered into a memorandum of agreement with an unrelated party for the sale of the Navios Serenity for proceeds of approximately $26.0 million. On March 26, 2012, the vessel was sold and the proceeds of the sale were applied towards the outstanding balance owed under the credit facility with DVB Bank, Nord LB and Emporiki Bank (the "Handysize Syndicate Facility Agreement") . On May 22, 2012, we signed an agreement with the shipbuilder of the Handysize Hull 4029, and the original shipbuilding contract with SPP Shipbuilding Co, Ltd., the prior contract with the yard, was terminated and ceased to be valid. Under this agreement, we and the yard mutually waived all rights and released and discharged each other from all liabilities, obligations, claims and demands. In addition, on May 22, 2012, we were released from our obligations under the Handysize Facility Agreement to the lenders in respect of the Handysize Hull 4029 and on November 23, 2012, we were formally discharged and released of any and all of our obligations in respect of the Handysize Syndicate Facility Agreement. As of December 31, 2012, no outstanding balance remained. As a result of these transactions, our overall indebtedness was decreased by an aggregate amount of approximately $30.8 million.

Northern Shipping Fund (NSF)

On March 14, 2012, we received enforcement notices from Endurance Shipping LLC whereby, among other things, Endurance Shipping LLC exercised its rights to foreclose on the pledge of the shares of Curby Navigation Ltd., which secured the bareboat charter, and, as a result, the Newlead Endurance was delivered back to Northern Shipping Fund LLC. On March 31, 2012, we entered into a deed of release with Endurance Shipping LLC, the owner of the Newlead Endurance, pursuant to which we were unconditionally released from any guarantee under the bareboat charter for the Newlead Endurance, which had been chartered-in by Curby Navigation Ltd. In connection with the enforcement notices, we also received a termination notice in respect of the ship management agreement between Curby Navigation Ltd. and Newlead Bulkers S.A., which had been the manager of the Newlead Endurance. As part of a redelivery agreement, we were released from all of our obligations and liabilities under the relevant finance lease documentation. The transaction resulted in a decrease of $26.3 million under the finance lease documentation. As of December 31, 2012, no outstanding balance remained.

Lemissoler Maritime Company W.L.L. Capital Lease Obligations and notional 4.5% Senior Convertible Note due in 2022

On January 31, 2012, February 7, 2012, February 11, 2012, and March 19, 2012, respectively, pursuant to various redelivery addendums to certain sale and leaseback agreements, we completed the redelivery of four dry bulk vessels, the Australia, the Grand Rodosi, the China and the Brazil, to their owners which are affiliates of Lemissoler Maritime Company W.L.L. ("Lemissoler").

On November 28, 2012, we entered into a settlement and standstill agreement (the "Settlement Agreement") with Prime, an affiliate of Lemissoler, which sets out the terms and conditions on which Lemissoler has agreed to the settlement of amounts outstanding and due to them from the Company pursuant to various agreements that had been entered into between the Company and Lemissoler (the "Lemissoler Indebtedness") and a standstill and waiver of Lemissoler's right to take action in respect of the Lemissoler Indebtedness and the failure of the Company to perform their respective obligations under such agreements, which includes, for the avoidance of doubt, any existing or future liabilities under agreements relating to the operation of vessels chartered or assigned to Lemissoler.

Pursuant to the Settlement Agreement: (a) the Lemissoler Indebtedness was settled by issuing (i) 109,351,314 common shares of the Company to Prime; and (ii) the $50.0 million 4.5% Note to Prime with such terms as described below; and (b) all fees, costs and expenses incurred by Prime in connection with the transaction will be paid from the issuance of 487,805 common shares of the Company (covering $0.4 million in fees) to Prime (with any shortfall to be fully paid and settled by us, which may be satisfied by issuing further common shares of the Company to Prime). As of December 31, 2012, Prime received 109,351,314 common shares of the Company for the outstanding balance and 487,805 common shares of Company for the fees, costs and expenses incurred by Prime, and we issued to Prime the 4.5% Note.

In addition, in connection with the Settlement Agreement, we entered into a registration rights agreement with Prime, pursuant to which we are obligated to file a registration statement or registration statements covering the potential sale of the common shares of the Company issued to Prime and the shares of the Company's common shares issuable upon conversion of the 4.5% Note. Prime may also request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

The 4.5% Note will bear interest at an annual rate of 4.5%, which is payable quarterly on March 1, June 1, September 1 and December 1 of each year (beginning on March 1, 2013), until maturity in December 2022 or earlier upon redemption, repurchase or conversion in accordance with its terms. At our option, subject to certain conditions, interest may be satisfied by issuing additional common shares of the Company (rather than in cash).

The amount of shares to be paid is calculated by dividing (i) the per share amount equal to 80% of the arithmetic average of the daily volume-weighted average price ("VWAPs") of the Company's common shares for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the interest payment date into (ii) an amount equal to the total amount of cash such holder would receive if the aggregate amount of interest on the 4.5% Note was being paid in cash. The 4.5% Note is convertible, at a holder's option, at any time prior to the close of business on the maturity date or earlier upon redemption or repurchase in accordance with its terms. The holder has the right to convert the principal amount of the 4.5% Note, or any portion of such principal amount which is at least $1,000 (or such lesser principal amount of the 4.5% Note as shall be outstanding at such time), plus accrued and unpaid interest, into that number of fully paid and non-assessable common shares of the Company (as such shares shall then be constituted) obtained by dividing (1) the sum of (x) the principal amount of the 4.5% Note or portion thereof being converted plus (y) accrued and unpaid interest on the portion of the principal amount of the 4.5% Note being converted to the applicable conversion date plus (z) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (y) to the applicable conversion date by (2) the Conversion Price (as defined below) in effect on the applicable conversion date. The Conversion Price means an amount equal to 80% of the arithmetic average of the daily VWAPs of the common shares of the Company for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the conversion date. If the holder does not convert the 4.5% Note prior to the maturity date, then so long as no certain events of default ("Events of Default") or an event triggering a repurchase ("Repurchase Event") has occurred and is continuing, the principal of and accrued interest on the 4.5% Note that is outstanding on the maturity date shall automatically convert, without further action by the holder, into common shares of the Company. The number of common shares issued by us to the holder upon such conversion shall be the quotient obtained by dividing (x) the outstanding principal of and accrued interest on the 4.5% Note on the maturity date by (y) the Conversion Price then in effect.

We may redeem all or part of the outstanding principal amount of the 4.5% Note at any time, subject to certain conditions, at a redemption price in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note plus (2) accrued and unpaid interest on such principal amount to the redemption date plus (3) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (2) at the rate provided in the 4.5% Note to the redemption date, subject to certain conditions specified in the 4.5% Note. If a Repurchase Event occurs, the holder will have the right, at the holder's option, to require us to repurchase all of the 4.5% Note, or any portion thereof, on a repurchase date that is five business days after the date of the holder delivered its notice with respect to such Repurchase Event. The repurchase price will be an amount in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note that the holder has elected to be repurchased plus (2) accrued and unpaid interest on such principal amount to the date of such repurchase plus (3) accrued and unpaid default interest, if any, thereon at the rate provided in the 4.5% Note to the date of such repurchase.

If an Event of Default shall have occurred, then the applicable interest rate shall be increased to 6.5% per annum during the period from the date of such Event of Default until the date no Event of Default is continuing. We may, at our option, subject to certain conditions, make any payments required to be made by us to the holder upon acceleration of the 4.5% Note by reason of certain Events of Default in common shares of the Company.

As of December 31, 2012, no outstanding balance on the lease debt remained and on January 30, 2013, we were formally released from all of our obligations and liabilities under the relevant finance lease documentation.

Good Faith Note

On February 5, 2013, we issued a senior convertible promissory note to Good Faith for up to $1.0 million (the "Good Faith Note"). The Good Faith Note is due in one balloon payment on August 4, 2014. Borrowings under this Good Faith Note bear a fixed interest rate of 10% per annum on the unpaid principal balance and 5% per annum on the outstanding principal balance and any accrued and unpaid cash interest in Company's common shares or cash, at our option. The Good Faith Note is convertible into common shares at a conversion price of $0.82 per share at holder's option, at any time and from time to time.

Tiger Note

On June 19, 2013, we issued a senior convertible promissory note to Tiger, for up to $1.7 million. The Tiger Note is due on June 19, 2014. Borrowings under this note bear a fixed interest rate of 8% per annum on the unpaid principal balance if paid in cash or 15% per annum on the outstanding principal balance if settled by issuance of shares of the Company , at our option. The Tiger Note also contains interest and anti-dulition adjustments under certain circumstances. The Tiger Note is convertible into common shares at a conversion price equal to 95% of the arithmetic average of the closing price of the Company's common shares on the five trading days prior to and beginning with the date two business days before the maturity date or the conversion date.

New Business Arrangements for Purchase and Trading of Coal

We have entered into a joint venture arrangement and we have established a new entity with J Mining & Energy Group for the purchase and trading of coal.

On April 11, 2012, through one of our wholly-owned subsidiaries, NewLead Holdings (US) Corp., we entered into a Joint Venture Agreement with J Mining & Energy Group to establish New Lead JMEG LLC as a joint venture to engage in the business of purchasing and trading certain commodities, principally coal. We have joint control with J Mining & Energy Group of New Lead JMEG LLC and we are entitled to and are liable for the total net assets of the joint venture. NewLead Holdings (US) Corp. contributed to the capital of the joint venture $2.5 million cash and $1.0 million of value in coal sales agreements. In addition, we delivered to J Mining & Energy Group $0.3 million in cash and 731,140 shares of our common stock as a condition to the closing of the Joint Venture Agreement.

On April 30, 2012, we and a third party established NewLead Mojave Holdings LLC (" NewLead Mojave"). We control 52% of NewLead Mojave (52% of the voting rights) and we are entitled to and are liable for the total net assets of NewLead Mojave according to this percentage of control. We contributed to the capital of the new entity 100% of NewLead Holdings (US) Corp.'s share capital, while Mojave Finance Inc. agreed to make available a loan facility of $3.0 million to NewLead Holdings (US) Corp.

New Credit Facilities for New Lead JMEG LLC (a joint control entity that is not consolidated into the Company's financial statements)

On March 4, 2013, New Lead JMEG LLC entered into an additional agreement with a financial institution for a Credit Facility of up to $0.5 million. The facility is payable in one balloon payment due three months from the draw-down unless the lender agrees, in its sole discretion to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance. On June 5, 2013, the facility was fully repaid.

On March 8, 2013, New Lead JMEG LLC entered into an agreement with a financial institution for a Revolving Credit Facility of up to $1.35 million. The facility is payable in one balloon payment due twelve months from the final draw-down unless the lender agrees, in its sole discretion, to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance.

Coal Sale Purchase Agreements (Sale Agreements)

As of December 31, 2012, excluding any Sale Purchase Agreements which existed on December 31, 2012, but which were cancelled prior to the date of the filing of this annual report, New Lead JMEG LLC, a joint venture affiliate of the Company, has entered into a Sale Purchase Agreement with a third party to sell 0.8 million tons of thermal coal, or approximately $69.4 million of total contracted revenue (subject to a variation of 10% in agreed tonnage supply), for a period of one year after the commencement date of this agreement, which is considered to be the first shipment of coal under the agreement. Shipments of coal under this Sale Purchase Agreement are expected to commence during the fourth quarter of 2013 or as otherwise agreed.

In January and February 2013, New Lead JMEG LLC also entered into three Sale Purchase Agreements with two third parties to supply approximately $806.1 million of thermal coal, which were subject to a variation of 5-10% in agreed tonnage supply, located in Kentucky, USA. In May and July 2013, New Lead JMEG LLC received notices of termination on the two of those Sale Purchase Agreements to supply approximately $245.1 million of thermal coal to one of the third parties due to ongoing defaults by New Lead JMEG LLC under the agreements. The third Sale Purchase Agreement was orally terminated by both parties due to ongoing defaults by New Lead JMEG LLC under the agreement. As of August 30 , 2013, the buyers of all three Sale Purchase Agreements have not initiated any actions against New Lead JMEG LLC based upon such defaults.

Coal Sale Purchase Agreements (Purchase Agreements)

As of December 31, 2012, New Lead JMEG LLC entered into two Sale Purchase Agreements with a third party to purchase thermal coal from Kentucky, USA. The commencement period of the agreements, which were revised on March 27, 2013, begins with the first shipment of coal, which is expected to take place during the fourth quarter of 2013 or as otherwise agreed.

The commitments under the Coal Purchase Sale Agreements (Purchase Agreements) as of December 31, 2012 were (in millions):

BTU	Year	Amount
12,300	1	$ 47.0
12,300	2	64.4
12,300	3	64.4
12,300	4	64.4
12,300	5	64.4
		304.6
10,800	1	40.2
10,800	2	54.9
10,800	3	54.9
10,800	4	54.9
10,800	5	54.9
		259.8
		$ 564.4

Coal Acquisitions

On December 18, 2012, the Company entered into an agreement with Cypress Camon Energy, LLC ("Cypress"), Cypress Camon Investment Management, LLC ("CCIM") the minority owners of Cypress and certain third parties (together the "Owners") to purchase:

i) the ownership and mineral rights to approximately 7,695 acres of land in Kentucky (the "Kentucky Property"), as successor-in-interest to a prior Asset Purchase Agreement entered into by Cypress (the "Kentucky Agreement"); and

ii) 18,335 acres in Tennessee (the "Tennessee Property") and certain leasehold interests, as successor-in-interest to a prior Asset Purchase Agreement entered into by Cypress (the "Tennessee Agreement").

In connection to the acquisitions, the Company agreed also to pay to CCIM $3.0 million in the form of common shares of NewLead (7,500,000 shares were issued on March 28, 2013) and a ten year warrant for $6.4 million in common shares of NewLead , at an exercise price of $0.40 per share. In addition, on January 1, 2013, the Company agreed to issue to J Mining & Energy Group 42,500,000 common shares as a prepayment for its assistance in supervising, securing and executing the acquisitions. The shares were issued on March 28, 2013. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed.

In connection with the potential acquisition of the two properties, the Company hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement.

As of August 30, 2013, our coal mining business has not yet commenced operations. While we hope to finalize the acquisitions and begin mining operations as soon as possible, there is no assurance that our coal business will begin operating in the near future, or at all. As of August 30, 2013, the Company has not generated any revenue as a result of the acquisitions.

Kentucky Property

The acquisition of the Kentucky Property is subject to execution of certain definitive agreements and other closing conditions. In connection with the Kentucky Agreement, the Company agreed to help facilitate the December 31, 2012 closing of the Asset Purchase Agreement of the Kentucky Property between Williams Industries, LLC ("Williams") and Kentucky Fuel Corporation ("Kentucky") in which Kentucky transferred its ownership and mineral rights in the Kentucky Property to Williams (both Williams and Kentucky are unrelated parties to the Company). In connection with the sale between William and Kentucky, on December 28, 2012, the Company issued promissory notes to RJLT Investments LLC, Williams Industries LLC and Kentucky in the amount of $1.5 million, $2.0 million and $7.5 million, respectively, for a total consideration of $11.0 million, payable in their entirety on January 29, 2013 (the "notes"). The Company issued the notes to facilitate the sale to Williams as the Company has agreed to acquire the Kentucky Property from Williams on a closing date subsequent to December 31, 2012. The notes did not accrue interest, but remained subject to a guaranty by the initial purchaser and were secured by a mortgage lien and a security interest in the assets being purchased (the "Collateral Security Package"). However, the Company did not receive an ownership interest in, or control over, the Kentucky Property.

On January 29, 2013, the maturity date of the notes, the Company had not yet obtained the necessary financing to satisfy the notes and, as a result, the transaction did not close. On January 29, 2013, the parties agreed to extend the closing date of the Kentucky Agreement to February 15, 2013 (the "Initial Extension") in exchange for an $100,000 non-refundable deposit by the Company. The Company was again unable to obtain the necessary financing to satisfy the notes and, as a result, on February 12, 2013, the parties agreed to further extend the closing date of the Kentucky Agreement to March 6, 2013 (the "Second Extension"). As consideration for the Second Extension, the Company agreed to (i) the immediate release to the noteholders of the $100,000 deposit provided in connection with the Initial Extension and (ii) the issuance of $175,000 of the Company's common stock. The stock issuance was not completed. On March 6, 2013, the sale was unable to close due to a lack of financing.

On March 18, 2013, the parties entered into a subsequent amendment to the Kentucky Agreement (the "Kentucky Amendment"), pursuant to which the parties agreed to further extend the closing date of the Kentucky Agreement, subject to the execution of certain definitive agreements and continued compliance by the Company with certain conditions. Under the terms of the Kentucky Amendment, the closing date was extended to February 18, 2014, but in no case later than promptly following a final commitment and closing of loans from a funding source to finance the remaining payments due by the Company. As consideration for this extension, the Company committed to (i) make and pay for certain improvements to the property in a minimum amount of $300,000, (ii) execute forbearance agreements with certain of the noteholders (the "Forbearance Agreements"), pursuant to which payments on the notes will be paid directly by the Company on a monthly basis, as discussed below, (iii) provide a non-refundable deposit of $400,000, (iv) provide a $175,000 cash payment in lieu of the Company stock not previously delivered in connection with the Second Extension and (v) deliver $175,000 of the Company's stock.

The Forbearance Agreements provide that such noteholders will forbear from pursuing the rights and remedies available to them under the notes and the Collateral Security Package until the earliest to occur of (a) the Company's failure to comply in any respect with the obligations under the Forbearance Agreements, (b) the occurrence or discovery of an event of default under the Kentucky Agreement, as amended (the period beginning March 18, 2013 to the earliest of such dates being the "Forbearance Period") or (c) February 18, 2014. Under the Forbearance Agreements, the Company was to pay to such noteholders monthly payments for a period of one year, with an aggregate of $400,000 per month due for the a three-month period, and approximately $1.1 million due per month for nine-month period thereafter. Interest will accrue on these payments, until all principal on such notes have been paid, at rate of 10% per annum. Accumulated interest is not payable until the earlier of (i) the date of early payment of the principal amount of such notes or (ii) February 18, 2014. All amounts then-owing under the Kentucky Agreement, as amended, and the Forbearance Agreements will be accelerated and due in full upon the closing of a credit facility by the Company with a lending institution. The Company has been unable to meet the obligations under the Forbearance Agreements and the Kentucky Amendment, and is currently in deafault under such agreements. To date, the noteholders have not initiated any actions against the Company based upon the continuing defaults.

Except with respect to the specific existing events of default contemplated under the Forbearance Agreements, the Forbearance Agreements do not constitute a forbearance or waiver of the noteholders' rights at any time, including during the term of the Forbearance Agreements, to enforce any and all rights and remedies held under the Kentucky Agreement, as amended, the notes, the Collateral Security Package, or any other related document between the parties. Following the end of the Forbearance Period or following any actions taken by the noteholders based upon the continuing defaults by the Company, continued forbearance will only occur upon written agreement by the noteholders, upon terms and conditions satisfactory to the noteholders and in their sole discretion. If such continued forbearance is not secured, the noteholders shall have the right to enforce any and all rights available to them, including recovery of the full amount of the obligations owed and foreclosure on collateral thereunder. The Company is seeking the financing to consummate this transaction to satisfy its obligations as soon as possible. However, the Company has already missed the original expected closing date, and there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and for any and all amounts owed.

Tennessee Property

The Tennessee Agreement contemplates that the Company will acquire rights, title, permits and leases to coal mines. The transaction was subject to execution and delivery of certain definitive agreements and other closing conditions, and was expected to close in February 2013. The agreement provided that consideration of approximately $55.0 million would be payable in cash in two installments; $30.0 million at closing and the remaining approximately $25.0 million on the first anniversary of the closing. As the Company has not obtained the necessary financing to satisfy its payment obligations under the Tennessee Agreement, the transaction has not closed.

On March 14, 2013, the Company entered into an amendment to the Tennessee Agreement (the "Tennessee Amendment") pursuant to which the Company was permitted to utilize the property through a one-year lease agreement, terminating February 15, 2014. The lease payments were to be $450,000 per month for a three-month period, followed by approximately $3.2 million per month for the nine month period thereafter. The lease payments were applied towards reducing the amount of consideration owed by the Company under the Tennessee Agreement, as amended. The lease was to be terminated if any lease payment was not timely made. Further, upon any default under the lease, the Company was to assign all rights under permits, mining contracts or other mining assets on the property to the seller of the property. The seller of the property was also be granted membership interests in the leasing party, our wholly-owned U.S. subsidiary, in order to secure obligations owed under the lease. Further, a portion of the Company's obligation was evidenced by an approximate $23.0 million promissory note with a maturity date of February 15, 2015.

Under the terms of the Tennessee Amendment, we have also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the Tennessee Amendment. Pursuant to the terms of the Tennessee Amendment, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the Tennessee Agreement, and any amendments thereto, shall terminate and be of no further force or effect. The Company has been unable to meet the obligations under the Tennessee Amendment, is currently in deafault under such agreement and no longer has the right to utilize the property. To date, the seller has not initiated any actions against the Company based upon such defaults. Because the Company has defaulted under the terms of the Tennessee Amendment, on June 7, 2013, the Company assigned all rights under permits, mining contracts or other mining assets on the property back to the seller. While the Company intends to secure the financing to satisfy the Tennessee Agreement, as amended, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable to the parties for damages or any and all amounts owed under the agreements, which may adversely affect our business.

Nickel Wire Transaction

On January 4, 2013, we, under a Nickel Purchase Agreement, acquired 3,750 grams of nickel wire (the "Nickel") from N.M. Kandilis S.A. in exchange for approximately 258.5 million newly issued common shares of the Company. The shares were issued on March 1, 2013. The Nickel Purchase Agreement stated that the respective shares will be delivered for Nickel with a value of at least $212.0 million. In connection with the Nickel Purchase Agreement, two affiliates of N.M. Kandilis S.A., Vasileios Telikostoglou and Essential Holding LTD, entered into lock-up agreements with respect to the common shares of the Company to be issued under the Nickel Purchase Agreement. These lock-up agreements provided, among other things, that if the Nickel was not monetized within eighteen months of the date of the Nickel Purchase Agreement, then the lock-up agreements would be considered null and void and the shares would be cancelled. These affiliates also agreed in the lock-up agreements that if the Nickel was sold at a reduced price of at least a 45% discount of the agreed contractual sale price under the Nickel Purchase Agreement, the number of shares would be adjusted pro rata. We intended to use the investment of Nickel to provide collateral for loans funding our capital-intensive activities and to provide a platform upon which to execute our diversified growth strategy.

Following our entry into the Nickel Purchase Agreement, PricewaterhouseCoopers Auditing Company S.A. ("PwC"), asked our audit committee to (i) conduct an investigation of the transaction between us and N.M. Kandilis S.A. within the scope of Section 10A of the Securities Exchange Act of 1934, as amended, (ii) investigate the origin of the Nickel, including its transfer from a Russian entity, its importation into the United Kingdom, the manner of its clearance through UK customs and whether N.M. Kandilis S.A. had proper title to the Nickel to effect the transaction, (iii) assess and report on the integrity of our management regarding the acquisition of the Nickel, (iv) assess whether we acquired legal ownership and good title of the Nickel and (v) advise as to any appropriate remedial action to be taken. The audit committee agreed with PwC's request, and hired Debevoise & Plimpton LLP ("Debevoise") to conduct the investigation.

The reports we had received from experts in the metals market, and used in connection with the closing of the Nickel transaction, valued much smaller quantities of nickel wire than the amount bought by us and the $212.0 million valuation was an extrapolation derived by our management from the value of the Nickel per meter. While the investigation was ongoing, PwC hired a third party valuation analyst to perform an independent fair value analysis of the Nickel. The third party valuation analyst determined that the Nickel's value was substantially less than the $212.0 million in common shares paid as consideration for the Nickel. This substantially lower value was up to a 99% discount of the valuation used for the January 4, 2013 transaction. We believe the difference was partially due to a substantial illiquidity discount being placed on the Nickel due to the very large amount acquired. Further, we believe that prices received from the sale of the Nickel depend upon the country in which it is sold as well as the method of sale used. Our attempts to use our Nickel as collateral following its acquisition convinced us that it would be challenging to accomplish a sizable transaction due to the illiquid market.

Pursuant to a July 31, 2013 report to the audit committee, Debevoise concluded as follows:

- It could not definitively confirm the source of the Nickel and did not see satisfactory documentation demonstrating the sale from its original manufacturer to N.M. Kandilis S.A. Although an investigator hired by Debevoise confirmed that certain Russian companies mentioned in the course of the investigation do manufacture nickel wire of similar characteristics to the Nickel in question, Debevoise noted that significant questions remain as to the way in which it was acquired. Debevoise further noted that, notwithstanding this, it did not identify any evidence of wrongdoing on the part of our management or any indication of wrongdoing on the part of N.M. Kandilis S.A.'s representative with whom we interfaced in connection with the Nickel transaction.

- Our management undertook limited due diligence in relation to the parties involved in the Nickel transaction, and tried to improve the documentary record after the transaction. This, for example, involved back-dating documents and seeking written assurances and affidavits from several persons involved, though it appeared that this was done in an attempt to properly document the transaction, as opposed to being intentionally done to deceive investors or other parties. Notwithstanding these matters, Debevoise did not find any evidence to suggest any wrongdoing on the part of our management, nor did it find any evidence that the Nickel transaction was done for potentially improper purposes.

- It would be advisable for our management to undertake enhanced due diligence on any transaction outside its ordinary course of business, such as the Nickel transaction.

As a result of the difficulties in collateralizing the Nickel, the discrepancy in possible values of the Nickel and uncertainty as to the Nickel's origin, we and N.M. Kandilis S.A. mutually agreed on May 24, 2013 to unwind the transaction, at which time the Nickel was returned to N.M. Kandilis S.A. and the common shares issued in the transaction were cancelled.

Deficiency and Compliance Notices from The NASDAQ Stock Market

On August 30, 2012, we received a written notification from The NASDAQ Stock Market LLC ("NASDAQ") indicating that we were not in compliance with NASDAQ Listing Rule 5450(b) (3)(C) for continued listing on The NASDAQ Global Select Market because the Market Value of the Company's Publicly Held Shares ("MVPHS") was below $15.0 million for the previous 30 consecutive business days. On September 13, 2012, we received another written notification from the NASDAQ indicating that we were not in compliance with NASDAQ Listing Rule 5450(a)(1) because the minimum bid price of our common shares was below $1.00 per share for the previous 30 consecutive business days (the "minimum bid price requirement").

Pursuant to the NASDAQ Listing Rules, we were granted a 180-day compliance period in respect of each violation to regain compliance with the requirements of the NASDAQ Listing Rules. On September 17, 2012, we received notification from the NASDAQ Listing Qualifications department that we had regained compliance with the minimum MVPHS of $15.0 million for continued listing under Listing Rule 5450(b)(3)(X) as our MVPHS had been $15.0 million or greater for 30 consecutive business days. On January 24, 2013, we received notification from the NASDAQ Listing Qualifications department that we had regained compliance with the minimum bid price requirement pursuant to NASDAQ Listing Rule 5450(a)(1), as the closing bid price of our common shares exceeded $1.00 for 10 consecutive business days.

On April 4, 2013, NewLead Holdings Ltd. (the "Company") received another written notification from NASDAQ indicating that the Company was not in compliance with NASDAQ Listing Rule 5450(a)(1) because the minimum bid price of the Company's common shares was below the minimum bid price requirement. Pursuant to the NASDAQ Listing Rules, the Company has been granted a 180-day compliance period to regain compliance with the requirements of the NASDAQ Listing Rules. The compliance period for the minimum bid price requirement ends on October 1, 2013. During the compliance period, the Company's common shares will continue to be listed and traded on The NASDAQ Global Select Market. Pursuant to the NASDAQ Listing Rules, the Company may regain compliance with the NASDAQ Listing Rules if the minimum bid price of its common shares equals at least $1.00 per share for ten consecutive business days at any time during the compliance period pursuant to NASDAQ Listing Rule 5810(c)(3)(A).

We had not filed our Form 20-F for the fiscal year ended December 31, 2012 before the due date of April 30, 2013 and therefore did not comply with Nasdaq Listing Rule 5250(c)(1) for continued listing. Consequently, on May 16, 2013, we received a notice from NASDAQ (the "NASDAQ Letter") stating that we were not in compliance with NASDAQ Listing Rule 5250(c)(1) (the "Rule") because we did not timely file Form 20-F with the Securities and Exchange Commission (the "SEC"). NASDAQ Listing Rule 5250(c)(1), in pertinent part, requires us to timely file all required periodic reports and other documents with the SEC. The NASDAQ Letter requested that we submit a plan to regain compliance with the Rule by July 15, 2013.

On July 10, 2013, we submitted to NASDAQ a plan to regain compliance with the Rule. After reviewing the Company's plan to regain compliance, on August 5, 2013 NASDAQ granted an exception to enable the Company to regain compliance with the Rule. Under the terms of the exception, the Company must file its Form 20-F on or before September 2, 2013. As we are filing the Form 20-F before that date, we did not receive a notice of delisting of our common stock.

Withdrawal of Registration Statement on Form F-1 (Registration No. 333-171472)

On October 3, 2012, pursuant to Rule 477 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), we requested the Securities and Exchange Commission consent to the withdrawal of our Registration Statement on Form F-1 (Registration No. 333-171472), together with all exhibits and amendments thereto (the "Registration Statement"). No securities were sold or will be sold under the Registration Statement. We submitted the request for withdrawal as we did not intend to pursue the contemplated public offering at that time. We reserve the right to undertake one or more subsequent private offerings in reliance on Rule 155(c) of the Securities Act.

Management Agreements

During 2013, we agreed, through our wholly-owned subsidiary Newlead Shipping, to perform part of the commercial, the technical and the operational management of three double-hulled oil tanker/asphalt carriers owned by a third party for a monthly fee of approximately $13,000 per vessel. We currently perform the management of two double-hulled oil tanker/asphalt carriers. Management of the third double-hulled oil tanker/asphalt carrier is expected to commence during September 2013.

Appointments

In January 2013, following (i) the expiration of the term of the Class I Directors in the Company's Annual General Meeting of Shareholders in 2012 and (ii) the resignation of Nicholas G. Fistes from his position as Class I Director and Chairman, the Company announced that Michael S. Zolotas, in addition to his other positions, would assume the role and responsibilities of Chairman of the Company. As such, our Board of Directors consists of one Class I Director, one Class II Director and two Class III Directors.

In March 2013, Spyros Gianniotis, a Class III Director since October 13, 2009, was appointed Deputy Chairman.

In March 2013, Antonis Bertsos, the Company's Chief Financial Officer, was appointed President and Corporate Secretary.

Equity Incentive Plan

On March 13, 2013, the Second Amended and Restated 2005 Equity Incentive Plan (the "Plan") was amended to increase the number of common shares reserved for issuance from 2,083,334 to 37,209,590 to better enable us to offer equity incentives to our officers, directors, employees and consultants. In addition, the Plan provides for an annual increase in the total number of our common shares available for issuance under the Plan on the first day of each fiscal year of the Company, beginning in fiscal year 2014, by 5% of the number of outstanding common shares of the Company on such date.

Accounts Payable Settlement (April 5, 2013)

On April 5, 2013, the Supreme Court of the State of New York, County of New York (the "Court"), entered an order (the "Order") approving, among other things, the fairness of the terms and conditions of an exchange pursuant to Section 3(a)(10) of the Securities Act of 1933, as amended (the "Securities Act"), in accordance with a stipulation of settlement (the "Settlement Agreement") between the Company and Hanover Holdings I, LLC, a New York limited liability company ("Hanover"), in the matter entitled Hanover Holdings I, LLC v. NewLead Holdings Ltd., Case No. 650964/2013 (the "Action"). Hanover commenced the Action against the Company on March 18, 2013 to recover an aggregate of $2,411,581.34 of past-due accounts payable of the Company, which Hanover had purchased from certain vendors of the Company pursuant to the terms of separate receivable purchase agreements between Hanover and each of such vendors (the "Assigned Accounts"), plus fees and costs (the "Claim"). The Assigned Accounts relate to certain legal, insurance, broker, bunker and consulting services provided by certain vendors of the Company. The Order provides for the full and final settlement of the Claim and the Action. The Settlement Agreement became effective and binding upon the Company and Hanover upon execution of the Order by the Court on April 5, 2013.

Pursuant to the terms of the Settlement Agreement approved by the Order, on April 5, 2013, the Company issued and delivered to Hanover 6,000,000 shares (the "Settlement Shares") of the Company's common stock, $0.01 par value (the "Common Stock"). Giving effect to such issuance, the Settlement Shares represent approximately 0.906% of the total number of shares of Common Stock outstanding as of the date of the Settlement Agreement. The Settlement Agreement provides that the Settlement Shares will be subject to adjustment on the trading day immediately following the Calculation Period (as defined below) (the "True-Up Date") to reflect the intention of the parties that the total number of shares of Common Stock to be issued to Hanover pursuant to the Settlement Agreement be based upon a specified discount to the trading volume weighted average price (the "VWAP") of the Common Stock for a specified period of time subsequent to the Court's entry of the Order. Specifically, the total number of shares of Common Stock to be issued to Hanover pursuant to the Settlement Agreement shall be equal to the sum of (i) the quotient obtained by dividing (A) $2,411,581.34, representing the total amount of the Claim, by (B) 70% of the VWAP of the Common Stock over the Calculation Period and (ii) the quotient obtained by dividing (A) the total dollar amount of Hanover's legal fees and expenses incurred in connection with the Action, which shall not exceed $50,000 (less $10,000 heretofore paid by the Company) by (B) the VWAP of the Common Stock over the Calculation Period, rounded up to the nearest whole share (the "VWAP Shares"). The "Calculation Period" is defined in the Settlement Agreement to mean the shorter of the following: (i) the 50-consecutive trading day period commencing on the trading day immediately following the date of issuance of the initial Settlement Shares (the "Initial Issuance Date"), and (ii) the consecutive trading day period commencing on the trading day immediately following the Initial Issuance Date and ending on the trading day that Hanover shall have received aggregate cash proceeds from the resale of Settlement Shares equal to the sum of (A) $3,135,055.75, representing 130% of the total amount of the Claim, and (B) the total dollar amount of Hanover's legal fees and expenses incurred in connection with the Action through the True-Up Date, subject to the cap set forth above (less $10,000 heretofore paid by the Company), supported by daily written reports to be delivered by Hanover to the Company. As a result, the Company ultimately may be required to issue to Hanover substantially more shares of Common Stock than the number of Settlement Shares initially issued (subject to the limitations described below).

The Settlement Agreement further provides that if, at any time and from time to time during the Calculation Period, Hanover reasonably believes that the total number of Settlement Shares previously issued to Hanover shall be less than the total number of VWAP Shares to be issued to Hanover or its designee in connection with the Settlement Agreement and the Order, Hanover may, in its sole discretion, deliver one or more written notices to the Company, at any time and from time to time during the Calculation Period, requesting that a specified number of additional shares of Common Stock promptly be issued and delivered to Hanover or its designee (subject to the limitations described below), and the Company will upon such request issue and deliver the number of additional shares of Common Stock requested to be so issued and delivered in the notice (all of which additional shares shall be considered "Settlement Shares" for purposes of the Settlement Agreement). At the end of the Calculation Period, (i) if the number of VWAP Shares exceeds the number of Settlement Shares issued, then the Company will issue and deliver to Hanover or its designee additional shares of Common Stock equal to the difference between the number of VWAP Shares and the number of Settlement Shares, and (ii) if the number of VWAP Shares is less than the number of Settlement Shares, then Hanover or its designee will return to the Company for cancellation that number of shares of Common Stock equal to the difference between the number of VWAP Shares and the number of Settlement Shares. Hanover may sell the shares of Common Stock issued to it or its designee in connection with the Settlement Agreement at any time without restriction (except as provided below), even during the Calculation Period.

The Settlement Agreement also provides that with respect to any single trading day during the Calculation Period, Hanover shall not offer or sell any Settlement Shares on, or over the course of, such trading day in excess of 15% (the "Trading Limitation Threshold") of the worldwide average daily trading volume in the Common Stock on all national securities exchanges and automated quotation systems, if any, on which the Common Stock is listed or designated for quotation (as the case may be), excluding any sales of Common Stock by Hanover (the "ADTV"), for the 10 trading days immediately preceding such trading day; provided, however, that if the aggregate market value of the ADTV does not exceed $300,000 (the "ADTV Threshold") for three consecutive trading days during the Calculation Period (based on the VWAP over such three consecutive trading days), then the Trading Limitation Threshold shall, for all purposes of the Settlement Agreement, become 10% until such time as the ADTV shall exceed the ADTV Threshold for at least three consecutive trading days (based on the VWAP over such three consecutive trading days), at which time it shall revert back to 15%. Hanover and the Company may modify this restriction by mutual written agreement. The Settlement Agreement further provides that in no event shall the number of shares of Common Stock issued to Hanover or its designee in connection with the Settlement Agreement, when aggregated with all other shares of Common Stock then beneficially owned by Hanover and its affiliates (as calculated pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder), result in the beneficial ownership by Hanover and its affiliates (as calculated pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder) at any time of more than 4.99% of the Common Stock.

Furthermore, the Settlement Agreement provides that, for so long as Hanover or any of its affiliates hold any shares of Common Stock, Hanover and its affiliates are prohibited from, among other actions: (1) voting any shares of Common Stock owned or controlled by Hanover or its affiliates, or soliciting any proxies or seeking to advise or influence any person with respect to any voting securities of the Company; or (2) engaging or participating in any actions, plans or proposals that relate to or would result in, among other things, (a) Hanover or its affiliates acquiring additional securities of the Company, alone or together with any other person, which would result in Hanover and its affiliates collectively beneficially owning, or being deemed to beneficially own, more than 9.99% of the Common Stock or other voting securities of the Company (as calculated pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder), (b) an extraordinary corporate transaction such as a merger, reorganization or liquidation of the Company or any of its subsidiaries, (c) a sale or transfer of a material amount of assets of the Company or any of its subsidiaries, (d) changes in the present board of directors or management of the Company, (e) material changes in the capitalization or dividend policy of the Company, (f) any other material change in the Company's business or corporate structure, (g) changes in the Company's charter, bylaws or similar instruments or other actions which may impede the acquisition of control of the Company by any person, (h) causing a class of securities of the Company to be delisted or cease to be authorized to be quoted on an inter-dealer quotation system of a registered national securities association, (i) causing a class of equity securities of the Company to become eligible for termination of registration under Section 12(g)(4) the Exchange Act, or (j) any actions similar to the foregoing. These prohibitions may not be modified or waived without further order of the Court.

The issuance of Common Stock to Hanover pursuant to the terms of the Settlement Agreement approved by the Order is exempt from the registration requirements of the Securities Act pursuant to Section 3(a)(10) thereof, as an issuance of securities in exchange for bona fide outstanding claims, where the terms and conditions of such issuance are approved by a court after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear.

Since the issuance of the Settlement Shares described above, Hanover demonstrated to the Company's satisfaction that it was entitled to receive an aggregate of 6,850,000 additional shares ("Additional Settlement Shares") based on the adjustment formula described above, and that the issuance of such Additional Settlement Shares to Hanover, in the amounts and at the times requested by Hanover during the Calculation Period, would not result in Hanover exceeding the beneficial ownership limitation set forth above. Accordingly, during the Calculation Period, the Company issued and delivered to Hanover an aggregate of 6,850,000 Additional Settlement Shares pursuant to the terms of the Settlement Agreement approved by the Order.

The Calculation Period expired on June 18, 2013 and the True-Up Date occurred on June 19, 2013. Based on the adjustment formula described above, Hanover was entitled to receive an aggregate of 11,995,826 VWAP Shares. Accordingly, since Hanover previously had received an aggregate of 12,850,000 Settlement Shares and Additional Settlement Shares, on the True-Up Date Hanover returned to the Company for cancellation 854,174 shares of Common Stock pursuant to the terms of the Settlement Agreement approved by the Order. No additional shares of Common Stock are issuable to Hanover pursuant to the Settlement Agreement.

Accounts Payable Settlement (July 9, 2013)

On July 9, 2013, the Court entered an order (the "July Order") approving, among other things, the fairness of the terms and conditions of an exchange pursuant to Section 3(a)(10) of the Securities Act in accordance with a stipulation of settlement (the "July Settlement Agreement") between the Company and Hanover in the matter entitled Hanover Holdings I, LLC v. NewLead Holdings Ltd., Case No. 155723/2013 (the "July Action"). Hanover commenced the July Action against the Company on June 21, 2013 to recover an aggregate of $7,205,547.92 of past-due accounts payable of the Company, which Hanover had purchased from certain vendors of the Company pursuant to the terms of separate receivable purchase agreements between Hanover and each of such vendors (the "July Assigned Accounts"), plus fees and costs (the "July Claim"). The July Assigned Accounts relate to certain legal, insurance, broker, bunker, consulting and other services and supplies provided by certain vendors of the Company. The July Order provides for the full and final settlement of the July Claim and the July Action. The July Settlement Agreement became effective and binding upon the Company and Hanover upon execution of the July Order by the Court on July 9, 2013.

Pursuant to the terms of the July Settlement Agreement approved by the July Order, on July 10, 2013, the Company issued and delivered to Hanover 61,000,000 shares (the "July Settlement Shares") of the Company's Common Stock. Giving effect to such issuance, the July Settlement Shares represent approximately 9.92% of the total number of shares of Common Stock outstanding as of the date of the July Settlement Agreement. The July Settlement Agreement provides that the July Settlement Shares will be subject to adjustment on the trading day immediately following the Calculation Period (as defined below) (the "July True-Up Date") to reflect the intention of the parties that the total number of shares of Common Stock to be issued to Hanover pursuant to the July Settlement Agreement be based upon theVWAP of the Common Stock for a specified period of time subsequent to the Court's entry of the July Order. Specifically, the total number of shares of Common Stock to be issued to Hanover pursuant to the July Settlement Agreement shall be equal to the sum of (i) the quotient obtained by dividing (A) $7,205,547.92, representing the total amount of the July Claim, by (B) 65% of the VWAP of the Common Stock over the Calculation Period as defined below and (ii) the quotient obtained by dividing (A) the total dollar amount of Hanover's legal fees and expenses incurred in connection with the July Action, which shall not exceed $50,000, by (B) the VWAP of the Common Stock over the Calculation Period, rounded up to the nearest whole share (the "July VWAP Shares"). The "Calculation Period" is defined in the July Settlement Agreement to mean the shorter of the following: (i) the 120-consecutive trading day period (subject to extension as set forth in the July Settlement Agreement) commencing on the trading day immediately following the date of issuance of the July Settlement Shares (the "July Initial Issuance Date") , and (ii) the consecutive trading day period commencing on the trading day immediately following the July Initial Issuance Date and ending on the trading day that Hanover shall have received aggregate cash proceeds from the resale of July Settlement Shares equal to the sum of (A) $9,727,489.70, representing 135% of the total amount of the July Claim, and (B) the total dollar amount of Hanover's legal fees and expenses incurred in connection with the July Action through the July True-Up Date, subject to the cap set forth above, supported by daily written reports to be delivered by Hanover to the Company. As a result, the Company ultimately may be required to issue to Hanover substantially more shares of Common Stock than the number of July Settlement Shares initially issued (subject to the limitations described below).

The July Settlement Agreement further provides that if, at any time and from time to time during the Calculation Period, Hanover reasonably believes that the total number of July Settlement Shares previously issued to Hanover shall be less than the total number of July VWAP Shares to be issued to Hanover or its designee in connection with the July Settlement Agreement and the July Order, Hanover may, in its sole discretion, deliver one or more written notices to the Company, at any time and from time to time during the Calculation Period, requesting that a specified number of additional shares of Common Stock promptly be issued and delivered to Hanover or its designee (subject to the limitations described below), and the Company will upon such request issue and deliver the number of additional shares of Common Stock requested to be so issued and delivered in the notice (all of which additional shares shall be considered "July Settlement Shares" for purposes of the July Settlement Agreement). At the end of the Calculation Period, (i) if the number of July VWAP Shares exceeds the number of July Settlement Shares issued, then the Company will issue and deliver to Hanover or its designee additional shares of Common Stock equal to the difference between the number of July VWAP Shares and the number of July Settlement Shares, and (ii) if the number of July VWAP Shares is less than the number of July Settlement Shares, then Hanover or its designee will return to the Company for cancellation that number of shares of Common Stock equal to the difference between the number of July VWAP Shares and the number of July Settlement Shares. Except as provided below, Hanover may sell the shares of Common Stock issued to it or its designee in connection with the July Settlement Agreement at any time without restriction, even during the Calculation Period.

The July Settlement Agreement also provides that with respect to any single trading day during the Calculation Period, Hanover shall not offer or sell any July Settlement Shares on, or over the course of, such trading day in excess of the greater of (i) 15% of the worldwide average daily trading volume in the Common Stock on all national securities exchanges and automated quotation systems, if any, on which the Common Stock is listed or designated for quotation (as the case may be), excluding any sales of Common Stock by Hanover, for the 10 trading days immediately preceding such trading day and (ii) $65,000 worth of Common Stock. Hanover and the Company may modify this restriction by mutual written agreement.

The July Settlement Agreement further provides that in no event shall the number of shares of Common Stock issued to Hanover or its designee in connection with the July Settlement Agreement, when aggregated with all other shares of Common Stock then beneficially owned by Hanover and its affiliates (as calculated pursuant to Section 13(d) of the Exchange Act, and the rules and regulations thereunder), result in the beneficial ownership by Hanover and its affiliates (as calculated pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder) at any time of more than 9.99% of the Common Stock.

The remaining terms of the July Settlement Agreement and July Order are substantially the same as the terms of the Settlement Agreement and Order executed in April.

Time Charter Agreements

On January 5, 2013, we agreed with the charterer of Newlead Markela to reduce the daily base rate from approximately $18,000 to approximately $8,000 and to extend the period of the charter for one additional year, through February 2014. In addition, we will be entitled to 50% profit sharing of the daily earnings of the charterer in excess of the base rate.

In December 2012, we entered into a five-year time charter contract for the Newlead Victoria with an escalating net daily charter-out rate ranging from $12,000 to $13,350 over the five-year period, beginning as early as June 2013. Under this agreement, we will be entitled to a profit sharing interest equal to 60% for each charter year based on the vessel's open books. In addition, on February 5, 2013, we entered into a four to seven month time charter agreement for Newlead Victoria, at the charterers' option, beginning February 10, 2013, at a net of commission rate of approximately $7,000 per day.

Common Shares and Restricted Common Shares

During the period from January 1, 2013 until August 30, 2013, we issued an aggregate of 3,786,014 common shares, which vested upon issuance, to various vendors in order to settle outstanding liabilities totaling $2.22 million. On February 5, 2013, the Company issued an aggregate of 43,931 common shares, which vested upon issuance, to an ex-director in order to settle outstanding liabilities of approximately $0.04 million.

On April 9, 2012, 750,000 warrants were issued to a third party. On January 23 and 24, 2013, the warrants were exercised and the Company issued an aggregate of 620,149 common shares.

On April 1, 2013, we granted (except for the grants described in (ii) below, which were granted per the terms of their employment agreements) and issued the following common shares: (i) 13,452,038 common shares to the Chairman, Mr. Zolotas, and 2,373,308 common shares to top management employees, of which 40% vested upon issuance and the remaining shares will vest 30% on April 1, 2014 and 30% on April 1, 2015, granted in recognition of the significant work performed by these individuals in connection with the Restructuring of the Company; (ii) 266,964 and 436,851 common shares to Nicholas G. Fistes, our former Chairman, and Mr. Zolotas, respectively, in connection with their 2012 annual base salaries under the terms of their respective employment agreements, which vested upon issuance; (iii) 1,267,603 common shares to employees and consultants, which vested upon issuance, granted in recognition of the significant work performed by these individuals in connection with the Restructuring of the Company; (iv) 700,000 common shares to non-executive directors, which vested upon issuance; (v) 16,399,703 shares to our former Chairman, Nicholas G. Fistes, after his resignation as part of his compensation package, which vested upon issuance; (vi) 4,166,667 shares to one of the Company's executive officers, after his resignation and as part of his compensation package, which vested upon issuance and (vii) 30,000 shares to two employees after their resignation and as part of their compensation packages, which vested upon issuance. The 2,373,308 common shares granted in (i) and all of the shares granted in (iii), (iv) and (vi) are subject to anti-dilution provisions, in the event of any reverse stock split within 18 months from the grant date.

On May 31, 2013, we issued 5,083,769 common shares to Mr. Zolotas in connection with his 2013 annual base salary under the terms of his employment agreement, which vested upon issuance.

Overview

General

The legal and commercial name of the Company is NewLead Holdings Ltd., a company incorporated under the Bermuda Corporations Act of 1981 ("BCA") on January 12, 2005. NewLead's principal place of business is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38 and its telephone number is (+30) 213-014-8600.

NewLead has historically been an international shipping company, and is now an international, vertically integrated shipping and commodity company. NewLead engages in the transportation of refined products, such as gasoline and jet fuel, and dry bulk goods, such as iron ore, coal and grain. We conduct our operations through vessel-owning companies whose principal activity is the ownership and/or operation of product tankers and dry bulk vessels. In addition, under specific management agreements, we perform part of the commercial, technical and operational management of vessels outside of our owned fleet. NewLead currently owns a fleet of two dry bulk carriers with a combined carrying capacity of approximately 0.15 million dwt and manages two double-hulled oil tanker/asphalt carriers. We seek to provide our customers with safe, reliable and environmentally sound seaborne transportation services that meet stringent internal and external standards while endeavoring to capitalize on the dynamics of the shipping industry.

In addition, NewLead has recently launched a commodities unit in order to take advantage of emerging dynamics in the maritime industry. We engage in the business of purchasing, trading and transporting commodities, principally coal, through certain joint venture affiliates. NewLead has also entered into agreements for the ownership of certain title and mineral excavation rights to land in Kentucky, as well as rights, title, permits and leases in coal mines in Tennessee. The Company is currently in default under such agreements. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. The properties in Kentucky and Tennessee also include natural gas wells and projects relating to extraction of timber, sand, gravel, fly ash and dimension stone. We expect third parties to extract some of these commodities on the properties and pay royalties. In connection with the potential acquisition of the two properties, the Company hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement. As of August 30, 2013, our coal mining business has not yet commenced operations. While we hope to finalize the acquisitions and begin mining operations as soon as possible, there is no assurance that our coal business will begin operating in the near future, or at all. As of August 30, 2013, the Company has not generated any revenue as a result of the acquisitions.

Furthermore, on January 4, 2013, we acquired 3,750 grams of nickel wire (the "Nickel") in exchange for 258.5 million common shares of the Company. We intended to use the Nickel as collateral for funding our capital-intensive activities and to provide a platform upon which to execute our diversified growth strategy. On May 24, 2013, the transaction was unwound whereby the nickel wire was returned to the seller and the shares issued in the transaction cancelled. (See "Item 3.—Key Information—Recent Developments").

Due to the economic conditions and operational difficulties of the Company, we entered into restructuring discussions with each of the lenders under our facility and credit agreements, the holders of our 7% Notes and the counterparties to our capital leases. See "Item 5. —Operating and Financial Review and Prospects—Liquidity and Capital Resources" for a detailed discussion. To date, we have completed our Restructuring, except for the credit facility with Piraeus Bank (CPB loan). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank, our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. As such, there can be no assurance that a satisfactory final agreement will be reached with Piraeus Bank (CPB loan) in any future efforts outside of the Restructuring, or at all. To date, we are also in default under the terms of the 4.5% Note, the Portigon AG Credit Facility, and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders. During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring. As a result, as of August 30, 2013, we own two dry bulk carriers.

Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of beneficial conversion feature, or BCF, related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interests payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Note, (iii) the issuance of the up to $1.0 million Good Faith Note and (iv) the issuance of the Tiger Note.

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by Investment Bank of Greece ("IBG")
- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations.

A. Operating results

The following discussion solely reflects results from continuing operations, unless otherwise noted. See Note 24, "Discontinued Operations", to our consolidated financial statements for a discussion of our discontinued operations.

Going Concern

Our financial statements were prepared using principles under Generally Accepted Accounting Principles in the United States of America (GAAP) applicable to a going concern. However, because of our losses, working capital deficiencies, negative operating cash flow and shareholders' deficiency, we concluded that there is substantial doubt as to our ability to continue as a going concern.

Over the past two years, we have experienced losses, working capital deficiencies, negative operating cash flow and shareholders' deficiency, which has affected, and which we expect will continue to affect, our ability to satisfy our obligations, despite the Restructuring and our new business arrangements. Charter rates for bulkers have experienced a high degree of volatility. Charter hire rates for bulkers continue to be at historical lows.

In connection with our acquisition of ownership and mineral rights to the Kentucky Property, on December 28, 2012, we issued promissory notes to RJLT Investments LLC, Williams and Kentucky in the amounts of $1,500, $2,000 and $7,500, respectively, payable in their entirety on January 29, 2013. We issued the promissory notes to help facilitate the sale of the Kentucky Property from Kentucky to Williams, as we have agreed to acquire the Kentucky Property from Williams on a closing date subsequent to December 31, 2012. The promissory notes that were issued on December 28, 2012 in the amount of $11,000 are reflected under Promissory notes payable in the consolidated balance sheet. Due to lack of financing, we have been unable to meet our obligations and we are currently in default under such agreements. To date, the noteholders have not initiated any actions against us based upon the continuing defaults. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, we may be liable for damages and for any and all amounts owed.

In addition, in connection with our acquisition of ownership and leasehold interests in the Tennessee Property, we are required to pay $55,000 ($30,000 was payable on or before February 15, 2013 and $25,000 payable on or before February 15, 2014.) Under the terms of the agreements governing the acquisition, we have also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the agreements. Pursuant to the terms of the agreements, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the agreements , shall terminate and be of no further force or effect. We have been unable to meet the obligations under the agreements, we are currently in default under such agreements and no longer have the right to utilize the property. To date, the sellers have not initiated any actions against us based upon such continuing defaults. Because we have defaulted under the terms of agreements, in June 2013 we assigned all rights under permits, mining contracts or other mining assets on the property back to seller. While we intend to secure the financing to satisfy the agreements, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, we may be liable to the parties for damages or any and all amounts owed under the agreements, which may adversely affect our business.

Furthermore, due to our economic conditions and operational difficulties described elsewhere in this report, we entered into restructuring discussions with each of the lenders under our facility and credit agreements, the holders of the 7% Notes and the counterparties to our c apital leases (collectively, the agreements governing such debt, the "Financing Documents"). As part of those discussions, we appointed Moelis & Company ("Moelis") to act as our financial advisors in respect of an overall restructuring proposal with respect to the Financing Documents. On November 8, 2011, we and Moelis presented to each of the lenders under the Financing Documents a commercial presentation which set out a comprehensive global restructuring proposal (the "Restructuring Proposal"), and which included, among other things, proposed amendments to the Financing Documents (including amortization relief and reset of financial covenants). We have been engaged in negotiations with our lenders under the Financing Documents regarding the terms of the Restructuring Proposal and as of the date of issuance of this report we have completed the restructuring efforts for the Syndicate Facility Agreement, Kamsarmax Syndicate Facility Agreements, Eurobank Credit Facility, Northern Shipping Fund LLC Capital Lease Obligation, Portigon AG (formerly, West LB Bank) Credit Facility, Piraeus Bank Credit Facilities, Handysize Syndicate Facility Agreement, Lemissoler Maritime Company W.L.L. Capital Lease Obligation and the 7% Notes, subject, in the case of the Syndicate Facility Agreement, to final payment of outstanding fees. However, the Company was not able to restructure the credit facility with Piraeus Bank (CPB loan). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank, our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. We remain in restructuring negotiations with Piraeus Bank (CPB loan) outside of the Restructuring Proposal. In addition, while we have completed our restructuring efforts with the lenders under the Syndicate Facility Agreement, we continue to have an outstanding liability of $0.1 million under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability. See "Item 5.—Operating and Financial Review and Prospects —Recent Developments—Completion of Restructuring of our Indebtedness" for a discussion of the status of our restructuring negotiations.

As a further result of the economic conditions and operational difficulties described elsewhere in this report, as of December 31, 2012, we were also in default under our credit agreements with Piraeus Bank (CPB loan), Portigon AG, Piraeus Bank and the 4.5% Note, in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions), as those credit facilities had not yet been restructured and discharged. To date, we have not obtained waivers for these defaults from Piraeus Bank (CPB loan), Portigon AG, and the holder of the 4.5% Note. We are also currently in default under the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all.

Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of BCF related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

During 2011 and through August 30, 2013, we have sold, disposed of or handed control over to our lenders a total of 20 vessels and hulls under construction (or our ownership of the shipowning subsidiaries) in connection with the Restructuring.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interest payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Note, (iii) the issuance of the up to $1.0 million Good Faith Note and (iv) the issuance of the Tiger Note.

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by Investment Bank of Greece ("IBG")

- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations. Although the Restructuring reduced our outstanding debt obligations, we issued significant additional common shares which diluted our existing shareholders and such additional issuances, individually or in the aggregate, significantly impacted the trading price of our common shares and may also impact our continued listing on NASDAQ.

As a result of the restructuring process, it will be difficult for us to incur additional debt on commercially reasonable terms, even if we are permitted to do so under our debt agreements. This may limit our ability to pursue activities that our management considers to be beneficial to us, which may further impair our financial condition.

All of the above raise substantial doubt regarding the Company's ability to continue as a going concern.

Long-term debt and the 4.5% Note have been classified as current liabilities due to covenant violations. The covenant violations in long-term debt give lenders the right to call the debt at the balance sheet date, absent waivers. Accordingly, as of December 31, 2012, we have reclassified all of our long term debt and 4.5% Note as current liabilities in our consolidated balance sheet, since we have not received waivers in respect of the covenants that were breached at such time. The financial statements have been prepared assuming that we will continue as a going concern and do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Important Factors to Consider When Evaluating Our Historical and Future Results of Operations

Charters

We have historically had many long-established charter relationships which we believe are well regarded within the international shipping community. Our management's assessment of a charterer's financial condition and reliability is an important factor in negotiating employment of our vessels. We have established stringent requirements for selecting qualified charterers. We generate revenues by charging customers for the transportation of a wide array of unpackaged cargo in our dry bulk business through various charter agreements. A time charter is a contract for the use of a vessel for a specific period of time during which the charterer pays all of the voyage expenses, including port and canal charges and the cost of bunkers, but the vessel owner pays the vessel operating expenses, including the cost of crewing, insuring, repairing and maintaining the vessel, the costs of spares and consumable stores and tonnage taxes. Under a spot-market charter, the vessel owner pays both the voyage expenses (less specified amounts covered by the voyage charterer) and the vessel operating expenses. Under both types of charters, we pay commissions to ship brokers depending on the number of brokers involved with arranging the charter. Vessels operating in the spot-charter market generate revenues that are less predictable than time charter revenues, but may enable us to capture increased profit margins during periods of improvements in charter rates.

We believe that our future results of operations are largely driven by the economic, regulatory, political and governmental conditions that affect the shipping industry generally and that affect conditions in countries and markets in which our vessels engage in business. Refer to the section titled "Item 3D.—Risk Factors" for a discussion of certain risks inherent in our business.

We believe that the important measures for analyzing trends in our results of shipping operations consist of the following:

- *Market exposure:* We manage our fleet by chartering our owned vessels to international charterers.
- *Available days:* Available days are the total number of days a vessel is controlled by a company less the aggregate number of days that the vessel is off-hire due to scheduled repairs or repairs under guarantee, vessel upgrades or special surveys. The shipping industry uses available days to measure the number of days in a period during which vessels should be capable of generating revenues.
- *Operating days:* Operating days are the number of available days in a period less the aggregate number of days that the vessels are off-hire due to any reason, including lack of demand or unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a period during which vessels actually generate revenues.
- *Fleet utilization:* Fleet utilization is obtained by dividing the number of operating days during a period by the number of available days during the period for the core vessels. The shipping industry uses fleet utilization to measure a company's efficiency in finding suitable employment for its vessels and minimizing the amount of days that its vessels are off-hire for reasons other than scheduled repairs or repairs under guarantee, vessel upgrades, special surveys or vessel positioning.

- *Equivalent vessels:* Equivalent vessels are equal to the available days of the fleet divided by the number of the calendar days in the respective period.

- *TCE rates:* Time Charter Equivalent, or TCE, rates are defined as voyage, time charter and bareboat revenues, less voyage expenses and commissions during a period, divided by the number of available days during the period. The TCE rate is a standard shipping industry performance measure used primarily to compare daily earnings generated by vessels on time charters with daily earnings generated by vessels on voyage charters, because charter hire rates for vessels on voyage charters are generally not expressed in per day amounts, while charter rates for vessels on time charters generally are expressed in such amounts.

- *Direct daily vessel operating expenses:* Direct daily vessel operating expenses are defined as the sum of the vessel operating expenses, excluding provision for claims, and management fees, divided by the vessels calendar days.

Set forth below are our selected historical and statistical data as of December 31, 2012, 2011 and 2010 with respect to charter coverage for our fleet under continuing operations that we believe may be useful in better understanding our financial position and results of operations.

	Year Ended December 31, 2012	**Year Ended December 31, 2011**	**Year Ended December 31, 2010**
Available days	703	705	1,376
Operating days	700	705	950
Fleet utilization (1)	99.6%	100.0%	98.5%
Equivalent vessels	1.9	1.9	3.8
Time Charter Equivalent Rate	$ 11,649	$ 16,913	$ 8,868
Direct daily vessel operating expenses	$ 4,758	$ 3,642	$ 6,746

(1): Fleet utilization for the year 2010 excludes non-core vessels (the High Rider, the High Land, the Ostria, the Nordanvind and the Chinook)

Principal Factors that Affect Our Shipping Business

The principal factors that affect our financial position, results of operations and cash flows include:

- charter rates and periods of charter hire;
- vessel operating expenses and voyage costs, which are incurred in both U.S. dollars and other currencies, primarily Euros;
- depreciation expenses, which are a function of the cost of our vessels, significant vessel improvement costs and our vessels' estimated useful lives;
- impairment loss;
- financing costs related to our indebtedness; and
- acquisitions and disposals.

You should read the following discussion together with the information contained in the table of vessel information under "Item 4.—Information on the Company—Business Overview—Owned Fleet". Revenues from period charters are stable over the duration of the charter, provided there are no unexpected or periodic survey off-hire periods and there are no performance claims from the charterer or charterer defaults. We cannot guarantee that actual results will be as anticipated. The discussions hereafter represent only our continuing operations, except where specifically mentioned.

Revenues

Revenues are driven primarily by the number of vessels in the fleet, the number of days during which such vessels operate and the amount of daily charter rates that the vessels earn under charters, which, in turn, are affected by a number of factors, including:

- the duration of the charters;
- the level of spot market rates at the time of charter;

- decisions relating to vessel acquisitions and disposals;
- the amount of time spent positioning vessels;
- the amount of time that vessels spend in dry-dock undergoing repairs and upgrades;
- the age, condition and specifications of the vessels; and
- the aggregate level of supply and demand in the dry bulk shipping industry.

Time charters are available for varying periods, ranging from a single trip (spot charter) to long-term, which may be many years. In general, a long-term time charter assures the vessel owner of a consistent stream of revenue. Operating the vessel in the spot market affords the owner greater spot market opportunity, which may result in high rates when vessels are in high demand or low rates when vessel availability exceeds demand. Vessel charter rates are affected by world economics, international events, weather conditions, strikes, governmental policies, supply and demand, and many other factors that might be beyond the control of management.

Commissions

Commissions are paid to brokers and are typically based on a percentage of the charter rate. A typical commission is 1.25% of the gross charter hire/freight earned (including demurrage) for each broker involved in a fixture. We are currently paying aggregate commissions of 2.5% per vessel per fixture (address commission, which represents money deducted from the charterer at source).

Voyage Expenses

Voyage expenses are incurred due to a vessel being en route from a loading port to a discharging port, to repair facilities or on a repositioning voyage, and include fuel (bunkers) cost, port expenses, agent's fees, canal dues and extra war risk insurance. Under time charters, the charterer is responsible for paying voyage expenses while the vessel is on hire.

General and Administrative Expenses

These expenses include executive and director compensation (inclusive of shares granted), staff wages, legal fees, audit fees, liability insurance premium and Company administration costs.

Vessel Operating Expenses

Vessel operating expenses are the costs of operating a vessel, primarily consisting of crew wages and associated costs, insurance premiums, lubricants and spare parts, and repair and maintenance costs. Vessel operating expenses exclude fuel cost, port expenses, agents' fees, canal dues and extra war risk insurance, which are included in "voyage expenses."

Certain vessel operating expenses are higher during the initial period of a vessel's operation. Initial daily vessel operating expenses are usually higher than normal as newly acquired vessels are inspected and modified to conform to the requirements of our fleet.

Under multi-year time charters and under short-term time charters, we pay for vessel operating expenses. Under bareboat charters, our charterers bear most vessel operating expenses, including the costs of crewing, insurance, surveys, dry-dockings, maintenance and repairs.

Impairment

In the event of impairment of an asset group, the fair value of the related long-lived asset is determined and an impairment charge is recorded to operations calculated by comparing the asset's carrying value to its fair value. Fair value is estimated primarily through the use of third-party valuations performed on an individual asset group basis.

Depreciation

Depreciation is the periodic cost charged to our income for the reduction in usefulness and long-term value of our vessels. We depreciate the cost of our vessels over 25 years on a straight-line basis. No charge is made for depreciation of vessels under construction until they are delivered.

Amortization of Special Survey and Dry-docking Costs

Our vessels are subject to regularly scheduled dry-docking and special surveys, which are carried out every 30 or 60 months to coincide with the renewal of the related certificates issued by the Classification Societies, unless a further extension is obtained in rare cases and under certain conditions. The costs of dry-docking and special surveys (mainly shipyard costs, paints and class renewal expenses) are deferred and amortized over the above periods or to the next dry-docking or special survey date if such date has been determined. Costs incurred during the dry-docking period relating to routine repairs and maintenance are expensed. The unamortized portion of special survey and dry-docking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain/(loss) on sale of the vessel.

Interest and Finance Expenses

Interest expenses include interest, commitment fees, arrangement fees, amortization of deferred financing costs, amortization of the debt discount and other similar charges. Interest incurred during the construction of a newbuilding is capitalized in the cost of the newbuilding. The amount of interest expense is determined by the amount of loans and advances outstanding from time to time and interest rates. The effect of changes in interest rates may be reduced (increased) by interest rate swaps or other derivative instruments. We use interest rate swaps to economically hedge our interest rate exposure under our loan agreements.

Change in Fair Value of Derivatives

At the end of each quarter, the fair values of our interest rate swaps are valued to market. Changes in the fair value between quarters are recognized in the statements of operations.

Foreign Exchange Rates

Foreign exchange rate fluctuations, particularly between the Euro and the U.S. dollar, have had a minimal impact on our vessel operating expenses and administrative expenses. We actively seek to manage such exposure. Close monitoring of foreign exchange rate trends, maintaining foreign currency accounts and buying foreign currency in anticipation of our future requirements are the main ways we manage our exposure to foreign exchange risk. See "Item 11. —Quantitative and Qualitative Disclosures about Market Risk—Foreign Exchange Rate Exposure".

Critical Accounting Policies

NewLead's consolidated financial statements have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires NewLead Holdings Ltd. to make estimates in the application of its accounting policies based on the best assumptions, judgments and opinions of management. The following is a discussion of the accounting policies that involve a higher degree of judgment and the methods of their application that affect the reported amount of assets and liabilities, revenues and expenses and related disclosure of contingent assets and liabilities at the date of its consolidated financial statements. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are those that reflect significant judgments of uncertainties and potentially result in materially different results under different assumptions and conditions. We have described below what we believe are our most critical accounting policies, because they generally involve a comparatively higher degree of judgment in their application. For a description of our significant accounting policies, please refer to Note 2 of our consolidated financial statements included herein.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, management evaluates the estimates and judgments, including those related to future dry-dock dates, the selection of useful lives for tangible and intangible assets, expected future cash flows from long-lived assets to support impairment tests, expected future cash flows from reporting units to support goodwill impairment tests, provisions necessary for accounts receivables, provisions for legal disputes, and contingencies. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions and/or conditions.

Vessels and Other Fixed Assets, net

Vessels are stated at cost, less accumulated depreciation and impairment losses. Cost consists of the contract price, delivery and acquisition expenses, interest cost while under construction, and, where applicable, initial improvements. Vessels acquired through an asset acquisition or through a business combination are stated at fair value. Subsequent expenditures for conversions and major improvements are also capitalized when they appreciably extend the life, increase the earnings capacity or improve the efficiency or safety of a vessel; otherwise, these amounts are charged to expenses as incurred.

Depreciation of a vessel is computed using the straight-line method over the estimated useful life of the vessel, after considering the estimated salvage value of the vessel. Each vessel's salvage value is equal to the product of its lightweight tonnage and estimated scrap value per lightweight ton. Management estimates the useful life of our vessels to be 25 years from the date of its initial delivery from the shipyard.

However, when regulations place limitations over the ability of a vessel to trade, its useful life is adjusted to end at the date such regulations become effective.

Fixed assets are stated at cost. The cost and related accumulated depreciation of fixed assets sold or retired are removed from the accounts at the time of sale or retirement and any gain or loss is included in the accompanying statement of operations.

Impairment of Long-lived Assets

Long-lived assets and certain identifiable intangibles held and used by an entity are required to be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the future net undiscounted cash flows from the asset group are less than the carrying values of the asset group, an impairment loss is recorded equal to the difference between the asset's carrying value and its fair value.

Undiscounted projected net operating cash flows are determined for each asset group and compared to the carrying value of the vessel and related carrying value of the intangible (backlog asset and deferred charter revenue) with respect to the time charter agreement attached to that vessel or the carrying value of deposits for newbuildings. Within the shipping industry, vessels are customarily bought and sold with a charter attached. The value of the charter may be favorable (backlog asset) or unfavorable (deferred charter revenue) when comparing the charter rate to then current market rates. The loss recognized either on impairment (or on disposition) will reflect the excess of carrying value over fair value (selling price) for the vessel asset group. For vessels under construction, the net estimated cash flows also include the future cash outflows to make vessels ready for use, all remaining progress payments to shipyards and other pre-delivery expenses (e.g. capitalized interest).

The significant factors and assumptions we use in the undiscounted projected net operating cash flow analysis included, among others, operating revenues, off-hire revenues, dry-docking costs, operating expenses and management fee estimates. Revenue assumptions are based on a number factors for the remaining life of the vessel: (a) contracted time charter rates up to the end of life of the current contract of each vessel, (b) the most recent ten-year average historical one-year time charter rates (adjusted for market conditions), (c) the respective vessel's age as well as considerations such as scheduled and unscheduled off-hire days based on historical experience and (d) the likelihood of the sale of the asset group. Operating expense assumptions included an annual escalation factor. All estimates we use and assumptions made are in accordance with our historical experience. Fair value is determined using the valuation derived from market data.

The current assumptions used and the estimates made are highly subjective, and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require us to record a material impairment charge in future periods. We performed an impairment assessment of the long-lived assets groups (i) during the years ended December 31, 2012, 2011, and 2010, when certain vessels were disposed of, and (ii) as of December 31, 2012, 2011 and 2010. For the year ended December 31, 2012, we recorded an impairment charge totaling $5.9 million in continuing operations on one of the two vessels that were held and used as of December 31, 2012. In addition, an impairment charge in continuing operations of $1.2 million was recorded on back log assets. For certain asset groups as of December 31, 2011, the future net undiscounted cash flows from the assets were less than the carrying values of the assets and, therefore, were adjusted to fair value. For the year ended December 31, 2011, we recorded an impairment charge of $2.4 million on one vessel that is classified as held and used and an impairment charge of $101.4 million on fifteen vessels that are classified as discontinued operations. In addition, an impairment charge in discontinued operations of $43.2 million was recorded on back log assets, and of $5.5 million was recorded on vessels under construction. For the year ended December 31, 2010, we recorded an impairment charge on vessels in the amount of $15.7 million all of which was recorded within continuing operations.

As per our impairment assessment as of December 31, 2012, the vessels' undiscounted projected net operating cash flows were in excess of their carrying values by more than 60%.

Share-based Compensation

Share-based compensation reflects grants of common shares, restricted common shares and share options approved by the board of directors. The restricted common shares and share option awards are subject to applicable vesting and unvested common shares and options may be forfeited under specified circumstances. The fair values of share option grants have been calculated based on the Binomial lattice model method. The fair value of common share grants is determined by reference to the quoted share price on the date of grant.

Trade Receivables, net and Other Receivables

The amount shown as trade receivables, net at each balance sheet date includes estimated recoveries from charterers for hire, freight and demurrage billings, net of allowance for doubtful accounts. An estimate is made of the allowance for doubtful accounts based on a review of all outstanding amounts at each period, and an allowance is made for any accounts which management believes are not recoverable. Bad debts are written off in the year in which they are identified. The allowance for doubtful accounts at December 31, 2012 and December 31, 2011 amounted to $2.4 million and $1.6 million, respectively, and relates to continuing and discontinued operations.

Revenue Recognition

Revenues are generated by chartering our vessels to our charterers to transport petroleum products and wide array of unpackaged cargo. In recognizing revenue, we are required to make certain estimates and assumptions. Historically, differences between our estimates and actual results have not been material to our financial results.

We have provided services to our customers under the following types of contractual relationships:

Voyage Charters, which are contracts made in the spot market for the use of a vessel for a specific voyage at a specified charter rate.

Time Charters, which are contracts for the use of a vessel for a fixed period of time at a specified daily rate. All expenses related to the time charter voyages are assumed by the charterers.

Bareboat Charters, which are contracts pursuant to which the vessel owner provides the vessel to the charterer for a fixed period of time at a specified daily rate, and the customer provides for all of the vessel's operating expenses including crewing repairs, maintenance, insurance, stores lube oils and communication expenses in addition to the voyage costs (with the exception of commissions) and generally assumes all risks of operation.

Profit sharing, represents our portion of the excess of the actual net daily charter rate earned by our charterers from the employment of our vessels over a predetermined base charter rate, as agreed between us and our charterers. Such profit sharing is recognized in revenue when mutually settled.

Results of Continuing Operations

The following discussion solely reflects results from continuing operations, unless otherwise noted. See Note 24, "Discontinued Operations", to our consolidated financial statements for a discussion of our discontinued operations.

Year Ended December 31, 2012 and Year Ended December 31, 2011

The following table presents the results of operations of the Company for the years ended December 31, 2012 and December 31, 2011 (amounts in thousands).

	Year Ended December 31, 2012	Year Ended December 31, 2011
OPERATING REVENUES	$ 8,928	$ 12,220
EXPENSES:		
Commissions	(107)	(150)
Voyage expenses	(158)	(146)
Vessel operating expenses	(3,266)	(2,928)
General and administrative expenses	(8,249)	(16,521)
Depreciation and amortization expenses	(6,564)	(8,180)
Impairment losses	(7,054)	(83,950)
	(25,398)	(111,875)
Operating loss from continuing operations	(16,470)	(99,655)
OTHER (EXPENSES) / INCOME, NET:		
Interest and finance expense	(86,549)	(22,672)
Loss on extinguishment of convertible notes	(293,109)	-
Interest income	-	68
Other expense, net	(3,528)	(1,457)
Total other expenses, net	(383,186)	(24,061)
Loss before equity in net earnings in Joint Ventures	**(399,656)**	**(123,716)**
Loss from investments in Joint Ventures	(2,469)	-
Loss from continuing operations	**(402,125)**	**(123,716)**
Loss from discontinued operations	(1,800)	(166,679)
Net loss	**(403,925)**	**(290,395)**
Less: Net loss attributable to the noncontrolling interest	1,363	-
Net loss attributable to NewLead Holdings' Shareholders	**$ (402,562)**	**$ (290,395)**

Revenues

For the year ended December 31, 2012, operating revenues from vessels were $8.4 million, compared to $12.2 million for the year ended December 31, 2011. In addition, for the year ended December 31, 2012, operating revenues from management of vessels were $0.5 million, compared to $0 for the year ended December 31, 2011. The decrease in revenue was attributable primarily to the reduction in the market charter rates of our two owned vessels. For the years ended December 31, 2012 and 2011, our time charter equivalent (TCE) rates were $11,649 per day and $16,913 per day, respectively, reflecting the reduction in charter rates.

Fleet utilization for the years ended December 31, 2012 and 2011 was 99.6% and 100.0%, respectively. Fleet utilization for the year 2012 reflected 3.1 unforeseen off-hire days. During the years ended December 31, 2012 and 2011, all vessels in our fleet were fixed on time charters.

Commissions

Chartering commissions were $0.11 million and $0.15 million for the years ended December 31, 2012 and 2011, respectively, reflecting the reduction of our charter rates.

Voyage Expenses

Voyage expenses were $0.16 million during the year ended December 31, 2012, compared to $0.15 million during the year ended December 31, 2011. Both amounts are attributable to ad-hoc port and other voyage expenses.

Vessel Operating Expenses

Vessel operating expenses were $3.3 million during the year ended December 31, 2012, compared to $2.9 million during the year ended December 31, 2011. This difference primarily reflected $0.6 million less gain attributable to claims. Excluding the amount attributable to claims, vessel operating expenses decreased by $0.2 million, reflecting more efficient ship management. As a consequence, our total direct daily vessel operating expenses increased to $4,758 in 2012 from $3,642 in 2011, mainly reflecting the claims received during 2011.

General and Administrative Expenses

General and administrative expenses were $8.2 million during the year ended December 31, 2012, compared to $16.5 million during the year ended December 31, 2011. The decrease is mainly attributable to a decrease in salaries and other general and administration expenses by approximately 60% as a result of our restructuring efforts and costs minimization. This decrease was partly offset by a $0.8 million increase in share based compensation costs.

Depreciation and Amortization

Depreciation and amortization was $6.6 million during the year ended December 31, 2012, compared to $8.2 million during the year ended December 31, 2011, reflecting the decreased depreciation and amortization of our vessels, due to the impairments recognized in the book value and backlog asset for the Newlead Markela. This decrease was partially offset by the higher amortization due to dry-docking repairs performed on the Newlead Victoria during 2012.

Impairment Loss

In light of recent market conditions as well as company-specific conditions that existed in 2012 and 2011, we evaluated the carrying amounts of our long-lived assets during and at the end of each of those periods. We recognized an impairment loss of $7.1 and $2.4 million on our long-lived assets (vessels and intangibles) in the years ended December 31, 2012 and 2011, respectively.

Moreover, we evaluated the recoverability of goodwill in our reporting units and recognized an impairment loss of $81.6 million for the year ended December 31, 2011, fully writing-off goodwill.

Interest and Finance Expense / Interest Income

	Year Ended December 31, 2012	Year Ended December 31, 2011
Interest expense excluding change in fair value of interest rate swaps	$ 8.7	$ 12.1
Other finance expenses	6.9	3.0
	15.6	**15.1**
Amortization of the beneficial conversion feature	71.6	8.2
Change in fair value of interest rate swaps	(0.7)	(0.6)
	70.9	**7.6**
Interest and finance expense	**$ 86.5**	**$ 22.7**

Interest and finance expense was $86.5 million for the year ended December 31, 2012, compared to $22.7 million for the year ended December 31, 2011. The expense for 2012 included a $71.6 million non-cash charge from the amortization of the BCF embedded in the 7% Notes. Excluding the amortization of the BCF and a $0.7 million gain resulting from the change in the fair value of our interest rate swaps, interest and finance expenses were $15.6 million, reflecting $152.3 million of indebtedness as of December 31, 2012 (net of the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes). The expense for 2011 included a $8.2 million non-cash charge from the amortization of the BCF embedded in the 7% Notes. Excluding the amortization of the BCF and a $0.6 million gain resulting from the change in the fair value of our interest rate swaps, interest and finance expenses were $15.1 million, reflecting the portion of the indebtedness from continuing operations during the year ended December 31, 2011. Furthermore, during the year ended December 31, 2011, we received interest income of $0.1 million.

Loss on extinguishment of convertible notes

In connection with the restructuring of the Company's debt, on July 2, 2012, we entered into an agreement with Focus Maritime Corp. for the conversion of its remaining $124.9 million of the 7% Notes, together with interest accrued thereon and future interest payments and an additional fee payable to Focus Maritime Corp. as an inducement for the conversion, into approximately 264.9 million common shares of the Company. As a result, we recorded an aggregate loss of $293.1 million, which is related to the non-cash loss from the settlement with common shares of the 7% Notes to Focus.

Other expense, net

Other expense, net was $3.5 million during the year ended December 31, 2012, compared to $1.5 million during the year ended December 31, 2011. Both amounts are mainly attributable to restructuring expenses, as a result of our decision to enter into restructuring discussions with each of our lenders, due to the economic conditions and operational difficulties experienced by the Company.

Loss from discontinued operations

Loss from discontinued operations was $1.8 million for the year ended December 31, 2012, compared to a loss of $166.7 million for the year ended December 31, 2011. The decrease was attributable to $150.2 million in impairment losses recognized in the year ended December 31, 2011, a decrease in interest and finance expenses, net of $23.0 million, a decrease in depreciation and amortization expenses of $35.8 million, and a decrease in gain on sale of vessels of $35.9 million. These amounts were partially offset by a non-cash loss from the settlement with common shares to Prime of the outstanding liability to Lemissoler of $50.6 million and a decrease in income from operational activities of $29.4 million in the year ended December 31, 2012.

Net Loss Attributable to NewLead Holdings' Shareholders

Loss from investments in Joint Ventures was $2.5 million for the year ended December 31, 2012, compared to nil during the same period in 2011. The loss was due to marketing and administrative services, start up fees and other general and administrative expenses.

Loss from continuing operations was $402.1 million and $123.7 million for the years ended December 31, 2012 and 2011, respectively.

Net loss for the years ended December 31, 2012 and 2011 was $403.9 million and $290.4 million, respectively. These losses included loss from discontinued operations of $1.8 million and $166.7 million in the years ended December 31, 2012 and 2011, respectively, which were related primarily to our restructuring process and resulted in the sale of certain dry bulk and all of the tanker vessels of the Company.

Net loss attributable to the noncontrolling interest was $1.4 million compared to nil during the same period in 2011.

Net loss attributable to NewLead Holdings' shareholders for the year ended December 31, 2012 was $402.6 million compared to a loss of $290.4 million for the year ended December 31, 2011.

Year Ended December 31, 2011 and Year Ended December 31, 2010

The following table presents the results of operations of the Company for the years ended December 31, 2011 and December 31, 2010 (amounts in thousands).

	Year Ended December 31, 2011	Year Ended December 31, 2010
OPERATING REVENUES	$ 12,220	$ 17,438
EXPENSES:		
Commissions	(150)	(436)
Voyage expenses	(146)	(4,799)
Vessel operating expenses	(2,928)	(9,714)
General and administrative expenses	(16,521)	(15,311)
Depreciation and amortization expenses	(8,180)	(4,237)
Impairment losses	(83,950)	(39,515)
Gain on sale of vessels, net	-	1,168
Management fees	-	(715)
	(111,875)	(73,559)
Operating loss from continuing operations	(99,655)	(56,121)
OTHER (EXPENSES) / INCOME, NET:		
Interest and finance expense	(22,672)	(18,550)
Interest income	68	532
Other (expense) / income, net	(1,457)	1
Change in fair value of derivatives	-	1,592
Total other expenses, net	(24,061)	(16,425)
Loss from continuing operations	**(123,716)**	**(72,546)**
Loss from discontinued operations	(166,679)	(13,803)
Net loss attributable to NewLead Holdings' Shareholders	**$ (290,395)**	**$ (86,349)**

Revenues

For the year ended December 31, 2011, operating revenues were $12.2 million, compared to $17.4 million for the year ended December 31, 2010. The decrease in revenue was attributable primarily to the disposal of the non-core vessels which contributed $8.2 million in revenue during the year ended December 31, 2010. Excluding revenue earned from the non-core vessels in 2010, operating revenues increased by $3.0 million. This increase was mainly the result of the increase in operating days of the Newlead Victoria and the Newlead Markela by 56.6% from 450 days in 2010 to 705 days in 2011, which was partially offset by the reduction of the time charter equivalent (TCE) rates for these two vessels from $19,331 per day in 2010 to $16,913 per day in 2011, due to the decrease in the market charter rates of these vessels.

Fleet utilization, excluding non-core vessels for the year ended December 31, 2011, was 100% compared to 98.5% for year ended December 31, 2010, which was suppressed by 7 unemployment days.

Commissions

Chartering commissions decreased to $0.2 million for the year ended December 31, 2011, compared to $0.4 million during the year ended December 31, 2010, reflecting the reduction in operating revenues.

Voyage Expenses

Voyage expenses were $0.1 million during the year ended December 31, 2011, compared to $4.8 million during the year ended December 31, 2010. The decrease was mainly attributable to the sale of the non-core vessels that mostly operated on the spot market during the year ended December 31, 2010, since voyage expenses are mainly incurred on spot market vessels.

Vessel Operating Expenses

Vessel operating expenses were $2.9 million during the year ended December 31, 2011, compared to $9.7 million during the year ended December 31, 2010. This decrease was attributable to the disposal of non-core vessels, which had incurred operating expenses of $6.8 million during the year ended December 31, 2010. Excluding the amount of the non-core vessels, operating expenses remained stable at $2.9 million. Our total direct daily vessel operating expenses reduced to $3,642 in the twelve months of 2011 from $6,746 in the twelve months of 2010, as a result of our strategic decision to dispose of non-core vessels.

General and Administrative Expenses

General and administrative expenses were $16.5 million during the year ended December 31, 2011, compared to $15.3 million during the year ended December 31, 2010. The increase is mainly attributable to the acquisition of Newlead Shipping (an integrated technical and commercial management company) and its subsidiaries on April 1, 2010, which operated three additional months during 2011 in relation to 2010. This increase was partially offset by the one-off transaction costs of $1.3 million that were incurred in the year ended December 31, 2010, mainly relating to the acquisition of new vessels.

Depreciation and Amortization

Depreciation and amortization was $8.2 million during the year ended December 31, 2011, compared to $4.2 million for the year ended December 31, 2010. This increase reflected the $0.9 million increase in vessels' and other assets' depreciation and amortization, as well as the increased amortization of the backlog assets and deferred charter revenues of $3.1 million created as a result of the 2010 asset acquisitions.

Impairment Loss

In light of the market conditions along with company-specific conditions that existed in the years of 2011 and 2010, we evaluated the carrying amounts of our long-lived assets during and at the end of each of those periods. We recognized an impairment loss of $2.4 million on our long-lived assets (vessels and intangibles) in the year ended December 31, 2011. Following our decision in 2010 to sell our non-core fleet, memorandums of agreements were signed for the sale of five such vessels. Accordingly, for the year ended December 31, 2010, we recorded an impairment loss of $15.7 million on our long-lived assets based on the future cash flows that these vessels expected to generate as a consequence of the sale.

Moreover, we evaluated the recoverability of goodwill in our reporting units, and we recognized an impairment loss of $81.6 million for the year ended December 31, 2011, which fully wrote-off goodwill, compared to $18.7 million of impairment loss in the wet reporting unit for the year ended December 31, 2010.

Furthermore, in the third quarter of 2010, we entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately $31.8 million, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, we cancelled such agreement and subsequently agreed to the full and final settlement of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this settlement agreement, dated December 21, 2010, we released to the sellers the deposit of $3.2 million, and further incurred a termination fee of $1.9 million which was paid in January 2011.

As a consequence of the foregoing charges, the aggregate impairment loss for the years ended December 31, 2011 and 2010 was $84.0 and $39.5 million, respectively.

Gain on sale of vessels, net

No sales under continuing operations were performed during the year ended December 31, 2011. For the year ended December 31, 2010 we recorded a gain of $1.2 million as a result of our strategic decision to dispose of the non-core vessels.

Management Fees

Management fees were zero for the year ended December 31, 2011, compared to $0.7 million during the year ended December 31, 2010. The decrease was due to bringing in-house the technical management of our vessels.

Interest and Finance Expense / Interest Income

	Year Ended December 31, 2011	Year Ended December 31, 2010
Interest expense excluding change in fair value of interest rate swaps	$ 12.1	$ 9.7
Other finance expenses	3.0	2.5
	15.1	**12.2**
Amortization of the beneficial conversion feature	8.2	5.9
Change in fair value of interest rate swaps	(0.6)	0.5
	7.6	**6.4**
Interest and finance expense	**$ 22.7**	**$ 18.6**

Interest and finance expense was $22.7 million during the year ended December 31, 2011, compared to $18.6 million during the year ended December 31, 2010. The expense for 2011 included a $8.2 million non-cash charge from the amortization of the BCF embedded in the 7% Notes. Excluding the amortization of the BCF and a $0.6 million gain from the change in the fair value of our interest rate swaps, interest and finance expenses were $15.1 million, reflecting indebtedness of continuing operations during the year ended December 31, 2011. The expense for 2010 included a $5.9 million non-cash charge from the amortization of the BCF embedded in the 7% Notes. Excluding the amortization of the BCF and $0.5 million loss from the change in the fair value of our interest rate swaps, interest and finance expenses were $12.2 million, reflecting indebtedness of continuing operations during the year ended December 31, 2010. Furthermore, during the year ended December 31, 2011, we received interest income of $0.1 million, compared to $0.5 million during the year ended December 31, 2010.

Other (expense) / income, net

Other expense, net was $1.5 million during the year ended December 31, 2011. These costs were a result of our decision to enter into restructuring discussions with each of our lenders, due to economic and operational difficulties experienced by the Company.

Change in Fair Value of Derivatives

The mark to market of the fair value of warrants classified as liabilities during the year ended December 31, 2010 resulted in an unrealized gain of $1.6 million. No such amount was applicable for the year ended December 31, 2011 because the warrants were classified as equity in the year 2011.

Loss from discontinued operations

Loss from discontinued operations was $166.7 million for the year ended December 31, 2011, compared to $13.8 million for the year ended December 31, 2010. The increase in loss was attributable to $150.1 million in impairment losses recognized in the year ended December 31, 2011, an increase in interest and finance expense of $13.9 million, an increase in depreciation and amortization expenses of $0.4 million, an increase in gain on sale of vessels of $13.6 million, and a decrease in income from operational activities of $2.1 million.

Net Loss Attributable to NewLead Holdings' Shareholders

Loss from continuing operations was $123.7 million for the year ended December 31, 2011, compared to $72.5 million for the year ended December 31, 2010.

The net loss attributable to NewLead Holdings' Shareholders for the years ended December 31, 2011 and 2010 was $290.4 million and $86.4 million, respectively. This loss included loss from discontinued operations of $166.7 million and $13.8 million in the years ended December 31, 2011 and 2010, respectively, which were related primarily to: (i) our restructuring process which resulted in the sale of certain dry bulk and tanker vessels and (ii) our strategic decision to exit from the container market in 2010.

B. Liquidity and Capital Resources

Overview

We operate in a capital intensive industry. Our principal sources of liquidity are cash flows from operations, equity and debt. Our future liquidity requirements relate to: (i) our operating expenses; (ii) payments of interest and other debt-related expenses and the repayment of principal; (iii) maintenance of minimum liquidity requirements under our credit facility agreements; (iv) payments for dry-docking and special survey costs; (v) lease payments in relation to mines; (vi) payments for purchase of coal; and (vii) maintenance of cash reserves to provide for contingencies.

As of December 31, 2012, our currents assets amounted to $12.2 million, while current liabilities amounted to $177.4 million, resulting in a negative working capital position of $165.2 million. Our independent registered public accounting firm has indicated in their report that there is substantial doubt about our ability to continue as a going concern.

Further, we have entered into agreements (i) to acquire title and mineral excavation rights to 7,695 acres of land in Kentucky, USA (ii) to acquire ownership and leasehold interests in 18,335 acres in Tennessee, USA containing coal and natural gas and other natural resources and (iii) to supply coal to certain creditworthy counterparties. The transactions are subject to the delivery of certain definitive agreements and other closing conditions. The Company has not yet obtained the necessary financing to satisfy payment under these agreements and, as a result, the transactions did not close on their intended closing dates, and as of August 30, 2013, have still not closed. Certain parties to whom we owe obligations under these agreements previously agreed to forbear from pursuing the rights and remedies available to them under the terms of the agreements, subject to satisfactory completion of ongoing obligations to be performed by the Company. NewLead was required, among other things, to pay an aggregate of $0.85 million per month through May 2013, which payments will be credited against a $66.0 million aggregate acquisition price . At that time, the initial aggregate acquisition price of the properties of approximately $40.0 million became payable in nine monthly installments. The Company has been unable to meet the obligations under the forbearance arrangements and is currently in default under such agreements. The Company is currently seeking financing for the $66.0 million aggregate acquisition price. While NewLead signed a preliminary term sheet with a lending party to fund this acquisition, no assurance can be provided that this or any other party will be able to provide the financing required in the timeline required under the forbearance documents, if at all. If appropriate financing is not secured, the transactions will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and any and all amounts owed. In connection with the potential acquisition of the two properties, the Company hired three executive employees with extensive mining expertise that will manage and supervise the Company's mining operations. In addition to the properties located in Kentucky and Tennessee, the Company is also in discussions for the acquisition of additional coal properties. However, there is no assurance that any such discussions will result in an agreement. For more information about our coal business, please see "Item 5.—Operating and Financial Review and Prospects—Recent Developments ", "Item 4B.—Business Overview—Coal Business" and "Item 4D.—Properties, Plants and Equipment".

As previously announced, due to the economic conditions and operational difficulties of the Company described elsewhere in this annual report, we entered into restructuring discussions with each of our lenders under the Financing Documents. As a result of such conditions, over a period of time, we defaulted under each of our Financing Documents in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions), as those credit facilities had not yet been restructured and discharged. To date, we have not obtained waivers for these defaults from Piraeus Bank (CPB loan), the holder of the 4.5% Note, Portigon AG and Mojave Finance Inc. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all. See "Recent Developments" above for a discussion of the status of our restructuring negotiations.

As of December 31, 2012, our liquidity reflected $2.4 million of total cash ($1.0 million of unrestricted cash and $1.4 million of restricted cash), compared with $5.4 million in total cash as of December 31, 2011. The decrease of $3.0 million in total cash was attributable to the disposal of vessels, which provided an increase in our cash flow of approximately $8.1 million, which was offset by a loss in our operating activities of $11.1 million. Total debt on our balance sheet as of December 31, 2012 and December 31, 2011 was $152.3 million and $500.6 million, respectively, representing a $348.3 million decrease. The decrease was attributable mainly to: (i) the $71.6 million amortization of the BCF attributed to the 7% Notes; (ii) the $124.9 million conversion into common shares of the 7% Notes; (iii) the issuance of the 4.5% Note; (iv) the proceeds of $268.4 million from the sale of vessels which were applied to the repayment of our long-term debt and capital lease obligations; (v) the $103.1 million reduction due to the foreclosure of the shares owned by the Company of Ayasha Trading Corporation, Bethune Properties S.A. and Curby Navigation Ltd.; (vi) the $11.0 million issuance of promissory notes due in relation to the acquisition of coal properties; and (vii) the drawdown of a new loan facility of $3.0 million relating to our coal business.

The following table below summarizes our cash flows for each of the years ended December 31, 2012, 2011 and 2010:

	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010
Net cash used in operating activities	$ (11,084)	$ (3,089)	$ (9,685)
Net cash provided by / (used in) investing activities	81,836	(69,612)	(22,189)
Net cash (used in) / provided by financing activities	(74,828)	10,289	(6,850)
Net decrease in cash and cash equivalents	**(4,076)**	**(62,412)**	**(38,724)**
Cash and cash equivalents beginning of year	5,119	67,531	106,255
Cash and cash equivalents end of year	**$ 1,043**	**$ 5,119**	**$ 67,531**

Cash Flows

Net cash used in operating activities

Net cash used in operating activities was $11.1 million for the year ended December 31, 2012, compared to net cash used in operating activities of $3.1 million for the year ended December 31, 2011. In determining net cash used in operating activities, net loss is adjusted for the effects of certain non-cash items such as depreciation and amortization, impairment losses, gains and losses from sales of vessels, unrealized gains and losses on derivatives.

The cumulative effect of non-cash adjustments to reconcile net loss to net cash used in operating activities was a $390.3 million increase for the year ended December 31, 2012, which consisted mainly of the following adjustments: $7.1 million of impairment losses; $6.0 million of depreciation and amortization charges; $71.6 million from the amortization of the BCF of the 7% Notes; $1.6 million from the amortization of the backlog asset; $1.0 and $2.4 million, respectively, relating to warrant and share-based compensation expenses; $5.7 million of amortization and write-off of deferred finance costs; $0.6 million provision for doubtful receivables; $2.5 million losses from investment activities in Joint Ventures; and a loss of $343.0 million from issuances of common shares to settle certain of our liabilities. These adjustments were partially offset by a $0.6 million gain from the valuation of derivatives; a $16.3 million of gain on vessel sales; $33.0 million of non-cash gains on disposal of vessels and release of debt; and a $1.3 million gain from discounts from suppliers.

Furthermore, the cash outflow from operations of $11.1 million for the year ended December 31, 2012 resulted mainly from: a $1.0 million payment for dry-docking and special survey costs; a $8.1 million decrease in trade receivables; a $1.4 million decrease in inventories; a $1.2 million decrease in prepaid expenses; and a $1.6 million increase in other receivables. This was partially offset by a $0.1 million decrease in accrued liabilities; a $2.9 million decrease in accounts payable; a $0.3 million increase in amounts due to related parties; and a $2.9 million decrease in deferred income.

Net cash used in operating activities was $3.1 million for the year ended December 31, 2011, compared to net cash used in operating activities of $9.7 million for the year ended December 31, 2010.

The cumulative effect of non-cash adjustments to reconcile net loss to net cash used in operating activities was a $282.6 million increase for the year ended December 31, 2011 which consisted mainly of the following adjustments: $234.1 million of impairment losses; $36.9 million of depreciation and amortization charges; $8.2 million from the amortization of the BCF of the 7% Notes; $8.1 million from the amortization of the backlog asset/deferred charter revenue; $1.6 million relating to share-based compensation; $7.9 million of amortization and write-off of deferred finance fees; and a $0.2 million provision for doubtful receivables. These adjustments were partially offset by a $1.1 million gain from the valuation of derivatives and a gain on vessels sales of $13.4 million.

Furthermore, the cash inflow from operations of $3.1 million for the year ended December 31, 2011 resulted mainly from: a $11.6 million increase in accrued liabilities; a $5.3 million increase in accounts payable; and a $1.3 million decrease in inventories. This was partially offset by: a $6.7 million payment for dry-docking and special survey costs; a $6.8 million increase in trade receivables; and a $1.2 increase in other receivables.

The cumulative effect of non-cash adjustments to reconcile net loss to net cash used in operating activities was a $83.5 million increase for the year ended December 31, 2010 which consisted mainly of the following adjustments: $39.5 million of impairment losses; $30.0 million of depreciation and amortization charges; $5.9 million from the amortization of the BCF of the 7% Notes; $10.7 million from the amortization of the backlog asset/deferred charter revenue; $2.7 million relating to share-based compensation; $3.7 million of amortization of deferred finance fees; and a $0.3 million provision for doubtful receivables. These adjustments were partially offset by an $8.4 million gain from the valuation of derivatives and a gain on vessel sales of $0.9 million.

Furthermore, the cash outflow from operations of $9.7 million for the year ended December 31, 2010, resulted mainly from: a $3.5 million payment for dry-docking and special survey costs; a $2.1 million decrease in amounts due to managing agents; a $0.6 million increase in amounts due from managing agents; a $0.7 million decrease in amounts due to related parties; a $0.9 million decrease in accrued liabilities; and a $0.8 million decrease in accounts payable. This was partially offset by a $0.6 million decrease in inventories and a $0.7 million decrease in prepaid expenses.

Net cash provided by / (used in) investing activities

For the year ended December 31, 2012, our net cash provided by investing activities was $81.8 million. This cash inflow resulted mainly from the proceeds from the sale of vessels and assets held for sale of $85.2 million, which was partially offset by a $0.2 million payment for vessels under construction; and $0.7 million of cash surrendered through foreclosure of the shares held by us in our subsidiaries and $2.5 million from Joint Venture capital contributions.

For the year ended December 31, 2011, our net cash used in investing activities was $69.6 million. This cash outflow resulted from advances for vessels under construction of $89.4 million, as well as vessel acquisitions of $23.9 million and $0.2 million for other fixed asset acquisitions, which was partially offset by the proceeds from vessel disposals of $32.7 million, the restricted cash of $6.0 million related to a letter of guarantee issued in connection with an installment payment in respect of the Newlead Prosperity acquisition and $ 5.0 in respect of the delivery installment of Newlead Gujarat.

For the year ended December 31, 2010, our net cash used in investing activities was $22.2 million. This cash outflow resulted from advances for vessels under construction of $45.1 million, as well as vessel acquisitions of $1.6 million, advances for vessel acquisitions of $3.2 million and the restricted cash of $11.0 million related to letters of guarantee issued in connection with future installments in respect of newbuildings and other vessel acquisitions, and $0.1 million for other fixed asset acquisitions, which was partially offset by the proceeds from vessel disposals of $37.2 million, as well as the net cash of $1.6 million acquired through the business combination that occurred on April 1, 2010.

Net cash (used in) / provided by financing activities

For the year ended December 31, 2012, our net cash used in financing activities was $74.8 million compared to our net cash provided by financing activities for the year ended December 31, 2011 of $10.3 million. The net cash outflow in 2012 resulted from the $76.2 million principal repayments of our debt, the drawdown of a new $3.0 million credit facility related to our coal business, the payments of deferred charges of $0.5 million and the $1.1 million increase in restricted cash following the sale of two vessels, Hiona and Hiotissa, which have been used to settle outstanding loan liabilities with Piraeus Bank.

The cash outflow in 2011 resulted from the $43.6 million net principal repayments of our debt, the capital lease payments of $4.0 million and the payments of deferred charges of $0.7 million. This outflow was partially offset by the $26.6 million proceeds from the sale and leaseback transaction and the $32.0 million in restricted cash that was used to pay down debt (resulting mainly from the proceeds of the sale of the five non-core vessels occurred in 2010).

The cash outflow in 2010 resulted from the $62.8 million net principal repayments of our debt, the increase in restricted cash of $21.0 million mainly related to the disposal from the five non-core vessels (retention accounts) which was used either to acquire vessels or pay down debt, the capital lease payments of $1.8 million and the payments of deferred charges of $8.0 million. This outflow was partially offset by the $86.8 million proceeds from the sale and leaseback transaction.

Indebtedness

Certain of our debt arrangements contain covenants that require us to maintain certain minimum financial ratios, including a minimum ratio of shareholders' equity to total assets, a minimum amount of working capital, and a minimum EBITDA to interest coverage ratio. Certain of our other debt arrangements require that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the total outstanding indebtedness.

As a result of the conditions described elsewhere in this annual report, since June 2011, we have defaulted under each of our debt agreements described below and are currently not in compliance with certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions) under such loan agreements. To date, we have restructured or obtained waivers of these defaults from each of the lenders under the Financing Documents (the "Restructuring"), except for the credit facility with Piraeus Bank (CPB loan) . Since our lenders have the right, absent receipt of waivers, to demand at any given time the repayment of our debt, we reclassified our long term debt and capital lease obligations as current liabilities in our consolidated balance sheet as of December 31, 2012. See "—Operating Results—Going Concern". Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank, our restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, we have chosen to treat our negotiations with Piraeus Bank (CPB loan) separately from our restructuring efforts with our other lenders. However, there can be no assurance that a satisfactory final agreement will be reached with Piraeus Bank (CPB loan) in any future efforts outside of the Restructuring, or at all.

To date, we are also in default under the terms of the 4.5% Note, the Portigon AG Credit Facility and the Mojave Finance Inc. Credit Facility. The lenders have continued to reserve their rights in respect of such defaults. The lenders have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all. In addition, while we have completed our restructuring efforts with the lenders under the Syndicate Facility Agreement, we continue to have an outstanding liability of $0.1 million under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability.

Prior to the Restructuring and as of June 30, 2011, our total indebtedness was approximately $585.5 million, which was net of $76.0 million of BCF related to the $125.0 million of 7% Notes. As of December 31, 2012, our outstanding indebtedness was $152.3 million, excluding the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes.

From July 1, 2011 through August 30, 2013, as a result of the sale, disposal of or handing control of vessels and hulls to our lenders (in conjunction with any repayments and drawdowns performed), our indebtedness has been decreased by an aggregate amount of approximately $460.8 million, excluding interest payable and including (i) the credit facility agreement entered into with Mojave Finance Inc., (ii) the issuance of the 4.5% Note, (iii) the issuance of the Good Faith Note and (iv) the issuance of the Tiger Note.

As of August 30, 2013 our total indebtedness was approximately $124.8 million, excluding the BCF of the 7% Notes:

- $32.5 million relating to the Piraeus Bank (CPB loan) Credit Facility
- $25.0 million relating to the Portigon AG Credit Facility
- $3.0 million relating to the Mojave Finance Inc. Credit Facility
- $62.5 million relating to the 4.5% Note
- $0.1 million of 7% Notes outstanding held by IBG
- $0.6 million relating to the Good Faith Note
- $1.1 million relating to the Tiger Note

While we continue to use our best efforts to complete our restructuring with Piraeus Bank (CPB loan), there can be no assurance that a successful resolution can be reached with Piraeus Bank (CPB loan). Further, there is no assurance that the Company will obtain releases or waivers from defaults under certain of its other indebtedness, and the failure to obtain such releases or waivers could materially and adversely affect our business and results of operations. The following is a discussion of our debt agreements that are in existence or were in existence during fiscal 2012.

Syndicate Facility Agreement

As part of our 2009 recapitalization, our existing syndicate of lenders entered into a $221.4 million facility agreement, referred to herein as the “Syndicate Facility Agreement”, by and among us and the banks identified therein in order to refinance our existing revolving credit facility.

On December 21, 2011, with the consent of the lenders under the Syndicate Facility Agreement, we agreed for the sale of the four LR1 vessels related to this facility, and the lenders agreed with us to accept the gross sale proceeds in full and final satisfaction of all liabilities owed to the syndicate under the governing loan agreement. Following this agreement, $64.5 million, which constituted the proceeds of the sales of the Newlead Avra and the Newlead Fortune (sold in December 2011) and $80.2 million, which constituted the proceeds of the sales of the Newlead Compass and the Newlead Compassion (sold in January 2012), were applied against the loan. As of December 31, 2012, the outstanding balance due to the syndicate lenders was $0.1 million related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, we have nevertheless not been formally discharged and released of any and all of our obligations in respect of the Syndicate Facility Agreement due to this outstanding liability.

Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd.(formerly, Marfin Egnatia Bank S.A.) (“Piraeus Bank (CPB loan)”)) Credit Facility

On December 10, 2010, we entered into a Loan Agreement with Piraeus Bank (CPB loan) for a reducing revolving credit facility of up to $62.0 million, in order to refinance the loans of the Newlead Venetico and the Newlead Markela, and to finance working and investment capital needs. The provisions of the agreement include a cash sweep of all surplus of quarterly earnings of the related vessels. Borrowings under this loan facility currently bear an approximate effective interest rate, including the margin, of 5.79%.

On April 5, 2012, with the consent of Piraeus Bank (CPB loan), we entered into an agreement for the sale of the Newlead Venetico and that vessel was delivered to the buyer on May 8, 2012 for proceeds of approximately $9.4 million. The proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the Newlead Venetico in a total aggregate amount of $6.7 million, (b) interest payable and (c) the payment of outstanding trade and vendor payments. As of December 31, 2012, the outstanding balance on such loan facility was $32.5 million.

The floating portion of the approximately $32.5 million drawn to date is approximately $15.4 million and bears an interest rate of approximately 3.8% (assuming current LIBOR of 0.310%, plus a 3.5% margin), while the fixed portion drawn is $17.1 million and bears an interest rate of 7.6% (assuming a current fixed swap rate of 4.1%, plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility, including: (i) our shareholders’ equity as a percentage of our total assets, adjusting the book value of our fleet to its market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending September 30, 2013 onwards (as of December 31, 2012, we were in breach of this covenant); (ii) the maintenance, on a consolidated basis on each financial quarter, of working capital (as defined in the loan facility) of not less than zero dollars ($0) (as of December 31, 2012, we were in breach of this covenant); (iii) the maintenance of minimum liquidity equal to at least 5% of the outstanding loan (as of December 31, 2012, we were in breach of this covenant); and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis to be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending June 30, 2013 onwards (as of December 31, 2012, we were in breach of this covenant). We are also subject to a covenant that requires the maintenance of a security value of at least 130% of the facility and the maximum swap exposure as specified in the agreement (as of December 31, 2012, we were in breach of this covenant).

As of December 31, 2012, we have defaulted on interest payments under the loan facility. As of August 30, 2013, the outstanding balance on such loan facility was $32.5 million.

Portigon AG (formerly, West LB Bank) Credit Facility

On April 1, 2010, we assumed a Loan Agreement with Portigon AG relating to a term loan facility of up to $27.5 million in relation to the Grand Victoria. The loan was initially payable in 20 quarterly installments of $0.375 million, followed by 15 quarterly installments of $0.475 million and a balloon payment of $12.875 million due on the last payment date. However, as of March 28, 2013, pursuant to an amended agreement, the outstanding balance will be payable according to a revised schedule (as described below). Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.46% (assuming current LIBOR of 0.207%, plus a 3.25% margin). The applicable margin is calculated as follows: (a) 3.25% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is less than 125%; (b) 3% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is less than 125%; (c) 2.75% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is equal to or greater than 125%; and (d) 2.50% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is equal to or greater than 125%.

The vessel's excess cash must be applied towards the prepayment of the balloon installment until such time as the balloon installment has been reduced to $6.0 million, in accordance with the following, all as described in the loan facility: (i) if we are in compliance with the value to loan ratio, 50% of the excess cash must be applied towards the prepayment of the loan facility; and (ii) if we are not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. The value to loan ratio is set at 100% until December 31, 2012 and 125% thereafter. As of December 31, 2012 we were not in compliance with this ratio. The loan facility includes, among other things, financial covenants including: (i) a minimum market adjusted equity ratio of 25% for the period from September 30, 2012 until June 30, 2013, increasing to 30% thereafter (as of December 31, 2012, we were in breach of this covenant); (ii) a minimum liquidity equal to at least 5% of the total debt during the period the loan facility remains outstanding (as of December 31, 2012, we were in breach of this covenant); (iii) working capital (as defined in the loan facility) must not be less than zero dollars ($0) during the period the loan facility remains outstanding (as of December 31, 2012, we were in breach of this covenant); and (iv) a minimum interest coverage ratio of 2:1 for the period from September 30, 2012 until June 30, 2013, increasing to 2.5:1 thereafter (as of December 31, 2012, we were in breach of this covenant). As of December 31, 2012, we have defaulted on principal and interest payments. As of December 31, 2012, the outstanding balance was $25.3 million.

On March 28, 2013, we agreed with Portigon AG ("Portigon") to certain amendments to the credit facility, which include, among others, that: (a) the outstanding balance of $25.3 million is to be payable in 3 quarterly installments of $0.3 million, followed by 5 quarterly installments of $0.375 million, followed by 15 quarterly installments of $0.475 million, followed by a balloon payment of $15.35 million due on the last payment date (the first repayment installment shall be repaid on June 30, 2013 and the balloon installment, shall be repaid on January 31, 2019), (b) we are waived from the application of the minimum security cover provisions set out in the original agreement as of the date of the amendment until the earlier of (i) the date on which the bank is satisfied that the security cover ratio is not less than 100 % and (ii) December 31, 2013 (inclusive), and (c) we were waived from the application of the financial covenants as of the date of the amendment until June 30, 2013 (inclusive). In addition, we will pay to Portigon a non-refundable restructuring fee of $0.25 million on or before September 30, 2013.

Furthermore, it was agreed that Portigon will have the option to demand the sale of the vessel Newlead Victoria at any time the market value of the vessel is at least equal to the amount of the loan outstanding on that date. Portigon will be entitled to 75% of the balance of the proceeds after repayment of the outstanding loan balance, any other amounts owed under the loan agreement (i.e. accrued interest), any direct sale costs approved by Portigon and any trade debt for an amount which will not exceed in aggregate $0.5 million. Moreover, t he vessel's excess cash must be applied towards the prepayment of the balloon installment, in accordance with the following, all as described in the amended loan facility: (i) if we are in compliance with the value to loan ratio, 50% of the excess cash must be applied towards prepayment of the loan facility; and (ii) if we are not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. As of August 30, 2013, we were in default under certain covenants in this facility and the outstanding balance was $25.0 million.

Piraeus Bank Credit Facilities

On April 1, 2010, we assumed a Loan Agreement with Piraeus Bank, dated March 31, 2010, for a loan of up to $21.0 million relating to the Grand Ocean. The loan facility was payable in one quarterly installment of $0.85 million, followed by six quarterly installments of $0.8 million, followed by seven quarterly installments of $0.75 million and a balloon payment of $10.1 million due in November 2013.

On December 29, 2011, with the consent of Piraeus Bank, we entered into an agreement for the sale of the Grand Ocean and that vessel was delivered to the buyer on January 11, 2012 for proceeds of approximately $8.2 million. Piraeus Bank applied the proceeds of such sale towards (a) the prepayment of $6.5 million of the total outstanding amounts due under the loan agreement for the Grand Ocean (b) interest payable and (c) the payment of outstanding trade and vendor payments. In addition, a repayment of $0.5 million was effected on June 21, 2012. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.9% (assuming current LIBOR of 0.353%, plus a 3.5% margin). As of December 31, 2012, the outstanding balance was $10.8 million.

On April 1, 2010, we also assumed a Loan Agreement with Piraeus Bank, dated March 19, 2008, as supplemented by a First Supplemental Agreement, dated February 26, 2009, and a Second Supplemental Agreement, dated March 31, 2010, for a loan of up to $76.0 million in relation to the Hiona and the Hiotissa. The loan is payable in one quarterly installment of $1.5 million, followed by four quarterly installments of $1.25 million, followed by 19 quarterly installments of $1.125 million and a balloon payment of $37.225 million due in April 2016. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.9% (assuming current LIBOR of 0.353%, plus a 3.5% margin).

On June 20, 2012, we entered into an agreement with Piraeus Bank, as amended on April 10 , 2013, to proceed with the sale of two tanker vessels, Hiona and Hiotissa, for an aggregate amount of approximately $57.0 million, and to convert the remaining outstanding debt of Hiona, Hiotissa and Grand Ocean, subject to the satisfaction of certain conditions precedent by the Company, into common shares of the Company. The Hiona and Hiotissa were sold during July 2012 and the proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the two vessels, in an aggregate amount of approximately $51.1 million, (b) interest payable and (c) the payment of outstanding trade and vendor payments. In addition, a repayment of $0.3 million was effected on November 2, 2012. As of December 31, 2012, the outstanding balance under the loan agreements with Piraeus Bank was $7.2 million. On April 11, 2013, 46.3 million common shares of the Company were issued to Piraeus Bank, which were vested immediately upon issuance. Pursuant to a Registration Rights Agreement entered into connection with the agreement, Piraeus Bank may demand that we file a registration statement with respect to the shares, request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that the common shares be covered by a registration statement that the we are otherwise filing (i.e., piggy-back registration). On April 25, 2013, the Company was fully discharged and released from any and all obligations to Piraeus Bank under the credit facilities.

As a result of these transactions, as of August 30, 2013, no outstanding balance remained.

Kamsarmax Syndicate Facility Agreements

On April 15, 2010, we assumed two facility agreements (the "Kamsarmax Syndicate Facility Agreements") in relation to the two acquired Kamsarmaxes ("Kamsarmax Syndicate"), the Newlead Tomi and the Newlead Gujarat. The senior facility agreement which was entered into with Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, was for $66.7 million and the junior facility agreement, which was entered into with Bank of Scotland and BTMU Capital Corporation, was for $13.3 million.

On February 24, 2012, the Bank of Scotland issued notices of enforcement and notices of default and acceleration in relation to the Kamsarmax Syndicate Facility Agreements between Ayasha Trading Corporation ("Ayasha") and Bethune Properties S.A. ("Bethune"), as borrowers, and the Bank of Scotland, BMTU Capital Corporation, and the Bank of Ireland, as lenders . In addition, the Bank of Scotland filed claim forms in the High Court of England and Wales against the borrowers representing claims for approximately $62.7 million and $13.9 million under the Kamsarmax Syndicate Facility Agreements and sought a declaration, that, among other things, the Bank of Scotland was entitled to make a demand against us in respect of sums owing under the Kamsarmax Syndicate Facility Agreements. Ayasha and Bethune were the shipowning companies of the motor vessels Newlead Tomi and Newlead Gujarat, respectively. Pursuant to such notices, the Bank of Scotland, as the agent and security trustee under each of the Kamsarmax Syndicate Facility Agreements, exercised its rights to foreclose on the shares of Ayasha and Bethune, which secured the loans under the Kamsarmax Syndicate Facility Agreements and the vessels were handed over to the lenders control. On August 1, 2012, we were formally discharged and released of any and all of our obligations in respect of the Kamsarmax Syndicate Facility Agreements. As of December 31, 2012, no outstanding balance remained.

First Business Bank (FBB) Credit Facility

As of December 31, 2011, no outstanding balance remained under the FBB credit facility. On April 27, 2012, we were fully discharged and released of any and all of our obligations to FBB outstanding under the FBB loan agreements.

Eurobank Credit Facility

On July 9, 2010, we assumed a Loan Agreement with Eurobank, for a loan facility of up to $32.0 million, in relation to the Newlead Esmeralda.

On February 10, 2012, with the consent of Eurobank, we agreed to the sale of the Newlead Esmeralda for proceeds of approximately $11.4 million. The proceeds of the sale were applied towards (a) the full and final satisfaction of all indebtedness owed to Eurobank under our loan agreement with Eurobank and (b) the payment of outstanding trade and vendor payments. As of February 16, 2012, the sale of this vessel was completed and we were fully discharged and released from any and all obligations to Eurobank under the credit facility and related documents. As of December 31, 2012, no outstanding balance remained.

Handysize Syndicate Facility Agreement

On July 9, 2010, we assumed a Loan Agreement with DVB Bank, Nord LB and Emporiki Bank, for a loan facility of up to $48.0 million, in relation to two newbuilding vessels. On March 21, 2012, with the consent of the lenders, we entered into a memorandum of agreement with an unrelated party for the sale of the Navios Serenity for proceeds of approximately $26.0 million. On March 26, 2012, the vessel was sold and the proceeds of the sale were applied towards the outstanding balance owed under the credit facility with DVB Bank, Nord LB and Emporiki Bank (the "Handysize Syndicate Facility Agreement"). Up to the sale of the vessel, we had defaulted on a number of principal and interest payments. On February 20, 2012, we received a default letter from the yard regarding our delay on an installment payment of $7.4 million following completion of the "steel cutting" for the Handysize Hull 4029 in September 2011. On May 22, 2012, we signed an agreement with the shipbuilder and the Shipbuilding Contract with SPP Shipbuilding Co. Ltd., the prior contract with the yard, was terminated and ceased to be valid. Under this agreement, we and the yard mutually waived all rights, and released and discharged each other from all liabilities, obligations, claims and demands. This agreement resulted in the Company being released from the $7.4 million liability to the yard and the $7.2 million write-off of the balance of the vessel under construction. In addition, on May 22, 2012, we were released from our obligations under the related facility for the Handysize Hull 4029, which were $5.5 million, and on November 23, 2012 we were formally discharged and released of any and all of our obligations in respect of the Handysize Syndicate Facility Agreement. As of December 31, 2012, no outstanding balance remained.

Mojave Finance Inc. Credit Facility

On April 10, 2012, we, as a third party, and NewLead Holdings (US) Corp., entered into a Loan Agreement with Mojave Finance Inc., for a secured loan facility of $3.0 million in order to finance our coal business. Pursuant to a Pledge Agreement, the loan facility is secured by an interest of 52% in NewLead Mojave Holdings LLC and 50% in New Lead JMEG LLC (the "Security"). The loan was initially payable in three equal monthly installments, the first to be paid one month after the drawdown date with each subsequent payment on a monthly basis. Pursuant to the Loan Agreement, we and NewLead Holdings (US) Corp. shall not, without prior written consent of Mojave Finance Inc., permit or create any security interest in the Security or permit or create any security interest in the assets of NewLead Holdings (US) Corp., NewLead Mojave Holdings LLC or New Lead JMEG LLC. Should NewLead Holdings (US) Corp. and/or the Company sell their entire interest in New Lead JMEG LLC, or any part thereof, such entity will have the obligation to prepay the loan, or any portion thereof, as applicable, in proportion to the interest sold. On July 9, 2012, the loan facility was amended. Pursuant to the amendment, the loan was payable after a nine-month period following the drawdown date, with the $3.0 million repayment due on January 11, 2013. On January 9, 2013 and July 9, 2013, the loan facility was further amended. Pursuant to the second and the third amendments, the loan was payable after an eighteen-month period following the drawdown date, with the $3.0 million repayment due on October 11, 2013. As of August 30, 2013, we were in default on this repayment. Borrowings under the terms of the loan facility currently bear an approximate effective interest rate, including the margin, of 4.7% (assuming current LIBOR of 0.736%, plus a 4.00% margin). As of August 30, 2013, the outstanding balance was $3.0 million.

New Credit Facilities for New Lead JMEG LLC (a joint control entity that is not consolidated into the Company's financial statements)

On March 4, 2013, New Lead JMEG LLC entered into an additional agreement with a financial institution for a Credit Facility of up to $0.5 million. The facility is payable in one balloon payment due three months from the draw-down unless the lender agrees, in its sole discretion to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance. On June 5, 2013, the facility was fully repaid.

On March 8, 2013, New Lead JMEG LLC entered into an agreement with a financial institution for a Revolving Credit Facility of up to $1.35 million. The facility is payable in one balloon payment due twelve months from the final draw-down unless the lender agrees, in its sole discretion, to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance.

Senior Convertible Notes

(a) Senior Convertible 7% Notes

In connection with the recapitalization on October 13, 2009, we issued $145.0 million in aggregate principal amount of 7% senior unsecured convertible notes due 2015, or the 7% Notes. The 7% Notes were convertible into common shares at a conversion price of $9.0 per share, subject to adjustment for certain events, including certain distributions by us of cash, debt and other assets, spin offs and other events. The issuance of the 7% Notes was pursuant to the Indenture dated October 13, 2009 between us and Piraeus Bank (as the successor of Cyprus Popular Bank), and the Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. as purchasers. All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Piraeus Bank (as the successor of Cyprus Popular Bank). $20.0 million of the proceeds of the 7% Notes were used to partially repay a portion of existing indebtedness and the remaining proceeds were used for general corporate purposes and to fund vessel acquisitions. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contained certain covenants, including, among others, limitations on the incurrence of additional indebtedness, except for approved vessel acquisitions, and limitations on mergers and consolidations. In connection with the issuance of the 7% Notes, we entered into a Registration Rights Agreement providing the holders of the 7% Notes with certain demand and other registration rights for the common shares underlying the 7% Notes. On October 13, 2009, the Investment Bank of Greece also received warrants to purchase up to 416,667 common shares of the Company at an exercise price of $24.00 per share, with an expiration date of October 13, 2015, in connection with advisory services provided by the Investment Bank of Greece to the Company.

In November 2009, Focus Maritime Corp., a company controlled by Michail S. Zolotas, the Company's Chairman, Chief Executive Officer and member of the Company's Board of Directors, converted $20.0 million of the 7% Notes into approximately 2.22 million common shares of the Company. In connection with the restructuring of NewLead's debt, on July 2, 2012, we entered into an agreement with Focus Maritime Corp. for the conversion of its remaining $124.9 million of the 7% Notes, together with interest accrued thereon and future interest payments and an additional fee payable to Focus Maritime Corp., as an inducement for the conversion, into approximately 264.9 million common shares of the Company. Under the agreement with Focus Maritime Corp., we may not allow debt to equity conversions on more favorable terms to other debtors. As of December 31, 2012, Investment Bank of Greece retained $0.1 million outstanding principal amount of the 7% Notes.

We recorded a BCF totaling $100.5 million as a contra liability (discount) that had to be amortized into the Company's income statement (via interest charge) over the life of the 7% Notes. For the year ended December 31, 2012, $71.6 million of the BCF was amortized and reflected as interest expense in the statement of operations ($8.2 million for the year ended December 31, 2011, and $5.9 million for the year ended December 31 2010). In addition, as a result of the agreement with Focus Maritime Corp., we recorded an aggregate loss of $293.1 million, which is included in Loss on extinguishment of convertible notes in the accompanying consolidated statements of operations. Accordingly, in the aggregate, $0.1 million and $125.0 million of the 7% Notes remained outstanding as at December 31, 2012 and December 31, 2011, respectively.

As of December 31, 2012, we were not in compliance with the financial covenants on this indebtedness and we were in default on three coupon payments. As such, the full amount outstanding was reclassified to current liabilities. As of August 30, 2013, we are not in compliance with the financial covenants on this indebtedness.

(b) Senior Convertible 4.5% Note

In connection with the agreement with Lemissoler, on December 31, 2012, we issued $50.0 million in aggregate principal amount of our notional 4.5% Senior Convertible Note due in 2022 to Prime (the "4.5% Note"). The 4.5% Note will bear interest at an annual rate of 4.5%, which is payable quarterly on March 1, June 1, September 1 and December 1 of each year (beginning on March 1, 2013), until maturity in December 2022 or earlier upon redemption, repurchase or conversion in accordance with its terms. At our option, subject to certain conditions, interest may be satisfied by issuing additional common shares of the Company (rather than in cash).

The amount of shares to be paid is calculated by dividing (i) the per share amount equal to 80% of the arithmetic average of the daily volume-weighted average price ("VWAPs") of the Company's common shares for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the interest payment date into (ii) an amount equal to the total amount of cash such holder would receive if the aggregate amount of interest on the 4.5% Note was being paid in cash. The 4.5% Note is convertible, at a holder's option, at any time prior to the close of business on the maturity date or earlier upon redemption or repurchase in accordance with its terms. The holder has the right to convert the principal amount of the 4.5% Note, or any portion of such principal amount which is at least $1,000 (or such lesser principal amount of the 4.5% Note as shall be outstanding at such time), plus accrued and unpaid interest, into that number of fully paid and non-assessable common shares of the Company (as such shares shall then be constituted) obtained by dividing (1) the sum of (x) the principal amount of the 4.5% Note or portion thereof being converted plus (y) accrued and unpaid interest on the portion of the principal amount of the 4.5% Note being converted to the applicable conversion date plus (z) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (y) to the applicable conversion date by (2) the Conversion Price (as defined below) in effect on the applicable conversion date. The Conversion Price means an amount equal to 80% of the arithmetic average of the daily VWAPs of the common shares of the Company for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the conversion date. If the holder does not convert the 4.5% Note prior to the maturity date, then so long as no certain events of default ("Events of Default") or an event triggering a repurchase ("Repurchase Event") has occurred and is continuing, the principal of and accrued interest on the 4.5% Note that is outstanding on the maturity date shall automatically convert, without further action by the holder, into common shares of the Company. The number of common shares issued by the Company to the holder upon such conversion shall be the quotient obtained by dividing (x) the outstanding principal of and accrued interest on the 4.5% Note on the maturity date by (y) the Conversion Price then in effect.

We may redeem all or part of the outstanding principal amount of the 4.5% Note at any time, subject to certain conditions, at a redemption price in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note plus (2) accrued and unpaid interest on such principal amount to the redemption date plus (3) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (2) at the rate provided in the 4.5% Note to the redemption date, subject to certain conditions specified in the 4.5% Note. If a Repurchase Event occurs, the holder will have the right, at the holder's option, to require us to repurchase all of the 4.5% Note, or any portion thereof, on a repurchase date that is five business days after the date of the holder delivered its notice with respect to such Repurchase Event. The repurchase price will be an amount in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note that the holder has elected to be repurchased plus (2) accrued and unpaid interest on such principal amount to the date of such repurchase plus (3) accrued and unpaid default interest, if any, thereon at the rate provided in the 4.5% Note to the date of such repurchase. If an Event of Default shall have occurred, then the applicable interest rate shall be increased to 6.5% per annum during the period from the date of such Event of Default until the date no Event of Default is continuing. We may, at our option, subject to certain conditions, make any payments required to be made by us to the holder upon acceleration of the 4.5% Note by reason of certain Events of Default in common shares of the Company.

On the date of the issuance, the fair value of the 4.5% Note amounted to $62.5 million. As of December 31, 2012 and August 30, 2013, we were not in compliance with certain covenants on this indebtedness.

(c) Good Faith Note

On February 5, 2013, we issued a senior convertible promissory note to Good Faith for up to $1.0 million (the "Good Faith Note"). The Good Faith Note is due in one balloon payment on August 4, 2014. Borrowings under this Good Faith Note bear a fixed interest rate of 10% per annum on the unpaid principal balance and 5% per annum on the outstanding principal balance and any accrued and unpaid cash interest in Company's common shares or cash, at our option. The Good Faith Note is convertible into common shares at a conversion price of $0.82 per share at holder's option, at any time and from time to time.

(d) Tiger Note

On June 19, 2013, we issued a senior convertible promissory note to Tiger for up to $1.7 million. The Tiger Note is due on June 19, 2014. Borrowings under this note bear a fixed interest rate of 8% per annum on the unpaid principal balance if paid in cash or 15% per annum on the outstanding principal balance if settled by issuance of shares of the Company, at our option. The Tiger Note also contains interest and anti-dulition adjustments under certain circumstances. The Tiger Note is convertible into common shares at a conversion price equal to 95% of the arithmetic average of the closing price of the Company's common shares on the five trading days prior to and beginning with the date two business days before the maturity date or the conversion date.

Sale and Leaseback Transactions

(a) Northern Shipping Fund LLC

In June 2011, we entered into an agreement with Northern Shipping Fund LLC for the sale and immediate bareboat leaseback of the Post-Panamax dry bulk vessel, the Newlead Endurance. The net proceeds for the sale were $26.6 million and the bareboat leaseback charter period was seven years. We retained call options to buy the vessel back during the lease period at pre-determined decreasing prices at the end of each of the seven years starting from the first year, with the last call option price at $26.5 million at the end of the lease term. Moreover, a put option existed, which if exercised, would have required us to repurchase the vessel for approximately $26.5 million at the end of the lease term. The call or put option price was to be paid in cash. We concluded that we had retained substantially all of the benefits and risks associated with such vessel and we have treated the transaction as a financing, resulting in an immediate loss of $0.2 million.

On February 14, 2012, an amendment agreement was signed, eliminating the existing put option. On March 14, 2012, we received enforcement notices from Endurance Shipping LLC, whereby, among other things, Endurance Shipping LLC exercised its rights to foreclose on the pledge of the shares of Curby Navigation Ltd., which secured the bareboat charter, and the vessel was delivered back to Northern Shipping Fund LLC. On March 31, 2012, we entered into a deed of release with Endurance Shipping LLC, the owner of the Newlead Endurance, pursuant to which we were unconditionally released from our guarantee under the bareboat charter for the Newlead Endurance, which had been chartered-in by Curby Navigation Ltd., and all its obligations and liabilities under the relevant finance lease documentation. In connection with the enforcement notices, we also received a termination notice in respect of the ship management agreement between Curby Navigation Ltd. and Newlead Bulkers S.A., our subsidiary which had been the manager of the Newlead Endurance. As of December 31, 2012, no outstanding balance on the lease debt remained.

(b) Lemissoler Maritime Company W.L.L.

In November 2010, we entered into an agreement with Lemissoler Maritime Company W.L.L. ("Lemissoler") for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi. Total consideration for the sale was $86.8 million and the bareboat leaseback charter period was eight years. We retained call options to buy the vessels back during the lease period at pre-determined decreasing prices and we were obligated to repurchase the vessels for approximately $40.0 million at the end of the lease term. The repurchase obligation could be paid partially in cash and partially in common shares, at our option.

We concluded that we had retained substantially all of the benefits and risks associated with such vessels and we have treated the transaction as a financing, resulting in an immediate loss of $2.7 million (for those vessels where the fair value was below their carrying amount) and deferred gain of $10.5 million (for those vessels where the fair value was above their carrying amount) which had been amortized over the life of each vessel. The unamortized portion of $9.1 million as of December 31, 2011 was written off upon the redelivery of the vessels and is reported under discontinued operations. The amortization for the years ended December 31, 2011 and 2010 amounted to $1.3 million and $0.1 million, respectively, and is reported under discontinued operations.

On January 31, 2012, February 7, 2012, February 11, 2012, and March 19, 2012, respectively, pursuant to various redelivery addendums to certain sale and leaseback agreements, we completed the redelivery of four dry bulk vessels, the Australia, the Grand Rodosi, the China and the Brazil, to their owners which are affiliates of Lemissoler.

On November 28, 2012, we entered into a settlement and standstill agreement (the "Settlement Agreement") with Prime, which sets out the terms and conditions on which Lemissoler has agreed to the settlement of amounts outstanding and due to them from the Company pursuant to various agreements that had been entered into between the Company and Lemissoler (the "Lemissoler Indebtedness") and a standstill and waiver of Lemissoler's right to take action in respect of the Lemissoler Indebtedness and the failure of the Company to perform their respective obligations under such agreements, which includes, for the avoidance of doubt, any existing or future liabilities under agreements relating to the operation of vessels chartered or assigned to Lemissoler.

Pursuant to the Settlement Agreement: (a) the Lemissoler Indebtedness was settled by issuing (i) 109,351,314 common shares of the Company to Prime; and (ii) $50.0 million aggregate principal amount of our 4.5% Senior Convertible Note due 2022 to Prime (the "4.5% Note") with such terms as described below; and (b) all fees, costs and expenses incurred by Lemissoler in connection with the transaction will be paid from the issuance of 487,805 common shares of the Company (covering $0.4 million in fees) to Prime (with any shortfall to be fully paid and settled by us, which may be satisfied by issuing further common shares of the Company to Prime). As of December 31, 2012, Lemissoler received 109,351,314 common shares of the Company for the outstanding balance and 487,805 common shares of Company for the fees, costs and expenses incurred by Prime and we issued to Prime the 4.5% Note.

In addition, in connection with the Settlement Agreement, we entered into a registration rights agreement with Prime, pursuant to which we are obligated to file a registration statement or registration statements covering the potential sale of the common shares issued to Prime and the common shares of the Company issuable upon conversion of the 4.5% Note. Prime may also request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration). As a result of the agreement with Lemissoler, we recorded an aggregate loss of $50.6 million, which is included in Loss from discontinued operations in the accompanying consolidated statements of operations.

As of December 31, 2012, no outstanding balance remained on the lease debt. On January 30, 2013, we were formally released from all of our obligations and liabilities under the relevant finance lease documentation.

EBITDA and adjusted EBITDA reconciliation to Net Loss

EBITDA represents net loss from continuing operations before net interest, taxes, depreciation and amortization. Adjusted EBITDA represents EBITDA before other non-cash items, including provisions for doubtful receivables, provisions for claims, changes in fair value of derivatives, impairment losses, gains and losses on sales of assets, share-based compensation expenses, loss on extinguishment of convertible notes and restructuring expenses, and operating losses for the non-core vessels. We use EBITDA and Adjusted EBITDA because we believe that each is a basis upon which our performance can be assessed and each presents useful information to investors regarding our ability to service and/or incur indebtedness. We also believe that EBITDA and Adjusted EBITDA are useful to investors because they are frequently used by securities analysts, investors and other interested parties in the evaluation of companies in our industry. EBITDA and Adjusted EBITDA have limitations as analytical tools, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are: (i) EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, working capital needs; (ii) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future; and (iii) EBITDA and Adjusted EBITDA do not reflect any cash requirements for such capital expenditures. Because of these limitations, EBITDA and Adjusted EBITDA should not be considered as a principal indicator of our performance.

	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31,2010
ADJUSTED EBITDA RECONCILIATION (amounts in thousands)			
Net loss attributable to NewLead Holdings' Shareholders	$ (402,562)	$ (290,395)	$ (86,349)
Plus: Loss from discontinued operations	1,800	166,679	13,803
Plus: Net loss attributable to the noncontrolling interest	(1,363)	-	-
Loss from continuing operations	(402,125)	(123,716)	(72,546)
PLUS:			
Net interest expense	86,549	22,604	18,018
Depreciation and amortization	6,564	8,180	4,237
EBITDA	**$ (309,012)**	**$ (92,932)**	**$ (50,291)**
Provision for doubtful receivables	9	(36)	214
Provision for claims	(43)	402	88
Change in fair value of derivatives	-	-	(1,592)
Impairment losses	7,054	83,950	39,515
Gain on sale from vessels, net	-	-	(1,168)
Loss on extinguishment of convertible notes	293,109	-	-
Restructuring expenses	4,132	1,551	-
Share based compensation	2,412	1,582	2,680
Operating loss for non-core vessels	-	-	6,564
ADJUSTED EBITDA	**$ (2,339)**	**$ (5,483)**	**$ (3,990)**

EBITDA loss for the year ended December 31, 2012 was $309.0 million, compared to EBITDA loss for the year ended December 31, 2011 of $92.9 million. Adjusted EBITDA for the year ended December 31, 2012 was a loss of $2.3 million, representing EBITDA before non-cash items such as $7.1 million of impairment losses, $2.4 million of share-based compensation expenses, a $0.01 million provision for doubtful receivables, a $0.04 million reversal of provision for claims, $293.1 million loss on extinguishment of convertible notes, and $4.1 million for restructuring expenses. Adjusted EBITDA for the year ended December 31, 2011 was a loss of $5.5 million. This decrease in Adjusted EBITDA loss was attributable primarily to the decrease in various general and administration expenses by over 60%, which was partially offset by a decrease of total revenues by 26.9% and an increase in operating expenses.

EBITDA loss for the year ended December 31, 2011 was $92.9 million, compared to EBITDA loss for the year ended December 31, 2010 of $50.3 million. Adjusted EBITDA for the year ended December 31, 2011 was a loss of $5.5 million, representing EBITDA before non-cash items such as $84.0 million of impairment losses, $1.6 million of share-based compensation expenses, $0.04 million reversal of provision for doubtful receivables, a $0.4 million provision for claims, as well as $1.6 million for restructuring expenses. Adjusted EBITDA for the year ended December 31, 2010 was a loss of $4.0 million. This increased loss in Adjusted EBITDA was attributable primarily to the increased general and administration expenses resulting from the April 1, 2010 acquisition of Newlead Shipping (an integrated technical and commercial management company) and its subsidiaries.

C. Research and Development, Patents and Licenses

Not applicable.

D. Trend information

Please refer to "Item 5A.—Operating and Financial Review and Prospects—Operating Results" and "Item 4B.—Information on the Company—Business Overview" for a discussion of significant and/or material recent trends.

E. Off-Balance Sheet Arrangements

We do not have any transactions, obligations or relationships that could be considered material off-balance sheet arrangements.

F. Tabular Disclosure of Contractual Obligations

As of December 31, 2012, our significant existing contractual obligations and contingencies consisted of our obligations as a borrower under our loan facility agreements, our obligations under our coal purchase agreements and our obligations for the acquisition of the Kentucky Property and Tennessee Property. In addition, we had contractual obligations under interest rate swap contracts and office rental agreements.

(in 000's USD)	**Payment Due by Period**				
Contractual obligations	**Total**	**Less than a year**	**1-3 years**	**3-5 years**	**More than 5 years**
Long-term debt obligation (1)	**$128,839**	$ 54,389	$ 3,400	$ 3,800	$ 67,250
Interest payments (2)	**32,639**	6,668	7,488	6,184	12,299
Rental agreements (3)	**4,145**	434	887	914	1,910
Promissory notes payable in relation to acquisition of coal property	**11,000**	11,000	-	-	-
Acquisition of the Kentucky property and Tennessee property	**55,000**	55,000	-	-	-
Coal purchase agreements (4)	**564,362**	87,182	357,885	119,295	-
Total	**$ 795,985**	**$ 214,673**	**$ 369,660**	**$ 130,193**	**$ 81,459**

Notes:

(1) Refers to our obligations to repay the indebtedness outstanding as of December 31, 2012, (including long-term debt and convertible notes) based on the originally contractual terms of the credit facilities and not taking into account the breach of covenants. The amount does not reflect $ 0.048 million of unamortized BCF treated as a debt discount to the 7% Notes .

(2) Refers to our expected interest payments over the term of the indebtedness outstanding as of December 31, 2012, assuming a weighted average interest rate of 4.31% per annum.

(3) Refers to our obligations under the rental agreements for office space.

(4) Refers to our obligations under the coal purchase agreements which are anticipated to commence in the fourth quarter of 2013 or as otherwise agreed.

Commitments

(i) Rental agreements

We have entered into office and warehouse rental agreements with a related party, Terra Stabile A.E., an entity in which Michail Zolotas, our Chairman and Chief Executive Officer, is a shareholder, at an aggregate monthly rate of approximately €27,200, which is to be paid in cash or, subject to successful negotiation, in newly issued common shares. These rental agreements vary in duration with the longest agreement expiring in April 2022. On January 1, 2013, we amended certain of our office rental agreements with Terra Stabile A.E., and the aggregate monthly rate of approximately €27,200 was reduced to approximately €17,400 per month for a two year period. In addition, on January 1, 2013, we entered into two six-month lease agreements with Terra Norma A.E., which is also controlled by Mr. Zolotas, in relation to office parking space for a monthly aggregate rate of approximately €2,400. Please see the information contained under "Item 7B.—Related Party Transactions" regarding transactions between us and any of our directors.

The committed rent payments to Terra Stabile A.E. and Terra Norma A.E. are (in millions):

December 31, 2013	$	0.3
December 31, 2014		0.3
December 31, 2015		0.4
December 31, 2016		0.4
December 31, 2017		0.5
Thereafter		1.9
	$	**3.8**

(ii) Coal Sale Purchase Agreements (Purchase Agreements)

New Lead JMEG LLC, a joint venture affiliate, has entered into two Coal Sale Purchase Agreements with a third party to purchase thermal coal, which is used in power plants for electricity generation and other industrial uses, from Kentucky, USA . The commencement of both agreements will begin upon the first shipment of coal, which is expected to take place during the fourth quarter of 2013 or as otherwise agreed.

The commitments under the Coal Sale Purchase Agreements as of December 31, 2012 were (in millions):

BTU	**Year**		**Amount**
12,300	1	$	47.0
12,300	2		64.4
12,300	3		64.4
12,300	4		64.4
12,300	5		64.4
			304.6
10,800	1		40.2
10,800	2		54.9
10,800	3		54.9
10,800	4		54.9
10,800	5		54.9
			259.8
		$	**564.4**

(iii) Commercial and Technical Ship Management Agreements

As of December 31, 2012 and August 30, 2013, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers S.A. ("Newlead Bulkers"). Outstanding balances due to managing agents as of December 31, 2012 relate to amounts generated prior to the termination of the agreement with Ernst Jacob, a managing agent who operated a number of our vessels prior to the Company's decision to have the technical management of all our vessels conducted in-house during 2010.

(iv) Commitment exit

In the third quarter of 2010, we entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately $31.8 million, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, we cancelled such agreement and subsequently agreed the full and final settlement of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this settlement agreement, dated December 21, 2010, we released to the sellers the deposit of $3.2 million and further incurred a termination fee of $2.0 million, which was paid in January 2011. As a result, $5.2 million was included in "Impairment losses" in continuing operations in 2010.

Recent Accounting Pronouncements

Obligations Resulting from Joint and Several Liability Arrangements

In February 2013, the FASB issued an amendment of the Accounting Standards Codification regarding recognition, measurement, and disclosure of obligations resulting from joint and several liability arrangements for which the total amount of the obligation within the scope of the new guidance is fixed at the reporting date, except for obligations addressed within existing guidance in U.S. generally accepted accounting principles. Examples of obligations within the scope of this update include debt arrangements, other contractual obligations, and settled litigation and judicial rulings. U.S. generally accepted accounting principles do not include specific guidance on accounting for such obligations. The amended standard requires an entity to measure obligations resulting from joint and several liability arrangements for which the total amount of the obligation within the scope of the new guidance is fixed at the reporting date, as the sum of: a) the amount the reporting entity agreed to pay on the basis of its arrangement among its co-obligors and b) any additional amount the reporting entity expects to pay on behalf of its co-obligors. The updated guidance also requires an entity to disclose the nature and amount of the obligation as well as other information about those obligations. The amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2013. The adoption of the new standard is not expected to have a significant impact on the Company's consolidated financial statements.

G. Safe Harbor

See the section “Cautionary Statement Regarding Forward-Looking Statements” at the beginning of this annual report.

Item 6. Directors, Senior Management and Employees

A. Directors and Senior Management

As of August 30, 2013, set forth below are the names, ages and positions of our directors and executive officers and their respective terms of service to the Company. Our board of directors is elected on a staggered basis, and each director elected holds office until his successor has been duly elected, except in the event of his death, resignation, removal or the earlier termination of his office. The primary business address of each of our executive officers and directors is 83 Akti Miaouli & Flessa Street, Piraeus Greece, 185 38.

Name	Age	Position
Michail S. Zolotas	39	Class I Director and CEO since October 2009 and Chairman since January 2013
Spyros Gianniotis	53	Class III Director since October 2009 and Deputy Chairman since March 2013
Sae Jung Oh	58	Class II Director since December 2011
Panagiotis Skiadas	42	Class III Director since June 2005
Antonios Bertsos	38	Chief Financial Officer since October 2011, Corporate Secretary since May 2012 and President since March 2013

Our board of directors is divided into three classes, as nearly equal in number as possible, with each director serving a three-year term and one class being elected at each year's annual meeting of shareholders. The term of the Class I Directors expires at our annual meeting in 2015, the term of the Class II Directors expires at our annual meeting in 2014 and the term of the Class III Directors expires at our annual meeting in 2013.

Set forth below is certain biographical information about each of these individuals, who were newly appointed on the date of the recapitalization.

Michail S. Zolotas
Director, Chairman and Chief Executive Officer

Michael S. Zolotas has long-standing experience in the shipping sector. As a third generation ship-owner, he has over 18 years of experience in commercial, operational and technical management in the shipping industry. Mr. Zolotas has already managed over 75 vessels in less than 15 years. Prior to October 2009, Mr. Zolotas was Chief Executive Officer of Grandunion, a private ship management company with 40 vessels under management. Mr. Zolotas founded Grandunion together with Mr. Nicholas G. Fistes in 2006. As Chief Executive Officer of Grandunion, Mr. Zolotas bought and sold more than 60 vessels, including newbuildings. Today, he still serves as Chief Executive Officer of Grandunion. From 1999 until 2006, Mr. Zolotas was General Manager of Stamford Navigation Inc. In less than seven years, Mr. Zolotas managed to expand the fleet of Stamford Navigation Inc. from two to 30 vessels, ranging from 17,000 dwt to 170,000 dwt, including newbuildings. Mr. Zolotas joined Stamford Navigation Inc. as a superintendent engineer in 1997. He commenced his career spending three years in sea service and, after the completion of his sea service, he was involved in the technical management of Stamford Navigation Inc., especially in newbuildings supervision and repairs and conversion of the fleet in operation. Mr. Zolotas is a member of the Hellenic and Black Sea Mediterranean Committee of Bureau Veritas, China Classification Society (CCS) Mediterranean Committee and Registro Italiano Navale (RINA) Committee. From 2001 to 2007, he served on the board of the CTM Pool. Mr. Zolotas holds a B.E. in Mechanical Engineering from Stevens Institute of Technology.

Spyros Gianniotis
Director and Deputy Chairman

Spyros Gianniotis has worked in various positions in major banks throughout Greece and the United States for over 24 years. From 1989 until 2001, Mr. Gianniotis held positions at Citigroup in Athens, Piraeus and New York. In 2001, Mr. Gianniotis became the Assistant General Manager, Head of Shipping at Piraeus Bank S.A. In 2008, Mr. Gianniotis became the Chief Financial Officer of Aegean Marine Petroleum Network Inc., a position he currently holds. Mr. Gianniotis holds a B.A. from Queens College, CUNY, an MSc from Maritime College, SUNY and an MBA from Wagner College. He joined NewLead's Board of Directors in October 2009.

Panagiotis Skiadas
Director

Panagiotis Skiadas has served as a member of our board of directors since the closing of our initial public offering in June 2005. He is currently the Environmental Manager of VIOHALCO S.A., a holding company of the largest Greek metals processing group that incorporates approximately 90 companies and accounts for approximately 10% of Greece's total exports. Within that role, Mr. Skiadas is responsible for all environmental and climate change issues as well as certain energy related matters. Prior to joining VIOHALCO in April 2006, Mr. Skiadas performed a similar role for a subsidiary of VIOHALCO, ELVAL S.A. He has also served as the Section Manager of Environmental Operations for the Organizational Committee of Olympic Games in Athens in 2004. Mr. Skiadas holds a Bachelor of Science from the University of Florida and a Master's degree in Engineering from the Massachusetts Institute of Technology in Environmental Engineering.

Sae Jung Oh
Director

Sae Jung Oh has been the Managing Director of MJLF Athens, a subsidiary of MJLF & Associates USA shipbrokering company, since the company's establishment in 2007. He is an active shipbroker, involved in various projects related to newbuildings, sales and purchases, ship repair, chartering and marine equipment, covering both technical and commercial scopes of interest. Prior to joining MJLF in 2007,Mr. Oh was employed at Hyundai Mipo Dockyard, starting as a Ship Repair Engineer of Machinery Division in the early1980s, rising to Project Manager for various projects and then becoming the Representative of Hyundai Mipo Dockyard Singapore Branch in 1993 and the Representative of Hyundai Mipo Dockyard Athens Branch in 1996.Concurrent with his stay in Greece, Mr. Oh has engaged himself in various responsibilities within the Korean Association, and currently holds the position of Vice Chairman. Mr. Oh was born in South Korea in 1954 and graduated from Hanyang University of Seoul with a B.S. in Mechanical and Thermal Engineering. He has broad international experience in Europe, Asia and the United States.

Antonis Bertsos
Chief Financial Officer, President and Corporate Secretary

Antonis Bertsos holds the offices of President, Corporate Secretary and Chief Financial Officer. Prior to this, Mr. Bertsos held the position of Deputy Chief Operating Officer of NewLead since April 2010. Prior to joining NewLead, Mr. Bertsos served as Chief Financial Officer for Aries Energy Corporation from February 2005 to March 2010. Mr. Bertsos commenced his career as an Auditor at PricewaterhouseCoopers in 1999. Mr. Bertsos holds a B.Sc. in Accounting and Finance from Deree College in Greece and a Postgraduate Diploma in Business Administration from the University of Leicester in the United Kingdom.

B. Compensation

We paid our officers and directors aggregate compensation of approximately $0.68 million for the year ended December 31, 2012, $2.13 million for the year ended December 31, 2011 and $1.44 million for the year ended December 31, 2010. In addition, total share-based compensation costs for the year ended December 31, 2012 was $2.4 million. In addition, each director will be reimbursed for out-of-pocket expenses incurred while attending any meeting of the board of directors or any board committee. These reimbursed amounts were insignificant for the year ended December 31, 2012.

On February 15, 2012, we issued 514,584 shares to Michail S. Zolotas, the Chairman and Chief Executive Officer, for his 2009, 2010, and 2011 annual base salary in accordance with the terms of his 2011 employment agreement . On April 1, 2013, we also granted and issued to Mr. Zolotas 13,452,038 common shares, of which 40% vested upon issuance and the remaining 60% will vest 30% on April 1, 2014 and 30% on April 1, 2015. These shares were granted in recognition of the significant work performed by Mr. Zolotas in connection with the Restructuring of the Company. On April 1, 2013, pursuant to the terms of his employment agreement, we also issued 436,851 common shares to Mr. Zolotas for his 2012 annual base salary, which vested upon issuance.

On January 2, 2012, we entered into an employment agreement with Mr. Zolotas, which entitles Mr. Zolotas to an annual base salary and an annual incentive bonus that is payable in our common stock. The agreement is retroactive for the years 2010 and 2011 and effective until December 31, 2016, after which it will automatically renew for additional one-year periods, unless terminated in accordance with the terms of such agreement. Pursuant to the employment agreement, Mr. Zolotas will be entitled to the following compensation: (1) for the period between October 13, 2009 until the end of 2010, he will be entitled to an aggregate base salary of $1.3 million and bonus of $0.3 million which will be paid in shares priced at $24.00 per share, resulting in an aggregate of issuance of 66,667 shares, (2) for 2011, he will be entitled to an aggregate base salary of $1.3 million and bonus of $0.3 million, which will be paid in shares priced at $2.00 per share, resulting in an aggregate of issuance of 800,000 shares; and (3) for each year from 2012 until the end of 2016, he will be entitled to an aggregate base salary of $1.45 million and bonus of $1.45 million, which will be paid in shares priced at $2.00 per share, resulting in an aggregate of issuance of 1,450,000 shares. Under the employment agreement, upon a change in control of the Company, any stock based awards to the employee will vest. If prior to the effective date of a change of control or after the second anniversary of the effective date of a change in control, the employee is terminated without "cause" or resigns for "good reason," the employee will be entitled to receive his then current base salary through the end of the expiration period of the agreement, in addition to any benefits accrued through the date of his termination. If an executive's employment is terminated for "cause" or voluntarily by the employee without "good reason," the employee will not be entitled to any salary, benefits or reimbursements beyond those accrued through the date of his termination.

On January 1, 2013, an amendment to the employment agreement with Mr. Zolotas was signed. Pursuant to the amended employment agreement, Mr. Zolotas will be entitled, for each year from 2013 until 2018, to an aggregate base salary of $1.5 million per year, which will be paid in advance and in common shares of the Company. The Company agreed to pay the annual base salary owed to Mr. Zolotas for the year 2013 by May 30, 2013 and on May 31, 2013, 5,083,769 common shares were issued. The share price used for the calculation of the shares was the average closing price of the Company's common stock for the last thirty trading days prior to the date on which the shares were delivered to Mr. Zolotas. For fiscal year 2014 and for each subsequent year, the share price to be used for the calculation of the shares to be issued shall be the average closing price of the Company's common stock for the last 365 days prior to the date on which the shares are delivered to the Mr. Zolotas. Pursuant to the terms of the amended employment agreement, for each year from 2013 until 2018, Mr. Zolotas will also be entitled to an aggregate bonus of $4.5 million per year, which will be paid in common shares or warrants. The share price to be used for the calculation of the shares to be issued shall be the average closing price of the Company's common stock for the last 60 trading days prior to the date on which the target bonus is granted to Mr. Zolotas. The target bonus for each performance period will be determined in writing on an annual basis and based on such factors as the board and Mr. Zolotas shall in good faith agree, such factors to be agreed no later than 60 days following the start of each performance period, except in the year 2013 where the target bonus of Mr. Zolotas was granted on May 30, 2013. In addition, if on or after the effective date of a change of control and prior to the second anniversary of the effective date of the change of control, Mr. Zolotas is terminated without "cause" or resigns for "good reason" (each as defined in the employment agreement), he will be entitled to a cash payment equal to (i) twenty times his then-current base salary and (ii) twenty times his annual bonus for the prior year within 30 days following the effectiveness of the termination.

C. Board Practices

Board Classes

Our board of directors currently consists of four members. Our directors serve until their successors are appointed or they resign, unless their office is earlier vacated in accordance with our bye-laws or with the provisions of the Bermuda Companies Act of 1981, as amended, or the BCA. Each of the directors has served in his respective capacity since his election, which for all directors, except Panagiotis Skiadas and Sae Jung Oh, was October 13, 2009. Mr. Skiadas and Mr. Oh have served as members of the board since June 2005 and December 2011, respectively . Our board of directors is divided into three classes, as nearly equal in number as possible, with each director serving a three-year term and one class being elected at each year's annual meeting of shareholders. The term of the Class I Directors expires at our annual meeting in 2015, the term of the Class II Directors expires at our annual meeting in 2014 and the term of the Class III Directors expires at our annual meeting in 2013. At each succeeding annual general meeting, successors to the class of directors whose term expires at that annual general meeting shall be elected for a three year term.

Committees of the Board of Directors

We have established an Audit Committee comprised of our three independent directors responsible for reviewing our accounting controls and recommending to the board of directors the engagement of our outside auditors. The current members of our audit committee are Messrs. Spyros Gianniotis (Chairman), Panagiotis Skiadas and Sae Jung Oh. We have also established a Compensation Committee comprised of three independent directors responsible for reviewing the compensation of our senior management, officers and board of directors. The current members of our Compensation Committee are Messrs. Sae Jung Oh (Chairman), Spyros Gianniotis and Panagiotis Skiadas. We have also established a Governance and Nominating Committee comprised of three independent directors responsible for identifying candidates who are eligible to serve as members of the board of directors and considering matters of corporate governance generally. The current members of our Governance and Nominating Committee are Messrs. Panagiotis Skiadas (Chairman), Sae Jung Oh and Spyros Gianniotis.

There are no service contracts between us and any of our directors providing for benefits upon termination of their employment or service. Please see the information contained under "Item 7B.—Related Party Transactions" regarding transactions between us and any of our directors.

D. Employees

See "Item 4.—Information on the Company—Business Overview—Crewing and Employees".

On January 2, 2012, we entered into severance agreements with certain of our key employees. If on or after the effective date of a change of control, and prior to the second anniversary of the effective date of a change of control, the employee is terminated without "cause," or the employee resigns for "good reason," the employee will be entitled to (i) five times his then-current base salary, (ii) five times his annual bonus and (iii) the number of shares of our common stock valued at two times his annual bonus at a price per share equal to the average trading price during the previous 30 trading days, in each case within 30 days following the effectiveness of the termination. "Change of control" means: (i) the sale or disposition, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of more than 50% of our assets to any "person" or "group" (as such terms are defined in Section 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")); (ii) any person or group is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of our outstanding equity representing more than 50% of the total voting power of our equity; or (iii) we undergo a merger, reorganization or other consolidation in which the owners of our outstanding equity ownership immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity's voting power immediately after the transaction.

E. Share ownership

The following table sets forth information with respect to the beneficial ownership of our common shares as of August 30, 2013 for:

- each of our directors and executive officers who beneficially own our shares; and
- all directors and executive officers as a group.

Beneficial ownership includes voting or investment power with respect to the securities. Except as indicated below, and subject to applicable community property laws, the persons named in the table have or share the voting and investment power with respect to all shares shown as beneficially owned by them. In computing the number of common shares beneficially owned by a person listed below and the percentage ownership of such person, common shares underlying options, warrants or convertible securities held by each such person that are exercisable or convertible within 60 days of August 30, 2013 are deemed outstanding, but are not deemed outstanding for computing the percentage ownership of any other person. Percentage of beneficial ownership is based on 614,833,099 shares outstanding on August 30, 2013. None of the shares set forth in the table below as being beneficially owned by these shareholders have voting rights that differ from the shares of any other shareholder. Unless otherwise specified, the business address of each of the individuals set forth below 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38.

Unless otherwise indicated, NewLead believes that all persons named in the table have sole voting and investment power with respect to all common shares beneficially owned by them.

Identity of Person or Group	Shares Beneficially Owned Number	Percentage
Executive Officers and Directors		
Michail S. Zolotas (1)(2)(3)(4)(5)	288,791,765	47.0%
Antonios Bertsos	101,418	*
Spyros Gianniotis	497,084	*
Sae Jung Oh	420,000	*
Panagiotis Skiadas	157,084	*
Directors and Executive Officers as a Group (1)(2)(3)(4)(5)	289,967,351	47.2%

* Less than one percent

(1) Includes 267,161,247 common shares beneficially owned by Focus Maritime Corp., a Marshall Islands corporation. Focus Maritime Corp. is wholly-owned by Michail S. Zolotas. Focus Maritime Corp.'s business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38.

(2) Includes 2,059,474 common shares beneficially owned by Grandunion, a Marshall Islands corporation, which is controlled by Michail S. Zolotas, who owns 50% of the issued and outstanding capital stock of Grandunion. Grandunion's business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38. The foregoing information was derived from a Schedule 13D/A filed with the SEC on April 30, 2012.

(3) The voting agreement between Rocket Marine Inc. and Grandunion, pursuant to which Grandunion had voting power over 1,463,631 common shares beneficially owned by Rocket Marine Inc., expired on February 29, 2012. As a result, these shares of Rocket Marine Inc. are no longer included in the beneficial ownership of Mr. Zolotas or Grandunion.

(4) Includes an aggregate of 79,042, 136,000 and 383,334 common shares beneficially owned by Terra Stabile A.E., Terra Norma S.A. and Aurora Properties Inc., each of which are affiliated with Mr. Zolotas. The address for each of Terra Stabile A.E. and Terra Norma A.E. is 115 Acharnon Street, Athens, 104 46, Greece and the address for Aurora Properties Inc. is Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960.

(5) Includes 12,000,000 common shares beneficially owned by Artemis World S.A., a corporation incorporated in the Republic of Panama. Artemis World S.A. is wholly-owned by Mr. Zolotas. The operating address of Artemis World S.A. is 9, Krevata, Piraeus 185 38 Greece.

Item 7. Major Shareholders and Related Party Transactions

A. Major Shareholders

The following table sets forth information regarding the owners of more than 5% of our common shares, par value $0.01 per share, with the exception of those listed in the table above, that we are aware of as of August 30, 2013. On August 30, 2013, there were 614,833,099 common shares outstanding. None of these shareholders have voting rights that differ from any other shareholder.

	Shares Beneficially Owned	
Identity of Person or Group	**Number**	**Percentage**
Principal Shareholders		
Focus Maritime Corp. (1)	267,161,247	43.5%
Prime Shipping Holding Ltd (2)	555,279,310	52.4%
Piraeus Bank A.E. (3)	46,250,000	7.5%
Ariadne Holdings LLC (4)	42,631,140	6.9%

(1) Includes 267,161,247 common shares beneficially owned by Focus Maritime Corp., a Marshall Islands corporation. Focus Maritime Corp. is wholly-owned by Michail S. Zolotas. Focus Maritime Corp.'s business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38.

(2) Prime Shipping Holding Ltd, a Marshall Islands corporation and affiliate of Lemissoler Maritime Company W.L.L., acquired the shares pursuant to a Settlement and Standstill Agreement between the Company and Prime Shipping Holding Ltd, dated November 28, 2012. The address of the principal office for Prime Shipping Holding Ltd is 17-21B Agias Zonis Street, Eleni Court, P.O. Box 54970, CY-3027 Limassol, Cyprus. Philippos Philis ("Mr. Philis") is the sole director of Prime Shipping Holding Ltd. The address of his principal office is 17-21B Agias Zonis Street, Eleni Court, P.O. Box 54970, CY-3027 Limassol, Cyprus. Mr. Philis is a citizen of the Republic of Cyprus. The foregoing information was derived from a Schedule 13D/A filed with the SEC on April 30, 2012. By reason of such relationship, Mr. Philis may be deemed to share voting and dispositive power over the common shares listed as beneficially owned by Prime Shipping Holding Ltd. Mr. Philis disclaims beneficial ownership of the common shares listed as beneficially owned by Prime Shipping Holding Ltd. The percentage of ownership is based upon the conversion price of the 4.5% Note as of August 29, 2013, and includes 445,440,191 common shares (the "Underlying Shares") issuable to Prime Shipping Holding Ltd upon conversion of the 4.5% Note. Such number of the Underlying Shares is subject to change based on changes to the conversion price of the 4.5% Note in accordance with its terms.

(3) Piraeus Bank A.E., a Greek corporation, acquired the shares pursuant to a Settlement Agreement between the Company and Piraeus Bank A.E., dated April 10, 2013. The principal business address for Piraeus Bank A.E. is 4 Amerikis Street, Athens, Greece, 10564.

(4) Ariadne Holdings LLC, a North Carolina limited liability company, acquired the shares pursuant to a Share Transfer Agreement between the Company and Ariadne Holdings LLC, dated January 1, 2013. The principal business address for Ariadne Holdings LLC is 122 Alton Court Mooresville, NC 28117, United States.

B. Related Party Transactions

Consistent with Bermuda law requirements, our bye-laws require any director who has a potential conflict of interest to identify and declare the nature of the conflict to our board of directors. Our bye-laws additionally provide that related party transactions must be approved by independent and disinterested directors.

Terra Stabile A.E./ Terra Norma A.E.

We lease office space as well as warehouse space in Piraeus, Greece from Terra Stabile A.E. ("Terra Stabile"), which is controlled by Michail S. Zolotas, our Chief Executive Officer and Chairman and member of the Company's Board of Directors. In November 2009, we entered into a 12-year lease agreement with Terra Stabile for the office space, and on April 28, 2010, we entered into a 12-year lease agreement with Terra Stabile for the warehouse space. On January 1, 2013, we amended certain of our office rental agreements with Terra Stabile to reduce the aggregate monthly payment from €27,200 to approximately €17,400 for a two year period. In addition, on January 1, 2013, we entered into two six-month lease agreements with Terra Norma A.E. ("Terra Norma"), which is also controlled by Mr. Zolotas, in relation to office parking space, for an aggregate monthly rate of approximately €2,400. Total rent for the years ended December 31, 2012, 2011 and 2010 was approximately $0.35 million, $0.48 million and $0.34 million, respectively. During the year ended December 31, 2012, the Company issued an aggregate of 475,000 shares, which vested upon issuance, to settle outstanding liabilities with Terra Stabile and Terra Norma of $0.55 million pursuant to settlement and subscription agreements.

Grandunion Inc.

Michail S. Zolotas is a stockholder and the chief executive officer of Grandunion. On October 13, 2009, Grandunion transferred 100% ownership in three dry bulk carriers, the China, the Australia and the Brazil (which transaction included assets with a carrying value of approximately $75.3 million and the assumption of a credit facility of $37.4 million and other liabilities, for a net value of $35.0 million) to us in exchange for 1,581,483 newly issued common shares of the Company.

As part of the same transaction, a voting agreement between Grandunion and Rocket Marine was entered into for which Grandunion transferred 222,223 of our common shares to Rocket Marine, a company controlled by two of our former directors and principal shareholders, in exchange for Grandunion's control over the voting rights relating to the shares owned by Rocket Marine and its affiliates. The voting agreement was terminated effective as of February 29, 2012.

In connection with the 2009 recapitalization, we issued $145.0 million in aggregate principal amount of 7% Notes. The 7% Notes were convertible into common shares at a conversion price of $9.00 per share, subject to adjustment for certain events, including certain distributions of our cash, debt and other assets, spin-offs and other events. The issuance of the 7% Notes was pursuant to an Indenture dated October 13, 2009 between us and Piraeus Bank (as the successor of Cyprus Popular Bank), and a Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp., as purchasers. In connection with the issuance of the 7% Notes, we entered into a Registration Rights Agreement providing certain demand and other registration rights for the common shares underlying the 7% Notes. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, our Chairman and Chief Executive Officer, converted $20.0 million of the 7% Notes into approximately 2.2 million new common shares. In connection with our debt restructuring, on July 2, 2012, we entered into an agreement with Focus Maritime Corp. for the conversion of its remaining $124.9 million of the 7% Notes, together with interest accrued thereon and future interest payments, and an additional fee payable to Focus Maritime Corp. as an inducement for the conversion, into approximately 264.9 million common shares of the Company. Under the agreement, the Company may not allow debt to equity conversions on more favorable terms to other debtors. As a result of this conversion, Focus Maritime Corp., as at December 31, 2012, owned approximately 67% of the Company's outstanding common shares. Currently, Investment Bank of Greece holds $0.1 million outstanding principal amount of the 7% Notes, which were purchased for cash and if fully converted, would result in an issuance of approximately 11,112 newly issued common shares. The Investment Bank of Greece was also granted warrants to purchase up to 416,667 common shares of the Company at an exercise price of $24.00 per share, with an expiration date of October 13, 2015, in connection with advisory services provided by the Investment Bank of Greece to the Company.

In April 2010, we completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, from Grandunion. For more details please refer to Note 5 of the accompanying consolidated financial statements. Three of the four dry bulk vessels and the two product tankers acquired in April 2010 were sold in connection with the Restructuring. In July 2010, we completed the acquisition of five dry bulk vessels from Grandunion including two newbuildings with long term quality time charters. Total consideration for the acquisition of the five vessels was approximately $147.0 million, which included approximately $93.0 million in assumed bank debt and other liabilities. Four of the five vessels acquired in July 2010 were sold in connection with the Restructuring.

Management Services and Commissions

Magnus Carriers, a company owned by two of our former officers and directors, is a company that provided commercial management services to certain vessel-owning companies at a commission of 1.25% of hires and freights earned by the vessels, or fees of $7,000 per month per vessel where no 1.25% commission was payable. In addition, Magnus Carriers was entitled to a commission of 1% on the sale or purchase price in connection with a vessel sale or purchase. These agreements were cancelled by us on May 1, 2009. For the years ended December 31, 2012, 2011 and 2010, these commissions and management fees were $0, $0 and $0.1 million, respectively (figures include continuing and discontinued operations).

Sea Breeze

As part of attaining revenue (commissions) for our vessels, we contracted with a related entity, Sea Breeze Ltd., of which one of our former directors is a shareholder. In addition, we paid 1% of the purchase price brokerage commission on the sale of the Saronikos Bridge and the MSC Seine, respectively. For the years ended December 31, 2012, 2011 and 2010, the commissions amounted to $0, $0 and $0.1 million, respectively (figures include continuing and discontinued operations).

Newfront Shipping S.A.— Stamford Navigation Inc.

At December 31, 2009, the vessel Australia had technical ship management and commercial management agreements with Stamford Navigation Inc. ("Stamford") and Newfront Shipping S.A. ("Newfront"), and the vessels China and Brazil had technical ship management and commercial management agreements with Newfront. Stamford and Newfront are both related parties with common shareholders. The agreed annual management fees were approximately $185,000 per vessel. During the first quarter of 2010, these agreements were terminated. Subsequently, the vessel owning companies have signed agreements with Newlead Bulkers for the provision of commercial and technical ship management services (see below). For the years ended December 31, 2012, 2011 and 2010, the management fees for Newfront were approximately $0, $0 and $0.05 million, respectively, and for Stamford were approximately $0, $0 and $0.03 million, respectively.

Newlead Bulkers S.A.

Since April 1, 2010, Newlead Bulkers has been our subsidiary as a result of its acquisition from Grandunion described in Note 5 of the accompanying consolidated financial statements and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Bulkers assumed the commercial and technical ship management services for the Australia, the China and the Brazil. The management fees for the year ended December 31, 2010 were $0.06 million.

As of December 31, 2011, December 31, 2012 and August 30, 2013, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

Newlead Shipping S.A.

Since April 1, 2010, Newlead Shipping has been our subsidiary as a result of its acquisition from Grandunion described in Note 5 of the accompanying consolidated financial statements and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Shipping assumed the commercial and technical ship management services for the Newlead Avra and the Newlead Fortune. The management fees for the year ended December 31, 2010 were $0.04 million.

As of December 31, 2011, December 31, 2012 and August 30, 2013, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

Domina Petridou O.E.

We leased office space in Glyfada, Greece from Domina Petridou O.E., a company of which one of our former directors is a shareholder. In November 2005, we entered into a 10-year lease agreement with the landowner. In October 2007, we entered into an additional nine-year lease agreement with the landowner. These agreements were terminated in 2009 and in the first quarter of 2010 respectively. Total rent for the years ended December 31, 2012, 2011 and 2010 amounted to approximately $0, $0 and $0.02 million, respectively.

Aries Energy Corporation

On April 15, 2010, we completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately $112.7 million (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction. The purchase was completed pursuant to the terms of a Securities Purchase Agreement, dated February 18, 2010, with Aries Energy Corporation, a company with a common shareholder, and Bhatia International PTE Ltd., an unrelated third party. Gabriel Petrides, a former Board member and an affiliate of Rocket Marine, one of our stockholders, is one of the principals of Aries Energy Corporation, one of the sellers of these vessels. Accordingly, even though Rocket Marine was a principal stockholder at that time, neither it nor Mr. Petrides had the ability to influence us. We believe that the negotiations were conducted at arm's length and that the sale price was no less favorable than would have been achieved through arm's length negotiations with a wholly unaffiliated third party. The voting agreement between Rocket Marine Inc. and Grandunion, pursuant to which Grandunion controlled the vote, expired on February 29, 2012.

Affiliates

On April 11, 2012, through one of our wholly-owned subsidiaries, NewLead Holdings (US) Corp., we established New Lead JMEG LLC with J Mining & Energy Group, Inc. as a joint venture to engage in the business of the purchasing and trading of certain commodities, principally coal. We have joint control with J Mining & Energy Group, Inc. of New Lead JMEG LLC and we are entitled to and are liable for the total net assets of the joint venture.   On December 20, 2012, Jan M. Berkowitz, the President and Chief Executive Officer of J Mining & Energy Group, Inc., was nominated, constituted and appointed with full power to execute and legally bind us in any and all contracts relating to coal mining and sales of coal in the United States and to act on behalf of us in the negotiation of deals related to coal-bearing properties in the United States.

Item 8. Financial Information

A. Consolidated Statements and Other Financial Information

See Item 18.

Legal Proceedings Against Us

From time to time in the future, we may be subject to legal proceedings and claims in the ordinary course of business, principally personal injury and property casualty claims. Those claims, even if lacking merit, could result in the expenditure of significant financial and managerial resources. Current legal proceedings of which we are aware are as follows:

- The charterers of the vessel Newlead Avra notified us in October 2008 of their intention to pursue the following claims and notified the appointment of an arbitrator in relation to them:

  a) Damages suffered by sub-charterers of the vessel in respect of remaining on board cargo at New York in September 2007;

  b) Damages suffered by sub-charterers of the vessel as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and

  c) Damages suffered by sub-charterers of the vessel resulting from a grounding at Houston in October 2007.

We do not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The charterers of the Newlead Fortune notified us in October 2008 of their intention to pursue the following claims, and notified the appointment of an arbitrator in relation to them:

  a) Damages as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and

  b) Damages resulting from the creation of Hydrogen Sulphide in the vessel's tanks at two ports in the United States.

We do not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The vessel Grand Rodosi was involved in a collision in October 2010 with the fishing vessel "Apollo S". As of December 31, 2012, we estimated that the expected possible losses amount to approximately $500,000 which, however, are 100% covered by the P&I Association:

  a) Pollution cleanup costs – we have provided guarantee for A$500,000.

- The charterers of the Newlead Esmeralda notified us in November 2010 of their intention to pursue the following claims. After discussions with charterers, in March 2011, an agreement was reached that neither party would seek any form of security in the future for the claims relating to the grounding that occurred in March 2010.We believe the charterer's chances of success are remote. Below is a list of the claims:

  a) Damages for lost income as a result of cargo that was not able to be loaded, subsequent to vessel's grounding in March 2010;

  b) Damages resulting from the prolonged storage costs due to the inability to place cargo on board the vessel; and

  c) Anticipated costs.

Other than as described above, we have not been involved in any legal proceedings which may have, or have had a significant effect on our financial statements, nor are we aware of any proceedings that are pending or threatened which may have a significant effect on our financial statements.

Dividend Policy

On September 12, 2008, we determined to suspend payment of our quarterly dividend, effective immediately. The decision followed our management's strategic review of our business and reflected our focus on improving our long-term strength and operational results. We will make dividend payments to our shareholders only if our board of directors, acting in its sole discretion, determines that such payments would be in our best interest and in compliance with relevant legal and contractual requirements. The principal business factors that our board of directors expects to consider when determining the timing and amount of dividend payments will be our earnings, financial condition and cash requirements at the time. Currently, the principal contractual and legal restrictions on our ability to make dividend payments are those contained in our credit facility agreements, and those created by Bermuda law.

Our debt agreements contain covenants that limit our ability to pay dividends. For example, our credit facility with Piraeus Bank (CPB loan) prohibits us from paying dividends without our lender's consent. Our facility agreements further require us to maintain specified financial ratios and minimum liquidity and working capital amounts. In September 2008, our board of directors suspended the payment of quarterly dividends commencing with the dividend in respect of the second quarter of 2008. Our board of directors may review and amend our dividend policy from time to time in light of our plans for future growth and other factors.

Under Bermuda law, a company may not declare or pay dividends if there are reasonable grounds for believing either that the company is, or would after the payment be, unable to pay its liabilities as they become due, or that the realizable value of its assets would thereby be less than its liabilities. If the realizable value of our assets decreases, in order for us to pay dividends, we may require our shareholders to approve resolutions reducing our share premium account by transferring an amount from such account to our contributed surplus account.

B. Significant Changes

Not applicable.

Item 9. The Offer and Listing

A. Offer and Listing Details

Currently, the principal trading market for our securities, which includes our common shares, is the NASDAQ Global Select Market under the symbol "NEWL".

The following table sets forth, for the periods indicated, the reported high and low market prices of our common shares on the NASDAQ Global Select Market. The following prices reflect the 1-for-12 reverse split of our common shares on August 3, 2010.

On August 29, 2013, the closing price of our common shares was $0.114.

	High	Low
For the Fiscal Year Ended December 31, 2008	$ 93.24	$ 3.72
For the Fiscal Year Ended December 31, 2009	$ 19.68	$ 3.84
For the Fiscal Year Ended December 31, 2010	$ 12.60	$ 2.26
For the Fiscal Year Ended December 31, 2011	$ 3.88	$ 0.46
For the Fiscal Year Ended December 31, 2012	$ 5.23	$ 0.31
For the Quarter Ended		
March 31, 2011	$ 2.88	$ 2.05
June 30, 2011	$ 2.30	$ 1.69
September 30, 2011	$ 3.88	$ 0.53
December 31, 2011	$ 0.98	$ 0.46
March 31, 2012	$ 2.30	$ 0.40
June 30, 2012	$ 5.23	$ 0.55
September 30, 2012	$ 1.56	$ 0.54
December 31, 2012	$ 0.63	$ 0.31
March 31, 2013	$ 2.73	$ 0.34
June 30, 2013	$ 0.65	$ 0.13
For the Month Ended		
December 31, 2012	$ 0.45	$ 0.33
January 31, 2013	$ 2.73	$ 0.34
February 29, 2013	$ 1.28	$ 0.67
March 31, 2013	$ 0.77	$ 0.55
April 30, 2013	$ 0.65	$ 0.35
May 31, 2013	$ 0.39	$ 0.18
June 30, 2013	$ 0.37	$ 0.13
July 31, 2013	$ 0.25	$ 0.13
August 31, 2013 (through August 29, 2013)	$ 0.19	$ 0.10

B. Plan of Distribution

Not applicable.

C. Markets

See "Item 9A." above.

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the issue

Not applicable.

Item 10. Additional Information

A. Share Capital

Not applicable.

B. Memorandum of Association and Bye-laws

The following description of our share capital summarizes the material terms of our Memorandum of Association and our bye-laws. Under our Memorandum of Association, as amended, our authorized capital consists of 500,000,000 preference shares, par value $0.01 per share, and 1,000,000,000 common shares, par value of $0.01 per share.

Common Shares

Our Memorandum of Association was amended on August 26, 2009 to increase our authorized share capital to 1,000,000,000 common shares and 500,000,000 preference shares.

Holders of common shares have no pre-emptive, subscription, redemption, conversion or sinking fund rights. Holders of common shares are entitled to one vote for each share held of record on all matters submitted to a vote of our shareholders. Holders of common shares have no cumulative voting rights. Holders of common shares are entitled to dividends if and when they are declared by our board of directors, subject to any preferred dividend right of holders of any preference shares. Directors to be elected by holders of common shares require a plurality of votes cast at a meeting at which a quorum is present. For all other matters, unless a different majority is required by law or our bye-laws, resolutions to be approved by holders of common shares require approval by a majority of votes cast at a meeting at which a quorum is present.

Upon our liquidation, dissolution or winding up, our common shareholders will be entitled to receive, ratably, our net assets available after the payment of all our debts and liabilities and any preference amount owed to any preference shareholders. The rights of our common shareholders, including the right to elect directors, are subject to the rights of any series of preference shares we may issue in the future.

Preference Shares

Under the terms of our bye-laws, our board of directors has authority to issue up to 500,000,000 “blank check” preference shares in one or more series and to fix the rights, preferences, privileges and restrictions of the preference shares, including voting rights, dividend rights, conversion rights, redemption terms (including sinking fund provisions) and liquidation preferences and the number of shares constituting a series or the designation of a series.

The rights of holders of our common shares will be subject to, and could be adversely affected by, the rights of the holders of any preference shares that we may issue in the future. Our board of directors may designate and fix rights, preferences, privileges and restrictions of each series of preference shares which are greater than those of our common shares. Our issuance of preference shares could, among other things:

- restrict dividends on our common shares;
- dilute the voting power of our common shares;
- impair the liquidation rights of our common shares; and
- discourage, delay or prevent a change of control of our Company.

Our board of directors does not at present intend to seek shareholder approval prior to any issuance of currently authorized preference shares, unless otherwise required by applicable law or NASDAQ requirements. Although we currently have no plans to issue preference shares, we may issue them in the future.

Reverse share split

On July 27, 2010, we announced that a 1-for-12 reverse share split of our common shares had been approved by our board of directors and by written consent of a majority of shareholders, effective upon the opening of the markets on August 3, 2010. The reverse share split consolidated every 12 common shares into one common share, with par value of $0.01 per share. Our number of authorized common shares and preference shares were not affected by the reverse split. In respect to the underlying common shares associated with stock options and any derivative securities, such as warrants and convertible notes, the conversion and exercise prices and number of common shares issued have been adjusted in accordance with the 1:12 ratio for all periods presented. As a result of the reverse share split, the number of our issued common shares was reduced from 88,363,265 to 7,327,934 shares, which takes into account the rounding up of all fractional shares to the nearest whole share. Due to such reverse share split, earnings per share, convertible notes, warrants and stock options have been adjusted retrospectively as well.

Registration Rights

Certain of our shareholders have registration rights as described below.

We entered into a Registration Rights Agreement, dated September 16, 2009, with Grandunion and Rocket Marine in connection with a securities purchase agreement, dated the same date, with Grandunion. Subject to the terms of the Registration Rights Agreement, at any time after December 31, 2011, Grandunion and Rocket Marine may demand that we file a registration statement, request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration). Pursuant to the Registration Rights Agreement, as of April 30, 2011, we received a notice from Rocket Marine waiving its rights to require us to file a registration statement prior to June 30, 2011 in respect of the 222,223 common shares that were transferred to Rocket Marine as part of our 2009 recapitalization.

We entered into a Registration Rights Agreement, dated April 1, 2010, with Grandunion in connection with a securities purchase agreement, dated as of March 31, 2010, with Grandunion. Subject to the terms of the agreement, at any time after April 1, 2011, Grandunion may demand that we file a registration statement, request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated October 13, 2009, with Investment Bank of Greece and Focus Maritime Corp. in connection with the issuance of our 7% Notes. Subject to the terms of this agreement, upon the request of the majority of the holders of the transfer restricted securities (as defined therein), we are required to file a shelf registration statement covering the transfer restricted securities within 30 days. The holders may also request that their transfer restricted securities be covered by a registration statement that we are otherwise filing for the purpose of a firm-commitment, underwritten public offering of common shares (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated October 13, 2009, with Investment Bank of Greece in connection with a warrant purchase agreement and a warrant agreement, each dated October 13, 2009. Subject to the terms of this agreement, upon the request of the holders of at least 83,334 of the warrant shares (as defined therein), we are required to file a shelf registration statement covering the transfer restricted securities within 30 days. The holders may also request that their warrant shares be covered by a registration statement that we are otherwise filing for the purpose of a firm-commitment, underwritten public offering of common shares (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated January 2, 2010, with S. Goldman Advisors, LLC, in connection with the registration of 208,334 common shares and 416,667 common stock underlying warrants issued to the advisors. Subject to the terms of this agreement, upon the request of holders of at least 83,334 of the transfer restricted securities (as defined therein), we are required to file a shelf registration statement covering the transfer restricted securities within 30 days. The holders may also request that their transfer restricted securities be covered by a registration statement that we are otherwise filing for the purpose of a firm-commitment, underwritten public offering of common shares (i.e., piggy-back registration). In addition, we entered into a Subscription Agreement, dated April 17, 2012, with S. Goldman Advisors, LLC, for the issuance of 750,000 common shares as payment for advice pertaining to the restructuring of our financial indebtedness. Subject to the terms of this agreement, the holder may request that the common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated July 2, 2012, with Focus Maritime Corp. in connection with a settlement agreement, dated the same date, for the settlement in common shares of our 7% Notes. Subject to the terms of this agreement, Focus Maritime Corp. may demand that we file a registration statement with respect to the shares, request that the we file a registration statement on Form F-3 if the Company is entitled to use such form, or request that the common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated December 5, 2012, with Prime in connection with a settlement agreement dated November 28, 2012 with affiliates of Prime, for the settlement in common shares of our Lemissoler Capital Lease Obligation. Subject to the terms of this agreement, we are obligated to file a registration statement or registration statements covering the potential sale of the common shares of the Company issued to Prime and the shares of the Company's common shares issuable upon conversion of the 4.5% Note. Prime may also request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

We entered into a Registration Rights Agreement on June 20, 2012, as amended on April 10, 2013, with Piraeus Bank, in connection with a principal agreement, dated June 20, 2012, as amended on April 10, 2013, with Piraeus Bank. Subject to the terms of this agreement, Piraeus Bank may demand that we file a registration statement with respect to the shares, request that the we file a registration statement on Form F-3 if the Company is entitled to use such form, or request that the common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

Treasury Shares

Our bye-laws were amended at our 2008 annual general meeting to allow our board of directors, at its discretion and without the sanction of a resolution of our shareholders, to authorize the acquisition by us of our shares, to be held as treasury shares. Our board of directors may, at its discretion and without the sanction or resolution of our shareholders, authorize the acquisition by us of our own shares, to be held as treasury shares, upon such terms as the board of directors may in its discretion determine, provided always that such acquisition is effected in accordance with the provisions of the BCA. We will be entered in the register of members as a shareholder in respect of the shares held as treasury shares and will be its own shareholder but subject always to the provisions of the BCA. We will not exercise any rights and will not enjoy or participate in any of the rights attaching to those shares save as expressly provided for in the BCA. Subject as otherwise provided in our bye-laws in relation to our shares generally, any shares held by us as treasury shares will be at the disposal of the board of directors, which may hold all or any of such shares, dispose of or transfer all or any of such shares for cash or other consideration, or cancel all or any of such shares.

Dividends

Under Bermuda law, a company may not declare or pay dividends if there are reasonable grounds for believing either that the company is, or would after the payment be, unable to pay its liabilities as they become due, or that the realizable value of its assets would thereby be less than its liabilities. There are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to U.S. residents who are holders of our common shares.

Anti-Takeover Effects of Provisions of Our Constitutional Documents

Several provisions of our bye-laws may have anti-takeover effects. These provisions are intended to avoid costly takeover battles, lessen our vulnerability to a hostile change of control and enhance the ability of our board of directors to maximize shareholder value in connection with any unsolicited offer to acquire us. However, these anti-takeover provisions, which are summarized below, could also discourage, delay or prevent (1) the recapitalization, amalgamation, merger or acquisition of our company by means of a tender offer, a proxy contest or otherwise, that a shareholder may consider in its best interest and (2) the removal of our incumbent directors and executive officers.

Blank Check Preference Shares

Under the terms of our bye-laws, subject to applicable legal or NASDAQ requirements, our board of directors has authority, without any further vote or action by our shareholders, to issue up to 500,000,000 preference shares with such rights, preferences and privileges as our board may determine. Our board of directors may issue preference shares on terms calculated to discourage, delay or prevent a change of control of our company or the removal of our management.

Classified Board of Directors

Our bye-laws provide for the division of our board of directors into three classes of directors, with each class as nearly equal in number as possible, serving staggered, three year terms. One-third (or as near as possible) of our directors will be elected each year. Our bye-laws also provide that directors may only be removed for cause upon the vote of the holders of no less than 80% of our outstanding common shares. These provisions could discourage a third party from making a tender offer for our shares or attempting to obtain control of our company. It could also delay shareholders who do not agree with the policies of the board of directors from removing a majority of the board of directors for two years.

Business Combinations

Although the BCA does not contain specific provisions regarding “business combinations” between companies organized under the laws of Bermuda and “interested shareholders”, we have included these provisions in our bye-laws. Specifically, our bye-laws contain provisions which prohibit us from engaging in a business combination with an interested shareholder for a period of three years after the date of the transaction in which the person became an interested shareholder, unless, in addition to any other approval that may be required by applicable law:

- prior to the date of the transaction that resulted in the shareholder becoming an interested shareholder, our board of directors approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of our voting shares outstanding at the time the transaction commenced; or
- after the date of the transaction that resulted in the shareholder becoming an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least 80% of our outstanding voting shares that are not owned by the interested shareholder.

For purposes of these provisions, a "business combination" includes recapitalizations, amalgamations, mergers, consolidations, exchanges, asset sales, leases, certain issues or transfers of shares or other securities and other transactions resulting in a financial benefit to the interested shareholder. An "interested shareholder" is any person or entity that beneficially owns 15% or more of our outstanding voting shares and any person or entity affiliated with or controlling or controlled by that person or entity.

Election and Removal of Directors

Our bye-laws do not permit cumulative voting in the election of directors. Our bye-laws require shareholders wishing to propose a person for election as a director (other than persons proposed by our board of directors) to give advance written notice of nominations for the election of directors. Our bye-laws also provide that our directors may be removed only for cause and only upon the affirmative vote of the holders of at least 80% of our outstanding common shares, voted at a duly authorized meeting of shareholders called for that purpose, provided that notice of such meeting is served on such director at least 14 days before the meeting. These provisions may discourage, delay or prevent the removal of our incumbent directors.

Shareholder Meetings

Under our bye-laws, annual general meetings of shareholders will be held at a time and place selected by our board of directors each calendar year. Special general meetings of shareholders may be called by our board of directors at any time and must be called at the request of shareholders holding at least 10% of our paid-up share capital carrying the right to vote at general meetings. Under our bye-laws, at least 15 days, but not more than 60 days notice of an annual general meeting or any special general meeting must be given to each shareholder entitled to vote at that meeting. Under Bermuda law, accidental failure to give notice will not invalidate proceedings at a meeting. Our board of directors may set a record date between 15 and 60 days before the date of any meeting to determine the shareholders who will be eligible to receive notice and vote at the meeting.

Limited Actions by Shareholders

Any action required or permitted to be taken by our shareholders must be effected at an annual or special general meeting of shareholders or by majority written consent without a meeting. Our bye-laws provide that, subject to certain exceptions and to the rights granted to shareholders pursuant to the BCA, only our board of directors may call special general meetings of our shareholders and the business transacted at a special general meeting is limited to the purposes stated in the notice for that meeting. Accordingly, a shareholder may be prevented from calling a special general meeting for shareholder consideration of a proposal over the opposition of our board of directors and shareholder consideration of a proposal may be delayed until the next annual general meeting.

Subject to certain rights set out in the BCA, our bye-laws provide that shareholders are required to give advance notice to us of any business to be introduced by a shareholder at any annual general meeting. The advance notice provisions provide that, for business to be properly introduced by a shareholder when such business is not specified in the notice of meeting or brought by or at the direction of our board of directors, the shareholder must have given our secretary notice not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual general meeting of the shareholders. In the event the annual general meeting is called for a date that is not within 30 days before or after such anniversary date, the shareholder must give our secretary notice not later than 10 days following the earlier of the date on which notice of the annual general meeting was mailed to the shareholders or the date on which public disclosure of the annual general meeting was made. The chairman of the meeting may, if the facts warrant, determine and declare that any business was not properly brought before such meeting and such business will not be transacted.

Amendments to Bye-Laws

Our bye-laws require the affirmative vote of the holders of not less than 80% of our outstanding voting shares to amend, alter, change or repeal the following provisions in our bye-laws:

- the classified board and director election and removal provisions;
- the percentage of approval required for our shareholders to amend our bye-laws;
- the limitations on business combinations between us and interested shareholders;
- the provisions requiring the affirmative vote of the holders of not less than 80% of our outstanding voting shares to amend the foregoing provisions; and
- the limitations on shareholders' ability to call special meetings, subject to certain rights guaranteed to shareholders under the BCA.

These requirements make it more difficult for our shareholders to make changes to the provisions in our bye-laws that could have anti-takeover effects.

C. Material contracts

Please refer to "Item 5.—Operating and Financial Review and Prospects" for a discussion of our long-term debt, "Item 4.—Information on the Company" for a discussion of various agreements relating to our restructuring, commodities business, recapitalization and certain vessel transactions and "Item 10. —Additional Information" for a discussion of our registration rights agreements.

D. Exchange controls

We have been designated as a non-resident of Bermuda for exchange control purposes by the Bermuda Monetary Authority (the "BMA").

The BMA must approve all issuances and transfers of securities of a Bermuda exempted company like us. For so long as our common shares are listed on an appointed stock exchange (which NASDAQ is), such shares may be issued to, and transferred by and among, persons who are residents and non-residents of Bermuda for exchange control purposes. Any other transfers remain subject to approval by the BMA and such approval may be denied or delayed.

Subject to the foregoing, there are no limitations on the rights of owners of our common shares to hold or vote their shares. Because we have been designated as a non-resident for Bermuda exchange control purposes, there are no restrictions on our ability to transfer funds in and out of Bermuda or to pay dividends to United States residents who are holders of our common shares, other than in respect of local Bermuda currency.

In accordance with Bermuda law, share certificates may be issued only in the names of corporations or individuals. In the case of an applicant acting in a special capacity (for example, as an executor or trustee), certificates may, at the request of the applicant, record the capacity in which the applicant is acting. Notwithstanding the recording of any such special capacity, we are not bound to investigate or incur any responsibility in respect of the proper administration of any such estate or trust.

We will not take notice of any trust applicable to any of our common shares or other securities whether or not we had notice of such trust.

As an "exempted company", we are exempt from Bermuda laws which restrict the percentage of share capital that may be held by non-Bermudians, but as an exempted company, we may not participate in certain business transactions including: (i) the acquisition or holding of land in Bermuda (except that required for its business and held by way of lease or tenancy for terms of not more than 21 years) without the express authorization of the Bermuda legislature; (ii) the taking of mortgages on land in Bermuda to secure an amount in excess of $50,000 without the consent of the Minister of Finance of Bermuda; (iii) the acquisition of securities created or issued by, or any interest in, any local company or business, other than certain types of Bermuda government securities or securities of another "exempted company", exempted partnership or other corporation or partnership resident in Bermuda but incorporated abroad; or (iv) the carrying on of business of any kind in Bermuda, except insofar as may be necessary for the carrying on of its business outside Bermuda or under a license granted by the Minister of Finance of Bermuda.

There is a statutory remedy under Section 111 of the BCA which provides that a shareholder may seek redress in the Bermuda courts as long as such shareholder can establish that the company's affairs are being conducted, or have been conducted, in a manner oppressive or prejudicial to the interests of some part of the shareholders, including such shareholder.

The Bermuda government actively encourages foreign investment in "exempted companies" that are based in Bermuda but do not operate in competition with local business. In addition to having no restrictions on the degree of foreign ownership, we are subject neither to taxes on our income or dividends nor to any exchange controls in Bermuda. In addition, there is no capital gains tax in Bermuda, and profits can be accumulated by us, as required, without limitation. There is no income tax treaty between the United States and Bermuda pertaining to the taxation of income other than applicable to insurance enterprises.

E. Taxation

The following is a discussion of the material Bermuda and United States federal income tax considerations with respect to the Company and the beneficial owners of our common shares (referred to herein as "holders"). This discussion does not purport to deal with the tax consequences of owning or disposing of common shares to all categories of investors, some of which, such as dealers or traders in securities, investors whose functional currency is not the United States dollar and investors that own, actually or under applicable constructive ownership rules, 10% or more of our common shares, may be subject to special rules. This discussion deals only with holders who hold the common shares as a capital asset. Holders of common shares are encouraged to consult their own tax advisors concerning the overall tax consequences arising in their own particular situation under United States federal, state, local or foreign law of the ownership of common shares.

Bermuda Tax Considerations

As of the date of this document, there is no Bermuda income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by non-residents of Bermuda in respect of capital gains realized on a disposition of our common shares or in respect of distributions by us with respect to our common shares. This discussion does not, however, apply to the taxation of persons ordinarily resident in Bermuda. Bermuda holders should consult their own tax advisors regarding possible Bermuda taxes with respect to dispositions of, and distributions on, our common shares and distributions to us by our subsidiaries also are not subject to any Bermuda tax. The Bermuda Minister of Finance, under the Exempted Undertakings Tax Protection Act 1966, as amended, has given the Company assurance that if any legislation is enacted in Bermuda that would impose tax computed on profits or income, or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of any such tax will not be applicable to the Company or any of the Company's operations, shares or other obligations until March 28, 2016.

United States Federal Income Tax Considerations

The following are the material United States federal income tax consequences to us of our activities and to U.S. Holders and Non-U.S. Holders, each as defined below, of our common shares. The following discussion of United States federal income tax matters is based on the United States Internal Revenue Code of 1986, or the Code, judicial decisions, administrative pronouncements, and existing and proposed regulations issued by the United States Department of the Treasury, all of which are subject to change, possibly with retroactive effect. In addition, the following discussion does not address any United States estate or gift, state, local or non-United States tax consequences, or any tax consequences of the newly enacted Medicare tax on investment income. The discussion below is based, in part, on the description of our business as described in "Item 4B. Business Overview — Information on the Company" above and assumes that we conduct our business as described in that section. Except as otherwise noted, this discussion is based on the assumption that we will not maintain an office or other fixed place of business within the United States. References in the following discussion to "we" and "us" are to NewLead Holdings Ltd. and its subsidiaries on a consolidated basis.

United States Federal Income Taxation of Our Company

Taxation of Operating Income: In General

We earn substantially all of our income from the use of vessels, from the hiring or leasing of vessels for use on a time, voyage or bareboat charter basis or from the performance of services directly related to those uses, which we refer to as "shipping income".

Fifty percent of shipping income that is attributable to transportation that begins or ends, but that does not both begin and end, in the United States constitutes income from sources within the United States, which we refer to as "U.S.-source shipping income".

Shipping income attributable to transportation that both begins and ends in the United States is considered to be 100% from sources within the United States. We are not permitted by law to engage in transportation that produces income which is considered to be 100% from sources within the United States.

Shipping income attributable to transportation exclusively between non-U.S. ports is not considered to be 100% derived from sources outside the United States. Shipping income derived from sources outside the United States is not subject to any United States federal income tax.
In the absence of exemption from tax under Section 883, our gross U.S. source shipping income is subject to a 4% tax imposed without allowance for deductions as described below.

In April 2012, our U.S. subsidiary entered into a joint venture arrangement with J Mining & Energy Group to purchase thermal coal (used in power plants for electricity generation and other industrial uses) located in Kentucky, USA. We currently do not have any revenues from this business, but anticipate generating our first revenues from this business in fiscal 2013. We anticipate paying U.S. income tax on income generated from this business.

Exemption of Operating Income from United States Federal Income Taxation

Under Section 883 of the Code, a foreign corporation will be exempt from United States federal income taxation on its U.S.-source shipping income if:

(1) it is organized in a qualified foreign country, which is one that grants an "equivalent exemption" to corporations organized in the United States in respect of such category of the shipping income for which exemption is being claimed under Section 883 and which we refer to as the "Country of Organization Test"; and

(2) Either

(A) more than 50% of the value of its stock is beneficially owned, directly or indirectly, for at least half of our taxable year by individuals who are "residents" of a qualified foreign country, which we refer to as the "50% Ownership Test", or

(B) its stock is "primarily and regularly traded on an established securities market" in its country of organization, in another qualified foreign country or in the United States, which we refer to as the "Publicly Traded Test".

The Country of Organization Test is satisfied since we are incorporated in Bermuda, and each of our subsidiaries is incorporated in the Bermuda, the Marshall Islands, Liberia, or Panama all of which are qualified foreign countries in respect of each category of shipping income we currently earn and expect to earn in the future. Therefore, we and our subsidiaries are exempt from United States federal income taxation with respect to our U.S.-source shipping income as we and each of our subsidiaries meet either of the 50% Ownership Test or the Publicly Traded Test. Under a special attribution rule of Section 883, each of our Subsidiaries is deemed to have satisfied the 50% Ownership Test if we satisfy such test or the Publicly Traded Test.

We believe we currently satisfy the 50% Ownership Test. Michael Zolotas is a "resident" in a qualified foreign country in that he is fully liable to tax as a resident in such country (and not liable to tax on a remittance basis only) and, in addition, he has a tax home (i.e., his regular or principal place of business) in that qualified foreign country for 183 days or more of the taxable year. Mr. Zolotas has or will provide us with the documentation (including ownership statements), and we will meet the reporting requirements with respect to such shareholder, as required by the Treasury Regulations under Section 883. However, we may have difficulty satisfying such test in the future if our common shares become more widely held.

With respect to the Publicly Traded Test, the Treasury Regulations provide, in pertinent part, that stock of a foreign corporation is considered to be "primarily traded" on an established securities market if the number of shares of each class of stock that are traded during any taxable year on all established securities markets in that country exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single country. Our common shares, which are our sole class of issued and outstanding stock, are "primarily traded" on the NASDAQ Global Select Market, which is an established securities market in the United States.

Under the Treasury Regulations, our common shares are considered to be "regularly traded" on an established securities market if one or more classes of our shares representing more than 50% of our outstanding shares, by total combined voting power of all classes of shares entitled to vote and total value, is listed on an established securities market, which we refer to as the listing threshold. Since our common shares are our sole class of issued and outstanding stock and are listed on the NASDAQ Global Select Market, we meet the listing threshold.

It is further required that with respect to each class of stock relied upon to meet the listing threshold (i) such class of the stock is traded on the market, other than in minimal quantities, on at least 60 days during the taxable year or 1/6 of the days in a short taxable year; and (ii) the aggregate number of shares of such class of stock traded on such market is at least 10% of the average number of shares of such class of stock outstanding during such year or as appropriately adjusted in the case of a short taxable year. We satisfy these trading frequency and trading volume tests. Even if this were not the case, the Treasury Regulations provide that the trading frequency and trading volume tests will be deemed satisfied if, as is currently the case with our common shares, such class of stock is traded on an established market in the United States and such stock is regularly quoted by dealers making a market in such stock.

Notwithstanding the foregoing, the Treasury Regulations provide, in pertinent part, that our shares are not to be considered to be "regularly traded" on an established securities market for any taxable year in which 50% or more of the vote and value of our outstanding common shares are owned, actually or constructively under specified stock attribution rules, on more than half the days during the taxable year by persons who each own 5% or more of the vote and value of our outstanding common shares, which we refer to as the "5 Percent Override Rule".

To determine the persons who own 5% or more of the vote and value of our shares, or "5% Shareholders", the Treasury Regulations permit us to rely on those persons that are identified on Form 13G and Form 13D filings with the SEC, as having a 5% or more beneficial interest in our common shares. The Treasury Regulations further provide that an investment company which is registered under the Investment Company Act of 1940, as amended, will not be treated as a 5% Shareholder for such purposes.

In the event the 5 Percent Override Rule is triggered, the Treasury Regulations provide that the 5 Percent Override Rule does not apply if we can establish in conformity with the Treasury Regulations that within the group of 5% Shareholders, sufficient shares are owned by qualified shareholders for purposes of Section 883 to preclude non-qualified shareholders in such group from owning 50% or more of the value of our shares for more than half the number of days during such year.

In the event that the 5 Percent Override Rule is triggered, we believe that, within the group of 5% Shareholders, sufficient shares will be owned by qualified shareholders for purposes of Section 883 to have precluded non-qualified shareholders in such group from owning 50% or more of the value of our shares for more than half the number of days during the relevant taxable years. We believe that, either (i) the 5 Percent Override Rule will not be triggered or (ii) if the 5 Percent Override Rule is triggered, sufficient shares will be owned by qualified shareholders for purposes of Section 883 to preclude non-qualified 5% Shareholders from owning 50% or more of the value of our shares for more than half the number of days during the relevant taxable years; however, there can be no assurance in this regard. In order to qualify for the exception to the 5 Percent Override Rule, sufficient 5% Shareholders that are qualified shareholders would have to comply with certain documentation and certification requirements designed to substantiate their identity as qualified shareholders. We believe that these requirements have been satisfied in the past, and, as noted above, we intend to cause these requirements to be satisfied in the future, as required, although there can be no assurance that we will be successful in this regard.

Even though we believe that we will be able to qualify for the benefits of Section 883, we can provide no assurance that we will be able to continue to so qualify in the future.

Taxation in the Absence of Section 883 Exemption

To the extent the benefits of Section 883 are unavailable, our U.S. source shipping income, to the extent not considered to be "effectively connected" with the conduct of a U.S. trade or business, as described below, would be subject to a 4% tax imposed by Section 887 of the Code on a gross basis, without the benefit of deductions. Since under the sourcing rules described above, no more than 50% of our shipping income would be treated as being derived from U.S. sources, the maximum effective rate of U.S. federal income tax on our shipping income would never exceed 2% under the 4% gross basis tax regime.

To the extent the benefits of the Section 883 exemption are unavailable and our U.S. source shipping income is considered to be "effectively connected" with the conduct of a U.S. trade or business, as described below, any such "effectively connected" U.S. source shipping income, net of applicable deductions, would, in lieu of the 4% gross basis tax described above, be subject to the U.S. federal corporate income tax currently imposed at rates of up to 35%. In addition, we may be subject to the 30% "branch profits" tax on earnings effectively connected with the conduct of such trade or business, as determined after allowance for certain adjustments, and on certain interest paid or deemed paid attributable to the conduct of our U.S. trade or business.

Our U.S. source shipping income would be considered "effectively connected" with the conduct of a U.S. trade or business only if:

- we have, or are considered to have, a fixed place of business in the United States involved in the earning of shipping income; and

- substantially all of our U.S. source shipping income is attributable to regularly scheduled transportation, such as the operation of a vessel that follows a published schedule with repeated sailings at regular intervals between the same points for voyages that begin or end in the United States.

We do not have, or permit circumstances that would result in our having, a fixed place of business in the United States involved in the earning of shipping income and therefore, we believe that none of our U.S. source shipping income will be "effectively connected" with the conduct of a U.S. trade or business.

United States Taxation of Gain on Sale of Vessels

Regardless of whether we qualify for exemption under Section 883, we will not be subject to United States federal income taxation with respect to gain realized on a sale of a vessel, provided the sale is considered to occur outside of the United States under United States federal income tax principles. In general, a sale of a vessel will be considered to occur outside of the United States for this purpose if title to the vessel, and risk of loss with respect to the vessel, pass to the buyer outside of the United States. It is expected that any sale of a vessel by us will be considered to occur outside of the United States.

United States Federal Income Taxation of U.S. Holders

As used herein, the term "U.S. Holder" means a beneficial owner of common shares that is a United States citizen or resident for United States federal income tax purposes, corporation or other entity treated as a corporation for United States federal income tax purposes that is created or organized under the laws of the United States or its political subdivisions, an estate the income of which is subject to United States federal income taxation regardless of its source, or a trust if a court within the United States is able to exercise primary jurisdiction over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust.

If a partnership (including an entity or arrangement treated as a partnership for United States federal income tax purposes) holds our common shares, the tax treatment of a partner will generally depend upon the status of the partner, upon the activities of the partnership and upon certain determinations made at the partner level. If you are a partner in a partnership holding our common shares, you are encouraged to consult your tax advisor.

Distributions

Subject to the discussion of passive foreign investment companies below, any distributions made by us with respect to our common shares to a U.S. Holder will generally constitute dividends, which may be taxable as ordinary income or "qualified dividend income" as described in more detail below, to the extent of our current or accumulated earnings and profits, as determined under United States federal income tax principles. Distributions in excess of our earnings and profits as so determined will be treated first as a nontaxable return of capital to the extent of the U.S. Holder's tax basis in his common shares on a dollar-for-dollar basis and thereafter as capital gain. We do not expect to calculate our earnings and profits under U.S. federal income tax principles. Therefore, a U.S. Holder should expect that any distributions will be treated as a dividend even if such distributions would otherwise be treated as a non-taxable return of capital or as capital gain under the rules described above. Because we are not a United States corporation, U.S. Holders that are corporations will not be entitled to claim a dividends received deduction with respect to any distributions they receive from us. Dividends paid with respect to our common shares will generally be treated as "passive category income" or, in the case of certain types of U.S. Holders "general category income" for purposes of computing allowable foreign tax credits for United States foreign tax credit purposes.

Dividends paid on our common shares to a U.S. Holder who is an individual, trust or estate (a "U.S. Individual Holder") will generally be treated as "qualified dividend income" that is taxable to such U.S. Individual Holders at preferential tax rates provided that (1) the common shares are readily tradable on an established securities market in the United States (such as the NASDAQ Global Select Market, on which our common shares are traded); (2) we are not a passive foreign investment company for the taxable year during which the dividend is paid or the immediately preceding taxable year (which we do not believe we have been through 2012, but may be in 2013 and/or future taxable years); and (3) the U.S. Individual Holder has owned the common shares for more than 60 days in the 121-day period beginning 60 days before the date on which the common shares becomes ex-dividend. Therefore, there is no assurance that any dividends paid on our common shares will be eligible for these preferential rates in the hands of a U.S. Individual Holder. Any dividends paid by the Company which are not eligible for these preferential rates will be taxed as ordinary income to a U.S. Individual Holder.

Special rules may apply to any "extraordinary dividend" generally, a dividend in an amount which is equal to or in excess of ten percent of a shareholder's adjusted basis (or fair market value in certain circumstances) in a common share paid by us. If we pay an "extraordinary dividend" on our common shares that is treated as "qualified dividend income", then any loss derived by a U.S. Individual Holder from the sale or exchange of such common shares will be treated as long-term capital loss to the extent of such dividend.

Sale, Exchange or other Disposition of Common Shares

Assuming we do not constitute a passive foreign investment company for any taxable year, a U.S. Holder generally recognizes taxable gain or loss upon a sale, exchange or other disposition of our common shares in an amount equal to the difference between the amount realized by the U.S. Holder from such sale, exchange or other disposition and the U.S. Holder's adjusted tax basis in such stock. Such gain or loss is treated as long-term capital gain or loss if the U.S. Holder's holding period is greater than one year at the time of the sale, exchange or other disposition. A U.S. Holder's adjusted tax basis in our common shares generally will equal the U.S. Holder's cost in acquiring our common shares, subject to the adjustments described above. Such capital gain or loss is generally treated as U.S.-source income or loss, as applicable, for U.S. foreign tax credit purposes. A U.S. Holder's ability to deduct capital losses is subject to certain limitations.

Passive Foreign Investment Company Status and Significant Tax Consequences

Special United States federal income tax rules apply to a U.S. Holder that holds stock in a foreign corporation classified as a passive foreign investment company for United States federal income tax purposes. In general, we are treated as a passive foreign investment company with respect to a U.S. Holder if, for any taxable year in which such holder held our common shares, either

- at least 75% of our gross income for such taxable year consists of passive income (e.g., dividends, interest, capital gains and rents derived other than in the active conduct of a rental business), or

- at least 50% of the average value of the assets (determined as of the end of each quarter of the foreign corporation's taxable year) held by the corporation during such taxable year produce, or are held for the production of, passive income.

For purposes of these tests, "passive income" includes dividends, interest, and gains from the sale or exchange of investment property, rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business and the excess of gains over losses from transactions in any commodities (gains and losses from certain "qualified active sales" and qualified hedging transactions are excluded from "passive income").

For purposes of determining whether we are a passive foreign investment company, we are treated as earning and owning our proportionate share of the income and assets, respectively, of any of our subsidiary corporations in which we own at least 25% of the value of the subsidiary's stock. Income earned, or deemed earned, by us in connection with the performance of services would not constitute passive income. By contrast, rental income would generally constitute "passive income" unless we were treated under specific rules as deriving our rental income in the active conduct of a trade or business.

Based on our past operations and asset holdings, we do not believe that we have been a PFIC through 2012. However, we may be a PFIC in 2013 and/or in future taxable years due to changes in the nature and extent of our assets and operations, including our entry into the commodities business. For example, we expect to purchase and trade coal commencing in the fourth quarter of 2013 and thereafter. If this activity gives use to at least 85% of our taxable income it would be considered active income under the "qualified active sales" exception; if not most likely passive income. As another example, in making the PFIC determination for 2013 under the 50% "assets" test, the fair market value of the nickel wire held in the first quarter of 2013 will have to be weighed relative to the fair market values of our vessels and other assets held through the end of each quarter in 2013 (noting that there has been a significant decline in the fair market value of these vessels). Although there is no legal authority directly on point, and we are not relying upon an opinion of counsel on this issue, our belief that we have not been a PFIC through 2012 is based principally on the position that, for purposes of determining whether we are a passive foreign investment company, the gross income we derived or are deemed to have derived from the time chartering and voyage chartering activities of our wholly-owned subsidiaries should constitute services income, rather than rental income. Correspondingly, such income should not constitute passive income, and the assets that we or our wholly-owned subsidiaries own and operate in connection with the production of such income, in particular, the vessels, should not constitute passive assets for purposes of determining whether we are a passive foreign investment company. We believe there is substantial legal authority supporting our position consisting of case law and Internal Revenue Service pronouncements concerning the characterization of income derived from time charters and voyage charters as services income for other tax purposes. However, in the absence of any legal authority specifically relating to the statutory provisions governing passive foreign investment companies, the Internal Revenue Service or a court could disagree with our position.

If we were to be treated as a passive foreign investment company, special and adverse United States federal income tax rules would apply to a U.S. Holder of our shares. Among other things, the distributions a U.S. Holder received with respect to our shares and gains, if any, a U.S. Holder derived from his sale or other disposition of our shares would be taxable as ordinary income (rather than as qualified dividend income or capital gain, as the case may be), would be treated as realized ratably over his holding period in our common shares, and would be subject to an additional interest charge. However, a U.S. Holder might be able to make certain tax elections which ameliorate these consequences. In addition, if we were treated as a passive foreign investment company, a U.S. Holder of our shares would be subject to special information reporting requirements with respect to its investment in our shares.

United States Federal Income Taxation of "Non-U.S. Holders"

A beneficial owner of common shares that is not a U.S. Holder or a partnership (including an entity or arrangement treated as a partnership for United States federal income tax purposes) is referred to herein as a "Non-U.S. Holder".

Dividends on Common Shares

Non-U.S. Holders generally are not subject to United States federal income tax or withholding tax on dividends received from us with respect to our common shares, unless that income is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States. If the Non-U.S. Holder is entitled to the benefits of a United States income tax treaty with respect to those dividends, that income is taxable only if it is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States.

Sale, Exchange or Other Disposition of Common Shares

Non-U.S. Holders generally are not subject to United States federal income tax or withholding tax on any gain realized upon the sale, exchange or other disposition of our common shares, unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States. If the Non-U.S. Holder is entitled to the benefits of an income tax treaty with respect to that gain, that gain is taxable only if it is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States; or

- the Non-U.S. Holder is an individual who is present in the United States for 183 days or more during the taxable year of disposition and other conditions are met.

If the Non-U.S. Holder is engaged in a United States trade or business for United States federal income tax purposes, the income from the common shares, including dividends and the gain from the sale, exchange or other disposition of the stock that is effectively connected with the conduct of that trade or business is generally subject to regular United States federal income tax in the same manner as discussed in the previous section relating to the taxation of U.S. Holders. In addition, if you are a corporate Non-U.S. Holder, your earnings and profits that are attributable to the effectively connected income, which are subject to certain adjustments, may be subject to an additional branch profits tax at a rate of 30%, or at a lower rate as may be specified by an applicable income tax treaty.

Backup Withholding and Information Reporting

In general, dividend payments or other taxable distributions and payment of the proceeds from the sale or other disposition of our common shares made within the United States to a U.S. Holder, other than an exempt U.S. Holder (such as a corporation) that properly certifies as to its exempt status, will be subject to information reporting requirements. Such payments will be subject to backup withholding tax if you are a not a non-exempt U.S. Holder and you:

- fail to provide an accurate taxpayer identification number;

- are notified by the Internal Revenue Service that you have failed to report all interest or dividends required to be shown on your federal income tax returns; or

- in certain circumstances, fail to comply with applicable certification requirements.

Non-U.S. Holders may be required to establish their exemption from information reporting and backup withholding by certifying their status on IRS Form W-8BEN, W-8ECI or W-8IMY, as applicable.

If you are a Non-U.S. Holder and you sell your common shares to or through a United States office or broker, the payment of the proceeds is subject to both United States backup withholding and information reporting unless you certify that you are a non-U.S. person, under penalties of perjury, or you otherwise establish an exemption. If you sell your common shares through a non-United States office of a non-United States broker and the sales proceeds are paid to you outside the United States then information reporting and backup withholding generally will not apply to that payment. However, United States information reporting requirements, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made to you outside the United States, if you sell your common shares through a non-United States office of a broker that is a United States person or has some other contacts with the United States.

Backup withholding tax is not an additional tax. Rather, you generally may obtain a refund of any amounts withheld under backup withholding rules that exceed your income tax liability by timely filing a refund claim with the Internal Revenue Service.

Information Reporting Regarding Non-U.S. Accounts

Effective for tax years beginning after March 18, 2010, individuals who are U.S. Holders, and who hold “specified foreign financial assets” (as defined in section 6038D of the Code), including stock of a non-U.S. corporation that is not held in an account maintained by a U.S. “financial institution” (as defined in section 6038D of the Code), whose aggregate value exceeds $50,000 during the tax year, will be required to attach to their tax returns for the year the information described in section 6038D of the Code. An individual who fails to timely furnish the required information generally will be subject to a penalty, unless the failure is shown to be due to reasonable cause and not due to willful neglect. Additionally, in the event a U.S. Holder does not file such a report, the statute of limitations on the assessment and collection of U.S. federal income taxes of such U.S. Holder for the related tax year may not close before such report is filed. To the extent provided in U.S. Treasury regulations or other guidance, these reporting obligations will apply to any U.S. entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

F. Dividends and paying agents

Not applicable.

G. Statement by experts

Not applicable.

H. Documents on display

We file annual reports and other information with the SEC. You may read and copy any document we file with the SEC at its public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference section of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. Our SEC filings are also available to the public at the web site maintained by the SEC at http://www.sec.gov, as well as on our website at http://www.newleadholdings.com.

I. Subsidiary information

Not applicable.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Exposure

Debt Instruments:

NewLead's exposure to interest rate risk, which could impact our results of operations, relates to our floating rate debt outstanding. The interest rate related to our total debt outstanding is based on the floating U.S. LIBOR plus, a specific margin for each credit facility. Our objective is to minimize our interest expenses while managing the exposure of our financial condition to interest rate risk, through our financing activities and, when deemed appropriate, through the use of designated interest rate swaps.

As of December 31, 2012, we had $152.3 million of total indebtedness, which is net of the $0.048 million of unamortized BCF treated as a debt discount to the 7% Notes. The interest on a number of our credit facilities are at floating rates and, therefore, changes in interest rates would have an effect on our interest expense. The interest rate on the 7% Notes and the 4.5% Note is fixed and, therefore, there is no associated market risk. As of December 31, 2012, we had $78.7 million of floating rate indebtedness out of our total indebtedness of $152.3 million. Of our floating rate indebtedness, as of December 31, 2012, $17.1 million was fixed with interest rate swaps. However, as of December 31, 2012 and as of August 30, 2013 we were in default under such interest rate swaps.

For the year ended December 31, 2012, a 1% increase and decrease in LIBOR would have resulted in an increase or decrease of approximately $1.1 million in our interest expense on the unhedged portion of drawings under the terms of our existing credit facilities.

Interest rate swaps:

As of December 31, 2012, in order to effectively manage our interest rate risk, we had the following interest rate swaps outstanding:

- In connection with the recapitalization, we entered into a credit facility and an interest rate swap with Piraeus Bank (CPB loan). On May 6, 2010, we refinanced this credit facility (see Note 15. Long-Term Debt of our consolidated financial statements). The aforementioned swap was re-attached to the new credit facility and has a termination date of September 2, 2014. Under the terms of the swap agreement, we pay a fixed interest rate of 4.08% per annum on the notional amount of the swap.

As of December 31, 2012 and August 30, 2013, the notional amount of the abovementioned interest rate swaps was $17.1 million. As of December 31, 2012, we have defaulted on a number of payments concerning the interest rate swap agreements.

Foreign Exchange Rate Exposure

Our vessel-owning subsidiaries generate revenues in U.S. dollars but incur certain expenses in other currencies, primarily Euros. During the year ended December 31, 2012, the value of the U.S. dollar reached highs of $1.34 and lows of $1.22 compared to the Euro, and as a result, an adverse or positive movement could increase our expenses. During the year ended December 31, 2012, the effect was minimal.

Credit Risk Exposure

We believe that no significant credit risk exists with respect to the Company's cash due to the spread of this risk among various different banks. We are also exposed to credit risk in the event of non-performance by counterparties to derivative instruments. As of December 31, 2012, those derivative instruments are in the counterparties' favor. Credit risk with respect to trade accounts receivable is reduced by the Company by chartering its vessels to established international charterers.

Cash deposits in excess of amounts covered by government – provided insurance are exposed to loss in the event of non-performance by financial institutions. The Company does maintain cash deposits in excess of government – provided insurance limits.

Item 12. Description of Securities Other than Equity Securities

Not applicable.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

Our independent registered public accounting firm has indicated in their report that there is substantial doubt about our ability to continue as a going concern. As previously announced, due to the economic conditions and operational difficulties described elsewhere in this annual report, we entered into restructuring discussions with each of the lenders under the Financing Documents. As a result of such conditions, over a period of time, we defaulted under each of our Financing Documents in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions). To date, we have restructured or obtained waivers of these defaults from each of the lenders under the Financing Documents, except for the credit facility with Piraeus Bank (CPB loan) . To date, we continue to be in default in this facility, the 4.5% Note, the Portigon AG Credit Facility and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all. See "Item 5. Operating and Financial Review and Prospects—Recent Developments" and "—Liquidity and Capital Resources" above for a discussion of our indebtedness and the defaults under the agreements governing such indebtedness and the status of our restructuring discussions.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds

Not applicable.

Item 15. Controls and Procedures

(a) Disclosure Controls and Procedures

The Company's management, with the participation of the CEO and CFO, has evaluated the effectiveness of the Company's disclosure controls and procedures, as defined by Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of December 31, 2012. Based upon their evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that the Company's disclosure controls and procedures were not effective as of December 31, 2012.

Disclosure controls and procedures are defined under SEC rules as controls and other procedures that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within required time periods. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure. There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives.

(b) Management's Annual Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Company's internal control over financial reporting is a process designed by, or under the supervision of, the Company's CEO and CFO, and is effected by the Company's Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of Company's financial reporting and the preparation of Company's consolidated financial statements for external reporting purposes in accordance with generally accepted accounting principles in the United States ("GAAP").

Internal control over financial reporting includes those policies and procedures that:

(1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the Company;
(2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Company; and
(3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on interim or annual consolidated financial statements .

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our CEO and CFO, our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2012, based on the criteria for effective internal control over financial reporting set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in "Internal Control – Integrated Framework". As a result of this assessment, management has concluded that, as of December 31, 2012, the Company's internal control over financial reporting was not effective, due to the material weaknesses described below.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Management has identified the following three material weaknesses:

(1) We did not maintain sufficient accounting resources with adequate training in the application of GAAP commensurate with our financial reporting and the complexity of certain transactions related to our restructuring and entering into new business. Management evaluated the impact of this lack of sufficient technical accounting resources and has concluded that the resulting control deficiency constitutes a material weakness.

(2) We did not have effective processes and controls to identify, capture and communicate relevant and financially significant information to the appropriate accounting personnel on a timely basis. This resulted in an ineffective system of internal controls over the Company's financial statements closing process. This control deficiency created a reasonable possibility of a material misstatement to our significant accounts and disclosures and management concluded that it constitutes a material weakness.

(3) We did not follow proper due diligence protocols when entering into transactions outside shipping. This control deficiency resulted in a material adjustment to our disclosures in the initial drafts of our financial statements. Management concluded that it constitutes a material weakness.

(c) Attestation report of the independent registered public accounting firm

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to the rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this annual report.

(d) Changes in internal control over financial reporting

There were no changes in internal control over financial reporting (identified in connection with management's evaluation of such internal controls over financial reporting) that occurred during the year covered by this annual report that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

(e) Remediation efforts and/or plans for the remediation

We have, and we plan to initiate the following corrective actions, which management believes are reasonably likely to remediate the material weaknesses identified above:

- We are in the process of further enhancing our internal finance and accounting organizational structure and we have retained consultants with the necessary technical expertise.

- We are in the process of enhancing the supervisory procedures to include additional levels and quality control reviews within the accounting and financing functions.

- We are in the process of expanding and clarifying existing controls regarding accumulation of significant information and its dissemination to the accounting function, as well as creating checklists to ensure completeness, accuracy, and timeliness of such information.

- We are in the process of expanding and clarifying existing controls regarding acquisitions outside the shipping business by creating detailed checklists that need to be followed before management enters in such transactions.

We are not in position at this time to assess if all of the above plans will be implemented and operate successfully by year-end.

Item 16. [Reserved]

Item 16A. Audit Committee Financial Expert

We have established an audit committee comprised of three members, which is responsible for reviewing our accounting controls and recommending to the board of directors the engagement of our outside auditors. Each member is an independent director under the corporate governance rules of the NASDAQ Global Market that are applicable to us. The members of the audit committee are Messrs. Spyros Gianniotis, Sae Jung Oh, and Panagiotis Skiadas. Mr. Gianniotis serves as the "audit committee financial expert" as defined in the instructions to Item 16A. in the Form 20-F.

Item 16B. Code of Ethics

As a foreign private issuer, we are exempt from the rules of the NASDAQ Global Market that require the adoption of a code of ethics. However, we have voluntarily adopted a code of ethics that applies to our principal executive officer, principal financial officer and persons performing similar functions. We will provide any person a hard copy of our code of ethics free of charge upon written request. Shareholders may direct their requests to the Company at 83 Akti Miaouli & Flessa Street, 185 38 Piraeus Greece, Attn: Corporate Secretary.

Item 16C. Principal Accountant Fees and Services

Audit Fees

Our principal accountants for the fiscal years ended December 31, 2012, 2011 and 2010 were PricewaterhouseCoopers S.A. Our audit fees for 2012, 2011 and 2010 were €507,700, €414,000 and €378,000, respectively.

Audit-Related Fees

We did not incur audit-related fees for 2012, 2011 and 2010.

Tax Fees

We did not incur tax fees for 2012, 2011 or 2010.

All Other Fees

We did not incur any other fees for 2012, 2011 or 2010.

Our audit committee pre-approves all audit, audit-related and non-audit services not prohibited by law to be performed by our independent registered public accounting firm and associated fees prior to the engagement of the independent auditor with respect to such services.

Item 16D. Exemptions from the Listing Standards for Audit Committees

Not applicable.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchases

None.

Item 16F. Changes in Registrant's Certifying Accountant

Not applicable.

Item 16G. Corporate Governance

We have certified to NASDAQ that our corporate governance practices are in compliance with, and are not prohibited by, the laws of Bermuda. Therefore, we are exempt from many of NASDAQ's corporate governance practices other than the requirements regarding the submission of a listing agreement, notification of material non-compliance with NASDAQ corporate governance practices and the establishment and composition of an audit committee and a formal written audit committee charter. The practices that we follow in lieu of NASDAQ's corporate governance rules are described below.

- We have a board of directors with a majority of independent directors which holds at least one annual meeting at which only independent directors are present, consistent with NASDAQ corporate governance requirements. We are not required under Bermuda law to maintain a board of directors with a majority of independent directors, and we cannot guarantee that we will always in the future maintain a board of directors with a majority of independent directors.

- We have a Governance and Nominating committee comprised of independent directors that is responsible for identifying and recommending potential candidates to become board members and recommending directors for appointment to the board and board committees. Shareholders may also identify and recommend potential candidates to become board members in writing. No formal written charter has been prepared or adopted because this process is outlined in our bye-laws.

- In lieu of obtaining an independent review of related party transactions for conflicts of interests, consistent with Bermuda law requirements, our bye-laws require any director who has a potential conflict of interest to identify and declare the nature of the conflict to our board of directors at the first meeting of the board of directors. Our bye-laws additionally provide that related party transactions must be approved by independent and disinterested directors.

- In lieu of obtaining shareholder approval prior to the issuance of securities, we were required to obtain the consent of the BMA as required by Bermuda law before we issued securities. If we choose to issue additional securities, we will not be required to obtain any further consent so long as our common shares are listed on an appointed stock exchange.

- As a foreign private issuer, we are not required to solicit proxies or provide proxy statements to NASDAQ pursuant to NASDAQ corporate governance rules or Bermuda law. Consistent with Bermuda law, we will notify our shareholders of general meetings between 15 and 60 days before the meeting. This notification will contain, among other things, information regarding business to be transacted at the meeting. In addition, our bye-laws provide that shareholders must give us advance notice to properly introduce any business at an annual general meeting of the shareholders. Our bye-laws also provide that shareholders may designate a proxy to act on their behalf (in writing or by telephonic or electronic means as approved by our board from time to time).

Other than as noted above, we are in full compliance with all other applicable NASDAQ corporate governance standards.

Item 16H. Mine Safety Disclosure

Pursuant to Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), issuers that are operators, or that have a subsidiary that is an operator, of a coal or other mine in the United States, and that is subject to regulation by the Federal Mine Safety and Health Administration ("MSHA") under the Mine Safety and Health Act of 1977 (the "Mine Act"), are required to disclose in their periodic reports filed with the SEC information regarding specified health and safety violations, orders and citations, related assessments and legal actions, and mining-related fatalities. During the fiscal year ended December 31, 2012, the Company was not an operator, nor did it have any subsidiary that was an operator, of a coal or other mine in the United States that were subject to regulation by the MSHA under the Mine Act.

PART III

Item 17. Financial Statements

See Item 18.

Item 18. Financial Statements

The financial information required by this Item, together with the related report of PricewaterhouseCoopers S.A. thereon, is filed as part of this annual report.

Item 19. Exhibits

1.1	Amended and Restated Memorandum of Association of NewLead Holdings Ltd. (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on September 30, 2009, and hereby incorporated by reference.)
1.2	Certificate of Incorporation on Change of Name (Previously filed as Exhibit 1.1 to the Company's Report on Form 6-K, filed on January 8, 2010, and hereby incorporated by reference.)
1.3	Amended and Restated Bye-laws of the Company (Previously filed as Exhibit 3.1 to the Company's Report on Form 6-K, filed on January 27, 2010, and hereby incorporated by reference.)
2.1	Indenture, dated as of October 13, 2009, between the Company and Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)) (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
2.2	Form of Note Purchase Agreement, dated October 13, 2009, among the Company, each of the purchasers listed on the signature thereto, and Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)) (Previously filed as Exhibit 99.2 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
2.3	Form of 7% Convertible Senior Note Due 2015, dated as of October 13, 2009, made by the Company (Previously filed as Exhibit 99.3 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
2.4	Warrant Certificate, dated October 13, 2009 from the Company to Investment Bank of Greece (Previously filed as Exhibit 99.8 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
2.5	Form of 4.5% Senior Convertible Note Due 2022, dated December 31, 2012, made by the Company (Previously filed as Exhibit 99.3 to the Company's Report on Form 6-K, filed on February 19, 2013, and hereby incorporated by reference.)
2.6	Note Purchase Agreement, dated February 4, 2013, between the Company and Good Faith Credit LLC.
2.7	$1.0 million Senior Convertible Promissory Note, dated February 5, 2013, made by the Company to Good Faith Credit LLC.
2.8	Form of $7.5 million Promissory Note, dated December 28, 2012, made by the Company.
2.9	Form of $2.0 million Promissory Note, dated December 28, 2012, made by the Company.
2.10	Form of $1.5 million Promissory Note, dated December 28, 2012, made by the Company.
2.11	Note Purchase Agreement, dated June 19, 2013, between the Company and Tiger Equity Partners Ltd.
2.12	$1.67 million Senior Convertible Promissory Note, dated June 19, 2013, made by the Company to Tiger Equity Partners Ltd.
4.1	Form of Equity Incentive Plan (Previously filed as Exhibit 10.6 to the Company's 10.6 to the Company's registration statement on Form F-1/A (Registration No. 333-124952) and hereby incorporated by reference.)

4.2	Amendment to Equity Incentive Plan (Previously filed as Exhibit 4.9 to the Company's Annual Report on Form 20-F, filed on June 26, 2009 and hereby incorporated by reference.)
4.3	Amendment to Equity Incentive Plan, dated October 14, 2010. (Previously filed as Exhibit 4.3 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.4	Amended and Restated 2005 Equity Incentive Plan (Previously filed as Exhibit 4.1 to the Company's Report on Form 6-K, filed on December 22, 2011, and hereby incorporated by reference.)
4.5	Second Amended and Restated 2005 Equity Incentive Plan (Previously filed as Exhibit 4.1 to the Company's Report on Form 6-K, filed on March 15, 2013, and hereby incorporated by reference.)
4.6	Employment Agreement, dated January 1, 2013, between the Company and Michail S. Zolotas.
4.7	Fifth Supplemental Agreement, dated June 11, 2008, between the Company and The Bank of Scotland relating to the Credit Agreement, dated April 3, 2006 among the Company and The Bank of Scotland and Nordea Bank Finland as joint lead arrangers (Previously filed as Exhibit 4.7 to the Company's Annual Report on Form 20-F, filed on June 30, 2008, and hereby incorporated by reference.)
4.8	Sixth Supplemental Agreement, dated June 24, 2009, between the Company and The Bank of Scotland relating to a Credit Agreement, dated April 3, 2006, among the Company and The Bank of Scotland and Nordea Bank Finland as joint lead arrangers (Previously filed as Exhibit 4.8 to the Company's Annual Report on Form 20-F, filed on June 26, 2009, and hereby incorporated by reference.)
4.9	$145 Million Convertible Bond Commitment Letter, dated July 15, 2009, between Investment Bank of Greece and the Company (Previously filed as Exhibit 99.F to the Schedule 13D of Grandunion Inc., filed on September 28, 2009, and hereby incorporated by reference.)
4.10	Financial Agreement, dated August 18, 2009, among Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)), Australia Holdings Ltd., China Holdings Ltd. and Brazil Holdings Ltd. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on January 27, 2010, and hereby incorporated by reference.)
4.11	Registration Rights Agreement, dated September 16, 2009 among Grandunion Inc., Rocket Marine Inc. and the Company (Previously filed as Exhibit 99.D to the Schedule 13D (Amendment No. 1) of Grandunion Inc. and Focus Maritime Corp., filed on October 22, 2009, and hereby incorporated by reference.)
4.12	Voting Agreement, dated September 16, 2009 among Grandunion Inc., Rocket Marine Inc. Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.B to the Schedule 13D of Grandunion Inc., filed on September 28, 2009, and hereby incorporated by reference.)
4.13	Lock-Up Agreement, dated September 16, 2009, among Grandunion Inc., Rocket Marine Inc., Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.C to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
4.14	Lock-Up Agreement, dated September 16, 2009, among Grandunion Inc., Rocket Marine Inc., Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.D to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
4.15	Lock-Up Agreement, dated September 16, 2009, between Grandunion Inc. and the Company (Previously filed as Exhibit 99.E to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
4.16	Facility Agreement, dated October 13, 2009, among the Company, Bank of Scotland plc, Nordea Bank Finland plc, London Branch, HSH Nordbank AG, The Governor and the Company of the Bank of Ireland, Sumitomo Mitsui Banking Corporation, Brussels Branch, Bayerische Hypo-und Vereinsbank AG, Commerzbank Aktiengesellschaft, General Electric Capital Corporation, Natixis and Swedbank AB (publ) (Previously filed as Exhibit 99.5 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)

4.17	Warrant Purchase Agreement, dated October 13, 2009, between the Company and Investment Bank of Greece (Previously filed as Exhibit 99.6 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
4.18	Warrant Agreement, dated October 13, 2009, between the Company and Investment Bank of Greece (Previously filed as Exhibit 99.7 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
4.19	Warrant Agreement, dated January 1, 2013, between the Company and Cypress Camon Investment Management, LLC.
4.20	Amendment to Warrant Agreement, dated June 30, 2013, between the Company and Cypress Camon Investment Management, LLC.
4.21	Registration Rights Agreement, dated October 13, 2009, among Investment Bank of Greece, Focus Maritime Corp. and the Company (Previously filed as Exhibit 99.4 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
4.22	Registration Rights Agreement, dated October, 13, 2009 between the Company and Investment Bank of Greece (Previously filed as Exhibit 99.4 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
4.23	Registration Rights Agreement, dated January 2, 2012, between NewLead Holdings Ltd. and S. Goldman Advisors. LLC (Previously filed as Exhibit 99.2 to the Schedule 13D of S. Goldman Advisors, LLC filed on December 23, 2010, and hereby incorporated by reference.)
4.24	Registration Rights Agreement, dated August 20, 2012, between the Company and Focus Maritime Corp.
4.25	Registration Rights Agreement, dated December 5, 2012, between the Company and Prime Shipping Holding Ltd. (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on February 19, 2013, and hereby incorporated by reference.)
4.26	$80 Million Secured Senior and Junior Term Loan Facility Commitment Letter, dated February 19, 2009 between Bank of Scotland and the Company, as guarantor (Previously filed as Exhibit 4.16 to the Company's Annual Report on Form 20-F, filed on March 18, 2010, and hereby incorporated by reference.)
4.27	Escrow Agreement, dated April 1, 2010, between the Company and Grandunion Inc. and Computershare Trust Company N.A. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
4.28	Registration Rights Agreement, dated April 1, 2010, between the Company and Grandunion Inc. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on April 26, 2010 and hereby incorporated by reference.)
4.29	Second Supplemental Agreement, dated April 1, 2010, in relation to the Loan Agreement, dated November 10, 2006, between the Company and Commerzbank, for a loan facility of up to $18.0 million. (Previously filed as Exhibit 10.4 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
4.30	Loan Agreement, dated March 19, 2008, between the Company and Piraeus Bank, for a loan of up to $76.0 million. (Previously filed as Exhibit 10.6 to the Company's Report on Form 6-K, filed on April 26, 2010 and hereby incorporated by reference.)
4.31	Second Supplemental Agreement, dated March 31, 2010, relating to the Loan Agreement dated March 19, 2008, between the Company and Piraeus Bank, for a loan of up to $76.0 million. (Previously filed as Exhibit 10.7 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
4.32	Loan Agreement, dated March 31, 2010, between the Company and Piraeus Bank, for a loan of up to $21.0 million. (Previously filed as Exhibit 10.8 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)

4.33	Financial Agreement dated March 31, 2010, between the Company and Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)), for a credit facility up to $35.0 million. (Previously filed as Exhibit 10.9 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
4.34	Senior Facility Agreement dated April 15, 2010, among the Company, Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, for a loan up to $66.7 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
4.35	Junior Facility Agreement dated April 15, 2010, among the Company, Bank of Scotland and BTMU Capital Corporation for a loan up to $13.3 million. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
4.36	Supplemental Deed dated April 26, 2010, among the Company, Bank of Scotland plc and Nordea Bank Finland plc, relating to a $221.4 million term loan facility. (Previously filed as Exhibit 10.3 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
4.37	Financial Agreement dated May 6, 2010, between the Company and Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)), for a credit facility up to $65.28 million. (Previously filed as Exhibit 10.4 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
4.38	Loan Agreement, dated October 16, 2007, as novated, amended and restated March 31, 2010, between the Company and West LB, and as further novated, amended and restated on June 4, 2010, relating to a term loan facility of up to $27.5 million. (Previously filed as Exhibit 10.5 to the Company's Report on Form 6-K, filed on July 19, 2010 and hereby incorporated by reference.)
4.39	Loan Agreement dated July 2, 2010, with First Business Bank for a loan facility of up to $24.15 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
4.40	Loan Agreement dated October 22, 2007, with EFG Eurobank for a loan facility of up to $32.0 million. (Previously filed as Exhibit 10.5 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
4.41	Third Supplemental Agreement dated July 9, 2010, relating to the $32.0 million loan facility with EFG Eurobank. (Previously filed as Exhibit 10.6 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
4. 42	Fourth Supplemental Agreement dated August 13, 2010 relating to the $32.0 million loan facility with EFG Eurobank. (Previously filed as Exhibit 10.7 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
4.43	Loan Agreement dated July 9, 2010, with DVB Bank, Nord LB and Emporiki Bank for a loan facility of up to $48.0 million. (Previously filed as Exhibit 10.8 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
4.44	First Supplemental Agreement dated July 14, 2010, relating to the $48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.9 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
4.45	Loan Agreement dated December 10, 2010, with Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formely, Marfin Egnatia Bank S.A.)), for a reducing revolving credit facility of up to $62.0 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on January 11, 2011 and hereby incorporated by reference.)
4.46	Second Supplemental Agreement dated November 9, 2010, relating to the $48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on January 11, 2011 and hereby incorporated by reference.)
4.47	Third Supplemental Agreement dated December 15, 2010, relating to the $48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.3 to the Company's Report on Form 6-K, filed on January 11, 2011, and hereby incorporated by reference.)

4.48	Third Supplemental Agreement, dated November 5, 2010, in relation to the Loan Agreement, dated November 10, 2006, between the Company and Commerzbank, for a loan facility of up to $18.0 million. (Previously filed as Exhibit 4.40 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.49	First Supplemental Agreement, dated October 15, 2010, in relation to Loan Agreement with First Business Bank dated July 2, 2010, for a loan facility of up to $24.15 million. (Previously filed as Exhibit 4.41 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.50	Loan Agreement dated May 9, 2011, with First Business Bank for a loan facility of up to $12.0 million. (Previously filed as Exhibit 4.42 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.51	Second Supplemental Agreement, dated May 9, 2011, in relation to the Loan Agreement dated July 2, 2010, with First Business Bank, for a loan facility of up to $24.15 million. (Previously filed as Exhibit 4.43 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.52	Fifth Supplemental Agreement dated October 15, 2010, relating to the $32.0 million loan facility with EFG Eurobank. (Previously filed as Exhibit 4.45 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.53	Amendment to Escrow Agreement, dated July 2, 2010, between the Company and Grandunion Inc. and Computershare Trust Company N.A. (Previously filed as Exhibit 4.46 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.54	Bareboat Agreement, dated November 23, 2010, between Grand Rodosi Inc. and Prime Hill Maritime Ltd. (Previously filed as Exhibit 4.47 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.55	Bareboat Agreement, dated November 23, 2010, between Australia Holdings Ltd. and Prime Mountain Maritime Ltd. (Previously filed as Exhibit 4.48 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.56	Bareboat Agreement, dated November 23, 2010, between Brazil Holdings Ltd. and Prime Hill Maritime Ltd. (Previously filed as Exhibit 4.49 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.57	Bareboat Agreement, dated November 23, 2010, between China Holdings Ltd. and Prime Time Maritime Ltd. (Previously filed as Exhibit 4.50 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.58	Shares Issuance Agreement, dated January 20, 2011, between the Company and Lemissoler Corporate Management Ltd. (Previously filed as Exhibit 4.51 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.59	Bareboat Agreement, dated June 8, 2011, between Curby Navigation Ltd. and Endurance Shipping LLC. (Previously filed as Exhibit 4.52 to the Company's Annual Report on Form 20-F, filed on June 30, 2011, and hereby incorporated by reference.)
4.60	Charge and Assignment, dated November 28, 2012, between Brazil Holdings Limited and Prime Lake Shipping Ltd. (Previously filed as Exhibit 99.2 to the Company's Report on Form 6-K, filed on February 19, 2013, and hereby incorporated by reference.)
4.61	Stipulation of Settlement Agreement, dated March 22, 2013, between the Company and Hanover Holdings I, LLC (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on April 5, 2013, and hereby incorporated by reference.)

4.62 Order Approving Fairness, dated April 5, 2013 (Previously filed as Exhibit 99.2 to the Company's Report on Form 6-K, filed on April 5, 2013, and hereby incorporated by reference.)

4.63 Stipulation of Settlement Agreement, dated June 24, 2013, between the Company and Hanover Holdings I, LLC (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on July 10, 2013, and hereby incorporated by reference.)

4.64 Order Approving Fairness, dated July 9, 2013 (Previously filed as Exhibit 99.2 to the Company's Report on Form 6-K, filed on July 10, 2013, and hereby incorporated by reference.)

4.65 Supplemental Agreement, dated March 28, 2013, relating to the Loan Agreement with Portigon AG, London Branch (formerly West LB AG, London Branch), dated October 16, 2007, as novated, amended and restated March 31, 2010 and June 4, 2010, relating to a term loan facility of up to $27.5 million.

4.66 Fee Agreement, dated March 28, 2013, with Portigon AG, London Branch.

4.67 Loan Agreement, dated April 10, 2012, with Mojave Finance Inc. for a facility of $3.0 million.

4.68 Pledge Agreement, dated April 11, 2012, made by the Company to Mojave Finance Inc.

4.69 Amendment to the Loan Agreement, dated July 9, 2012, relating to the Loan Agreement with Mojave Finance Inc., dated April 10, 2012, for a facility of $3.0 million.

4.70 Second Amendment to the Loan Agreement, dated January 9, 2013, relating to the Loan Agreement with Mojave Finance Inc., dated April 10, 2012, as amended July 9, 2012, for a facility of $3.0 million.

4.71 Third Amendment to the Loan Agreement, dated July 9, 2013, relating to the Loan Agreement with Mojave Finance Inc., dated April 10, 2012, as amended July 9, 2012 and as further amended January 9, 2013, for a facility of $3.0 million.

4.72 Loan Agreement, dated March 8, 2013 between New Lead JMEG LLC and Oppenheim Capital Ltd. for a facility of $1.35 million.

4.73 Amended and Restated Registration Rights Agreement, dated April 10, 2013, by and between the Company and Piraeus Bank A.E.

4.74 Business Agreement Relating to the Five Mile and Elk Valley Property, dated December 18, 2012, by and between, among others, the Company, Cypress Camon Energy, LLC and Cypress Camon Investment Management, LLC.

4.75 Asset Purchase Agreement, dated June 13, 2012, between Cypress Camon Energy, LLC and Williams Industries, LLC.

4.76 Amendment to Asset Purchase Agreement, dated October 15, 2012, between Cypress Camon Energy, LLC and Williams Industries, LLC.

4.77 Second Amendment to the Asset Purchase Agreement, dated November 6, 2012, between Cypress Camon Energy, LLC and Williams Industries, LLC.

4.78 Asset Purchase Agreement, dated as of May 10, 2012, between Williams Industries, LLC and Kentucky Fuel Corporation.

4.79 Third Amendment to the Asset Purchase Agreement, dated November 6, 2012, between Williams Industries, LLC, Kentucky Fuel Corporation and James C. Justice Companies, Inc.

4.80 Fourth Amendment to the Asset Purchase Agreement, dated February 12, 2013, between Williams Industries, LLC, Kentucky Fuel Corporation and James C. Justice Companies, Inc.

4.81 Fifth Amendment to the Asset Purchase Agreement, dated March 18, 2013, between Williams Industries, LLC, Kentucky Fuel Corporation and James C. Justice Companies, Inc.

4.82	Amended and Restated Forbearance Agreement, effective March 18, 2013, between the Company and Kentucky Fuel Corporation.
4.83	Amended and Restated Forbearance Agreement, effective March 18, 2013, by and between the Company and Williams Industries, LLC.
4.84	Assignment Agreement: Five Mile, dated December 21, 2012, between Cypress Camon Energy, LLC and the Company.
4.85	Asset Purchase and Sale Agreement, effective April 27, 2012, between Cypress Camon Energy, LLC, Ketchen Land Company, Inc., Ketchen Development Company, Inc., Westbourne Lane Associates, LLC, Davis Creek Energy, LLC, Pine Mountain Land Company, Inc. and Ketchen Resources, LLC.
4.86	Reinstatement and Amendment to Asset Purchase and Sale Agreement, dated November 27, 2012, by and between Cypress Camon Energy, LLC, Ketchen Land Company, Inc., Ketchen Development Company, Inc., Westbourne Lane Associates, LLC, Davis Creek Energy, LLC, Pine Mountain Land Company, Inc. and Ketchen Resources, LLC.
4.87	Second Reinstatement and Amendment to Asset Purchase and Sale Agreement, dated March 14, 2013, by and between Cypress Camon Energy, LLC, Ketchen Land Company, Inc., Ketchen Development Company, Inc., Westbourne Lane Associates, LLC, Davis Creek Energy, LLC, Pine Mountain Land Company, Inc. and Ketchen Resources, LLC.
4.88	Assignment Agreement: Elk Valley, dated December 21, 2012, between Cypress Camon Energy, LLC and the Company.
8.1	List of Subsidiaries.
12.1	Rule 13a-14(a)/15d-14(a) Certification of the Company's Chief Executive Officer.
12.2	Rule 13a-14(a)/15d-14(a) Certification of the Company's Chief Financial Officer.
13.1	Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
13.2	Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.1	The following materials from the Company's Annual Report on Form 20-F for the fiscal year ended December 31, 2012, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets; (ii) Consolidated Statements of Operations; (iii) Consolidated Statements of Changes in Shareholders' Equity; (iv) Consolidated Statements of Cash Flows; and (v) the Notes to the Consolidated Financial Statements as blocks of text. *

*Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM
To the Board of Directors and Shareholders of
NewLead Holdings Ltd.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, changes in shareholders' equity and of cash flows present fairly, in all material respects, the financial position of NewLead Holdings Ltd. and its subsidiaries (the "Company") at December 31, 2012 and December 31, 2011 and the results of their operations and their cash flows for the three years ended December 31, 2012, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has incurred a net loss, has negative cash flows from operations, negative working capital, an accumulated deficit and has defaulted under its credit facility agreements resulting in all of its debt being reclassified to current liabilities all of which raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to this matter are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ PricewaterhouseCoopers S.A.
Athens, Greece.

August 30, 2013

NEWLEAD HOLDINGS LTD.

CONSOLIDATED BALANCE SHEETS
(All amounts expressed in thousands of U.S. dollars except share amounts)

	Note	As of December 31, 2012	As of December 31, 2011
ASSETS			
Current assets			
Cash and cash equivalents		$ 1,043	$ 5,119
Restricted cash	8	1,311	250
Trade receivables, net		3,586	12,522
Other receivables		4,980	3,398
Due from related parties		5	82
Inventories		81	1,686
Prepaid expenses		646	2,520
Backlog asset	9	-	2,404
Deferred charges, net	12	573	5,742
Total current assets		**12,225**	**33,723**
Restricted cash	8	31	31
Investments in Joint Ventures	6	1,040	-
Vessels under construction	10	-	7,055
Advance for acquisition of coal property	5	11,000	-
Assets held for sale	11	-	86,082
Vessels and other fixed assets, net	11	37,503	269,519
Backlog asset	9	-	342
Total non-current assets		**49,574**	**363,029**
Total assets		**$ 61,799**	**$ 396,752**
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities			
Current portion of long-term debt	15	$ 78,739	$ 339,722
Accounts payable, trade	13	13,434	38,927
Senior convertible notes, net	16	62,552	53,391
Accrued liabilities	14	10,660	32,489
Capital lease obligations	17	-	107,527
Promissory notes payable	5	11,000	-
Deferred income		-	2,111
Derivative financial instruments	20	767	8,808
Due to related parties		90	445
Due to managing agent		184	184
Total current liabilities		**177,426**	**583,604**
Non-current liabilities			
Unearned profit	17	-	9,083
Deferred income		-	800
Other non-current liabilities		-	5,699
Total non-current liabilities		**-**	**15,582**
Total liabilities		**177,426**	**599,186**
Commitments and contingencies	21		
Shareholders' equity			
Preference Shares, $0.01 par value, 500 million shares authorized, none issued		-	-
Common Shares, $0.01 par value, 1 billion shares authorized, 397.1 million and 7.8 million shares issued and outstanding as of December 31, 2012 and December 31, 2011, respectively		3,971	79
Additional paid-in capital		696,796	209,956
Accumulated deficit		(815,031)	(412,469)
Total NewLead Holdings' shareholders' deficit		**(114,264)**	**(202,434)**
Noncontrolling interest	6	(1,363)	-
Total shareholders' equity		**(115,627)**	**(202,434)**
Total liabilities and shareholders' equity		**$ 61,799**	**$ 396,752**

The accompanying notes are an integral part of the consolidated financial statements.

NEWLEAD HOLDINGS LTD.

CONSOLIDATED STATEMENTS OF OPERATIONS
(All amounts expressed in thousands of U.S. dollars except share and per share amounts)

	Note	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010
OPERATING REVENUES		$ 8,928	$ 12,220	$ 17,438
EXPENSES:				
Commissions		(107)	(150)	(436)
Voyage expenses		(158)	(146)	(4,799)
Vessel operating expenses		(3,266)	(2,928)	(9,714)
General and administrative expenses		(8,249)	(16,521)	(15,311)
Depreciation and amortization expenses		(6,564)	(8,180)	(4,237)
Impairment losses	3, 7, 9, 10, 11, 21	(7,054)	(83,950)	(39,515)
Gain on sale of vessels, net	11	-	-	1,168
Management fees		-	-	(715)
		(25,398)	(111,875)	(73,559)
Operating loss from continuing operations		(16,470)	(99,655)	(56,121)
OTHER (EXPENSES) / INCOME, NET:				
Interest and finance expense	15	(86,549)	(22,672)	(18,550)
Loss on extinguishment of convertible notes		(293,109)	-	-
Interest income		-	68	532
Other (expense) / income, net		(3,528)	(1,457)	1
Change in fair value of derivatives	20	-	-	1,592
Total other expenses, net		(383,186)	(24,061)	(16,425)
Loss before equity in net earnings in Joint Ventures		**(399,656)**	**(123,716)**	**(72,546)**
Loss from investments in Joint Ventures	6	(2,469)	-	-
Loss from continuing operations		**(402,125)**	**(123,716)**	**(72,546)**
Loss from discontinued operations	24	(1,800)	(166,679)	(13,803)
Net loss		**(403,925)**	**(290,395)**	**(86,349)**
Less: Net loss attributable to the noncontrolling interest	6	1,363	-	-
Net loss attributable to NewLead Holdings' Shareholders		**$ (402,562)**	**$ (290,395)**	**$ (86,349)**
Loss per share:				
Basic and diluted				
Continuing operations		$ (2.50)	$ (16.69)	$ (10.42)
Discontinued operations		$ (0.01)	$ (22.49)	$ (1.99)
Total		$ (2.51)	$ (39.18)	$ (12.41)
Weighted average number of shares:				
Basic and diluted		160,921,728	7,411,600	6,958,903

The accompanying notes are an integral part of the consolidated financial statements.

NEWLEAD HOLDINGS LTD.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(All amounts expressed in thousands of U.S. dollars except share amounts)

	Note	Common Shares	Share Capital	Additional Paid-in Capital	Accumulated Deficit	Total NewLead Holdings' Shareholders' Equity	Noncontrolling Interest	Total Shareholders' Equity
Balance at January 1, 2010		**6,615**	**$ 67**	**$ 196,317**	**$ (35,725)**	**$ 160,659**	**$ -**	**$ 160,659**
Net loss		-	-	-	(86,349)	(86,349)	-	(86,349)
Issuance of common shares	18, 19	13	0	-	-	0	-	0
Shares issued for business acquisition	5, 19	700	7	5,203	-	5,210	-	5,210
Issuance of warrants	12, 20	-	-	4,081	-	4,081	-	4,081
Share-based compensation	18	-	-	2,680	-	2,680	-	2,680
Balance at December 31, 2010		**7,328**	**$ 74**	**$ 208,281**	**$ (122,074)**	**$ 86,281**	**$ -**	**$ 86,281**
Net loss		-	-	-	(290,395)	(290,395)	-	(290,395)
Issuance of common shares	18, 19	37	0	87	-	87	-	87
Share-based compensation	18	473	5	1,588	-	1,593	-	1,593
Balance at December 31, 2011		**7,838**	**$ 79**	**$ 209,956**	**$ (412,469)**	**$ (202,434)**	**$ -**	**$ (202,434)**
Net loss		-	-	-	(402,562)	(402,562)	(1,363)	(403,925)
Issuance of common shares	18, 19	731	7	1,017	-	1,024	-	1,024
Issuance of common shares - settlement of liabilities	19	385,305	3,853	482,432	-	486,285	-	486,285
Issuance of warrants	12, 20	-	-	1,015	-	1,015	-	1,015
Share-based compensation	18	3,245	32	2,376	-	2,408	-	2,408
Balance at December 31, 2012		**397,119**	**$ 3,971**	**$ 696,796**	**$ (815,031)**	**$ (114,264)**	**$ (1,363)**	**$ (115,627)**

The accompanying notes are an integral part of the consolidated financial statements.

NEWLEAD HOLDINGS LTD.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(All amounts expressed in thousands of U.S. dollars)

	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010
OPERATING ACTIVITIES:			
Net loss	$ (403,925)	$ (290,395)	$ (86,349)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	5,989	36,945	30,028
Impairment losses	7,054	234,109	39,515
Provision for doubtful receivables	618	243	316
Amortization and write-off of deferred financing costs	5,733	7,930	3,728
Amortization of deferred charter revenue	-	(568)	(3,194)
Amortization of backlog asset	1,603	8,697	13,890
Amortization of the beneficial conversion feature	71,561	8,161	5,942
Change in fair value of derivative financial instruments	(564)	(1,153)	(8,449)
Gain on disposal of vessels and release of debt (non-cash)	(33,005)	-	-
Payments for dry-docking / special survey costs	(985)	(6,650)	(3,548)
Share-based compensation	2,412	1,582	2,680
Warrants compensation expense	1,015	-	-
Loss on equity settlement	342,985	-	-
Discounts from suppliers	(1,355)	-	-
Gain on sale of vessels	(16,258)	(13,363)	(938)
Loss from investments in Joint Ventures	2,469	-	-
(Increase) decrease in:			
Trade receivables	8,127	(6,740)	(927)
Other receivables	(1,583)	(1,211)	676
Inventories	1,389	1,300	617
Prepaid expenses	1,208	(611)	700
Due from/to managing agent	-	489	(2,712)
Due from/to related parties	275	330	(668)
Increase (decrease) in:			
Accounts payable, trade	(2,866)	5,344	(823)
Accrued liabilities	(70)	11,638	(938)
Deferred income	(2,911)	834	769
Net cash used in operating activities	**(11,084)**	**(3,089)**	**(9,685)**
INVESTING ACTIVITIES:			
Vessel acquisitions	-	(23,863)	(1,601)
Vessels under construction	(185)	(89,364)	(45,126)
Advances for vessel acquisition	-	-	(3,177)
Joint Ventures	(2,486)	-	-
Restricted cash for vessel installment payments	-	11,033	(11,033)
Cash acquired through business acquisition, net of cash paid	-	-	1,561
Cash surrendered through subsidiaries' foreclosure	(665)	-	-
Other fixed asset acquisitions	-	(190)	(76)
Proceeds from the sale of vessels	85,172	32,772	37,263
Net cash provided by / (used in) investing activities	**81,836**	**(69,612)**	**(22,189)**
FINANCING ACTIVITIES:			
Principal repayments of long-term debt	(76,203)	(94,879)	(482,243)
Proceeds from long-term debt	3,000	51,318	419,445
Restricted cash for debt repayment	(1,061)	31,992	(21,038)
Proceeds from the sale and leaseback of vessels	-	26,600	86,800
Capital lease payments	-	(4,040)	(1,833)
Payments for deferred charges	(564)	(702)	(7,982)
Proceeds from issuance of common shares	-	-	1
Net cash (used in) / provided by financing activities	**(74,828)**	**10,289**	**(6,850)**
Net decrease in cash and cash equivalents	**(4,076)**	**(62,412)**	**(38,724)**
Cash and cash equivalents			
Beginning of year	5,119	67,531	106,255
End of period	**$ 1,043**	**$ 5,119**	**$ 67,531**
Supplemental Cash Flow information:			

Interest paid, net of capitalised interest	$ 7,875	$ 30,642	$ 23,684
Issuance of common shares for business combination	$ -	$ -	$ 5,210
Issuance of common shares for investment in Joint Ventures	$ 1,024	$ -	$ -
Release of liabilities for vessels under construction	$ 9,179	$ -	$ -
Release of debt related to vessels under construction	$ 5,492	$ -	$ -
Disposal of vessels applied to related debt	$ 105,498	$ -	$ -
Disposal of vessels applied to capital lease obligations	$ 30,481	$ -	$ -
Issuance of common shares for settlement of 7% Notes	$ 138,111	$ -	$ -
Capital lease obligations settled with common shares and 4.5% convertible note	$ 58,057	$ -	$ -
Release of purchase option liabilities	$ 2,194	$ -	$ -
Assets and liabilities disposed of by foreclosure:			
- Vessels	$ 93,993	$ -	$ -
- Long-term debt	$ 76,836	$ -	$ -
- Capital lease obligations	$ 26,301	$ -	$ -
- Disposed other assets / liabilities, net	$ 12,546	$ -	$ -
Issuance of common shares to settle accounts payable	$ 11,694	$ -	$ -
Issuance of warrants for deferred charges	$ -	$ -	$ 957
Assets disposed in connection with assumed acquisitions	$ -	$ -	$ 8,501
Assets acquired and liabilities assumed under asset acquisitions:			
- Acquired advances for vessels under construction	$ -	$ -	$ 29,315
- Vessels and other fixed assets, net acquired	$ -	$ -	$ 81,110
- Long-term debt assumed	$ -	$ -	$ 118,868
Acquired other assets / liabilities, net	$ -	$ -	$ 40,098
Assets acquired and liabilities assumed under business acquisitions:			
- Vessels and other fixed assets, net acquired	$ -	$ -	$ 143,808
- Long-term debt assumed	$ -	$ -	$ 154,475
- Other assets and liabilities, net acquired	$ -	$ -	$ 36
Progress payment payable for vessels under construction	$ -	$ 8,873	$ -
Sale of vessels applied to related debt	$ -	$ 64,532	$ -

The accompanying notes are an integral part of the consolidated financial statements.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

1. DESCRIPTION OF BUSINESS

NewLead Holdings Ltd. (the "Company" or "NewLead") was incorporated on January 12, 2005.

NewLead has historically been an international shipping company, and is now an international, vertically integrated shipping and commodity company. As of December 31, 2012, the Company owns two dry bulk vessels and manages two double-hulled product tankers owned by third parties. NewLead's principal activity is the ownership and operation of dry bulk vessels and the operation of product tankers owned by third parties that transport a variety of refined petroleum products and a wide array of unpackaged cargo world-wide. In addition, under specific management agreements, the Company performs part of the commercial, the technical and the operational management of vessels owned by a third party.

In April 2012, a wholly-owned U.S. subsidiary of the Company entered into a joint venture agreement with J Mining & Energy Group to purchase thermal coal (used in power plants for electricity generation) located in Kentucky, USA. The joint venture has entered into agreements to purchase certain quantities of thermal coal with specified minimum qualities (after processing at the mine by the mine operator) over a five-year period. The Company expects to market and distribute the thermal coal to end users or distributors, located primarily in Asia, and transport it using the Company's vessels. In connection with entering into the joint venture arrangement, the Company's U.S. subsidiary was converted from a Delaware limited liability company into a Delaware corporation and its name was changed from NewLead Holdings (US) LLC to NewLead Holdings (US) Corp. In addition, in April 2012, NewLead entered into an agreement for the establishment of a new entity, NewLead Mojave Holdings LLC. The Company contributed to the capital of the new entity 100% of NewLead Holdings (US) Corp. share capital, while Mojave Finance Inc. agreed to make available a loan of $3,000 to NewLead Holdings (US) Corp. The Company controls 52% of NewLead Mojave Holdings LLC.

Up to the date of issuance of these financial statements, the Company has completed the negotiations with its lenders under the Financing Documents (as defined below) regarding the terms of the Restructuring Proposal (as defined below) presented on November 8, 2011 and finalized the satisfaction and release of the Company's obligations under certain of its debt agreements and the amendment of the terms of certain other debt agreements. As part of the restructuring efforts, the Company has sold vessels as part of the arrangements with its lenders to reduce and discharge the Company's obligations. During 2011 and up to the date of issuance of these financial statements, the Company has sold, disposed of or handed control over to its lenders a total of 20 vessels and hulls under construction (or the ownership of the shipowning subsidiaries) in connection with the restructuring plan. To the extent that the Company has sold vessels, the sale proceeds have been used to repay the related debt. See Notes 10, 11, 15, 16, 17 and 25 for a detailed description of certain recent developments relating to the restructuring plan.

In connection with the 2009 recapitalization, the Company issued $145,000 in aggregate principal amount of 7% senior unsecured convertible notes due 2015 (the "7% Notes"). The issuance of the 7% Notes was pursuant to an Indenture dated October 13, 2009, between the Company and Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (as the successor of Cyprus Popular Bank)"), and a Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. ("Focus") as purchasers. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, the Company's Chairman and Chief Executive Officer, converted $20,000 of the 7% Notes into approximately 2.2 million new common shares. In connection with the Company's debt restructuring, on July 2, 2012, the Company entered into an agreement with Focus for the conversion of its remaining $124,900 of the 7% Notes, together with interest accrued thereon and future interest payments and an additional fee payable to Focus as an inducement for the conversion, into approximately 264.9 million common shares of the Company. Under the agreement, the Company may not allow debt to equity conversions on more favorable terms to other debtors. As of December 31, 2012, Investment Bank of Greece retained $100 outstanding principal amount of the 7% Notes. The Investment Bank of Greece was also granted warrants to purchase up to 416,667 common shares of the Company at an exercise price of $24.00 per share, with an expiration date of October 13, 2015, in connection with advisory services provided by the Investment Bank of Greece to the Company (refer to Note 16). As a result of this conversion, Focus, as at December 31, 2012, owned approximately 67% of the Company's outstanding common shares.

Newlead Shipping S.A. ("Newlead Shipping") is an integrated technical and commercial management company that manages oil tankers as well as dry bulk vessels through its subsidiaries. It provides a broad spectrum of technical and commercial management to all segments of the maritime shipping industry resulting in the Company discontinuing the outsourcing of such services. Newlead Shipping holds the following accreditations:

- ISO 9001 from American Bureau of Shipping Quality Evaluations for a quality management system that includes consistently providing service that meets customer and applicable statutory and regulatory requirements and enhancing customer satisfaction through, among other things, processes for continual improvement;

- ISO 14001 from American Bureau of Shipping for environmental management, including policies and objectives targeting legal and other requirements; and

- Certificate of Company Compliance by the American Bureau of Shipping for safety, quality and environmental requirements of the ABS HSQE guide.

Going concern

The Company has experienced losses, working capital deficiencies, negative operating cash flow and shareholders' deficiency, which has affected, and which is expected to continue to affect, its ability to satisfy its obligations, despite the Restructuring and the new business arrangements set forth in Note 25 "Subsequent events". Charter rates for bulkers have experienced a high degree of volatility. Charter hire rates for bulkers continue to be at historical lows.

In connection with the Company's acquisition of ownership and mineral rights to approximately 7,695 acres of land in Kentucky, USA (the "Kentucky property"), on December 28, 2012, the Company issued promissory notes to RJLT Investments LLC, Williams Industries LLC ("Williams") and Kentucky Fuel Corporation ("Kentucky") in the amounts of $1,500, $2,000 and $7,500, respectively, payable in their entirety on January 29, 2013. The Company issued the promissory notes to help facilitate the sale of the Kentucky property from Kentucky to Williams, as the Company has agreed to acquire the Kentucky property from Williams on a closing date subsequent to December 31, 2012. The promissory notes that were issued on December 28, 2012 in the amount of $11,000 are reflected under Promissory notes payable in the consolidated balance sheet. Due to lack of financing, the Company has been unable to meet its obligations and is currently in default under such agreements. To date, the noteholders have not initiated any actions against the Company based upon the continuing defaults. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and for any and all amounts owed.

In addition, in connection with the Company's acquisition of ownership and leasehold interests in 18,335 acres in Tennessee, USA (the "Tennessee property"), the Company is required to pay $55,000 ($30,000 was payable on or before February 15, 2013 and $25,000 payable on or before February 15, 2014.) Under the terms of the agreements governing the acquisition, the Company has also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the agreements. Pursuant to the terms of the agreements, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the agreements shall terminate and be of no further force or effect. The Company has been unable to meet the obligations under the agreements, is currently in default under such agreements and no longer has the right to utilize the property. To date, the sellers have not initiated any actions against the Company based upon such continuing defaults. Because the Company has defaulted under the terms of agreements, in June 2013 the Company assigned all rights under permits, mining contracts or other mining assets on the property back to seller. While the Company intends to secure the financing to satisfy the agreements, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable to the parties for damages or any and all amounts owed under the agreements, which may adversely affect its business.

Furthermore, due to its economic conditions and operational difficulties, the Company entered into restructuring discussions with the lenders under the facility and credit agreements set forth in Note 15 (Long Term Debt) sections (a) through (h), the holders of the 7% Notes set forth in Note 16 and the counterparties to the Company's capital leases set forth in Note 17 (Capital Lease Obligations) (collectively, the agreements governing such debt, the "Financing Documents"). As part of those discussions, the Company appointed Moelis & Company ("Moelis") to act as its financial advisors in respect of an overall restructuring proposal with respect to the Financing Documents. On November 8, 2011, the Company and Moelis presented to each of the lenders under the Financing Documents a commercial presentation which set out a comprehensive global restructuring proposal (the "Restructuring Proposal"), and which included, among other things, proposed amendments to the Financing Documents (including amortization relief and reset of financial covenants). The Company has been engaged in negotiations with its lenders under the Financing Documents regarding the terms of the Restructuring Proposal and as of the date of issuance of this report has completed the restructuring efforts for the Syndicate Facility Agreement, Kamsarmax Syndicate Facility Agreements, Eurobank Credit Facility, Northern Shipping Fund LLC Capital Lease Obligation, Portigon AG (formerly, West LB Bank) Credit Facility, Piraeus Bank Credit Facilities, Handysize Syndicate Facility Agreement, Lemissoler Maritime Company W.L.L. Capital Lease Obligation (all references to the Lemissoler Maritime Company W.L.L. Capital Lease Obligation refer to the agreement entered into with Prime Mountain Shipping Ltd, Prime Lake Shipping Ltd, Prime Time Shipping Ltd and Prime Hill Shipping Ltd, the four affiliate companies of Lemissoler Maritime Company W.L.L., in November 2010, for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi) and the 7% Notes, subject, in the case of the Syndicate Facility Agreement, final payment of outstanding fees. However, the Company was not able to restructure the credit facility with Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (CPB loan)"). Due to the recent economic conditions of the country of Cyprus and the recent acquisition of the Greek branch of Cyprus Popular Bank Public Co. Ltd. by Piraeus Bank A.E. ("Piraeus Bank"), the Company's restructuring efforts with Piraeus Bank (CPB loan) have experienced difficulties and, as a result, have been delayed. Due to these difficulties, the Company has chosen to treat its negotiations with Piraeus Bank (CPB loan) separately from its restructuring efforts with its other lenders.The Company remains in restructuring negotiations with Piraeus Bank (CPB loan) outside of the Restructuring Proposal. In addition, while the Company has completed its restructuring efforts with the lenders under the Syndicate Facility Agreement, it continues to have an outstanding liability of $129 under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, the Company has nevertheless not been formally discharged and released of any and all of its obligations in respect of the Syndicate Facility Agreement due to this outstanding liability. See also Note 25 for a discussion of the recent developments relating to the Company's restructuring negotiations.

As a further result of the economic conditions and operational difficulties set out above, as of December 31, 2012, the Company was also in default under its credit agreements with Piraeus Bank (CPB loan), Portigon AG, Piraeus Bank and the 4.5% Senior Convertible Note due in 2022 issued to Prime Shipping Holding Ltd ("Prime") (an affiliate of Lemissoler Maritime Company W.L.L. ("Lemissoler")) ("4.5% Note") (refer to Note 17), in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions), as those credit facilities had not yet been restructured and discharged. To date, the Company continues to be in default under the Piraeus Bank (CPB loan) Credit Facility, the 4.5% Note, the Portigon AG Credit Facility, and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all.

Although the Restructuring reduced the Company's outstanding debt obligations, the Company issued significant additional common shares which diluted its existing shareholders and such additional issuances, individually or in the aggregate, significantly impacted the trading price of the Company's common shares and may also impact its continued listing on NASDAQ.

As a result of the restructuring process, it will be difficult for the Company to incur additional debt on commercially reasonable terms, even if the Company is permitted to do so under its debt agreements. This may limit the ability of the Company to pursue activities that its management considers to be beneficial to it, which may further impair its financial condition.

All of the above raise substantial doubt regarding the Company's ability to continue as a going concern.

Long-term debt and the 4.5% Note have been classified as current liabilities due to covenant violations. The covenant violations in long-term debt give lenders the right to call the debt at the balance sheet date, absent waivers. Accordingly, as of December 31, 2012, the Company has reclassified all of its long term debt and 4.5% Note as current liabilities in its consolidated balance sheet, since it has not received waivers in respect of the covenants that were breached at such time. The financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

2. SUBSIDIARIES INCLUDED IN THE CONSOLIDATED FINANCIAL STATEMENTS

NewLead's subsidiaries included in these consolidated financial statements were as follows:

	Company Name	Country of Incorporation	Nature / Vessel Name	Statement of operations 2012	2011	2010
1	Land Marine S.A.	Marshall Islands	Dissolved (1)	—	—	1/1/2010 — 9/15/2010
2	Rider Marine S.A.	Marshall Islands	Dissolved (2)	—	—	1/1/2010 — 4/22/2010
3	Ostria Waves Ltd.	Marshall Islands	Dissolved (3)	—	—	1/1/2010 — 9/7/2010
4	Altius Marine S.A.	Marshall Islands	Vessel owning company (4)	—	1/1/2011 — 12/22/2011	1/1/2010 — 12/31/2010
5	Fortius Marine S.A.	Marshall Islands	Vessel owning company (4)	—	1/1/2011 — 12/22/2011	1/1/2010 — 12/31/2010
6	Ermina Marine Ltd.	Marshall Islands	Vessel owning company (5)	—	—	1/1/2010 — 9/7/2010
7	Chinook Waves Corporation	Marshall Islands	Vessel owning company (6)	—	—	1/1/2010 — 4/15/2010
8	Compass Overseas Ltd.	Bermuda	Vessel owning company (7)	1/1/2012 — 1/31/2012	1/1/2011 — 12/31/2011	1/1/2010 — 12/31/2010
9	Compassion Overseas Ltd.	Bermuda	Vessel owning company (7)	1/1/2012 — 1/31/2012	1/1/2011 — 12/31/2011	1/1/2010 — 12/31/2010
10	Australia Holdings Ltd.	Liberia	Vessel owning company (8)	1/1/2012 — 1/31/2012	1/1/2011 — 12/31/2011	1/1/2010 — 12/31/2010
11	Brazil Holdings Ltd.	Liberia	Vessel owning company (9)	1/1/2012 — 3/19/2012	1/1/2011 — 12/31/2011	1/1/2010 — 12/31/2010
12	China Holdings Ltd.	Liberia	Vessel owning company (10)	1/1/2012 — 2/11/2012	1/1/2011 — 12/31/2011	1/1/2010 — 12/31/2010
13	Curby Navigation Ltd.	Liberia	Foreclosed (11)	1/1/2012 — 3/14/2012	6/13/2011 — 12/31/2011	—
14	Newlead Victoria Ltd.	Liberia	M/V Newlead Victoria	1/1/2012 — 12/31/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
15	Grand Venetico Inc.	Marshall Islands	Vessel owning company (12)	1/1/2012 — 5/8/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
16	Grand Oceanos Inc.	Liberia	Vessel owning company (13)	1/1/2012 — 1/11/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
17	Grand Rodosi Inc.	Liberia	Vessel owning company (14)	1/1/2012 — 2/7/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
18	Challenger Enterprises Ltd.	Liberia	Vessel owning company (15)	1/1/2012 — 7/19/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
19	Crusader Enterprises Ltd.	Liberia	Vessel owning company (15)	1/1/2012 — 7/27/2012	1/1/2011 — 12/31/2011	4/1/2010 — 12/31/2010
20	Newlead Shipping S.A.	Panama	Management company	—	—	—
21	Newlead Bulkers S.A.	Liberia	Management company	—	—	—
22	Santa Ana Waves Corporation	Marshall Islands	Dissolved (16)	—	—	—
23	Makassar Marine Ltd.	Marshall Islands	Dissolved (17)	—	—	1/1/2010 — 1/7/2010
24	Seine Marine Ltd.	Marshall Islands	Dissolved (18)	—	—	1/1/2010 — 1/20/2010
25	Vintage Marine S.A.	Marshall Islands	Dissolved (19)	—	—	—
26	Jubilee Shipholding S.A.	Marshall Islands	Dissolved (19)	—	—	—
27	Olympic Galaxy Shipping Ltd.	Marshall Islands	Dissolved (20)	—	—	—
28	Dynamic Maritime Co.	Marshall Islands	Dissolved (20)	—	—	—
29	AMT Management Ltd.	Marshall Islands	Management company	—	—	—
30	NewLead Holdings (US) Corp. (ex NewLead Holdings (ex Aries Maritime) (US) LLC)	United States of America	Operating company (21)	—	—	—
31	Abroad Consulting Ltd.	Marshall Islands	Dissolved (22)	—	—	—

(All amounts expressed in thousands of U.S. dollars)

	Company Name	Country of Incorporation	Nature / Vessel Name	Statement of operations 2012	2011	2010
32	Leading Marine Consultants Inc.	Marshall Islands	Operating company	—	—	—
33	Ayasha Trading Corporation	Liberia	Foreclosed (23)	1/1/2012 — 2/24/2012	1/1/2011 — 12/31/2011	12/3/2010 — 12/31/2010
34	Bethune Properties S.A.	Liberia	Foreclosed (24)	1/1/2012 — 2/24/2012	11/10/2011 — 12/31/2011	—
35	Grand Esmeralda Inc.	Liberia	Vessel owning company (25)	1/1/2012 — 2/16/2012	1/1/2011 — 12/31/2011	7/9/2010 — 12/31/2010
36	Grand Markela Inc.	Liberia	M/V Newlead Markela	1/1/2012 — 12/31/2012	1/1/2011 — 12/31/2011	7/2/2010 — 12/31/2010
37	Grand Spartounta Inc.	Marshall Islands	Vessel owning company (26)	—	1/1/2011 — 9/13/2011	7/2/2010 — 12/31/2010
38	Newlead Progress Inc.	Marshall Islands	Dormant company	—	—	—
39	Newlead Prosperity Inc.	Marshall Islands	Vessel owning company (26)	—	1/1/2011 — 9/20/2011	10/1/2010 — 12/31/2010
40	Grand Affection S.A.	Marshall Islands	Vessel owning company (27)	1/1/2012 — 3/26/2012	7/28/2011 — 12/31/2011	—
41	Grand Affinity S.A.	Marshall Islands	Hull owning company (28)	—	—	—
42	Newlead Stride Inc.	Marshall Islands	Dissolved (20)	—	—	—
43	Grand Victoria Pte Ltd.	Singapore	Dormant company	—	—	—
44	Newlead Bulker Holdings Inc.	Marshall Islands	Sub-holding company	—	—	—
45	Newlead Tanker Holdings Inc.	Marshall Islands	Sub-holding company	—	—	—
46	Mote Shipping Ltd.	Malta	Dissolved (20)	—	—	—
47	Statesman Shipping Ltd.	Malta	Dissolved (29)	—	—	—
48	Trans Continent Navigation Ltd.	Malta	Dormant company	—	—	—
49	Trans State Navigation Ltd.	Malta	Dormant company	—	—	—
50	Bora Limited	British Virgin Islands	Vessel owning company	—	—	—
51	Newlead Trading Inc.	Liberia	Trading company (30)	—	—	—
52	New Lead JMEG LLC	United States of America	Trading company (31)	—	—	—
53	Newleadjmeg Inc.	Marshall Islands	Dormant company (32)	—	—	—
54	NewLead Mojave Holdings LLC	United States of America	Operating company (33)	—	—	—
55	Ocean Hope Shipping Ltd.	Malta	Dormant company	—	—	—

1) M/T High Land was sold and delivered to its new owners on September 15, 2010. The shipowning company was dissolved on September 21, 2011.

2) M/T High Rider was sold and delivered to its new owners on April 22, 2010. The shipowning company was dissolved on September 21, 2011.

3) M/T Ostria was sold and delivered to its new owners on September 7, 2010. The shipowning company was dissolved on September 21, 2011.

4) M/T Newlead Avra and M/T Newlead Fortune were sold and delivered to their new owners on December 22, 2011.

5) M/T Nordanvind was sold and delivered to its new owners on September 7, 2010.

6) M/T Chinook was sold and delivered to its new owners on April 15, 2010.

7) M/T Newlead Compass and M/T Newlead Compassion were sold and delivered to their new owners on January 31, 2012.

8) M/V Australia was delivered to its owner (an affiliate of Lemissoler Maritime Company W.L.L.) on January 31, 2012.

9) M/V Brazil was delivered to its owner (an affiliate of Lemissoler Maritime Company W.L.L.) on March 19, 2012.

10) M/V China was delivered to its owner (an affiliate of Lemissoler Maritime Company W.L.L.) on February 11, 2012.

11) On March 14, 2012, the lessor foreclosed on M/V Newlead Endurance. Refer to Note 17 for more details. Newlead Bulkers had the commercial, technical and operational management of the vessel until March 31, 2012.

12) M/V Newlead Venetico was sold and delivered to its new owners on May 8, 2012.

13) M/V Grand Ocean was sold and delivered to its new owners on January 11, 2012.

14) M/V Grand Rodosi was delivered to its owner (an affiliate of Lemissoler Maritime Company W.L.L.) on February 7, 2012.

15) M/T Hiona and M/T Hiotissa were sold and delivered to their new owners on July 19, 2012 and July 27, 2012, respectively. After these dates, Newlead Shipping continued to have part of the commercial, technical and operational management of these vessels. On February 25, 2013, the Company received notices of redelivery and termination, which were effected during June 2013, pursuant to the terms of the management agreements governing such services.

16) The company was dissolved on November 9, 2010.

17) M/V Saronikos Bridge was sold and delivered to its new owners on January 7, 2010. The shipowning company was dissolved on July 28, 2011.

18) M/V MSC Seine was sold and delivered to its new owners on January 20, 2010. The shipowning company was dissolved on July 28, 2011.

19) These shipowning companies were dissolved on September 21, 2011.

20) Olympic Galaxy Shipping Ltd. and Dynamic Maritime Co. were dissolved on July 28, 2011. Newlead Stride Inc. was dissolved on November 22, 2011. Mote Shipping Ltd. was dissolved on August 5, 2011.

21) The Company controls 52% of NewLead Holdings (US) Corp. through NewLead Mojave Holdings LLC.

22) The company was dissolved on June 15, 2010.

23) On February 24, 2012, the lender foreclosed on the shares of Ayasha Trading Corporation (owner of M/V Newlead Tomi). Newlead Bulkers had the commercial, technical and operational management of the vessel until April 18, 2012. Refer to Note 15 for more details.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

24) On February 24, 2012, the lender foreclosed on the shares of Bethune Properties S.A. (owner of M/V Newlead Gujarat). Newlead Bulkers had the commercial, technical and operational management of the vessel until May 21, 2012. Refer to Note 15 for more details.

25) M/V Newlead Esmeralda was sold and delivered to its new owners on February 16, 2012.

26) M/V Newlead Spartounta and M/V Newlead Prosperity were sold and delivered to their new owners on September 13, 2011 and September 20, 2011, respectively. Refer to Note 11 for more details.

27) On July 28, 2011, Hull 4023, named Navios Serenity, was delivered from a Korean shipyard. On March 26, 2012, M/V Navios Serenity was sold and delivered to its new owners.

28) On May 22, 2012, the Shipbuilding Contract for Hull 4029 with SPP Shipbuilding Co. Ltd.was terminated. Refer to Note 10 for more details.

29) The company was dissolved on August 5, 2011.

30) Newlead Trading Inc. was established on July 1, 2011 as a joint venture between the Company and a third party. The Company owns 50% of the shares of Newlead Trading Inc. No operations have taken place by this entity.

31) New Lead JMEG LLC was established on April 11, 2012 as a joint venture between the Company and J Mining & Energy Group. The Company has joint control with J Mining & Energy Group of New Lead JMEG LLC.

32) Newleadjmeg Inc. was established on February 23, 2012. The Company owns 50% of the shares of Newleadjmeg Inc. No transactions have taken place by this entity.

33) NewLead Mojave Holdings LLC was established on April 30, 2012. The Company controls 52% of NewLead Mojave Holdings LLC and is entitled to and is liable for the total net assets of NewLead Mojave Holdings LLC according to this percentage of control.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation:

The accompanying financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain immaterial reclassifications to the prior years/periods presentation have been made to conform to the current year presentation.

Principles of Consolidation:

The accompanying consolidated financial statements represent the consolidation of the accounts of the Company and its wholly-owned subsidiaries. The subsidiaries are fully consolidated from the date on which control is transferred to the Company. Subsidiaries are those entities in which NewLead has an interest of more than one half of the voting rights or otherwise has power to govern the financial and operating policies of each one.

The Company also consolidates entities that are determined to be variable interest entities as defined in the accounting guidance, if it determines that it is the primary beneficiary. A variable interest entity is defined as a legal entity where either (a) equity interest holders as a group lack the characteristics of a controlling financial interest, including decision making ability and an interest in the entity’s residual risks and rewards, or (b) the equity holders have not provided sufficient equity investment to permit the entity to finance its activities without additional subordinated financial support, or (c) the voting rights of some investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected residual returns of the entity, or both and substantially all of the entity’s activities either involve or are conducted on behalf of an investor that has disproportionately few voting rights.

All inter-company balances and transactions have been eliminated upon consolidation.

Use of Estimates:

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, management evaluates the estimates and judgments, including those related to future dry-dock dates, the selection of useful lives for tangible and intangible assets, expected future cash flows from long-lived assets to support impairment tests, expected future cash flows from reporting units to support goodwill impairment tests, provisions necessary for accounts receivables, provisions for legal disputes, and contingencies. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions and/or conditions.

Foreign Currency Transactions:

The functional currency of the Company is the U.S. dollar because the Company’s vessels operate in international shipping markets, and therefore primarily transact business in U.S. dollars and the Company’s debt is denominated in U.S. dollars. The accounting records of the Company’s subsidiaries are maintained in U.S. dollars. Transactions involving other currencies during a year are converted into U.S. dollars using the exchange rates in effect at the time of the transactions. At the balance sheet dates, monetary assets and liabilities, which are denominated in other currencies, are translated to reflect the period-end exchange rates. Resulting gains or losses are reflected in the accompanying consolidated statements of operations.

Cash and Cash Equivalents:

The Company considers highly liquid investments, such as time deposits and certificates of deposit, with an original maturity of three months or less to be cash equivalents.

Restricted Cash:

Restricted cash includes additional minimum cash deposits required to be maintained with certain banks under the Company’s borrowing arrangements. In addition, it includes cash collateralized, cash that can be withheld at any time by such banks following events of default, as well as retention accounts which contain the proceeds from the sale of the vessels. The funds can only be used for the purposes of interest payments and loan repayments.

(All amounts expressed in thousands of U.S. dollars)

Trade Receivables, Net and Other Receivables:

The amount shown as trade receivables, net at each balance sheet date includes estimated recoveries from charterers for hire, freight and demurrage billings, net of allowance for doubtful accounts. An estimate is made of the allowance for doubtful accounts based on a review of all outstanding amounts at each period, and an allowance is made for any accounts which management believes are not recoverable. Bad debts are written off in the year in which they are identified. The allowance for doubtful accounts at December 31, 2012 and December 31, 2011 amounted to $2,382 and $1,624, respectively, and relates to continuing and discontinued operations. Other receivables relate mainly to claims for hull and machinery and loss of hire insurers and guarantees, as well as to amounts to be received from Lemissoler Maritime Company W.L.L. ("Lemissoler") for the settlement of outstanding liabilities relating to the four dry bulk vessels, as part of an agreement entered into with Lemissoler on November 28, 2012 (refer to Note 17).

Inventories:

Inventories, which comprise bunkers and lubricants remaining on board the vessels at year end, are valued at the lower of cost and market value as determined using the first in-first out method.

Equity Investments

The Company uses the equity method of accounting to account for its interest in New Lead JMEG LLC, recording the initial investment at cost. Subsequently, the carrying amount of the investment is increased to reflect the Company's share of income of the investee and capital contributions, and are reduced to reflect the Company's share of losses of the investee or distributions received from the investee.

Vessels and Other Fixed Assets, net:

Vessels are stated at cost less accumulated depreciation and impairment losses. Cost consists of the contract price, delivery and acquisition expenses, interest cost while under construction, and, where applicable, initial improvements. Vessels acquired through an asset acquisition or through a business combination are stated at fair value. Subsequent expenditures for conversions and major improvements are also capitalized when they appreciably extend the life, increase the earnings capacity or improve the efficiency or safety of a vessel; otherwise, these amounts are charged to expenses as incurred.

Depreciation of a vessel is computed using the straight-line method over the estimated useful life of the vessel, after considering the estimated salvage value of the vessel. Each vessel's salvage value is equal to the product of its lightweight tonnage and estimated scrap value per lightweight ton. Management estimates the useful life of the Company's vessels to be 25 years from the date of its initial delivery from the shipyard.

However, when regulations place limitations over the ability of a vessel to trade, its useful life is adjusted to end at the date such regulations become effective.

Fixed assets are stated at cost. The cost and related accumulated depreciation of fixed assets sold or retired are removed from the accounts at the time of sale or retirement and any gain or loss is included in the accompanying statement of operations.

Depreciation of fixed assets is computed using the straight-line method. Annual depreciation rates, which approximate the useful life of the assets, are:

Furniture, fixtures and equipment:	3 years
Computer equipment and software:	3 years

Assets held for sale/Discontinued operations:

Long-lived assets are classified as "Assets held for sale" when the following criteria are met: management has committed to a plan to sell the asset; the asset is available for immediate sale in its present condition; an active program to locate a buyer and other actions required to complete the plan to sell the asset have been initiated; the sale of the asset is probable, and transfer of the asset is expected to qualify for recognition as a completed sale within one year; the asset is being actively marketed for sale at a price that is reasonable in relation to its current fair value and actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Assets classified as held for sale are measured at the lower of their carrying amount or fair value less cost to sell. These assets are not depreciated once they meet the criteria to be held for sale.

The Company reports discontinued operations when the operations and cash flows of a component, usually a vessel, have been (or will be) eliminated from the ongoing operations of the Company, and the operations and cash flows will not be replaced or the Company does not have the ability to replace the vessels, and the Company will not have any significant continuing involvement in the operations of the component after its disposal. All assets held for sale are considered discontinued operations for all periods presented.

For years ended December 31, 2012, 2011 and 2010, a total of twenty vessels and hulls have been reported as discontinued operations (see Note 24). The Container Market (as defined in Note 24) was fully discontinued as of December 31, 2009.

Accounting for Special Survey and Dry-docking Costs:

The Company's vessels are subject to regularly scheduled dry-docking and special surveys, which are carried out every 30 or 60 months to coincide with the renewal of the related certificates issued by the Classification Societies, unless a further extension is obtained in rare cases and under certain conditions. The costs of dry-docking and special surveys are deferred and amortized over the above periods or to the next dry-docking or special survey date if such date has been determined.

Costs incurred during the dry-docking period relating to routine repairs and maintenance are expensed. The unamortized portion of special survey and dry-docking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain/(loss) on sale of the vessel.

Impairment of Long-lived Assets:

Long-lived assets and certain identifiable intangibles held and used by an entity are required to be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the future net undiscounted cash flows from the asset group are less than the carrying values of the asset group, an impairment loss is recorded equal to the difference between the asset's carrying value and its fair value.

Undiscounted projected net operating cash flows are determined for each asset group and compared to the carrying value of the vessel and related carrying value of the intangible (backlog asset and deferred charter revenue) with respect to the time charter agreement attached to that vessel or the carrying value of deposits for newbuildings. Within the shipping industry, vessels are customarily bought and sold with a charter attached. The value of the charter may be favorable (backlog asset) or unfavorable (deferred charter revenue) when comparing the charter rate to then current market rates. The loss recognized either on impairment (or on disposition) will reflect the excess of carrying value over fair value (selling price) for the vessel asset group. For vessels under construction, the net estimated cash flows also include the future cash outflows to make vessels ready for use, all remaining progress payments to shipyards and other pre-delivery expenses (e.g. capitalized interest).

The significant factors and assumptions the Company used in the undiscounted projected net operating cash flow analysis included, among others, operating revenues, off-hire revenues, dry-docking costs, operating expenses and management fee estimates. Revenue assumptions were based on a number of factors for the remaining life of the vessel: (a) contracted time charter rates up to the end of life of the current contract of each vessel, (b) the most recent ten-year average historical one-year time charter rates (adjusted for market conditions), (c) the respective vessel's age as well as considerations such as scheduled and unscheduled off-hire days based on historical experience and (d) the likelihood of the sale of the asset group. Operating expense assumptions included an annual escalation factor. All estimates used and assumptions made were in accordance with the Company's historical experience. Fair value is determined using the valuation derived from market data.

The current assumptions used and the estimates made are highly subjective, and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require the Company to record a material impairment charge in future periods. The Company performed an impairment assessment of the long-lived assets groups (i) during the years ended December 31, 2012, 2011, and 2010, when certain vessels were disposed of, and (ii) as of December 31, 2012, 2011 and 2010. For the year ended December 31, 2012, the Company recorded an impairment charge totaling $5,911 in continuing operations on one of the two vessels that were held and used as of December 31, 2012. In addition, an impairment charge in continuing operations of $1,143 was recorded on back log assets. For certain asset groups as of December 31, 2011, the future net undiscounted cash flows from the assets were less than the carrying values of the assets and, therefore, were adjusted to fair value. For the year ended December 31, 2011, the Company recorded an impairment charge in the amount of $2,360 on one of the two vessels that is classified as held and used and an impairment charge in the amount of $101,415 on fifteen vessels that are classified as discontinued operations (see Note 11). In addition, an impairment charge in discontinued operations of $43,214 was recorded on back log assets, and of $5,530 was recorded on vessels under construction. For the year ended December 31, 2010, the Company recorded an impairment charge on vessels in the amount of $15,662 all of which was recorded within continuing operations.

As per the Company's impairment assessment as of December 31, 2012, the vessels' undiscounted projected net operating cash flows were in excess of their carrying values by more than 60%.

Backlog asset/Deferred charter revenue:

Where the Company identifies any assets or liabilities associated with the acquisition of a vessel, the Company typically records all such identified assets or liabilities at fair value. Fair value is determined by reference to market data. The Company values any asset or liability arising from the time or bareboat charters assumed based on the market value at the time a vessel is acquired. The amount to be recorded as an asset or liability at the date of vessel delivery is based on the difference between the current fair value of a charter with similar characteristics as the time charter assumed and the net present value of future contractual cash flows from the time charter contract assumed. When the present value of the time charter assumed is greater than the current fair value of a charter with similar characteristics, the difference is recorded as a backlog asset. When the net present value of the time or bareboat charter assumed is lower than the current fair value of a charter with similar characteristics, the difference is recorded as deferred charter revenue. Such assets and liabilities, respectively, are amortized as an increase in, or a reduction of, "Depreciation and Amortization Expense" over the remaining period of the time or bareboat charters acquired. For the impairment recognized on these assets, refer to "Impairment of Long-lived Assets" in this Note.

Provisions:

The Company, in the ordinary course of business, is subject to various claims, suits and complaints. Management provides for a contingent loss in the financial statements if the contingency has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. In accordance with the guidance issued by the Financial Accounting Standards Board ("FASB"), in accounting for contingencies, if the Company has determined that the reasonable estimate of the loss is a range, and there is no best estimate amount within the range, the Company will provide the lower amount of the range. See Note 21 "Commitments and Contingent Liabilities" for further discussion.

The Company participates in Protection and Indemnity (P&I) insurance plans provided by mutual insurance associations known as P&I clubs. Under the terms of these plans, participants may be required to pay additional premiums (supplementary calls) to fund operating deficits incurred by the clubs ("back calls"). Obligations for back calls are accrued annually based on information provided by the clubs and when the obligations are probable and estimable.

Leases:

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases. The Company records vessels under capital leases as fixed assets at the lower of the present value of the minimum lease payments at inception of the lease or the fair value of the vessel. Vessels under capital leases are amortized over the estimated remaining useful life of the vessel for capital leases which provide for transfer of title of the vessel, similar to that used for other vessels of the Company.

Payments made for operating leases are expensed on a straight-line basis over the term of the lease. Office and warehouse rental expense is recorded in "General and administrative expenses" in the consolidated statements of operations.

Financing Costs:

Fees incurred for obtaining new debt are deferred and amortized over the life of the related debt, using the effective interest rate method.

Fees incurred in a refinancing of existing debt continue to be amortized over the remaining term (or expected remaining term) of the new debt where there is a modification of the debt. Fees incurred in a refinancing of existing loans where there is an extinguishment of the old debt are written off and included in the debt extinguishment gain or loss.

Interest Expense:

Interest costs are generally expensed as incurred and include interest on loans, financing costs, amortization and write-offs and a deemed interest from BCF. Interest costs incurred while a vessel is being constructed are capitalized.

Accounting for Revenue and Expenses:

The Company generates its revenues from charterers for the charter hire of its vessels. Vessels are chartered using either time and bareboat charters, where a contract is entered into for the use of a vessel for a specific period of time and a specified daily charter hire rate, or voyage charters, where a contract is made in the spot market for the use of a vessel for a specific voyage for a specified charter rate. If a charter agreement exists, price is fixed, service is provided and collection of the related revenue is reasonably assured, revenue is recognized as it is earned ratably on a straight-line basis over the duration of the period of each time charter as adjusted for the off-hire days that the vessel spends undergoing repairs, maintenance and upgrade work depending on the condition and specification of the vessel and address commissions. A voyage is deemed to commence upon the completion of discharge of the vessel's previous cargo and is deemed to end upon the completion of the discharge of the current cargo.

Profit sharing represents the Company's portion of the excess of the actual net daily charter rate earned by the Company's charterers from the employment of the Company's vessels over a predetermined base charter rate, as agreed between the Company and its charterers. Such profit sharing is recognized in revenue when mutually settled.

Demurrage income represents payments by the charterer to the vessel owner when loading or discharging time exceeded the stipulated time in the voyage charter and is recognized as incurred.

Deferred income represents cash received on charter agreement prior to the balance sheet date and is related to revenue not meeting the criteria for recognition.

Voyage Expenses:

Voyage expenses comprise all expenses related to each particular voyage, including time charter hire paid and voyage freight paid bunkers, port charges, canal tolls, cargo handling, agency fees and brokerage commissions.

Vessel Operating Expenses:

Vessel operating expenses consist of all expenses relating to the operation of vessels, including crewing, repairs and maintenance, insurance, stores and lubricants and miscellaneous expenses such as communications. Vessel operating expenses exclude fuel cost, port expenses, agents' fees, canal dues and extra war risk insurance, which are included in "voyage expenses".

Insurance Claims:

Insurance claims represent the claimable expenses, net of deductibles, which are probable to be recovered from insurance companies. Any costs to complete the claims are included in accrued liabilities. The Company accounts for the cost of possible additional call amounts under its insurance arrangements in accordance with the accounting guidance for contingencies based on the Company's historical experience and the shipping industry practices. These claims are included in the consolidated balance sheet line item "Other receivables".

Pension and Retirement Benefit Obligations-Crew:

The crew on board the companies' vessels serves in such capacity under short-term contracts (usually up to seven months) and accordingly, the vessel-owning companies are not liable for any pension or post-retirement benefits.

Repairs and Maintenance:

Expenditure for routine repairs and maintenance of the vessels is charged against income in the period in which it is incurred. Major vessel improvements and upgrades are capitalized to the cost of vessel.

Derivative Financial Instruments:

Derivative financial instruments are recognized in the balance sheets at their fair values as either assets or liabilities. Changes in the fair value of derivatives that are designated and qualify as cash flow hedges, and that are highly effective, are recognized in other comprehensive income. If derivative transactions do not meet the criteria to qualify for hedge accounting, any unrealized changes in fair value are recognized immediately in the statement of operations.

Gain/loss arising on the termination of interest rate swap agreements qualifying as hedging instruments are deferred and amortized over the shorter of the life of the hedged debt or the hedge instrument.

The Company has entered into various interest rate swap agreements (see Note 20) that did not qualify for hedge accounting. As such, the fair value of these agreements and changes therein are recognized in the balance sheets and statements of operations, respectively.

Share-based Compensation:

The standard requires the Company to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions). The grant-date fair value of employee share options and similar instruments are estimated using option-pricing models adjusted for the unique characteristics of those instruments. The cost is recognized over the period during which an employee is required to provide service in exchange for the award — the requisite service period (usually the vesting period). No compensation cost is recognized for equity instruments for which employees do not render the requisite service. Employee share purchase plans will not result in recognition of compensation cost if certain conditions are met. If an equity award is modified after the grant date, incremental compensation cost will be recognized in an amount equal to the excess of the fair value of the modified award over the fair value of the original award immediately before the modification.

Warrants:

The Company initially measures warrants at fair value. If warrants meet accounting criteria for equity classification then there is no other measurement subsequent to their issue. If based on their contractual terms warrants need to be recorded as derivative liabilities, then they are remeasured to fair value at each reporting period with changes recognized in the statements of operations.

Segment Reporting:

Operating segments, as defined, are components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing financial performance. The Company reports financial information and evaluates its operations by charter revenues and not by vessel type, length of ship employment, customers or type of charter. Management, including the chief operating decision makers, reviews operating results solely by revenue per day and operating results of the fleet. Based on this review, the Company has determined that it operates under one reportable segment. In addition, any revenues from the technical and the operational management of vessels owned by a third party are not considered significant ($474, $0 and $0 during the years ended December 31, 2012, 2011 and 2010, respectively) and the coal business is expected to initiate its operations during the fourth quarter of 2013 or as otherwise agreed.

Loss per Share:

The Company has presented loss per share for all periods presented based on the weighted average number of its outstanding common shares at the reported periods. The effect of dilutive or potentially dilutive securities is anti-dilutive, accordingly there is no difference between basic and diluted net loss per share.

4. RECENT ACCOUNTING PRONOUNCEMENTS

Obligations Resulting from Joint and Several Liability Arrangements

In February 2013, the FASB issued an amendment of the Accounting Standards Codification regarding recognition, measurement, and disclosure of obligations resulting from joint and several liability arrangements for which the total amount of the obligation within the scope of the new guidance is fixed at the reporting date, except for obligations addressed within existing guidance in U.S. generally accepted accounting principles. Examples of obligations within the scope of this update include debt arrangements, other contractual obligations, and settled litigation and judicial rulings. U.S. generally accepted accounting principles do not include specific guidance on accounting for such obligations. The amended standard requires an entity to measure obligations resulting from joint and several liability arrangements for which the total amount of the obligation within the scope of the new guidance is fixed at the reporting date, as the sum of: a) the amount the reporting entity agreed to pay on the basis of its arrangement among its co-obligors and b) any additional amount the reporting entity expects to pay on behalf of its co-obligors. The updated guidance also requires an entity to disclose the nature and amount of the obligation as well as other information about those obligations. The amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2013. The adoption of the new standard is not expected to have a significant impact on the Company’s consolidated financial statements.

5. ACQUISITIONS

Acquisition of Six Vessels, Newlead Shipping and its Subsidiaries

On April 1, 2010, NewLead completed the 100% acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, pursuant to the terms of a Securities Purchase Agreement, dated March 31, 2010 (the “Purchase Agreement”), between NewLead and Grandunion. In exchange for shares of the subsidiaries acquired, NewLead assumed approximately $161,000 of bank debt, accounts payable and accrued liabilities, net of cash acquired, and paid Grandunion an additional consideration of $5,310 which consisted of $100 in cash, as well as 700,214 common shares (the “Shares”) to Grandunion, reflecting the 737,037 Shares initially issued to complete the acquisition and the subsequent cancellation of 36,823 of these Shares to maintain the aggregate consideration in accordance with the terms of the Purchase Agreement as a result of assuming a higher amount of liabilities. The Company valued the Shares issued at $7.44 per common share, which represented the market price less a discount for the Lock-Up Agreement.

The acquisition was accounted for under the acquisition method of accounting and, accordingly, the assets acquired and liabilities assumed were recorded at their fair values. The excess of the fair value of total liabilities assumed over total assets acquired and other consideration resulted in a premium (goodwill) of $14,280. The goodwill balance arose primarily as a result of the synergies existing within the acquired business and also the synergies expected to be achieved as a result of combining the six vessels and Newlead Shipping and its subsidiaries with the rest of the Company.

Direct acquisition costs of approximately $1,300 were fully expensed.

The following paragraph includes unaudited pro forma consolidated financial information and reflects the results of operations for the year ended December 31, 2010, as if the acquisition had been consummated as of January 1, 2010 and after giving effect to acquisition accounting adjustments. These pro forma results have been prepared for comparative purposes only and do not purport to be indicative of what operating results would have been had the acquisition actually taken place as of January 1, 2010. In addition, these results are not intended to be a projection of future results and do not reflect any synergies that might be achieved from the combined operations. The actual results of the operations of the six vessels and the two management companies are included in the consolidated financial statements of the Company only from the date of the acquisition.

If the business combination had taken place on January 1, 2010, the Company’s operating revenues would have been approximately $112,400 for the year ended December 31, 2010, and net loss would have been approximately $107,200 for the year ended December 31, 2010 (including approximately $13,803 of loss from discontinued operations). The contribution of this business combination in the year ended December 31, 2010 since the acquisition date was as follows: (a) approximately $31,200 in operating revenues and (b) approximately $2,100 in net loss.

Acquisition of the Kentucky Property and Tennessee Property

On December 18, 2012, the Company entered into an agreement (the “Williams-CCE-Newlead Holdings APA”) with Cypress Camon Energy, LLC (“Cypress”), Cypress Camon Investment Management, LLC (“CCIM”) the minority owners of Cypress and certain third parties (together the “Owners”) to purchase:

i. the Kentucky property ownership and mineral rights for $11,000 in promissory notes payable in their entirety in January 29, 2013.

ii. the Tennessee property ownership and leasehold interests for $55,000 ($30,000 payable on or before February 15, 2013 and $25,000 payable on or before February 15, 2014).

In connection with the acquisitions, the Company agreed to pay CCIM $3,000 in the form of common shares of NewLead (7,500,000 shares were issued on March 28, 2013) and a ten year warrant for $6,400 in common shares of NewLead, at an exercise price of $0.40 per share, for the assignment of the acquisition contracts to NewLead. In addition, on January 1, 2013, the Company agreed to issue to J Mining & Energy Group 42,500,000 common shares as a prepayment for its assistance in supervising, securing and executing the acquisitions. The shares were issued on March 28, 2013.

Based on the agreements executed with the Owners, the Company determined that as of December 31, 2012 there has been no exchange of assets, liabilities and ownership interests and the control of the properties will remain with the Owners until closing.

As part of the Williams-CCE-Newlead Holdings Asset Purchase Agreement (APA), the Company agreed to help facilitate the December 31, 2012 closing of the Asset Purchase Agreement of the Kentucky property between Williams and Kentucky in which Kentucky transferred its ownership and mineral rights in the Kentucky property to Williams (both Williams and Kentucky are unrelated parties to the Company). In connection with sale between William and Kentucky, on December 28, 2012, the Company issued promissory notes to RJLT Investments LLC, Williams Industries LLC and Kentucky Fuel Corporation in the amount of $1,500, $2,000 and $7,500, respectively, payable in their entirety on January 29, 2013. The Company issued the promissory notes to facilitate the sale to Williams as the Company has agreed to acquire the Kentucky property from Williams on a closing date subsequent to December 31, 2012. In connection with the issuance of the promissory notes, the Company received a security interest in Kentucky property to secure the repayment of the notes, but the Company did not receive an ownership interest in, or control over, the Kentucky property.

The promissory notes that were issued on December 28, 2012 in the amount of $11,000 are reflected under Promissory notes payable in the consolidated balance sheet. The related asset is reflected under Advance for acquisition of coal property in the consolidated balance sheet.

See Note 25 for recent developments relating to this acquisition.

6. JOINT VENTURES

On April 11, 2012, through one of its wholly-owned subsidiaries, NewLead Holdings (US) Corp., the Company entered into a Joint Venture Agreement with J Mining & Energy Group to establish New Lead JMEG LLC as a joint venture to engage in the business of the purchasing and trading certain commodities, principally coal. The Company has joint control with J Mining & Energy Group of New Lead JMEG LLC and is entitled to and is liable for the total net assets of the joint venture. NewLead Holdings (US) Corp. contributed to the capital of the joint venture $2,500 cash and $1,000 in value of coal sales agreements. In addition, the Company delivered to J Mining & Energy Group $300 and 731,140 common shares of the Company as a condition to the closing of the Joint Venture Agreement.

On July 13, 2012, and in relation to this Joint Venture Agreement, the Company and New Lead JMEG LLC, entered into a marketing and administrative services agreement (effective as of April 11, 2012), where it was agreed NewLead (through its subsidiary Newlead Bulkers) would provide the aforementioned services with a monthly fee of $160. In addition, NewLead and J Mining & Energy Group invoiced New Lead JMEG LLC for an aggregate amount of $3,280 relating to start up fees. Due to the nature of these related party transactions, invoices in the amount of $1,980 to New Lead JMEG LLC from the Company, as well as the aggregate of $1,387 from the relevant marketing and administrative services agreement, have not been recognized as revenue during the year ended December 31, 2012, but they will be recognized upon payment of each amount from New Lead JMEG LLC.

For the year ended December 31, 2012, New Lead JMEG LLC had a loss of $4,939, which was comprised of the fees described above, as well as from other general and administrative expenses. No other transactions have taken place during this period. As of December 31, 2012, New Lead JMEG LLC's current assets were $2,380 and its current liabilities were $4,819.

On April 30, 2012, the Company and a third party established NewLead Mojave Holdings LLC ("NewLead Mojave"). The Company controls 52% of NewLead Mojave and is entitled to and is liable for the total net assets of NewLead Mojave according to this percentage of control. The Company contributed to the capital of the new entity 100% of NewLead Holdings (US) Corp.'s share capital, while Mojave Finance Inc. agreed to make available a loan facility of $3,000 to NewLead Holdings (US) Corp.

For the year ended December 31, 2012, NewLead Mojave had a loss of $2,838 which was comprised of $2,469 loss attributable to NewLead Mojave as a result of its 50% investment in New Lead JMEG LLC and of $369 Interest and Finance Costs, respectively. No other transactions have taken place during this period.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

7. GOODWILL

As a result of the 2009 recapitalization the Company recorded the following:

1. The transfer of the three vessels—the Australia, the Brazil and the China—to NewLead from Grandunion was accounted for as an asset acquisition and at historical book value, since control over the vessels did not change.

2. The acquisition of the predecessor entity was accounted for under the acquisition method of accounting and, accordingly, these assets and liabilities assumed were recorded at their fair values. The excess of the purchase price over the fair value of the assets acquired and liabilities assumed resulted in a premium (goodwill) of $86,036.

Goodwill Impairment

The Company evaluated goodwill, described above and in Note 5, for impairment using a two-step process. First, the aggregate fair value of the reporting unit was compared to its carrying amount, including goodwill. The Company determines the fair value based on discounted cash flow analysis. The fair value for goodwill impairment testing was estimated using the expected present value of future cash flows, and using judgments and assumptions that management believes were appropriate in the circumstances. The future cash flows from operations were determined by considering the charter revenues based on a number of factors relating to the remaining life of the vessels, including: (a) the contracted time charter rates up to the end of life of the current contract of each vessel, (b) the most recent ten-year average historical one-year time charter rates (adjusted for market conditions) and (c) the respective vessel's age, as well as considerations such as scheduled and unscheduled off-hire days based on historical experience or, if the most likely use of the vessel would result in flows only through its disposal, the fair value of the vessel at the end of the reporting period. Expenses were forecasted with reference to the historic absolute and relative levels of expenses the Company has incurred in generating revenue in each reporting unit, and operating strategies and specific forecasted operating expenses to be incurred are forecasted by applying an inflation rate of 2% considering the economies of scale due to the Company's growth. The weighted average cost of capital (WACC) used was between 9% and 12%.

The Company's annual impairment test as of December 31, 2011 and 2010 resulted in an impairment charge of $81,590 and $18,726, respectively, which was recorded in "Impairment losses" in the consolidated statement of operations. No goodwill remained after these two impairment charges.

8. RESTRICTED CASH

Restricted cash, as of December 31, 2012 and December 31, 2011, was as follows:

	As of December 31, 2012	As of December 31, 2011
Minimum Liquidity	$ -	$ 250
Retention accounts	1,311	-
Short term restricted cash accounts	**1,311**	**250**
Letters of guarantee	31	31
Long term restricted cash accounts	**31**	**31**
	$ 1,342	**$ 281**

As of December 31, 2012, the Company retained in its bank accounts an amount of $1,311 following the disposal of vessels Hiona and Hiotissa. This amount refers to cash that can be withheld at any time by Piraeus Bank as the Company is in breach of the covenants under the respective Credit Facility and which will be used as per the final agreement reached with Piraeus Bank on April 10, 2013 as follows: (a) $282 for payment of trade debt of the two vessels and $1,029 for the settlement of outstanding loan liabilities at the bank's discretion.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

9. BACKLOG ASSET / DEFERRED CHARTER REVENUE

The movement of the backlog asset and the deferred charter revenue for the three year period ended December 31, 2012 was as follows:

	Backlog Asset	Deferred Charter Revenue
Balance at January 1, 2010	**$ 5,528**	**$ -**
Business combination (Note 5)	9,833	3,051
Additions	53,186	710
Amortization	(13,890)	(3,194)
Balance at December 31, 2010	**$ 54,657**	**$ 567**
Amortization	(8,697)	(567)
Impairment loss	(43,214)	-
Balance at December 31, 2011	**$ 2,746**	**$ -**
Amortization	(1,603)	-
Impairment loss	(1,143)	-
Balance at December 31, 2012	**$ -**	**$ -**
December 31, 2011		
Current	$ 2,404	$ -
Non-current	$ 342	$ -

As a result of the business combination disclosed in Note 5, the transaction related to the Kamsarmax vessels described in Note 10, and the July 2010 acquisition of five dry bulk vessels described in Note 11, the Company acquired backlog assets of $9,833, $27,677 and $25,509, respectively.

Impairment of backlog assets

As a result of the change of the terms of the charter party agreement of the vessel Markela, during the year ended December 31, 2012, an impairment charge of the then unamortized portion of $1,143 was recorded and is included within “Impairment losses” from continuing operations.

As a result of the impairment testing of the vessel asset groups, certain backlog assets related to the vessels Newlead Tomi, Navios Serenity, Newlead Gujarat and Handysize Hull 4029 were considered impaired as of December 31, 2011 and an impairment charge totaling $43,214 was recorded and is included in Loss from discontinued operations. See Note 3 for the details related to the impairment tests of the vessel asset groups.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

10. VESSELS UNDER CONSTRUCTION

The movement of the vessels under construction as of December 31, 2012 was as follows:

	Kamsarmax Vessels	Post-Panamax Vessel	Handysize Vessels	Total
Balance January 1, 2011	**$ 6,229**	**$ 7,798**	**$ 18,226**	**$ 32,253**
Advance payments in cash	35,000	28,600	19,350	82,950
Progress payment payable for vessels under construction	-	-	7,400	7,400
Capitalized expenses	3,609	2,310	1,968	7,887
Impairment loss	-	-	(5,530)	(5,530)
Transfer to vessels' cost	(44,838)	(38,708)	(34,359)	(117,905)
Balance December 31, 2011	**$ -**	**$ -**	**$ 7,055**	**$ 7,055**
Capitalized expenses	-	-	185	185
Disposals — Discontinued operations	-	-	(7,240)	(7,240)
Balance December 31, 2012	$ -	$ -	$ -	$ -

The Company purchased a 92,000 deadweight ton ("dwt") newbuild Post-Panamax vessel from a shipyard in South Korea for $37,000. The vessel, named the Newlead Endurance, was delivered in June 2011 and the total cost (including capitalized interest) of $38,708 was transferred to vessels.

The Newlead Gujarat was delivered in November 2011. The total cost of $44,838 was transferred to the vessel Newlead Gujarat.

As further explained in Note 11 "Vessels and Other Fixed Assets, Net", in July 2010, the Company acquired two newbuildings and recognized purchase option liabilities of $3,973, with respect to the charterers' 50% purchase option on these two hulls. The fair value as of the acquisition date of these two newbuildings was $9,588. In July 2011, the Navios Serenity, one of the two Handysize newbuilding vessels of 35,000 dwt, was delivered from a Korean shipyard and the total cost transferred to vessels was $34,359.

As of December 31, 2011, the Handysize Hull 4029 was tested for impairment and an impairment charge of $5,530 was recorded. As a result, as of December 31, 2011, total fair value of deposits for this Hull was $7,055 and the remaining commitments for delivery of this vessel amounted to approximately $19,350.

On February 20, 2012, the Company received a default letter from the yard in respect of the delay of the payment of an installment of $7,400 after the completion of the "steel cutting" in September 2011 for the Handysize Hull 4029. On May 22, 2012, the Company signed an agreement with the shipbuilder and the Shipbuilding Contract with SPP Shipbuilding Co., Ltd., the prior contract with the yard, was terminated and ceased to be valid. Under this agreement, the Company and the yard mutually waived all rights and released and discharged each other from all liabilities, obligations, claims and demands. This agreement resulted in the Company being released from the $7,400 liability to the yard and the $7,240 write-off of the balance of the vessel under construction. In addition, on May 22, 2012, the Company was released from its obligations under the related Handysize Syndicate Facility Agreement for the Handysize Hull 4029, which were $5,492 (see Note 15). Furthermore, the obligation under the purchase option liability of $1,779 was written off upon the termination of the shipbuilding contract. The net gain resulting from these transactions and any other costs related to the sale amounted to $7,424 and is included in Loss from discontinued operations.

11. VESSELS AND OTHER FIXED ASSETS, NET

Acquisition of vessels

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately $112,700 (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction.

In July 2010, the Company completed the acquisition of five dry bulk vessels, including two newbuildings, from Grandunion. Pursuant to the purchase agreement, the entire transaction, which was an asset acquisition, aggregated to approximately $147,000, which included assumption of bank debt, other liabilities, net and the newbuildings' commitments. The fair values acquired consisted of vessels of $58,110, vessels under construction of $9,588, backlog assets of $25,509, a deferred charter revenue liability of $710, bank debt of $86,368, purchase option liabilities of $3,973 and net other liabilities of $2,156.

In October 2010, the Company acquired the vessel Newlead Prosperity for a total consideration of $24,500.

Transfer from vessels under construction

In June 2011, the Newlead Endurance was delivered from a South Korean shipyard for a contracted price of $37,000. A total cost of $38,708 was transferred from vessels under construction.

In July 2011, the Navios Serenity was delivered from a Korean shipyard for a contracted price of $34,000. A total cost of $34,359 was transferred from vessels under construction.

In November 2011, the Newlead Gujarat was delivered from a Korean shipyard for a contracted price of $34,000. A total cost of $44,838 was transferred from vessels under construction.

Disposal of vessels (Continuing operations)

On April 22, 2010, the Company sold the High Rider to an unrelated third party for proceeds to the Company of approximately $6,700. The gain on the sale of the High Rider amounted to $49 and is included in Gain on the sale of vessels, net.

In September 2010, the Company sold the Ostria and the Nordanvind to unrelated third parties, for aggregate proceeds of approximately $16,300, resulting in an aggregate gain on the sale of the vessels of $1,045. Also, in September 2010, the Company sold the High Land for proceeds of approximately $4,500. The gain on the sale of the vessel amounted to $74 and is included in Gain on the sale of vessels, net.

Disposal of vessels (Discontinued operations - see Note 24)

On July 19, 2012 and on July 27, 2012, the Company sold the Hiona and the Hiotissa, respectively, to two unrelated parties for proceeds of approximately $28,500 for each vessel. The gain on the sale of the vessels amounted to $18,011 and is included in Loss from discontinued operations. The Company paid an address commission of 1.5% of the purchase price as a sales commission.

On May 8, 2012, the Company sold the Newlead Venetico to an unrelated party for proceeds of approximately $9,450. The loss on the sale of the vessel amounted to $1,268 and is included in Loss from discontinued operations. The Company paid an address commission of 4.25% of the purchase price as a sales commission.

On March 26, 2012, the Company sold the Navios Serenity to an unrelated party for proceeds of approximately $26,000. The loss on the sale of the vessel amounted to $49 and is included in Loss from discontinued operations.

On February 24, 2012, the Bank of Scotland plc ("Bank of Scotland") issued notices of enforcement and notices of default and acceleration in relation to their respective loan agreements, each dated April 15, 2010 (collectively, the "Kamsarmax Syndicate Facility Agreements"), between Ayasha Trading Corporation ("Ayasha") and Bethune Properties S.A. ("Bethune"), as borrowers, and the Bank of Scotland, BMTU Capital Corporation, and the Bank of Ireland, as lenders (see also Note 15). Ayasha and Bethune were the shipowning companies of the vessels Newlead Tomi and Newlead Gujarat, respectively. Pursuant to such notices, the Bank of Scotland, as the agent and security trustee under each of the Kamsarmax Syndicate Facility Agreements, exercised its rights to foreclose on the shares of Ayasha and Bethune, which secured the loans under the Kamsarmax Syndicate Facility Agreements and the vessels were handed over to the lenders' control. The gain on the transaction resulting from the release of the respective liabilities to the lender amounted to $24,576 and is included in Loss from discontinued operations.

On February 16, 2012, the Company sold the Newlead Esmeralda to an unrelated party for proceeds of approximately $11,400. The loss on the sale of the vessel amounted to $28 and is included in Loss from discontinued operations.

On December 29, 2011, the Company signed a memorandum of agreement relating to the Grand Ocean and on January 11, 2012 sold the vessel to an unrelated party for proceeds of approximately $8,150. The loss on the sale of the vessel amounted to $457 and is included in Loss from discontinued operations. As of December 31, 2011, the Grand Ocean was classified as an asset held for sale, and was written down to its recoverable amount. The Company paid a 2% address commission and a 1% brokerage commission of the purchase price as sales commission to an unrelated party.

On December 20, 2011, the Company entered into a memorandum of agreement with an unrelated party for the sale of four LR1 product tanker vessels. The sale of two vessels, the Newlead Fortune and the Newlead Avra, was completed on December 22, 2011 for an aggregate selling price of $64,532. The carrying value of the vessels was $55,171 and the gain on the sale of these two vessels amounted to $8,640 and is included in Loss from discontinued operations in the accompanying statements of operations and cash flows. As of December 31, 2011, the Newlead Compass and the Newlead Compassion met the criteria for “Assets Held for Sale” and were recorded at their carrying value of $64,712, since this was below fair value (less costs to sell). The sale was completed on January 31, 2012 for a selling price of $80,159. The gain on the sale of these two vessels amounted to $14,267 and is included in Loss from discontinued operations in the accompanying statements of operations and cash flows.

On August 12, 2011, First Business Bank (“FBB”) and the Company entered into an agreement for the sale of two vessels, the Newlead Spartounta and Newlead Prosperity, which were sold on September 13, 2011 and September 20, 2011, respectively, for a net aggregate selling price of $33,548. The carrying value of the vessels was $28,005 and the gain on the sale of these two vessels amounted to $4,931 and is included in Loss from discontinued operations in the accompanying statements of operations and cash flows.

On January 7, 2010, the Company sold the Saronikos Bridge to an unrelated party for net proceeds of $5,348. The gain on the sale of the vessel amounted to $1,226 and is included in Loss from discontinued operations. The Company paid 1% of the purchase price as a sales commission to a brokerage firm, of which one of the former Company’s directors is a shareholder (refer to Note 23). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as, a 1% address commission.

On January 20, 2010, the Company sold the MSC Seine to an unrelated party for net proceeds of $5,399. The gain on the sale of the vessel amounted to $1,271 and is included in Loss from discontinued operations. The Company paid 1% of the purchase price as a sales commission to a brokerage firm, of which one of the former Company’s directors is a shareholder (refer to Note 23). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as a 1% address commission.

Disposal of leased vessels (Discontinued operations)

On March 14, 2012, the Company received enforcement notices from Endurance Shipping LLC whereby, among other things, Endurance Shipping LLC exercised its rights to foreclose on the pledge of the shares of Curby Navigation Ltd., which secured the bareboat charter (see also Note 17). On March 14, 2012, the Company redelivered the Newlead Endurance to Northern Shipping Fund LLC pursuant to a redelivery agreement in respect of the capital leasing arrangement. As part of this redelivery agreement, the Company was released from all its obligations and liabilities under the relevant finance lease documentation. The loss on the transaction amounted to $5,645 and is included in Loss from discontinued operations.

In November 2010, the Company signed an agreement with Lemissoler for the sale and leaseback of the vessels Australia, Brazil, China and Grand Rodosi (see also Note 17).

On March 19, 2012, the Company entered into an agreement with Prime Lake Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel Brazil, in settlement of part of the vessel’s outstanding debt. The redelivery of the vessel was completed on March 19, 2012.

On February 3, 2012, the Company entered into an agreement with Prime Hill Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel Grand Rodosi, in settlement of part of the vessel’s outstanding debt. The redelivery of the vessel was completed on February 7, 2012.

On February 3, 2012, the Company entered into an agreement with Prime Time Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel China, in settlement of part of the vessel’s outstanding debt. The redelivery of the vessel was completed on February 11, 2012.

On October 21, 2011, the Company entered into an agreement with Prime Mountain Shipping Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.), in order to redeliver the vessel Australia, in settlement of part of the vessel’s outstanding debt, for a gross aggregate price of $13,220. As of December 31, 2011, the Australia was classified as an asset held for sale, and was written down to its fair value (less costs to sell). The redelivery of the vessel was completed on January 31, 2012. The Company paid an address commission of 3.5% of the purchase price as a sales commission.

The aggregate loss of the redelivery of these four vessel amounted to $669 and is included in Loss from discontinued operations.

Assets held for sale

On December 29, 2011, the Company entered into a memorandum of agreement with an unrelated party for the sale of the Grand Ocean, which was completed on January 11, 2012, for a net aggregate selling price of approximately $8,150. On October 21, 2011, the Company entered into an agreement with Prime Mountain Shipping Ltd, in order to return the vessel Australia in settlement of part of the vessel's outstanding debt. The delivery was completed on January 31, 2012. As of December 31, 2011, the Grand Ocean and the Australia met the criteria for "Assets Held for Sale" and were recorded at fair value (less costs to sell) of $21,370.

On December 20, 2011, the Company entered into a memorandum of agreement with an unrelated party for the sale of four LR1 product tanker vessels. Two vessels were sold in 2011 as noted above and the sale of the other two vessels, the Newlead Compass and the Newlead Compassion, was completed on January 31, 2012. As of December 31, 2011, the Newlead Compass and the Newlead Compassion met the criteria for "Assets Held for Sale" and were recorded at their carrying value of $64,712, as the carrying value was below fair value (less costs to sell).

As of December 31, 2012 and December 31, 2011, assets held for sale, net totaled $0 and $86,082 respectively.

For all the vessels sold, see also Note 24 Discontinued Operations.

Impairment of vessels

For the year ended December 31, 2012, the Company recorded an impairment charge totaling $5,911 in continuing operations on one of the two vessels that were held and used as of December 31, 2012. For the year ended December 31, 2011, the Company recorded an impairment charge totaling $2,360 in continuing operations on one vessel classified as held and used and $101,415 in discontinued operations on fifteen vessels. For the year ended December 31, 2010, the Company recorded an impairment charge on vessels in the amount of $15,662 all of which was recorded within continuing operations. Refer to Note 3 for the details related to the vessel impairment tests.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

The table below presents the movement of "Vessels and Other Fixed Assets, Net":

Cost	**Vessels**	**Leased Vessels**	**Dry docking and Special survey**	**Other fixed assets**	**Total**
Balance at January 1, 2010	**$ 400,660**	**$ -**	**$ 7,100**	**$ -**	**$ 407,760**
Business combination	143,050	-	-	758	143,808
Additions	82,711	-	3,548	76	86,335
Transfer from Vessels Under Construction	44,025	-	-	-	44,025
Disposals	(34,338)	-	(1,332)	-	(35,670)
Transfers from Vessels to Leased Vessels	(87,291)	87,000	-	-	(291)
Balance at December 31, 2010	**$ 548,817**	**$ 87,000**	**$ 9,316**	**$ 834**	**$ 645,967**
Additions	863	-	6,650	190	7,703
Transfer from Vessels Under Construction	79,197	38,708	-	-	117,905
Transfer to assets held for sale	(92,600)	(24,000)	(4,038)	-	(120,638)
Disposals — Discontinued operations	(102,794)	-	(2,959)	-	(105,753)
Loss on sale and leaseback	-	(208)	-	-	(208)
Balance at December 31, 2011	**$ 433,483**	**$ 101,500**	**$ 8,969**	**$ 1,024**	**$ 544,976**
Additions	-	-	985	-	985
Disposals — Discontinued operations	(376,517)	(101,500)	(7,759)	-	(485,776)
Balance at December 31, 2012	**$ 56,966**	**$ -**	**$ 2,195**	**$ 1,024**	**$ 60,185**
Accumulated Depreciation and Amortization					
Balance at January 1, 2010	**$ (152,607)**	**$ -**	**$ (2,038)**	**$ -**	**$ (154,645)**
Depreciation and Amortization for the year	(26,139)	(841)	(2,781)	(408)	(30,169)
Impairment loss (Note 3)	(15,662)	-	-	-	(15,662)
Accumulated Depreciation of Leasedback Vessels	8,104	-	-	-	8,104
Disposals — Discontinued operations	1,664	-	157	-	1,821
Balance at December 31, 2010	**$ (184,640)**	**$ (841)**	**$ (4,662)**	**$ (408)**	**$ (190,551)**
Depreciation and Amortization for the year	(26,497)	(8,068)	(3,384)	(312)	(38,261)
Impairment loss (Note 3)	(68,185)	(30,497)	(5,093)	-	(103,775)
Transfer to assets held for sale	20,672	10,932	2,952	-	34,556
Disposals — Discontinued operations	20,148	-	2,426	-	22,574
Balance at December 31, 2011	**$ (238,502)**	**$ (28,474)**	**$ (7,761)**	**$ (720)**	**$ (275,457)**
Depreciation and Amortization for the period	(5,168)	(209)	(428)	(184)	(5,989)
Impairment loss (Note 3)	(5,075)	-	(836)	-	(5,911)
Disposals — Discontinued operations	228,294	28,683	7,698	-	264,675
Balance at December 31, 2012	**$ (20,451)**	**$ -**	**$ (1,327)**	**$ (904)**	**$ (22,682)**
Net book value — January 1, 2010	**$ 248,053**	**$ -**	**$ 5,062**	**$ -**	**$ 253,115**
Net book value — December 31, 2010	**$ 364,177**	**$ 86,159**	**$ 4,654**	**$ 426**	**$ 455,416**
Net book value — December 31, 2011	**$ 194,981**	**$ 73,026**	**$ 1,208**	**$ 304**	**$ 269,519**
Net book value — December 31, 2012	**$ 36,515**	**$ -**	**$ 868**	**$ 120**	**$ 37,503**

(All amounts expressed in thousands of U.S. dollars)

12. DEFERRED CHARGES, NET

The movement of the deferred charges, net, as of December 31, 2012 is as follows:

	Financing Costs	Other Costs	Total
Net Book Value at January 1, 2010	**$ 6,831**	**$ -**	**$ 6,831**
Additions	9,778	255	10,033
Amortization	(2,368)	-	(2,368)
Write-offs	(1,360)	-	(1,360)
Transfer to Vessels Under Construction	(96)	-	(96)
Net Book Value at December 31, 2010	**$ 12,785**	**$ 255**	**$ 13,040**
Additions	622	80	702
Amortization	(2,948)	-	(2,948)
Write-offs	(4,647)	(335)	(4,982)
Transfer to Vessels Under Construction	(70)	-	(70)
Net Book Value at December 31, 2011	**$ 5,742**	**$ -**	**$ 5,742**
Additions	564	-	564
Amortization	(1,781)	-	(1,781)
Write-offs	(3,952)	-	(3,952)
Net Book Value at December 31, 2012	**$ 573**	**$ -**	**$ 573**
December 31, 2012			
Current	$ 573	$ -	$ 573
December 31, 2011			
Current	$ 5,742	$ -	$ 5,742

Total fees of $479 for the year ended December 31, 2011 related to the financing costs of the Newlead Endurance, which was delivered in June 2011. Total fees for the loans the Company entered during the year ended December 31, 2010 related to the business combination. Such fees amounted to $4,169 and have been recorded as deferred charges and amortized over the life of their related facility. Of such fees, $3,213 was paid in cash and an amount of $956 represents the fair value of 112,500 warrants with a strike price of $3.00 and a contractual term of 10 years.

Total fees paid for the new or modified loans related to the acquisition of five dry bulk vessels completed in July 2010, amounted to $2,180 and they have been recorded as deferred charges and amortized over the life of the related facility. Of such fees, $2,148 was paid in cash.

As of December 31, 2012 and December 31, 2011, the Company was in active negotiations with its lenders (see Notes 15, 16, 17). For the indebtedness in relation to which the Company expects that the lender will call the debt, and neither a waiver nor a restructuring of the debt will be available, the Company concluded that certain deferred finance fees and other costs should be written off and as such accelerated the amortization. As a result, during the year ended December 31, 2012 the Company recorded a charge of $3,952, of which $3,882 is included within “Interest & Finance Expense” from continuing operations and the remaining amount of $70 is included in Loss from discontinued operations. During the year ended December 31, 2011, the Company recorded a charge of $4,647, which is included within discontinued operations.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

13. ACCOUNTS PAYABLE, TRADE

Accounts payable, trade, as of December 31, 2012 and 2011 were as follows:

	As of December 31, 2012	As of December 31, 2011
Suppliers	$ 3,099	$ 7,891
Shipyards	616	10,523
Insurers	383	2,885
Agents	766	1,342
Other creditors	8,570	16,286
	$ 13,434	**$ 38,927**

14. ACCRUED LIABILITIES

Accrued liabilities as of December 31, 2012 and 2011 were as follows:

	As of December 31, 2012	As of December 31, 2011
Accrued interest	$ 2,269	$ 16,411
Accrued claims	3,454	5,889
Other accrued expenses	4,937	10,189
	$ 10,660	**$ 32,489**

In accrued interest as of December 31, 2012 and 2011, an amount of $1,995 and $10,806, respectively, represents interest due and payable as of such date.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

15. LONG-TERM DEBT

Below is a summary of the long-term portion and current portion of long-term debt as at December 31, 2012 and 2011:

Description	December 31, 2012 Long-term	December 31, 2012 Current portion	December 31, 2012 Total	December 31, 2011 Long-term	December 31, 2011 Current portion	December 31, 2011 Total
Syndicate Facility Agreement	$ -	$ -	$ -	$ -	$ 80,159	$ 80,159
Piraeus Bank A.E. (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (CPB loan)") Credit Facility	-	32,525	32,525	-	39,261	39,261
Portigon AG (ex West LB Bank) Credit Facility	-	25,250	25,250	-	25,250	25,250
Piraeus Bank Credit Facilities	-	17,964	17,964	-	76,350	76,350
Kamsarmax syndicate facilities agreements	-	-	-	-	76,836	76,836
Eurobank Credit Facility	-	-	-	-	11,035	11,035
Handysize Syndicate Facility Agreement	-	-	-	-	30,831	30,831
Mojave Finance Inc	-	3,000	3,000	-	-	-
Ending Balance	$ -	$ 78,739	$ 78,739	$ -	$ 339,722	$ 339,722

Due to economic conditions and operational difficulties, the Company entered into restructuring discussions with each of the lenders under Company's facility and credit agreements, the holders of Company's 7% Notes and the counterparties to Company's capital leases (collectively, the agreements governing such debt, the "Financing Documents"). As part of those discussions, the Company appointed Moelis to act as the Company's financial advisors in respect of the restructuring proposal described below. On November 8, 2011, the Company and Moelis presented to each of the lenders under the Financing Documents a commercial presentation which set out a comprehensive global restructuring proposal (the "Restructuring Proposal"). The Restructuring Proposal included, among other things, proposed amendments to the Financing Documents (including amortization relief and reset of financial covenants). The aim of the Restructuring was to increase liquidity, normalize trade vendor payments and deleverage the Company on a going forward basis. To date, the Company has completed the restructuring efforts for the Syndicate Facility Agreement, Kamsarmax Syndicate Facility Agreements, Eurobank Credit Facility, Northern Shipping Fund LLC Capital Lease Obligation, Portigon AG (formerly, West LB Bank) Credit Facility, Piraeus Bank Credit Facilities, Handysize Syndicate Facility Agreement, Lemissoler Capital Lease Obligation and the 7% Notes, subject, in the case of the Syndicate Facility Agreement, final payment of outstanding fees. However, the Company was not able to restructure the credit facility with Piraeus Bank (CPB loan). See also Note 25 for a discussion of the recent developments relating to the Company's restructuring negotiations.

Since June 2011, the Company has defaulted under each of its Financing Documents in respect of certain covenants (including, in some cases, the failure to make amortization and interest payments, the failure to satisfy financial covenants and the triggering of cross-default provisions). As of December 31, 2012, the Company was also in default under its credit agreements with Piraeus Bank (CPB loan), Portigon AG, Piraeus Bank and the 4.5% Note (refer to Note 17), as those credit facilities had not yet been restructured and discharged. To date, the Company continues to be in default under the Piraeus Bank (CPB loan) Credit Facility, the 4.5% Note, the Portigon AG Credit Facility, and the Mojave Finance Inc. Credit Facility. These lenders have continued to reserve their rights in respect of such defaults. They have not exercised their remedies at this time; however, they could change their position at any time. As such, there can be no assurance that a satisfactory final agreement will be reached with these lenders, or at all. In addition, while the Company has completed its restructuring efforts with the lenders under the Syndicate Facility Agreement, it continues to have an outstanding liability of $129 under the Syndicate Facility Agreement related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay the outstanding amounts owed and fees under the agreement, the Company has nevertheless not been formally discharged and released of any and all of its obligations in respect of the Syndicate Facility Agreement due to this outstanding liability.

During 2011 and up to the date of issuance of these financial statements, the Company has sold, disposed of or handed control over to its lenders a total of 20 vessels and hulls under construction (or the ownership of the shipowning subsidiaries) in connection with the Restructuring.

As of December 31, 2012, the Company has defaulted on payments of principal and interest with respect to the Piraeus Bank (CPB loan), the Portigon AG and the Piraeus Bank credit facilities and was not in compliance with certain of its covenants for the respective debt agreements outlined below. As of December 31, 2012, all other debt has been restructured. Since the Company's lenders have the right, absent receipt of waivers, to demand the repayment of its debt at any given time, the Company reclassified its long term debt as of December 31, 2012 as current liabilities in its consolidated balance sheet.

(a) Syndicate Facility Agreement

As part of the 2009 recapitalization, the Company's existing syndicate of lenders entered into a $221,400 facility agreement, referred to herein as the "Syndicate Facility Agreement", by and among the Company and the banks identified therein in order to refinance the Company's existing revolving credit facility.

On December 21, 2011, with the consent of the lenders under the Syndicate Facility Agreement, the Company agreed for the sale of the four LR1 vessels related to this facility, and the lenders agreed with NewLead to accept the gross sale proceeds in full and final satisfaction of all liabilities owed to the syndicate under the governing loan agreement. Following this agreement, $64,532, which constituted the proceeds of the sales of the Newlead Avra and the Newlead Fortune (sold in December 2011), and $80,159, which constituted the proceeds of the sales Newlead Compass and the Newlead Compassion (sold in January 2012), were applied against the loan. As of December 31, 2012, the outstanding balance due to the syndicate lenders was $129, which is included in Accounts Payable and related to loan fees outstanding. While the proceeds from the sale of the four LR1 vessels under the Syndicate Facility Agreement were used to repay outstanding amounts owed and fees under the agreement, the Company has nevertheless not been formally discharged and released of any and all of its obligations in respect of the Syndicate Facility Agreement due to this outstanding liability as of December 31, 2012.

(b) Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd. (formerly, Marfin Egnatia Bank S.A.) ("Piraeus Bank (CPB loan)") Credit Facility

On December 10, 2010, the Company entered into a Loan Agreement with Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd.) ("Piraeus Bank (CPB loan)") for a reducing revolving credit facility of up to $62,000, in order to refinance the loans of the Newlead Venetico and the Newlead Markela, and to finance the working and investment capital needs. The provisions of the agreement include a cash sweep of all surplus of quarterly earnings of the related vessels. Borrowings under this loan facility currently bear an approximate effective interest rate, including the margin, of 5.79%.

On April 5, 2012, with the consent of Piraeus Bank (CPB loan), the Company entered into an agreement for the sale of the Newlead Venetico and that vessel was delivered to the buyer on May 8, 2012 for proceeds of approximately $9,450. The proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the Newlead Venetico in a total aggregate amount of $6,736, (b) interest payable and (c) the payment of outstanding trade and vendor payments. As of December 31, 2012, the outstanding balance on such loan facility was $32,525.

The floating portion of the approximately $32,525 drawn to date is approximately $15,405 and bears an interest rate of approximately 3.8% (assuming current LIBOR of 0.310%, plus a 3.5% margin), while the fixed portion drawn is $17,120 and bears an interest rate of 7.6% (assuming a current fixed swap rate of 4.1% plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility including: (i) the Company's shareholders' equity as a percentage of its total assets, adjusting the book value of its fleet to its market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending September 30, 2013 onwards (as of December 31, 2012, the Company was in breach of this covenant); (ii) the maintenance, on a consolidated basis on each financial quarter, of working capital (as defined in the loan facility) of not less than zero dollars ($0) (as of December 31, 2012, the Company was in breach of this covenant); (iii) the maintenance of minimum liquidity equal to at least five percent of the outstanding loan (as of December 31, 2012, the Company was in breach of this covenant); and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis to be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending June 30, 2013 onwards (as of December 31, 2012, the Company was in breach of this covenant). The Company is also subject to a covenant that requires the maintenance of a security value of at least 130% of the facility and the maximum swap exposure as specified in the agreement (as of December 31, 2012, the Company was in breach of this covenant).

As of December 31, 2012, the Company has defaulted on interest payments under the loan agreement.

(c) Portigon AG (formerly, West LB Bank) Credit Facility

On April 1, 2010, the Company assumed a Loan Agreement with Portigon AG, relating to a term loan facility of up to $27,500 in relation to the Grand Victoria. The loan was payable in 20 quarterly installments of $375, followed by 15 quarterly installments of $475 and a balloon payment of $12,875 due on the last payment date. However, after the amendment reached on March 28, 2013 (see Note 25) the outstanding balance will be payable in 3 quarterly installments of $300, followed by 5 quarterly installments of $375, followed by 15 quarterly installments of $475, followed by a balloon payment of $15,350 (the first repayment installment shall be repaid on June 30, 2013 and the balloon installment, shall be repaid on January 31, 2019). Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.46% (assuming current LIBOR of 0.207%, plus a 3.25% margin). The applicable margin is calculated as follows: (a) 3.25% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is less than 125%; (b) 3% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is less than 125%; (c) 2.75% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is equal to or greater than 125%; and (d) 2.50% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is equal to or greater than 125%.

The vessel's excess cash must be applied towards the prepayment of the balloon installment until such time as the balloon installment has been reduced to $6,000, in accordance with the following, all as described in the loan facility: (i) if the Company is in compliance with the value to loan ratio, 50% of the excess cash must be applied towards prepayment of the loan facility; and (ii) if the Company is not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. The value to loan ratio is set at 100% until December 31, 2012 and 125% thereafter. As of December 31, 2012, the Company was not in compliance with this ratio. The loan facility includes, among other things, financial covenants including: (i) a minimum market adjusted equity ratio of 25% for the period from September 30, 2012 until June 30, 2013, increasing to 30% thereafter (as of December 31, 2012, the Company was in breach of this covenant); (ii) a minimum liquidity equal to at least 5% of the total debt during the period the loan facility remains outstanding (as of December 31, 2012, the Company was in breach of this covenant); (iii) working capital (as defined in the loan facility) must not be less than zero dollars ($0) during the period the loan facility remains outstanding (as of December 31, 2012, the Company was in breach of this covenant) and (iv) a minimum interest coverage ratio of 2:1 for the period from September 30, 2012 until June 30, 2013, increasing to 2.5:1 thereafter (as of December 31, 2012, the Company was in breach of this covenant). As of December 31, 2012, the Company has defaulted on principal and interest payments. As of December 31, 2012, the outstanding balance was $25,250.

On March 28, 2013, the Company agreed with the bank to certain amendments to the credit facility. See Note 25 for recent developments relating to the facility.

(d) Piraeus Bank Credit Facilities

On April 1, 2010, the Company assumed a Loan Agreement with Piraeus Bank, dated March 31, 2010, for a loan of up to $21,000 relating to the Grand Ocean. The loan facility was payable in one quarterly installment of $850, followed by six quarterly installments of $800, followed by seven quarterly installments of $750, and a balloon payment of $10,100 due in November 2013. On December 29, 2011, the Company, with the consent of Piraeus Bank, entered into an agreement for the sale of the Grand Ocean and that vessel was delivered to the buyer on January 11, 2012 for proceeds of approximately $8,150. Piraeus Bank applied the proceeds of such sale towards (a) the prepayment of $6,510 of the outstanding amounts due under the loan agreement for the Grand Ocean (b) interest payable and (c) the payment of outstanding trade and vendor payments. In addition, a repayment of $490 was effected on June 21, 2012. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.9% (assuming current LIBOR of 0.353%, plus a 3.5% margin). As of December 31, 2012, the outstanding balance was $10,750. See Note 25 for recent developments relating to the facility.

On April 1, 2010, the Company also assumed a Loan Agreement with Piraeus Bank, dated March 19, 2008, as supplemented by a First Supplemental Agreement, dated February 26, 2009, and a Second Supplemental Agreement, dated March 31, 2010, for a loan of up to $76,000 in relation to the Hiona and the Hiotissa. The loan was payable in one quarterly installment of $1,500, followed by four quarterly installments of $1,250, followed by 19 quarterly installments of $1,125 and a balloon payment of $37,225 due in April 2016. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.9% (assuming current LIBOR of 0.353%, plus a 3.5% margin).

On June 20, 2012, the Company entered into an agreement with Piraeus Bank, as amended on April 10, 2013 to proceed with the sale of two tanker vessels, Hiona and Hiotissa, for an aggregate amount of approximately $57,000 and to convert the remaining outstanding debt of Hiona, Hiotissa and Grand Ocean, subject to the satisfaction of certain conditions precedent by the Company, into common shares of the Company. The Hiona and Hiotissa were sold during July 2012, and the proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the two vessels, in an aggregate amount of approximately $51,100, (b) interest payable and (c) the payment of outstanding trade and vendor payments. In addition, a repayment of $271 was effected on November 2, 2012. As of December 31, 2012, the outstanding balance was $7,214. See Note 25 for recent developments relating to the facility.

(e) Kamsarmax Syndicate Facility Agreements

On April 15, 2010, the Company assumed two facility agreements (the "Kamsarmax Syndicate Facility Agreements") in relation to the two acquired Kamsarmaxes ("Kamsarmax Syndicate"), the Newlead Tomi and the Newlead Gujarat. The senior facility agreement which was entered into with Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, was for $66,667 and the junior facility agreement which was entered into with Bank of Scotland and BTMU Capital Corporation was for $13,333.

On February 24, 2012, the Bank of Scotland issued notices of enforcement and notices of default and acceleration in relation to the senior loan agreement and the junior loan agreement, each dated April 15, 2010, between Ayasha Trading Corporation ("Ayasha") and Bethune Properties S.A. ("Bethune"), as borrowers, and the Bank of Scotland, BMTU Capital Corporation, and the Bank of Ireland, as lenders. In addition, the Bank of Scotland filed claim forms in the High Court of England and Wales against the borrowers representing claims for approximately $62,684 and $13,938 under the Kamsarmax Syndicate Facility Agreements and sought a declaration, that, among other things, the Bank of Scotland was entitled to make a demand against the Company in respect of sums owing under the Kamsarmax Syndicate Facility Agreements. Ayasha and Bethune were the shipowning companies of the motor vessels "Newlead Tomi" and "Newlead Gujarat," respectively. Pursuant to such notices, the Bank of Scotland, as the agent and security trustee under each of the Kamsarmax Syndicate Facility Agreements, exercised its rights to foreclose on the shares of Ayasha and Bethune, which secured the loans under the Kamsarmax Syndicate Facility Agreements and the vessels were handed over to the lenders control. The gain on the transaction resulting from the release of the respective liabilities to the lender amounted to $24,576 and is included in Loss from discontinued operations.

On August 1, 2012, the Company was formally discharged and released of any and all of its obligations in respect of the Kamsarmax Syndicate Facility Agreements.

As of December 31, 2012, no outstanding balance remained.

(f) First Business Bank (FBB) Credit Facility

As of December 31, 2011, no outstanding balance remained under the FBB credit facility. On April 27, 2012, the Company was fully discharged and released of any and all of its obligations to FBB outstanding under the FBB loan agreements.

(g) Eurobank Credit Facility

On July 9, 2010, the Company assumed a Loan Agreement with Eurobank, for a loan facility of up to $32,000 in relation to the Newlead Esmeralda. On February 10, 2012, with the consent of Eurobank, the Company agreed to the sale of the Newlead Esmeralda for proceeds of approximately $11,400. The proceeds of the sale were applied towards (a) the full and final satisfaction of all indebtedness owed to Eurobank under the loan agreement with Eurobank and (b) the payment of outstanding trade and vendor payments. As of February 16, 2012 the sale of this vessel was completed and on February 16, 2012, the Company was fully discharged and released from any and all obligations to Eurobank under the credit facility and related documents. As of December 31, 2012, no outstanding balance remained.

(h) Handysize Syndicate Facility Agreement

On July 9, 2010, the Company assumed a Loan Agreement with DVB Bank, Nord LB and Emporiki Bank, for a loan facility of up to $48,000 in relation to two newbuilding vessels. On March 21, 2012, with the consent of the lenders, the Company entered into a memorandum of agreement with an unrelated party for the sale of the Navios Serenity for proceeds of approximately $26,000. On March 26, 2012 the vessel was sold and the proceeds of the sale were applied towards the outstanding balance owed under the credit facility with DVB Bank, Nord LB and Emporiki Bank. Up to the sale of the vessel, the Company had defaulted on a number of principal and interest payments. On February 20, 2012, the Company received a default letter from the yard in respect of the delay of the payment of an installment of $7,400 after the completion of the "steel cutting" in September 2011 for the Handysize Hull 4029. On May 22, 2012, the Company signed an agreement with the shipbuilder and the Shipbuilding Contract with SPP Shipbuilding Co, Ltd., the prior contract with the yard, was terminated and ceased to be valid. Under this agreement, the Company and the yard mutually waived all rights and released and discharged each other from all liabilities, obligations, claims and demands. This agreement resulted in the Company being released from the $7,400 liability to the yard and the $7,240 write-off of the balance of the vessel under construction. In addition, on May 22, 2012, the Company was released from its obligations under the related facility for the Handysize Hull 4029, which were $5,492, and on November 23, 2012, the Company was formally discharged and released of any and all of its obligations in respect of the Handysize Syndicate Facility Agreement.

(All amounts expressed in thousands of U.S. dollars)

(i) Mojave Finance Inc. Credit Facility

On April 10, 2012, the Company, as a third party, and NewLead Holdings (US) Corp. (refer to Note 6), entered into a Loan Agreement with Mojave Finance Inc., for a secured loan facility of $3,000 in order to finance its coal business. Pursuant to a Pledge Agreement the loan facility is secured by an interest of 52% in NewLead Mojave Holdings LLC and 50% in New Lead JMEG LLC (the "Security"). The loan was initially payable in three equal monthly installments, the first to be paid one month after the drawdown date with each subsequent payment on a monthly basis. Pursuant to the Loan Agreement, the Company and NewLead Holdings (US) Corp. shall not, without prior written consent of Mojave Finance Inc., permit or create any security interest in the Security or permit or create any security interest in the assets of NewLead Holdings (US) Corp., NewLead Mojave Holdings LLC or New Lead JMEG LLC. Should NewLead Holdings (US) Corp. and/or the Company sell their entire interest in New Lead JMEG LLC, or any part thereof, such entity will have the obligation to prepay the loan, or any portion thereof, as applicable, in proportion to the interest sold. On July 9, 2012, the loan facility was amended. Pursuant to the amendment, the loan was payable after a nine-month period following the drawdown date, with the $3,000 repayment due on January 11, 2013. On January 9, 2013 and July 9, 2013, the loan facility was further amended. Pursuant to the second and the third amendments, the loan is payable after an eighteen-month period following the drawdown date, with the $3,000 repayment due on October 11, 2013. Borrowings under the terms of the loan facility currently bear an approximate effective interest rate, including the margin, of 4.7% (assuming current LIBOR of 0.736%, plus a 4.00% margin).

In respect of all the remaining mentioned facilities, as of December 31, 2012, the Company was in default of principal and interest payments due in the amounts of $3,582 and $1,995, respectively.

Amounts drawn under the Piraeus Bank (CPB loan), Portigon AG and Piraeus Bank credit facilities are secured by first priority mortgages on the Company's vessels, guaranteed by each vessel-owning subsidiary and guaranteed by NewLead Holdings.

The amounts shown as interest and finance expense in the statements of operations are analyzed as follows:

	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010
Interest expense	$ 8,125	$ 11,528	$ 10,124
Amortization of deferred charges	5,624	2,112	1,026
Amortization of the beneficial conversion feature	71,561	8,161	5,942
Other expenses	1,239	871	1,458
	$ 86,549	**$ 22,672**	**$ 18,550**

The effective interest rate at December 31, 2012 was approximately 4.31% per annum (December 31, 2011: 4.88% and December 31 2010: 6.08%). Capitalized interest for the year ended December 31, 2012 amounted to $20 ($2,549 for the year ended December 31, 2011 and $902 for the year ended December 31, 2010, respectively).

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

16. SENIOR CONVERTIBLE NOTES

(a) Senior Convertible 7% Notes

In connection with the recapitalization on October 13, 2009, the Company issued $145,000 in aggregate principal amount of 7% Notes. The 7% Notes were convertible into common shares at a conversion price of $9.00 per share (“Any time” conversion option), subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin offs and other events. The issuance of the 7% Notes was pursuant to the Indenture dated October 13, 2009, between the Company and Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd.), and the Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. as purchasers.

All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Piraeus Bank (as the successor of Cyprus Popular Bank Public Co. Ltd.) $20,000 of the proceeds of the 7% Notes were used to partially repay a portion of existing indebtedness and the remaining proceeds were used for general corporate purposes and to fund vessel acquisitions. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contained certain covenants, including, among others, limitations on the incurrence of additional indebtedness, except for approved vessel acquisitions, and limitations on mergers and consolidations. In connection with the issuance of the 7% Notes, the Company entered into a Registration Rights Agreement providing the holders of the 7% Notes with certain demand and other registration rights for the common shares underlying the 7% Notes. The Investment Bank of Greece also received warrants to purchase up to 416,667 common shares at an exercise price of $24.00 per share, with an expiration date of October 13, 2015, in connection with advisory services provided by the Investment Bank of Greece to the Company.

In November 2009, Focus Maritime Corp., a company controlled by Michail S. Zolotas, the Company’s Chairman, Chief Executive Officer and member of the Company’s Board of Directors, converted $20,000 of the 7% Notes into approximately 2.22 million new common shares of the Company. In connection with the Restructuring of NewLead’s debt, on July 2, 2012, the Company entered into an agreement with Focus Maritime Corp. for the conversion of its remaining $124,900 of the 7% Notes, together with interest accrued thereon and future interest payment and an additional fee payable to Focus Maritime Corp. as an inducement for the conversion, into approximately 264.9 million common shares of the Company. Under the agreement with Focus Maritime Corp., the Company may not allow debt to equity conversions on more favorable terms to other debtors. As of December 31, 2012, Investment Bank of Greece retained $100 outstanding principal amount of the 7% Notes.

The Company recorded a BCF totaling $100,536 as a contra liability (discount) that had to be amortized into the income statement (via interest charge) over the life of the 7% Notes. For the year ended December 31, 2012, $71,561 of the BCF was amortized and reflected as interest expense in the statement of operations ($8,161 for the year ended December 31, 2011, and $5,942 for the year ended December 31 2010). In addition, as a result of the agreement with Focus Maritime Corp., the Company recorded an inducement loss of $293,109, which is included in Loss on extinguishment of convertible notes. Accordingly, in the aggregate, $100 and $125,000 of the 7% Notes remained outstanding as at December 31, 2012 and December 31, 2011, respectively.

The amount regarding the 7% Notes presented in the consolidated balance sheets is as follows:

		7% Notes
Balance at January 1, 2010	**$**	**39,283**
Amortization of the Beneficial Conversion Feature		5,942
Make whole fundamental change		5
Balance at December 31, 2010	**$**	**45,230**
Amortization of the Beneficial Conversion Feature		8,161
Make whole fundamental change		0
Balance at December 31, 2011	**$**	**53,391**
Amortization of the Beneficial Conversion Feature		71,561
Partial Conversion of the Convertible Senior Notes		(124,900)
Balance at December 31, 2012	**$**	**52**

As of December 31, 2012, the Company was not in compliance with its financial covenants on this indebtedness and had defaulted on three coupon payments. As such, the full amount outstanding was reclassified to current liabilities.

(b) Senior Convertible 4.5% Note

In connection with the agreement with Lemissoler Maritime Company W.L.L. (refer to Note 17), on December 31, 2012, the Company issued $50,000 in aggregate principal amount of its notional 4.5% Senior Convertible Note due in 2022 to Prime (the “4.5% Note”). The 4.5% Note will bear interest at an annual rate of 4.5%, which is payable quarterly on March 1, June 1, September 1 and December 1 of each year (beginning on March 1, 2013), until maturity in December 2022 or earlier upon redemption, repurchase or conversion in accordance with its terms. At the option of the Company, subject to certain conditions, interest and principal payments may be satisfied by issuing additional common shares of the Company (rather than in cash).

The amount of shares to be paid is calculated by dividing (i) the per share amount equal to 80% of the arithmetic average of the daily volume-weighted average price (“VWAPs”) of the Company’s common shares for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the interest payment date into (ii) an amount equal to the total amount of cash such holder would receive if the aggregate amount of interest on the 4.5% Note was being paid in cash. The 4.5% Note is convertible, at a holder’s option, at any time prior to the close of business on the maturity date or earlier upon redemption or repurchase in accordance with its terms. The holder has the right to convert the principal amount of the 4.5% Note, or any portion of such principal amount which is at least $1 (or such lesser principal amount of the 4.5% Note as shall be outstanding at such time), plus accrued and unpaid interest, into that number of fully paid and non-assessable common shares of the Company (as such shares shall then be constituted) obtained by dividing (1) the sum of (x) the principal amount of the 4.5% Note or portion thereof being converted plus (y) accrued and unpaid interest on the portion of the principal amount of the 4.5% Note being converted to the applicable conversion date plus (z) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (y) to the applicable conversion date by (2) the Conversion Price (as defined below) in effect on the applicable conversion date. The Conversion Price means an amount equal to 80% of the arithmetic average of the daily VWAPs of the common shares of the Company for all of the trading days during the period of 30 consecutive trading days ending on and including the trading day immediately preceding the conversion date. If the holder does not convert the 4.5% Note prior to the maturity date, then so long as no certain events of default (“Events of Default”) or an event triggering a repurchase (“Repurchase Event”) has occurred and is continuing, the principal of and accrued interest on the 4.5% Note that is outstanding on the maturity date shall automatically convert, without further action by the holder, into common shares of the Company. The number of common shares issued by the Company to the holder upon such conversion shall be the quotient obtained by dividing (x) the outstanding principal of and accrued interest on the 4.5% Note on the maturity date by (y) the Conversion Price then in effect.

The Company may redeem all or part of the outstanding principal amount of the 4.5% Note at any time, subject to certain conditions, at a redemption price in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note plus (2) accrued and unpaid interest on such principal amount to the redemption date plus (3) accrued and unpaid default interest, if any, on the amount referred to in the immediately preceding clause (2) at the rate provided in the 4.5% Note to the redemption date, subject to certain conditions specified in the 4.5% Note. If a Repurchase Event occurs, the holder will have the right, at the holder’s option, to require the Company to repurchase all of the 4.5% Note, or any portion thereof, on a repurchase date that is five business days after the date of the holder delivered its notice with respect to such Repurchase Event. The repurchase price will be an amount in cash equal to the sum of (1) 100% of the outstanding principal amount of the 4.5% Note that the holder has elected to be repurchased plus (2) accrued and unpaid interest on such principal amount to the date of such repurchase plus (3) accrued and unpaid default interest, if any, thereon at the rate provided in the 4.5% Note to the date of such repurchase. If an Event of Default shall have occurred, then the applicable interest rate shall be increased to 6.5% per annum during the period from the date of such Event of Default until the date no Event of Default is continuing. The Company may, at its option, subject to certain conditions, make any payments required to be made by the Company to the holder upon acceleration of the 4.5% Note by reason of certain Events of Default in common shares of the Company.

On the date of the issuance, the fair value of the 4.5% Note amounted to $62,500. As of December 31, 2012, the Company was not in compliance with certain covenants on this indebtedness.

17. CAPITAL LEASE OBLIGATIONS

(a) Northern Shipping Fund LLC

In June 2011, the Company entered into an agreement with Northern Shipping Fund LLC for the sale and immediate bareboat leaseback of the Post-Panamax dry bulk vessel, the Newlead Endurance. The net proceeds for the sale were $26,600 and the bareboat leaseback charter period was seven years. NewLead retained call options to buy the vessel back during the lease period at pre-determined decreasing prices at the end of each of the seven years starting from the first year, with the last call option price at $26,500 at the end of the lease term. Moreover, a put option existed, which if exercised, would have required the Company to repurchase the vessel for approximately $26,500 at the end of the lease term. The call or put option price was to be paid in cash. On February 14, 2012, an amendment agreement was signed, eliminating the existing put option.

The Company concluded that it had retained substantially all of the benefits and risks associated with such vessel and has treated the transaction as a financing, resulting in an immediate loss of $208. On March 14, 2012, the Company received enforcement notices from Endurance Shipping LLC whereby, among other things, Endurance Shipping LLC exercised its rights to foreclose on the pledge of the shares of Curby Navigation Ltd., which secured the bareboat charter, and the vessel was delivered back to Northern Shipping Fund LLC. On March 31, 2012, the Company entered into a deed of release with Endurance Shipping LLC, the owner of the Newlead Endurance, pursuant to which the Company was unconditionally released from its guarantee under the bareboat charter for the Newlead Endurance, which had been chartered-in by Curby Navigation Ltd., and all its obligations and liabilities under the relevant finance lease documentation. In connection with the enforcement notices, the Company also received a termination notice in respect of the ship management agreement between Curby Navigation Ltd. and Newlead Bulkers S.A., which had been the manager of the Newlead Endurance. As of December 31, 2012, no outstanding balance on the lease debt remained. The loss on the transaction amounted to $5,645 and is included in Loss from discontinued operations.

(b) Lemissoler Maritime Company W.L.L.

In November 2010, the Company entered into an agreement with Lemissoler Maritime Company W.L.L. (“Lemissoler”) for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi. Total consideration for the sale was $86,800 and the bareboat leaseback charter period was eight years. NewLead retained call options to buy the vessels back during the lease period at pre-determined decreasing prices and was obligated to repurchase the vessels for approximately $40,000 at the end of the lease term. The repurchase obligation could be paid partially in cash and partially in common shares, at the Company’s option.

The Company concluded that it had retained substantially all of the benefits and risks associated with such vessels and has treated the transaction as a financing, resulting in an immediate loss of $2,728 (for those vessels where their fair value was below their carrying amount) and deferred gain of $10,540 (for those vessels where their fair values was above their carrying amount) which had been amortized over the life of each vessel. The unamortized portion of $9,083 as of December 31, 2011 was written off upon the redelivery of the vessels and is reported under discontinued operations. The amortization for the years ended December 31, 2011 and 2010 amounted to $1,316 and $141, respectively, and is reported under discontinued operations.

On January 31, 2012, February 7, 2012, February 11, 2012, and March 19, 2012, respectively, pursuant to various redelivery addendums to certain sale and leaseback agreements, the Company completed the redelivery of the four dry bulk vessels, the Australia, the Grand Rodosi, the China and the Brazil, to their owners which are affiliates of Lemissoler. On November 28, 2012, the Company entered into a settlement and standstill agreement (the “Settlement Agreement”) with Prime, which sets out the terms and conditions on which Lemissoler has agreed to the settlement of amounts outstanding and due to them from the Company pursuant to various agreements that had been entered into between the Company and Lemissoler (the “Lemissoler Indebtedness”) and a standstill and waiver of Lemissoler’s right to take action in respect of the Lemissoler Indebtedness and the failure of the Company to perform their respective obligations under such agreements, which includes, for the avoidance of doubt, any existing or future liabilities under agreements relating to the operation of vessels chartered or assigned to Lemissoler.

Pursuant to the Settlement Agreement: (a) the Lemissoler Indebtedness was settled by issuing (i) 109,351,314 common shares of the Company to Prime; and (ii) $50,000 aggregate principal amount of the Company's 4.5% Senior Convertible Note due 2022 to Prime (the "4.5% Note") with such terms as described below; and (b) all fees, costs and expenses incurred by Prime in connection with the transaction will be paid from the issuance of 487,805 common shares of the Company (covering $400 in fees) to Prime (with any shortfall from the sale of the common shares to be fully paid and settled by the Company, which may be satisfied by issuing further common shares of the Company to Prime). As of December 31, 2012, Prime received 109,351,314 common shares of the Company for the outstanding balance and 487,805 common shares of the Company for the fees, costs and expenses incurred by Prime and the Company issued to Prime the 4.5% Note (refer to Note 16). In addition, in connection with the Settlement Agreement, the Company entered into a registration rights agreement with Prime, pursuant to which NewLead is obligated to file a registration statement or registration statements covering the potential sale of the common shares of the Company issued to Prime and the shares of the Company's common shares issuable upon conversion of the 4.5% Note. Prime may also request that the Company file a registration statement on Form F-3 if NewLead is entitled to use such form, or request that their purchased common shares be covered by a registration statement that the Company is otherwise filing (i.e., piggy-back registration). As a result of the agreement with Prime, the Company recorded an aggregate loss of $50,574, which is included in Loss from discontinued operations.

As of December 31, 2012, no outstanding balance remained on the lease debt. On January 30, 2013, the Company was formally released from all of its obligations and liabilities under the relevant finance lease documentation.

18. SHARE BASED COMPENSATION

Equity Incentive Plan

The Company's 2005 Equity Incentive Plan (the "Plan") is designed to provide certain key persons, on whose initiative and efforts the successful conduct of the Company depends, with incentives to: (a) enter into and remain in the service of the Company, (b) acquire a proprietary interest in the success of the Company, (c) maximize their performance, and (d) enhance the long-term performance of the Company.

On December 20, 2011, the Board of Directors amended the Plan to increase the number of common shares reserved for issuance from 583,334 shares to 2,083,334 shares to better enable the Company to offer equity incentives to its officers, directors, employees and consultants.

In addition, the Company may grant restricted common shares and share options to third parties and to employees outside of the Plan. During the year ended December 31, 2012 and 2011 approximately 1,659,000 and 1,214,000 shares, respectively, were granted to former employees, officers, executive officers, board of directors members and consultants, which vested upon their issuance. For shares issued to third parties refer to Note 19, and for shares granted/issued after December 31, 2012, refer to Note 25.

Employment and Severance Agreements

On January 2, 2012, the Company entered into employment agreements with two of the Company's then executive officers, Nicholas G. Fistes (resigned in December 2012), and Michail S. Zolotas, which entitle each executive to an annual base salary and an annual incentive bonus that is payable in the Company's common shares.The agreements are retroactive for the years 2010 and 2011 and effective until December 31, 2016, after which they will automatically renew for additional one-year periods, unless terminated in accordance with the terms of such agreements. Pursuant to the employment agreements, both executives were entitled to the following compensation: (1) for the period between October 13, 2009 until the end of 2010, were entitled to an aggregate base salary of $1,300 and a bonus of $300, which was paid in shares priced at $24.00 per share, resulting in an aggregate of issuance of 66,667shares, (2) for 2011, they were entitled to an aggregate base salary of $1,300 and bonus of $300, which was paid in shares priced at $2.00 per share, resulting in an aggregate of issuance of 800,000 shares; and (3) for each year from 2012 until the end of 2016, they will be entitled to an aggregate base salary of $1,450 and bonus of $1,450, which will be paid in shares priced at $2.00 per share, resulting in an aggregate of issuance of 1,450,000 shares. Under each employment agreement, upon a change in control of the Company, any stock based awards to the employee will vest. If prior to the effective date of a change of control or after the second anniversary of the effective date of a change in control, the employee is terminated without "cause" or resigns for "good reason," the employee will be entitled to receive his then current base salary through the end of the expiration period of the agreement, in addition to any benefits accrued through the date of his termination. In addition, if on or after the effective date of a change of control and prior to the second anniversary of the effective date of the change of control, the employee is terminated without "cause" or resigns for "good reason," the employee will be entitled to five times his then current base salary and five times the annual bonus for the prior year within 30 days following the effectiveness of the termination. If an executive's employment is terminated for "cause" or voluntarily by the employee without "good reason," the employee will not be entitled to any salary, benefits or reimbursements beyond those accrued through the date of his termination.

On January 1, 2013, an amendment to the employment agreement with Michail S. Zolotas was signed. Pursuant to the amended employment agreement, Michail S. Zolotas will be entitled, for the fiscal years 2013 through 2018, to an aggregate base salary of $1,500 per year, which will be paid in advance and in common shares of the Company. The Company agreed to pay the annual base salary owed to Michail S. Zolotas for fiscal year 2013 by May 30, 2013 and on May 31, 2013, 5,083,769 common shares were issued. The share price used for the calculation of the shares was the average closing price of the Company's common stock for the last thirty trading days prior to the date on which the shares were delivered to Michail S. Zolotas. For fiscal year 2014 and for each subsequent year, the share price to be used for the calculation of the shares to be issued shall be the average closing price of the Company's common stock for the last 365 days prior to the date on which the shares are delivered to the Michail S. Zolotas. Pursuant to the terms of the amended employment agreement, for fiscal years 2013 through 2018, Michail S. Zolotas will also be entitled to an aggregate bonus of $4.5 million per year, which will be paid in common shares or warrants. The share price to be used for the calculation of the shares to be issued shall be the average closing price of the Company's common stock for the last 60 trading days prior to the date on which the target bonus is granted to Michail S. Zolotas. The target bonus for each performance period will be determined on an annual basis and based on such factors as the board and Michail S. Zolotas shall in good faith agree, such factors to be agreed no later than 60 days following the start of each performance period, except in the year 2013 where the target bonus of Michail S. Zolotas was granted on May 30, 2013. In addition, if on or after the effective date of a change of control and prior to the second anniversary of the effective date of the change of control, Mr. Zolotas is terminated without "cause" or resigns for "good reason" (each as defined in the employment agreement), he will be entitled to a cash payment equal to (i) twenty times his then-current base salary and (ii) twenty times his annual bonus for the prior year within 30 days following the effectiveness of the termination.

On January 2, 2012, the Company entered into severance agreements with certain of its key employees, not including Michail S. Zolotas. If on or after the effective date of a change of control and prior to the second anniversary of the effective date of a change of control, the severance agreements are terminated without "cause," or the employee resigns for "good reason," the employee will be entitled to (i) five times his then current base salary, (ii) five times his annual bonus and (iii) the lesser of (x) the number of shares of the Company's common shares valued at two times his annual bonus at a price per share equal to the average trading price during the previous 30 trading days or (y) 20,000,000 shares, in each case within 30 days following the effectiveness of the termination. As used in the employment agreements and the severance agreements, "change of control" means: (i) the sale or disposition, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of more than 50% of the assets of the Company to any "person" or "group" (as such terms are defined in Section 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")); (ii) any person or group is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of the Company's outstanding equity representing more than 50% of the total voting power of the Company's equity; or (iii) the Company undergoes a merger, reorganization or other consolidation in which the owners of the Company's outstanding equity ownership immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity's voting power immediately after the transaction.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

Restricted Common Shares

The Company measures share-based compensation cost at grant date, based on the estimated fair value of the restricted common share awards, which is determined by the closing price of the Company's common shares as quoted on the NASDAQ Stock Market on the grant date and recognizes the cost as expense on a straight-line basis over the requisite service period.

During the years ended December 31, 2012 , 2011, and 2010, the Company recognized compensation cost related to the Company's restricted shares of $2,412, $1,884 and $1,838, respectively.

A summary of the activity relating to restricted common shares during the years ended December 31, 2012, 2011 and 2010 is as follows:

	Number of Shares	Weighted Average Fair Values	Weighted Average Vesting Period (Years)
Outstanding and non-vested shares, as of January 1, 2010 (1)	**181,667**	**$ 15.01**	**1.8**
Granted (2)	12,085	11.04	1.2
Outstanding and non-vested shares, as of December 31, 2010	**193,752**	**14.76**	**1.7**
Granted (3), (4), (5), (6)	1,984,751	0.93	2.4
Forfeited (1), (2), (3), (4)	(65,651)	3.38	-
Vested (1), (2)	(181,252)	14.94	-
Outstanding and non-vested shares, as of December 31, 2011	**1,931,600**	**0.92**	**2.4**
Forfeited (4), (6)	(517,736)	0.91	-
Vested (1), (3), (4), (5), (6)	(589,538)	0.83	-
Outstanding and non-vested shares, as of December 31, 2012	**824,326**	**$ 0.99**	**2.9**

(1) 181,667 shares were granted on the date of the recapitalization; 166,667 shares had a two-year vesting schedule (at January 1, 2011 and 2012), of which 83,334 shares, with an original vesting date January 1, 2012, were vested in July 15, 2011 upon the resignation of the former Chief Financial Officer; and 15,000 shares had a three-year vesting schedule (at January 1, 2011, 2012 and 2013), of which 5,000 shares, with an original vesting date of January 1, 2012 and January 1, 2013, were forfeited on December 31, 2011 due to the resignation of two board members. The remaining 2,500 shares will fully vest on January 1, 2013.

(2) 6,668 shares were granted on January 1, 2010 and vested over a one year period (January 1, 2011). 5,417 shares were granted on April 15, 2010, of which: (a) 1,667 vested over a one year period (January 1, 2011) and (b) 3,750 with an original three-year vesting period (at January 1, 2011, 2012 and 2013) were treated as follows: (i) 1,250 vested on January 1, 2011 and (ii) the remaining 2,500 were forfeited on December 31, 2011 due to the resignation of one board member.

(3) 8,335 shares were granted to members of the board of directors on February 1, 2011. Of such shares, 5,001 shares were forfeited on December 31, 2011 due to the resignation of three board members and 3,334 shares were fully vested in 2012.

(4) 365,250 shares were granted on April 1, 2011 to employees, officers and directors with original vesting date April 1, 2013. Of such shares, 53,150 shares were forfeited during 2011 and 92,150 as of December 31, 2012. 50,600 were fully vested as of December 31, 2012. The remaining 169,350 shares will fully vest on April 1, 2013, unless forfeited prior to such time.

(5) 350,000 shares were granted to members of the board of directors on December 21, 2011, of which 140,000 shares were vested upon issuance (February 15, 2012) and the remaining 210,000 shares were vested on December 31, 2012.

(6) 1,261,166 shares were granted on December 21, 2011 to employees, officers and directors which were to be vested as follows: (i) 314,930 shares, were to be vested over four years with 25% of the grants being vested on each of the first, second, third and fourth anniversary of the issuance date (February 15, 2013, February 15, 2014, February 15, 2015 and February 15, 2016, respectively); and (ii) 946,236 shares were to be vested on the third anniversary of the issuance date (February 15, 2015). During 2012, 425,586 of such shares were forfeited and 183,104 were fully vested earlier than their original vesting date, upon approval from the Board of Directors. The remaining 652,476 shares will fully vest on their original vesting date, unless forfeited prior to such time.

Compensation cost of $309 related to non-vested shares will be primarily recognized up to February 15, 2016.

Share options

The summary of share option awards is summarized as follows (in thousands except per share data):

	Number of Options	Weighted Average Exercise Price	Weighted Average Fair Value	Weighted Average Vesting Period (Years)
Outstanding, as of January 1, 2010 [(1)]	**275,000**	**$ 27.45**	**$ 6.24**	**3.0**
Outstanding, as of December 31, 2010	**275,000**	**27.45**	**6.99**	**3.0**
Forfeited [(1)]	(104,167)	19.80	9.33	-
Outstanding, as of December 31, 2011	**170,833**	**32.12**	**6.96**	**3.0**
Outstanding, as of December 31, 2012	**170,833**	**$ 32.12**	**$ 6.96**	**3.0**
Exercisable at December 31, 2012	170,833	$ 32.12	$ 6.96	-

(1) In 2008, the Company granted 25,000 share options to purchase common shares subject to a vesting period of three annual equal installments. On October 13, 2009, all these shares were vested due to the recapitalization.

In 2009, the Company granted 250,000 share options to purchase common shares, which vest equally over 36 months and are subject to accelerated vesting or forfeiture upon certain circumstances. The options granted are exercisable at a specified time after vesting period (through five years from October 13, 2009). Pursuant to the Board of Directors resolution dated October 14, 2010, the exercisable period of these share options extended for additional five years, i.e. until October 13, 2019. In July 2011, upon the resignation of the former Chief Financial Officer, the remaining 104,167 shares (i.e. 250,000 shares granted less 145,833 shares exercisable as of June 30, 2011) were forfeited. As a result, no unrecognized compensation existed as of July 2011.

During the year ended December 31, 2012 no share-based compensation cost was recognized, relating to the share options. During the year ended December 31, 2011 the Company recognized share-based compensation cost of $194 and a reduction of compensation expense of $496 due to the forfeited shares upon the resignation of the former Chief Financial Officer. During the year ended December 31, 2010 the Company recognized share-based compensation cost of $842, relating to the share options.

The weighted average contractual life of the share options outstanding as of December 31, 2012 was 6.6 years.

As of December 31, 2012, the intrinsic value of the Company’s share options was $0, since the share price of the Company’s common shares was less than the exercise price.

19. COMMON SHARES AND DIVIDENDS

Common Shares

As a result of the issuance of restricted shares to employees, former employees, officers, executive officers, directors and consultants during the years ended December 31, 2012, 2011 and 2010, the Company's share capital was increased by approximately 3,245,000 shares, 473,000 shares and 13,000 shares, respectively.

As a result of the issuance of shares to various vendors to settle outstanding invoices during the year ended December 31, 2012, the Company's share capital was increased by approximately 10,328,000 shares. No such shares issued during the years ended December 31, 2011 and 2010.

As a result of the issuance of shares to Prime to settle outstanding lease obligations during the year ended December 31, 2012, the Company's share capital was increased by approximately 109,839,000 shares (refer to Note 17).

As a result of the issuance of shares to Focus Maritime Corp.to settle outstanding 7% Notes during the year ended December 31, 2012, the Company's share capital was increased by approximately 264,939,000 shares (refer to Note 16).

As a result of a joint venture arrangement that was entered into on April 2012, the Company's share capital was increased by approximately 731,000 shares.

As a result of the agreement that NewLead entered into with Lemissoler (refer to Note 17), the Company's share capital was increased by approximately 199,000 shares and 37,000 shares, which were issued in January 2012 and in January 2011, respectively.

As a result of the business combination that occurred on April 1, 2010 (refer to Note 5), the Company's share capital was increased by approximately 700,000 shares, which reflected the consideration transferred to Grandunion to complete the business combination.

Dividends

During the years ended December 31, 2012, 2011, and 2010, the Company did not pay dividends as a result of the decision in September 2008 by the board of directors to suspend the payment of cash dividends. In addition, certain of the Company's debt agreements contain covenants that limit its ability to pay dividends or prohibit the Company from paying dividends without the lender's consent.

(All amounts expressed in thousands of U.S. dollars)

20. FINANCIAL INSTRUMENTS

The principal financial assets of the Company consist of cash and cash equivalents, trade receivables and other assets. The principal financial liabilities of the Company consist of long-term bank loans, the 4.5% Note, accounts payable and accrued liabilities.

Fair Values

Derivative financial instruments are stated at their fair values. The carrying amounts of the following financial instruments approximate their fair values: cash and cash equivalents and restricted cash accounts, trade and other receivables, trade and other payables and derivative financial instruments. The fair values of long-term loans and capital lease obligations are estimated by taking into consideration the Company's creditworthiness and the market value of the underlying mortgage assets. The 7% Notes had a fair value of $94,289 as of December 31, 2011 which was determined based on quoted market prices of debt with similar characteristics available for companies with comparable creditworthiness.

	Carrying amount	Fair Value	Carrying amount	Fair Value
	December 31, 2012		December 31, 2011	
Assets				
Cash and cash equivalents	$ 1,043	$ 1,043	$ 5,119	$ 5,119
Restricted cash	$ 1,342	$ 1,342	$ 281	$ 281
Trade receivables, net	$ 3,586	$ 3,586	$ 12,522	$ 12,522
Other receivables	$ 4,980	$ 4,980	$ 3,398	$ 3,398
Liabilities				
Accounts payable, trade	$ 13,434	$ 13,434	$ 38,927	$ 38,927
Current portion of long-term debt	$ 78,739	$ 17,400	$ 339,722	$ 207,281
Senior convertible notes, net	$ 62,552	$ 62,552	$ 53,391	$ 94,289
Derivative financial instruments	$ 767	$ 767	$ 8,808	$ 8,808
Capital lease obligations	$ -	$ -	$ 107,527	$ 69,812
Due to managing agent	$ 184	$ 184	$ 184	$ 184

Warrants

During the fourth quarter of 2009, the Company authorized the issuance to a third party of a six-year warrant to purchase 416,667 common shares for advisory services provided in connection with the recapitalization. In connection with the issuance of the 7% Notes, the Company issued to the Investment Bank of Greece warrants to purchase up to 416,667 common shares at an exercise price of $24.00 per share, with an expiration date of October 13, 2015, which resulted in $3,940 of debt issuance cost that was recorded as deferred issuance cost. These warrants were fair valued as of October 13, 2009 and were to be amortized over a period of six years. Upon conversion of the 7% Notes, the remaining unamortized amount of $1,860 was written off. The warrants were marked to market at every reporting date.

For the period from January 1, 2010 to September 29, 2010, the total fair value change on warrants was a gain of $1,855. On September 30, 2010, the Company and the warrant holders amended certain terms of the warrants and the amended warrants now qualify for equity classification. Upon the amendment, the amended warrants were remeasured at fair value, which included the cash paid to certain warrant holders. The amendment resulted in the warrant liability of $3,124 being reclassified to Additional Paid-in Capital in Shareholders Equity. An additional consulting expense of $600 was recognized in the statement of operations for the year ended December 31, 2010 to amend the warrants.

During 2010, the Company authorized the issuance to a third party of a ten-year warrant to purchase 112,500 common shares with a strike price of $3.00. The fair value of $956 of such warrants was recorded as deferred charges (refer to Note 12).

During 2012, the Company authorized the issuance to the third party of a ten-year warrant to purchase 750,000 common shares for advisory services provided in connection with the Restructuring, with a strike price of $0.25 (provided however that the third party surrenders its existing 416,667 and 112,500 described above, which were fair valued as of April 9, 2012 at $494). The warrants qualify for equity classification. The new warrants were fair valued as of April 9, 2012 at $1,000. These warrants were exercised during January 2013 and a total of 620,149 common shares were issued. The fair value of the warrant for the 750,000 shares has been calculated based on the Binomial options pricing model method. The Company used this model because the warrants are exercisable at for a period of up to 10 years. The assumptions utilized in the Binomial options pricing model for the warrants included a dividend yield of 0% and an expected volatility of 150%. The risk-free interest rate used was 2.06%.

On December 31, 2012, the Company authorized the issuance to the third party of a ten-year warrant to purchase 1,250,000 common shares for advisory services provided in connection with the Restructuring, with a strike price of $0.25. The warrants qualify for equity classification. The fair value of these warrants amounted to $509. The fair value of the warrant for the 1,250,000 shares has been calculated based on the Binomial options pricing model method. The Company used this model because the warrants are exercisable at for a period of up to 10 years. The assumptions utilized in the Binomial options pricing model for the warrants included a dividend yield of 0% and an expected volatility of 176%. The risk-free interest rate used was 1.73%. On May 21, 2013, the Company and the third party mutually agreed to terminate the warrant agreement.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

Interest Rate Risk

Interest rate risk arises on bank borrowings. Considering its recent financial position and subject to the restructuring of the remaining credit facilities, the Company monitors the interest rate on borrowings closely to ensure that the borrowings are maintained at favorable rates. The interest rates relating to the long-term loans are disclosed in Note 15, “Long-term Debt”.

Concentration of Credit Risk

The Company believes that no significant credit risk exists with respect to the Company’s cash due to the spread of this risk among various different banks. The Company is also exposed to credit risk in the event of non-performance by counterparties to derivative instruments. As of December 31, 2012, those derivative instruments are in the counterparties’ favor. Credit risk with respect to trade accounts receivable is reduced by the Company by chartering its vessels to established international charterers.

Cash deposits in excess of amounts covered by government – provided insurance are exposed to loss in the event of non-performance by financial institutions. The Company does maintain cash deposits in excess of government – provided insurance limits.

Interest Rate Swaps

Outstanding swap agreements involve both the risk of a counterparty not performing under the terms of the contract and the risk associated with changes in market value. The Company monitors its positions, the credit ratings of counterparties and the level of contracts it enters into with any one party. The counterparties to these contracts are major financial institutions. The Company has a policy of entering into contracts with counterparties that meet stringent qualifications.

The Company has entered into various interest rate swap agreements in order to hedge the interest expense arising from the Company’s long-term borrowings detailed in Note15. The interest rate swaps allow the Company to raise long-term borrowings at floating rates and swap them into effectively fixed rates. Under the interest rate swaps, the Company agrees with the counterparty to exchange, at specified intervals, the difference between a fixed rate and floating rate interest amount calculated by reference to the agreed notional amount.

The details of the Company’s swap agreements are as follows:

Counterparty

Interest rate swaps	Value Date	Termination Date	Contract Notional Amount	Fixed Rate	Floating Rate	Fair Value As of December 31, 2012	Fair Value As of December 31, 2011
Marfin Egnatia Bank	9/2/2009	9/2/2014	$ 37,400	4.08%	3-month LIBOR	$ 767	$ 1,373
Bank of Scotland*	7/6/2010	10/15/2015	$ 63,636	4.01%	3-month LIBOR	-	6,042
Bank of Scotland*	7/6/2010	10/15/2015	$ 13,333	4.01%	3-month LIBOR	-	1,393
						$ 767	$ 8,808

As of December 31, 2012 and 2011, the Company has defaulted on payments of interests on its swap agreements. As a result, the amounts of $767 and $8,808 are presented within current liabilities in the consolidated balance sheet.

* These swaps were surrendered in conjunction with the foreclosure of vessel owning companies.

The total fair value change of the interest rate swaps is reflected in interest expense within the consolidated statements of operations. These amounts were a gain of $564, $1,153 and $367 for the years ended December 31, 2012, 2011 and 2010, respectively. The related asset or liability is shown under derivative financial instruments in the balance sheet.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

Fair Value Hierarchy

The guidance on fair value prescribes methods for measuring fair value, establishes a fair value hierarchy based on the inputs used to measure fair value and expands disclosures about the use of fair value measurements.

The following tables present the Company's assets and liabilities that are measured at fair value on a recurring and a non-recurring basis and are categorized using the fair value hierarchy. The fair value hierarchy has three levels based on the reliability of the inputs used to determine fair value.

	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
December 31, 2011				
Assets				
Cash and cash equivalents	$ 5,119	$ 5,119	$ -	$ -
Restricted cash	$ 281	$ 281	$ -	$ -
Vessels under construction	$ 7,055	$ -	$ 7,055	$ -
Assets held for sale	$ 21,370	$ -	$ 21,370	$ -
Vessels	$ 210,850	$ -	$ 210,850	$ -
Liabilities				
Current portion of long-term debt	$ 207,281	$ -	$ 207,281	$ -
Senior convertible notes, net	$ 94,289	$ -	$ 94,289	$ -
Interest rate swaps	$ 8,808	$ -	$ 8,808	$ -
Capital lease obligations	$ 69,812	$ -	$ 69,812	$ -
December 31, 2012				
Assets				
Cash and cash equivalents	$ 1,043	$ 1,043	$ -	$ -
Restricted cash	$ 1,342	$ 1,342	$ -	$ -
Vessels	$ 4,775	$ -	$ 4,775	$ -
Liabilities				
Current portion of long-term debt	$ 17,400	$ -	$ 17,400	$ -
Senior convertible notes, net	$ 62,552	$ -	$ 62,552	$ -
Interest rate swaps	$ 767	$ -	$ 767	$ -

The Company's derivative instruments are valued using pricing models and the Company generally uses similar models to value similar instruments. Where possible, the Company verifies the values produced by its pricing models to market prices. Valuation models require a variety of inputs, including contractual terms, market prices, yield curves, credit spreads, measures of volatility, and correlations of such inputs. The Company's derivatives trade in liquid markets, and as such, model inputs can generally be verified and do not involve significant management judgment. Such instruments are typically classified within Level 2 of the fair value hierarchy.

The Company's assessment included its evaluation of the estimated fair market values for each vessel based on market transactions for which management assumes responsibility for all assumptions and judgments used, compared to the carrying value. Where possible, the Company's valuations consider a number of factors that include a combination of last completed sales, present market candidates, buyers' and sellers' ideas of similar vessels and other information they may possess. Based on this, the Company makes an assessment of what the vessel is worth at a given time, assuming that the vessel is in good working order and its hull and machinery are in a condition to be expected of vessels of its age, size and type, that the vessel's class is fully maintained and free from all conditions and the vessel is in sound seagoing condition, and that the vessel is undamaged, fully equipped, freely transferable and charter free. Such instruments are typically classified within Level 2 of the fair value hierarchy.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

21. COMMITMENTS AND CONTINGENT LIABILITIES

(1) Commitments

Rental Agreements

The Company has entered into office and warehouse rental agreements with a related party, Terra Stabile A.E. ("Terra Stabile"), which is controlled by Michail Zolotas, the Company's Chairman, Chief Executive Officer and member of the Company's Board of Directors (see Note 23), at a monthly rate of approximately €27,200, according to the original terms (for amendments in these rental agreements refer to Note 25). These rental agreements vary in duration —the longest agreement will expire in April 2022.

The committed rent payments to Terra Stabile as of December 31, 2012 were:

December 31, 2013	$	434
December 31, 2014		440
December 31, 2015		447
December 31, 2016		454
December 31, 2017		460
Thereafter		1,910
	$	**4,145**

Coal Sale Purchase Agreements (Purchase Agreements)

As of December 31, 2012, New Lead JMEG LLC, a joint venture affiliate of the Company (see Note 6) entered into two Sale Purchase Agreements with a third party to purchase thermal coal (used in power plants for electricity generation and other industrial uses) from Kentucky, USA. The commencement period of the agreements, which were revised on March 17, 2013, is considered to be the first shipment of coal, which is expected to take place during the fourth quarter of 2013 or as otherwise agreed.

The commitments as of December 31, 2012 were:

BTU	Year		Amount
12,300	1	$	47,028
12,300	2		64,350
12,300	3		64,350
12,300	4		64,350
12,300	5		64,350
			304,428
10,800	1		40,154
10,800	2		54,945
10,800	3		54,945
10,800	4		54,945
10,800	5		54,945
			259,934
		$	**564,362**

Commercial and Technical Ship Management Agreements

As of December 31, 2012, 2011 and 2010, the commercial and technical management services of all the Company's owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers. Outstanding balances, due to managing agents as at December 31, 2012 and 2011, relate to amounts generated prior to the termination of the agreements with the previous managers in prior periods (see Note 23).

Commitment exit

In the third quarter of 2010, the Company entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately $31,800, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, the Company cancelled such agreement and subsequently agreed to a final, mutual settlement in full of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this settlement agreement, dated December 21, 2010, the Company released to the sellers the deposit of $3,177 and further incurred a termination fee of $1,950, which was paid in January 2011. The total of $5,127 was included in Impairment losses in continuing operations in 2010.

(2) Contingencies

The Company is involved in various disputes and arbitration proceedings arising in the ordinary course of business. Provisions have been recognized in the financial statements for all such proceedings in which the Company believes that a liability may be probable, and for which the amounts are reasonably estimable, based upon facts known at the date the financial statements were issued. As of December 31, 2012, the Company has provided in respect of all claims an amount equal to $3,454 ($7,615 as of December 31, 2011). Other than those listed below, there are no material legal proceedings to which the Company is a party other than routine litigation incidental to the Company's business:

- The charterers of the Newlead Avra notified the Company in October 2008 of their intention to pursue the following claims and notified the appointment of an arbitrator in relation to them:

  a) Damages suffered by sub-charterers of the vessel relating to remaining on board cargo in New York in September 2007;

  b) Damages suffered by sub-charterers of the vessel as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and

  c) Damages suffered by sub-charterers of the vessel resulting from grounding in Houston in October 2007.

  The Company does not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The charterers of the Newlead Fortune notified the Company in October 2008 of their intention to pursue the following claims, and notified the appointment of an arbitrator in relation to them:

  a) Damages as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and

  b) Damages resulting from the creation of hydrogen sulphide in the vessel's tanks at two ports in the United States.

  The Company does not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The vessel Grand Rodosi was involved in a collision in October 2010 with the fishing vessel "Apollo S". As of December 31, 2012, the Company estimated that the expected possible losses amount to approximately $500, which, however, are 100% covered by the P&I Association:

  a) Pollution cleanup costs — the Company has a provided guarantee for A$500,000.

- The charterers of the Newlead Esmeralda notified the Company in November 2010 of their intention to pursue the following claims. After discussions with the charterers in March 2011, an agreement was reached that neither party would seek any form of security in the future for the claims relating to the grounding that occurred in March 2010. The Company believes the charterer's chances of success are remote. Below is a list of the claims:

  a) Damages for lost income as a result of cargo that was not able to be loaded, subsequent to vessel's grounding in March 2010;

  b) Damages resulting from the prolonged storage costs due to the inability to place cargo on board the vessel; and

  c) Anticipated costs.

The Company accrues for the cost of environmental liabilities when management becomes aware that a liability is probable and is able to reasonably estimate the probable exposure. Currently, management is not aware of any such claims or contingent liabilities, which should be disclosed, or for which a provision should be established in the accompanying consolidated financial statements. The Company's protection and indemnity (P&I) insurance coverage for pollution is $1,000,000 per vessel per incident.

22. TAXATION

The Company is not subject to tax on international shipping income in its respective jurisdictions of incorporation or in the jurisdictions in which their respective vessels are registered. However, the vessel-owning companies' vessels are subject to tonnage taxes, which have been included in the vessel operating expenses in the accompanying statements of operations.

Pursuant to the U.S. Internal Revenue Code (the "Code"), U.S.-source income from the international operation of vessels is generally exempt from U.S. tax if the company operating the vessels meets certain requirements. Among other things, in order to qualify for this exemption, the company operating the vessels must be incorporated in a country which grants an equivalent exemption from income taxes to U.S. corporations.

All of the Company's ship-operating subsidiaries satisfy these initial criteria. In addition, these companies must be more than 50% owned by individuals who are residents, as defined, in the countries of incorporation or another foreign country that grants an equivalent exemption to U.S. corporations. These companies also currently satisfy the more than 50% beneficial ownership requirement. In addition, should the beneficial ownership requirement not be met, the management of the Company believes that by virtue of a special rule applicable to situations where the ship operating companies are beneficially owned by a publicly traded company like the Company, the more than 50% beneficial ownership requirement can also be satisfied based on the trading volume and the anticipated widely-held ownership of the Company's shares, but no assurance can be given that this will remain so in the future, since continued compliance with this rule is subject to factors outside of the Company's control.

23. TRANSACTIONS INVOLVING RELATED PARTIES AND AFFILIATES

Terra Stabile A.E./ Terra Norma A.E.

The Company leases office space as well as warehouse space in Piraeus, Greece from Terra Stabile, which is controlled by Michail Zolotas, the Company's Chairman, Chief Executive Officer and member of the Company's Board of Directors. In November 2009, the Company and Terra Stabile entered into a 12-year lease agreement in relation to the office space and on April 28, 2010, the Company and Terra Stabile entered into a 12-year lease agreement for the warehouse space (see Note 21). In July 2012, the Company entered into two six-month lease agreements with Terra Norma A.E., which is also controlled by Mr. Zolotas in relation to office parking. Total rent for the years ended December 31, 2012, 2011 and 2010 was approximately $346, $484 and $340, respectively. During the year ended December 31, 2012, the Company issued, according to their respective settlement and subscription agreements, approximately an aggregate of 475,000 shares which vested upon issuance, to settle outstanding liabilities of $552 with Terra Stabile and Terra Norma.

Management Services and Commissions

Magnus Carriers, a company owned by two of the Company's former officers and directors, is a company that provided commercial management services to certain Company's vessel-owning companies at a commission of 1.25% of hires and freights earned by the vessels, or fees of $7 per month per vessel where no 1.25% commission was payable. In addition, Magnus Carriers was entitled to a commission of 1% on the sale or purchase price in connection with a vessel sale or purchase. These agreements were cancelled by the Company on May 1, 2009. For the years ended December 31, 2012, 2011 and 2010, these commissions and management fees were $0, $0 and $135, respectively (figures include continuing and discontinued operations).

Sea Breeze

As part of attaining revenue (commissions) for the Company's vessels, the Company contracted with a related entity, Sea Breeze Ltd., of which one of the Company's former directors is a shareholder. In addition, the Company paid 1% of the purchase price brokerage commission on the sale of the Saronikos Bridge and the MSC Seine, respectively. For the years ended December 31, 2012, 2011 and 2010, the commissions amounted to $0, $0 and $111, respectively (figures include continuing and discontinued operations).

Newfront Shipping S.A. – Stamford Navigation Inc.

At December 31, 2009, the vessel Australia had technical ship management and commercial management agreements with Stamford Navigation Inc. ("Stamford") and Newfront Shipping S.A. ("Newfront"), and the vessels China and Brazil had technical ship management and commercial management agreements with Newfront. Stamford and Newfront are both related parties with shareholders in common. The agreed annual management fees were approximately $185 per vessel. During the first quarter of 2010, these agreements were terminated. Accordingly, the vessel owning companies signed agreements with Newlead Bulkers S.A. for the provision of commercial and technical ship management services (see below). For the years ended December 31, 2012, 2011 and 2010, the management fees for Newfront were approximately $0, $0 and $50, respectively, and for Stamford were approximately $0, $0 and $28, respectively.

Newlead Bulkers S.A.

Since April 1, 2010, Newlead Bulkers S.A. has been a subsidiary of the Company as a result of its acquisition from Grandunion described in Note 5 above and, consequently, any transactions with the rest of the group have been fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of shareholders in common, Newlead Bulkers S.A. assumed the commercial and technical ship management services for the Australia, the China and the Brazil. The management fees for the year ended December 31, 2010 were $59.

As of December 31, 2012, the commercial and technical management services of all of the Company's owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

Newlead Shipping S.A.

Since April 1, 2010, Newlead Shipping S.A. has been a subsidiary of the Company as a result of its acquisition from Grandunion described in Note 5 above and, consequently, any transactions with the rest of the group have been fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of shareholders in common, Newlead Shipping S.A. assumed the commercial and technical ship management services for the Newlead Avra and the Newlead Fortune. The management fees for the year ended December 31, 2010 were $36.

As of December 31, 2012, the commercial and technical management services of all of the Company's owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

Grandunion Inc.

In April 2010, the Company completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, from Grandunion. For more details, refer to Note 5. In July 2010, the Company completed the acquisition of five dry bulk vessels from Grandunion including two newbuildings with long term time charters. See Note 11 for more details.

Domina Petridou O.E.

The Company leased office space in Glyfada, Greece from Domina Petridou O.E., a company in which one of the Company's former directors is a shareholder. In November 2005, the Company entered into a 10-year lease agreement with the landowner. In October 2007, the Company entered into an additional nine-year lease agreement with the landowner. These agreements were terminated in 2009 and in the first quarter of 2010, respectively. Total rent for the years ended December 31, 2012, 2011 and 2010, amounted to approximately $0, $0 and $17, respectively.

Aries Energy Corporation

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately $112,700 (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction. The purchase was completed pursuant to the terms of a Securities Purchase Agreement, dated February 18, 2010, with Aries Energy Corporation, a company with which NewLead had a significant shareholder in common at that time and Bhatia International PTE Ltd., an unrelated third party. Gabriel Petrides, a former Board member and an affiliate of Rocket Marine, is one of the Company's stockholders and is one of the principals of Aries Energy Corporation. The vote on Rocket Marine's shares was controlled by Grandunion pursuant to a voting agreement, and Mr. Petrides left the Company's board in October 2009. Accordingly, even though Rocket Marine was a principal stockholder at that time, neither it nor Mr. Petrides had the ability to influence the Company. The voting agreement between Rocket Marine Inc. and Grandunion expired on February 29, 2012. Management believes that the negotiations were conducted at arm's length and that the sale price is no less favorable than would have been achieved through arm's length negotiations with a wholly unaffiliated third party.

Affiliates

On April 11, 2012, through one of its wholly-owned subsidiaries, NewLead Holdings (US) Corp., the Company established New Lead JMEG LLC with J Mining & Energy Group, Inc. as a joint venture to engage in the business of the purchasing and trading of certain commodities, principally coal. The Company has joint control with J Mining & Energy Group, Inc. of New Lead JMEG LLC and is entitled to and is liable for the total net assets of the joint venture. On December 20, 2012, Jan M. Berkowitz, the President and Chief Executive Officer of J Mining & Energy Group, Inc., was nominated, constituted and appointed with full power to execute and legally bind the Company in any and all contracts relating to coal mining and sales of coal in the United States and to act on behalf of the Company in the negotiation of deals related to coal-bearing properties in the United States.

For more details for these transactions refer to Note 6.

24. DISCONTINUED OPERATIONS

During the year ended December 31, 2012, the Company sold twelve vessels and one hull, and three lenders foreclosed on the shares of the respective vessel owning companies and determined that the sales and the foreclosures met the requirements for these vessels and vessel owning companies to be classified as discontinued operations, which are reflected in the Company's consolidated statements of operations for all periods presented. See also Notes 10 and 11.

During 2011, the Company had sold four vessels and determined that the sale of these vessels met the requirements for these vessels to be classified as discontinued operations, which are reflected in the Company's consolidated statements of operations for all periods presented. See also Notes 10 and 11. In addition, as of December 31, 2011, the Company classified four vessels as "Assets held for sale".

Vessels

On April 6, 2012, the Company signed a memorandum of agreement in respect of each of the Hiona and the Hiotissa. On July 19, 2012 and on July 27, 2012, the Company sold the Hiona and the Hiotissa, respectively, to two unrelated parties for proceeds of approximately $28,500 for each vessel. The gain on the sale of the vessels amounted to $18,011 and is included in Loss from discontinued operations. The Company paid an address commission of 1.5% of the purchase price as a sales commission.

On April 5, 2012, the Company signed a memorandum of agreement in respect of the Newlead Venetico and on May 8, 2012 sold the vessel to an unrelated party for proceeds of approximately $9,450. The loss on the sale of the vessel amounted to $1,268 and is included in Loss from discontinued operations. The Company paid an address commission of 4.25% of the purchase price as a sales commission.

On March 21, 2012, the Company signed a memorandum of agreement relating to the Navios Serenity and on March 26, 2012 sold the vessel to an unrelated party for proceeds of approximately $26,000. The loss on the sale of the vessel amounted to $49 and is included in Loss from discontinued operations.

On February 24, 2012, the Bank of Scotland plc issued notices of enforcement and notices of default and acceleration in relation to their respective loan agreements, each dated April 15, 2010 (collectively, the "Kamsarmax Syndicate Facility Agreements"), between Ayasha Trading Corporation ("Ayasha") and Bethune Properties S.A. ("Bethune"), as borrowers, and the Bank of Scotland, BMTU Capital Corporation, and the Bank of Ireland, as lenders (see Note 15). Ayasha and Bethune were the shipowning companies of the vessels Newlead Tomi and Newlead Gujarat, respectively. Pursuant to such notices, the Bank of Scotland, as the agent and security trustee under each of the Kamsarmax Syndicate Facility Agreements, exercised its rights to foreclose on the shares of Ayasha and Bethune, which secured the loans under the Kamsarmax Syndicate Facility Agreements and the vessels were handed over to the lenders' control. The gain on the transaction resulting from the release of the respective liabilities to the lender amounted to $24,576 and is included in Loss from discontinued operations.

On February 10, 2012, the Company signed a memorandum of agreement relating to the Newlead Esmeralda and on February 16, 2012 sold the vessel to an unrelated party for proceeds of approximately $11,400. The loss on the sale of the vessel amounted to $28 and is included in Loss from discontinued operations.

On December 29, 2011, the Company signed a memorandum of agreement relating to the Grand Ocean and on January 11, 2012 sold the vessel to an unrelated party for proceeds of approximately $8,150. The loss on the sale of the vessel amounted to $457 and is included in Loss from discontinued operations. As of December 31, 2011, the Grand Ocean was classified as an asset held for sale, and was written down to its recoverable amount. The Company paid a 2% address commission and a 1% brokerage commission of the purchase price as sales commission to an unrelated party.

On December 20, 2011, the Company entered into a memorandum of agreement with an unrelated party for the sale of four LR1 product tanker vessels. The sale of two vessels, the Newlead Fortune and the Newlead Avra, was completed on December 22, 2011 for a net aggregate selling price of $63,758. The gain on the sale of these two vessels amounted to $8,640 and is included in Loss from discontinued operations in the accompanying statements of operations and cash flows. As of December 31, 2011, the Newlead Compass and the Newlead Compassion were classified as assets held for sale and the sale was completed on January 31, 2012 for a net aggregate selling price of $79,197. The gain on the sale of these two vessels amounted to $14,267 and is included in Loss from discontinued operations.

On August 12, 2011, First Business Bank and the Company entered into an agreement for the sale of two vessels, the Newlead Spartounta and Newlead Prosperity, which were sold on September 13, 2011 and September 20, 2011, respectively, for a net aggregate selling price of $33,548. The gain on the sale of these two vessels amounted to $4,931 and is included in Loss from discontinued operations in the accompanying statements of operations and cash flows.

Container vessels

From 2005 until 2010, the Company owned a number of container vessels, chartering them to its customers (the "Container Market"). The Container Market was fully discontinued as of December 31, 2009 and the last two vessels were sold in January 2010.

On January 7, 2010, the Company sold the Saronikos Bridge to an unrelated party for net proceeds of $5,348. The gain on the sale of the vessel amounted to $1,226. The Company paid 1% of the purchase price as sales commission to a brokerage firm, of which one of the former Company's directors is a shareholder (refer to Note 23). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as, a 1% address commission.

On January 20, 2010, the Company sold the MSC Seine to an unrelated party for net proceeds of $5,399. The gain on the sale of the vessel amounted to $1,271. The Company paid 1% of the purchase price as sales commission to a brokerage firm, of which one of the former Company's directors is a shareholder (refer to Note 23). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as, a 1% address commission.

Vessels under construction

On February 20, 2012, the Company received a default letter from the yard in respect of the delay of the payment of an installment of $7,400 after the completion of the "steel cutting" in September 2011 for the Handysize Hull 4029. On May 22, 2012, the Company signed an agreement with the shipbuilder and the Shipbuilding Contract with SPP Shipbuilding Co., Ltd., the prior contract with the yard, was terminated and ceased to be valid. Under this agreement, the Company and the yard mutually waived all rights and released and discharged each other from all liabilities, obligations, claims and demands. This agreement resulted in the Company being released from the $7,400 liability to the yard and the $7,240 write-off of the balance of the vessel under construction. In addition, on May 22, 2012, the Company was released from its obligations under the related Handysize Syndicate Facility Agreement for the Handysize Hull 4029, which were $5,492 (see Note 15). Furthermore, the obligation under the purchase option liability of $1,779 was written off upon the termination of the shipbuilding contract. The net gain resulting from these transactions and any other costs related to the sale amounted to $7,424 and is included in Loss from discontinued operations.

Leased vessels

On March 14, 2012, the Company received enforcement notices from Endurance Shipping LLC whereby, among other things, Endurance Shipping LLC exercised its rights to foreclose on the pledge of the shares of Curby Navigation Ltd., which secured the bareboat charter (see Note 17). On March 14, 2012, the Company redelivered the Newlead Endurance to Northern Shipping Fund LLC pursuant to a redelivery agreement in respect of the capital leasing arrangement. As part of this redelivery agreement, the Company was released from all its obligations and liabilities under the relevant finance lease documentation. The loss on the transaction amounted to $5,645 and is included in Loss from discontinued operations.

On March 19, 2012, the Company entered into an agreement with Prime Lake Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel Brazil, in settlement of part of the vessel's outstanding debt. The redelivery of the vessel was completed on March 19, 2012.

On February 3, 2012, the Company entered into an agreement with Prime Hill Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel Grand Rodosi, in settlement of part of the vessel's outstanding debt. The redelivery of the vessel was completed on February 7, 2012.

On February 3, 2012, the Company entered into an agreement with Prime Time Maritime Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.) in order to redeliver the vessel China, in settlement of part of the vessel's outstanding debt. The redelivery of the vessel was completed on February 11, 2012.

On October 21, 2011, the Company entered into an agreement with Prime Mountain Shipping Ltd. (an affiliate of Lemissoler Maritime Company W.L.L.), in order to redeliver the vessel Australia, in settlement of part of the vessel's outstanding debt, for a gross aggregate price of $13,220. As of December 31, 2011, the Australia was classified as an asset held for sale, and was written down to its recoverable amount. The redelivery of the vessel was completed on January 31, 2012. The Company paid an address commission of 3.5% of the purchase price as a sales commission.

The aggregate loss of the redelivery of these four vessel amounted to $669 and is included in Loss from discontinued operations.

(All amounts expressed in thousands of U.S. dollars)

The following table represents the revenues and net loss from discontinued operations:

	Year Ended December 31, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010
Operating Revenues	$ 14,187	$ 95,773	$ 86,503
Net loss	$ (1,800)	$ (166,679)	$ (13,803)

The reclassification to discontinued operations had no effect on the Company's previously reported consolidated net loss. In addition to the financial statements themselves, certain disclosures have been modified to reflect the effects of these reclassifications on those disclosures. The Company recorded an impairment charge on vessels in the amount of $0, $150,161 and $0 for the years ended December 31, 2012, 2011 and 2010, respectively.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements
(All amounts expressed in thousands of U.S. dollars)

25. SUBSEQUENT EVENTS

a) Common Shares, Restricted Common Shares and Warrants

During the period from January 1, 2013 until August 30, 2013, the Company issued an aggregate of 3,786,014 common shares, which vested upon issuance, to various vendors in order to settle outstanding liabilities totaling $2,223. On February 5, 2013, the Company issued an aggregate of 43,931 common shares, which vested upon issuance, to an ex-director in order to settle outstanding liabilities of approximately $44.

On April 9, 2012, 750,000 warrants were issued to a third party. On January 23 and 24, 2013, the warrants were exercised and the Company issued an aggregate of 620,149 common shares.

On April 1, 2013, the Company granted (except for the grants described in (ii) below which were granted per the terms of their employment agreements) and issued the following common shares: (i) 13,452,038 common shares to the Chairman, Mr. Zolotas, and 2,373,308 common shares to top management employees, of which 40% vested upon issuance and the remaining shares will vest 30% on April 1, 2014 and 30% on April 1, 2015, granted in recognition of the significant work performed by these individuals in connection with the Restructuring of the Company; (ii) 266,964 and 436,851 common shares to Nicholas G. Fistes, the former Chairman, and Mr. Zolotas, respectively, in connection with their 2012 annual base salaries under the terms of their respective employment agreements, which vested upon issuance; (iii) 1,267,603 common shares to employees and consultants, which vested upon issuance, granted in recognition of the significant work performed by these individuals in connection with the Restructuring of the Company; (iv) 700,000 common shares to non-executive directors, which vested upon issuance; (v) 16,399,703 shares to the former Chairman, Nicholas G. Fistes, after his resignation as part of his compensation package, which vested upon issuance; (vi) 4,166,667 shares to one of the Company's executive officers, after his resignation and as part of his compensation package, which vested upon issuance and (vii) 30,000 shares to two employees after their resignation and as part of their compensation packages, which vested upon issuance. The 2,373,308 common shares granted in (i) and all of the shares granted in (iii), (iv) and (vi) are subject to anti-dilution provisions, in the event of any reverse stock split within 18 months from the grant date.

On May 16, 2013, the Company authorized the issuance to a third party of a two-year warrant to purchase 1,666,667 common shares in exchange for $250,000, with an exercise price of $0.15.

On May 31, 2013, the Company issued 5,083,769 common shares to Mr. Zolotas in connection with his 2013 annual base salary under the terms of his employment agreement, which vested upon issuance.

b) Lease Agreements

On January 1, 2013, the Company entered into two six-month lease agreements with Terra Norma A.E., which is controlled by Mr. Zolotas, the Company's Chairman, Chief Executive Officer and member of the Company's Board of Directors in relation to office parking space for a monthly aggregate rate of approximately €2,400.

In addition, on January 1, 2013, the Company amended certain of its office rental agreements with Terra Stabile, which is also controlled by Mr. Zolotas (refer to Notes 21 and 23). According to the amendments, the aggregate monthly rate of approximately €27,200 was reduced to approximately €17,400 for the next two years.

Following the above mentioned agreements and amendments the committed rent payments to Terra Stabile A.E. and Terra Norma are:

December 31, 2013	$	294
December 31, 2014		275
December 31, 2015		438
December 31, 2016		445
December 31, 2017		451
Thereafter		1,873
	$	**3,776**

c) Compliance and Deficiency Notices from The NASDAQ Stock Market

On September 13, 2012, the Company received a written notification from The NASDAQ Stock Market LLC ("NASDAQ") indicating that it was not in compliance with NASDAQ Listing Rule 5450(a)(1) because the minimum bid price of the Company's common shares was below $1.00 per share for the previous 30 consecutive business days (the "minimum bid price requirement"). Pursuant to the NASDAQ Listing Rules, the Company was granted a 180-day compliance period in respect of the violation to regain compliance with the requirements of the NASDAQ Listing Rules. On January 24, 2013, the Company received notification from the NASDAQ Listing Qualifications department that it had regained compliance with the minimum bid price requirement pursuant to NASDAQ Listing Rule 5450(a)(1), as the closing bid price of the Company's common shares exceeded $1.00 for 10 consecutive business days.

On April 4, 2013, the Company received another written notification from NASDAQ indicating that the Company was not in compliance with NASDAQ Listing Rule 5450(a)(1) because the minimum bid price of the Company's common shares was below the minimum bid price requirement. Pursuant to the NASDAQ Listing Rules, the Company has been granted a 180-day compliance period to regain compliance with the requirements of the NASDAQ Listing Rules. The compliance period for the minimum bid price requirement ends on October 1, 2013. During the compliance period, the Company's common shares will continue to be listed and traded on The NASDAQ Global Select Market. Pursuant to the NASDAQ Listing Rules, the Company may regain compliance with the NASDAQ Listing Rules if the minimum bid price of its common shares equals at least $1.00 per share for ten consecutive business days at any time during the compliance period pursuant to NASDAQ Listing Rule 5810(c)(3)(A).

Additionally, the Company had not filed its Annual Report on Form 20-F for the fiscal year ended December 31, 2012 (the "Form 20-F") before the due date of April 30, 2013 and therefore did not comply with Nasdaq Listing Rule 5250(c)(1) for continued listing. On May 16, 2013, the Company received a notice from NASDAQ (the "NASDAQ Letter") stating that it was not in compliance with NASDAQ Listing Rule 5250(c)(1) (the "Rule") because it did not timely file the Form 20-F with the Securities and Exchange Commission (the "SEC"). NASDAQ Listing Rule 5250(c)(1), in pertinent part, requires the Company to timely file all required periodic reports and other documents with the SEC. The NASDAQ Letter requested that the Company submit a plan to regain compliance with the Rule by July 15, 2013.

On July 10, 2013, the Company submitted to NASDAQ a plan to regain compliance with the Rule. After reviewing the Company's plan to regain compliance, on August 5, 2013, NASDAQ granted an exception to enable the Company to regain compliance with the Rule. Under the terms of the exception, the Company must file its Form 20-F on or before September 2, 2013. As the Company is filing the Form 20-F before that date, it did not receive a notice of delisting of its common stock from NASDAQ.

d) Nickel Wire Transaction

On January 4, 2013, the Company, under a Nickel Purchase Agreement, acquired 3,750 grams of nickel wire (the "Nickel") from N.M. Kandilis S.A. in exchange for 258,536,585 newly issued common shares of the Company. The shares were issued on March 1, 2013. The Nickel Purchase Agreement stated that the respective shares will be delivered for Nickel with a value of at least $212,000. In connection with the Nickel Purchase Agreement, two affiliates of N.M. Kandilis S.A., Vasileios Telikostoglou and Essential Holding LTD, entered into lock-up agreements with respect to the common shares of the Company to be issued under the Nickel Purchase Agreement. These lock-up agreements provided, among other things, that if the Nickel was not monetized within eighteen months of the date of the Nickel Purchase Agreement, then the lock-up agreements would be considered null and void and the shares would be cancelled. These affiliates also agreed in the lock-up agreements that if the Nickel was sold at a reduced price of at least a 45% discount of the agreed contractual sale price under the Nickel Purchase Agreement, the number of shares would be adjusted pro rata. The Company intended to use the investment of Nickel to provide collateral for loans funding its capital-intensive activities and to provide a platform upon which to execute its diversified growth strategy.

Following Company's entry into the Nickel Purchase Agreement, PricewaterhouseCoopers Auditing Company S.A. ("PwC"), asked the Company's audit committee to (i) conduct an investigation of the transaction between us and N.M. Kandilis S.A. within the scope of Section 10A of the Securities Exchange Act of 1934, as amended, (ii) investigate the origin of the Nickel, including its transfer from a Russian entity, its importation into the United Kingdom, the manner of its clearance through UK customs and whether N.M. Kandilis S.A. had proper title to the Nickel to effect the transaction, (iii) assess and report on the integrity of the Company's management regarding the acquisition of the Nickel, (iv) assess whether the Company acquired legal ownership and good title of the Nickel and (v) advise as to any appropriate remedial action to be taken. The audit committee agreed with PwC's request, and hired Debevoise & Plimpton LLP ("Debevoise") to conduct the investigation.

The reports the Company had received from experts in the metals market, and used in connection with the closing of the Nickel transaction, valued much smaller quantities of nickel wire than the amount bought by the Company and the $212,000 valuation was an extrapolation derived by the Company's management from the value of the Nickel per meter. While the investigation was ongoing, PwC hired a third party valuation analyst to perform an independent fair value analysis of the Nickel. The third party valuation analyst determined that the Nickel's value was substantially less than the $212,000 in common shares paid as consideration for the Nickel. This substantially lower value was up to a 99% discount of the valuation used for the January 4, 2013 transaction. The Company believes the difference was partially due to a substantial illiquidity discount being placed on the Nickel due to the very large amount acquired. Further, the Company believes that prices received from the sale of the Nickel depend upon the country in which it is sold as well as the method of sale used. Company's attempts to use the Nickel as collateral following its acquisition convinced the Company that it would be challenging to accomplish a sizable transaction due to the illiquid market.

Pursuant to a July 31, 2013 report to the audit committee, Debevoise concluded as follows:

- It could not definitively confirm the source of the Nickel and did not see satisfactory documentation demonstrating the sale from its original manufacturer to N.M. Kandilis S.A. Although an investigator hired by Debevoise confirmed that certain Russian companies mentioned in the course of the investigation do manufacture nickel wire of similar characteristics to the Nickel in question, Debevoise noted that significant questions remain as to the way in which it was acquired. Debevoise further noted that, notwithstanding this, it did not identify any evidence of wrongdoing on the part of the Company's management or any indication of wrongdoing on the part of N.M. Kandilis S.A.'s representative with whom the Company interfaced in connection with the Nickel transaction.

- The Company's management undertook limited due diligence in relation to the parties involved in the Nickel transaction, and tried to improve the documentary record after the transaction. This, for example, involved back-dating documents and seeking written assurances and affidavits from several persons involved, though it appeared that this was done in an attempt to properly document the transaction, as opposed to being intentionally done to deceive investors or other parties. Notwithstanding these matters, Debevoise did not find any evidence to suggest any wrongdoing on the part of the Company's management, nor did it find any evidence that the Nickel transaction was done for potentially improper purposes.

- It would be advisable for the Company's management to undertake enhanced due diligence on any transaction outside its ordinary course of business, such as the Nickel transaction.

As a result of the difficulties in collateralizing the Nickel, the discrepancy in possible values of the Nickel and uncertainty as to the Nickel's origin, the Company and N.M. Kandilis S.A. mutually agreed on May 24, 2013 to unwind the transaction, at which time the Nickel was returned to N.M. Kandilis S.A. and the common shares issued in the transaction were cancelled.

e) Time Charter Agreements

On January 5, 2013, the Company agreed with the charterer of Newlead Markela to reduce the daily base rate from approximately $18 to approximately $8 and to extend the period of the charter for one additional year, through February 2014. In addition, the Company will be entitled to a 50% profit sharing of the daily earnings of the charterer in excess of the base rate.

On February 5, 2013, the Company entered into a four to seven month, time charter agreement, at the charterers' option, beginning February 10, 2013, for Newlead Victoria at a net of commission rate of approximately $7 per day. The time charter was completed on June 6, 2013.

f) Acquisition of Kentucky Property and Tennessee Property (refer to Note 5)

On February 12, 2013, the Company and the Owners agreed to extend the closing on the Kentucky property until no later than March 6, 2013, in exchange for $175 worth of restricted shares in the Company to be awarded at closing, and to extend the closing on the Tennessee property until no later than March 5, 2013, in exchange for $200 worth of shares in the Company to be awarded at closing.

On March 6, 2013, the sale was unable to close due to a lack of financing.

On March 18, 2013, the parties entered into a subsequent amendment (the "Kentucky Amendment") to the agreement to acquire title and mineral excavation rights to approximately 7,695 acres of land in Kentucky, dated December 18, 2012 (the "Kentucky Agreement"), pursuant to which the parties agreed to further extend the closing date of the Kentucky Agreement, subject to the execution of certain definitive agreements and continued compliance by the Company with certain conditions. Under the terms of the Kentucky Amendment, the closing date was extended to February 18, 2014, but in no case later than promptly following a final commitment and closing of loans from a funding source to finance the remaining payments due by the Company. As consideration for this extension, the Company committed to (i) make and pay for certain improvements to the property in a minimum amount of $300, (ii) execute forbearance agreements with certain of the noteholders (the "Forbearance Agreements"), pursuant to which payments on the notes will be paid directly by the Company on a monthly basis, as discussed below, (iii) provide a non-refundable deposit of $400, (iv) provide a $175 cash payment in lieu of the Company stock not previously delivered in connection with a prior extension of the closing date and (v) deliver $175 of the Company's stock. The Company is still evaluating the accounting to be followed in connection with the acquisition of this property.

The Forbearance Agreements provide that such noteholders will forbear from pursuing the rights and remedies available to them under the notes and the collateral security package until the earliest to occur of (a) the Company's failure to comply in any respect with the obligations under the Forbearance Agreements, (b) the occurrence or discovery of an event of default under the Kentucky Agreement, as amended (the period beginning March 18, 2013 to the earliest of such dates being the "Forbearance Period") or (c) February 18, 2014. Under the Forbearance Agreements, the Company was to pay to such noteholders monthly payments for a period of one year, with an aggregate of $400 per month due for the a three-month period, and approximately $1,100 due per month for nine-month period thereafter. Interest will accrue on these payments, until all principal on such notes have been paid, at rate of 10% per annum. Accumulated interest is not payable until the earlier of (i) the date of early payment of the principal amount of such notes or (ii) February 18, 2014. All amounts then-owing under the Kentucky Agreement, as amended, and the Forbearance Agreements will be accelerated and due in full upon the closing of a credit facility by the Company with a lending institution. The Company has been unable to meet the obligations under the Forbearance Agreements and the Kentucky Amendment, and is currently in default under such agreements. To date, the noteholders have not initiated any actions against the Company based upon the continuing defaults.

Except with respect to the specific existing events of default contemplated under the Forbearance Agreements, the Forbearance Agreements do not constitute a forbearance or waiver of the noteholders' rights at any time, including during the term of the Forbearance Agreements, to enforce any and all rights and remedies held under the Kentucky Agreement, as amended, the notes, the Collateral Security Package, or any other related document between the parties. Following the end of the Forbearance Period or following any actions taken by the noteholders based upon the continuing defaults by the Company, continued forbearance will only occur upon written agreement by the noteholders, upon terms and conditions satisfactory to the noteholders and in their sole discretion. If such continued forbearance is not secured, the noteholders shall have the right to enforce any and all rights available to them, including recovery of the full amount of the obligations owed and foreclosure on collateral thereunder. The Company is seeking the financing to consummate this transaction to satisfy its obligations as soon as possible. However, the Company has already missed the original expected closing date, and there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable for damages and for any and all amounts owed.

On March 14, 2013, the Company entered into an amendment (the "Tennessee Amendment") to the agreement to acquire ownership and leasehold interests in 18,335 acres in Tennessee containing coal and natural gas and other natural resources (the "Tennessee Agreement"), pursuant to which the Company was permitted to utilize the property through a one-year lease agreement, terminating February 15, 2014. The lease payments were to be $450 per month for a three-month period, followed by approximately $3,200 per month for the nine month period thereafter. The lease payments were applied towards reducing the amount of consideration owed by the Company under the Tennessee Agreement, as amended. The lease was to be terminated if any lease payment was not timely made. Further, upon any default under the lease, the Company must assign all rights under permits, mining contracts or other mining assets on the property to the seller of the property. The seller of the property was also be granted membership interests in the leasing party, our wholly-owned U.S. subsidiary, in order to secure obligations owed under the lease. Further, a portion of the Company's obligation was evidenced by an approximate $23,000 on promissory note with a maturity date of February 15, 2015. The Company is still evaluating the accounting to be followed in connection with the acquisition of this property.

Under the terms of the Tennessee Amendment, the Company has also agreed to take all reasonable steps to secure financing to close the transaction as soon as possible, and will set a closing date as soon as practicable following a secure commitment of financing, but in any case before the end of the first year following the first lease payment under the Tennessee Amendment. Pursuant to the terms of the Tennessee Amendment, since the transaction has not closed by July 15, 2013, the remaining lease payments will now bear interest at a rate of 6% per annum, payable on the 15th date of each month, until closing occurs. Should closing not occur on or before March 15, 2014, the Tennessee Agreement, and any amendments thereto, shall terminate and be of no further force or effect. The Company has been unable to meet the obligations under the Tennessee Amendment, is currently in default under such agreement and no longer has the right to utilize the property. To date, the sellers have not initiated any actions against the Company based upon such continuing defaults. Because the Company has defaulted under the terms of Tennessee Amendment, in June 2013 the Company assigned all rights under permits, mining contracts or other mining assets on the property back to seller. While the Company intends to secure the financing to satisfy the Tennessee Agreement, as amended, there can be no assurance that such financing will be secured on favorable terms, or at all. If appropriate financing is not secured, the transaction will not close, and, unless alternative terms are negotiated, the Company may be liable to the parties for damages or any and all amounts owed under the agreements, which may adversely affect our business.

g) Coal Sale Purchase Agreements (Sale Agreements)

During 2012, New Lead JMEG LLC, a joint venture affiliate of the Company, entered into three Sale Purchase Agreements with two parties to supply approximately $575,800 of thermal coal, located in Kentucky, USA, which are subject to a variation of 5-10% in agreed tonnage supply. On October, 25, 2012, two of those Sale Purchase Agreements to supply approximately $65,300 of thermal coal with the same third party were assigned from the buyers to another third party, according to an addendum to the Sale Purchase Agreements. As a result of the assignments, a new Sale Purchase Agreement was signed. The commencement period of the new agreement begins with the first shipment of coal which is expected to commence during the fourth quarter of 2013 or as otherwise agreed. Additionally, on April 23, 2013, New Lead JMEG LLC and the third party mutually agreed to cancel the third Sale Purchase Agreement to supply approximately $510,500 of thermal coal.

In January and February 2013, New Lead JMEG LLC also entered into three Sale Purchase Agreements with two third parties to supply approximately $806,100 of thermal coal, which are subject to a variation of 5-10% in agreed tonnage supply, located in Kentucky, USA. In May and July 2013, New Lead JMEG LLC received notices of termination on the two of those Sale Purchase Agreements to supply approximately $245,100 of thermal coal to one of the third parties due to the ongoing defaults by New Lead JMEG LLC under the agreements. The third Sale Purchase Agreement was orally terminated by both parties due to the ongoing defaults by New Lead JMEG LLC under the agreement. As of August 30, 2013, the buyers of all three Sale Purchase Agreements have not initiated any actions against New Lead JMEG LLC based upon such defaults.

h) New Credit Facilities

On February 5, 2013, the Company issued a senior convertible promissory note to Good Faith Credit LLC ("Good Faith"), for up to $1,000 (the "Good Faith Note"). The Good Faith Note is due in one balloon payment on August 4, 2014. Borrowings under this Good Faith Note bear a fixed interest rate of 10% per annum on the unpaid principal balance and 5% per annum on the outstanding principal balance and any accrued and unpaid cash interest in Company's common shares or cash, at the option of the Company. The Good Faith Note is convertible into common shares at a conversion price of $0.82 per share at holder's option, at any time and from time to time.

On March 4, 2013, New Lead JMEG LLC entered into an additional agreement with a financial institution for a Credit Facility of up to $500. The facility was payable in one balloon payment due three months from the draw-down unless the lender agrees, in its sole discretion to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance. On June 5, 2013, the facility was fully repaid.

On March 8, 2013, New Lead JMEG LLC entered into an agreement with a financial institution for a Revolving Credit Facility of up to $1,350. The facility is payable in one balloon payment due twelve months from the final draw-down unless the lender agrees, in its sole discretion, to extend to such date as the lender may determine. Borrowings under this facility bear a fixed interest rate of 24% per annum on the unpaid principal balance.

On June 19, 2013, the Company issued a senior convertible promissory note to Tiger Equity Partners Ltd. ("Tiger") for up to $1,670 (the "Tiger Note"). The Tiger Note is due on June 19, 2014. Borrowings under this note bear a fixed interest rate of 8% per annum on the unpaid principal balance if paid in cash or 15% per annum on the outstanding principal balance if settled by issuance of shares of the Company, at the option of the Company. The Tiger Note also contains interest and anti-dulition adjustments under certain circumstances. The Tiger Note is convertible into common shares at a conversion price equal to 95% of the arithmetic average of the closing price of the Company's common shares on the five trading days prior to and beginning with the date two business days before the maturity date or the conversion date.

i) Management Agreements

During the period from January 1, 2013 until August 30, 2013, the Company agreed, through its wholly-owned subsidiary Newlead Shipping, to perform part of the commercial, the technical and the operational management of three double-hulled oil tanker/asphalt carriers owned by a third party for a monthly fee of approximately $13 per vessel. As of August 30, 2013, the Company performs the management of two double-hulled oil tanker/asphalt carriers. Management of the third double-hulled oil tanker/asphalt carrier is expected to commence during September 2013.

M/T Hiona and M/T Hiotissa were sold and delivered to their new owners on July 19, 2012 and July 27, 2012, respectively. After that dates, Newlead Shipping continued to have part of the commercial, the technical and the operational management of these vessels. On February 25, 2013, the Company received notices of redelivery and termination of the respective management agreements, which were effected during June 2013.

j) Appointments

In January 2013, following (i) the expiration of the term of the Class I Directors in the Company's Annual General Meeting of Shareholders in 2012 and (ii) the resignation of Nicholas G. Fistes from his position as Class I Director and Chairman, the Company announced that Michael S. Zolotas, in addition to his other positions, would assume the role and responsibilities of Chairman of the Company. As such, the Company's Board of Directors consists of one Class I Director, one Class II Director and two Class III Directors.

In March 2013, Spyros Gianniotis, a Class III Director since October 13, 2009, was appointed Deputy Chairman.

In March 2013, Antonis Bertsos, the Company's Chief Financial Officer, was appointed President and Corporate Secretary.

k) Equity Incentive Plan

On March 13, 2013, the Second Amended and Restated 2005 Equity Incentive Plan (the "Plan") was amended to increase the number of common shares reserved for issuance from 2,083,334 to 37,209,590 to better enable the Company to offer equity incentives to officers, directors, employees and consultants. In addition, the Plan provides for an annual increase in the total number of the Company's common shares available for issuance under the Plan on the first day of each fiscal year of the Company beginning in fiscal year 2014, by 5% of the number of outstanding common shares of the Company on such date.

(l) (i) Accounts Payable Settlement (April 5, 2013)

On April 5, 2013, the Supreme Court of the State of New York, County of New York (the "Court"), entered an order (the "Order") approving, among other things, the fairness of the terms and conditions of an exchange pursuant to Section 3(a)(10) of the Securities Act of 1933, as amended (the "Securities Act"), in accordance with a stipulation of settlement (the "Settlement Agreement") between NewLead Holdings Ltd. and Hanover Holdings I, LLC, a New York limited liability company ("Hanover"), in the matter entitled Hanover Holdings I, LLC v. NewLead Holdings Ltd., Case No. 650964/2013 (the "Action"). Hanover commenced the Action against the Company on March 18, 2013 to recover an aggregate of $2,412 of past-due accounts payable of the Company, which Hanover had purchased from certain vendors of the Company pursuant to the terms of separate receivable purchase agreements between Hanover and each of such vendors (the "Assigned Accounts"), plus fees and costs (the "Claim"). The Assigned Accounts relate to certain legal, insurance, broker, bunker and consulting services provided by certain vendors of the Company. The Order provides for the full and final settlement of the Claim and the Action. The Settlement Agreement became effective and binding upon the Company and Hanover upon execution of the Order by the Court on April 5, 2013.

Pursuant to the terms of the Settlement Agreement approved by the Order, on April 5, 2013, the Company issued and delivered to Hanover 6,000,000 shares (the "Settlement Shares") of the Company's common shares. The Settlement Agreement provides that the Settlement Shares will be subject to certain adjustments for certain period (which is the shorter of the following: (a) the 50-consecutive trading day period commencing on the trading day immediately following the date of issuance of the initial Settlement Shares and (b) the consecutive trading day period commencing on the trading day immediately following the Initial Issuance Date and ending on the trading day that Hanover shall have received the aggregate cash proceeds from the resale of Settlement Shares) to reflect the intention of the parties that the total number of common shares to be issued to Hanover pursuant to the Settlement Agreement be based upon a specified discount to the trading volume weighted average price of the common shares for a specified period of time. Hanover should receive aggregate cash proceeds from the resale of Settlement Shares equal to the sum of (i) $3,135, representing 130% of the total amount of the Claim, and (ii) the total dollar amount of Hanover's legal fees and expenses incurred in connection with the Action, subject to the cap set forth above (less $10 heretofore paid by the Company), supported by daily written reports to be delivered by Hanover to the Company. As a result, the Company ultimately may be required to issue to Hanover substantially more common shares than the number of Settlement Shares initially issued, subject to certain limitations.

In addition, the Settlement Agreement also provides that with respect to any single trading day during the period, Hanover shall not offer or sell any Settlement Shares on, or over the course of, such trading day in excess of a specified “Trading Limitation Threshold” of the average daily trading volume in the Company’s common shares. The Settlement Agreement further provides that in no event shall the number of shares of common shares issued to Hanover or its designee in connection with the Settlement Agreement, when aggregated with all other shares of Common Stock then beneficially owned by Hanover and its affiliates, result in the beneficial ownership by Hanover and its affiliates at any time of more than 4.99% of the Company’s common shares. Furthermore, the Settlement Agreement provides that, for so long as Hanover or any of its affiliates hold any common shares, Hanover and its affiliates are prohibited from, among other actions: (1) voting any common shares owned or controlled by Hanover or its affiliates, or soliciting any proxies or seeking to advise or influence any person with respect to any voting securities of the Company; or (2) engaging or participating in any actions, plans or proposals that relate to or would result in, among other things, (a) Hanover or its affiliates acquiring additional securities of the Company, alone or together with any other person, which would result in Hanover and its affiliates collectively beneficially owning, or being deemed to beneficially own, more than 9.99% of the Company’s common shares or other voting securities of the Company, (b) an extraordinary corporate transaction such as a merger, reorganization or liquidation of the Company or any of its subsidiaries, (c) a sale or transfer of a material amount of assets of the Company or any of its subsidiaries, (d) changes in the present board of directors or management of the Company, (e) material changes in the capitalization or dividend policy of the Company, (f) any other material change in the Company’s business or corporate structure, (g) changes in the Company’s charter, bylaws or similar instruments or other actions which may impede the acquisition of control of the Company by any person, (h) causing a class of securities of the Company to be delisted or cease to be authorized to be quoted on an inter-dealer quotation system of a registered national securities association, (i) causing a class of equity securities of the Company to become eligible for termination of registration under Section 12(g)(4) the Exchange Act, or (j) any actions similar to the foregoing. These prohibitions may not be modified or waived without further order of the Court.

The issuance of Common Stock to Hanover pursuant to the terms of the Settlement Agreement approved by the Order is exempt from the registration requirements of the Securities Act pursuant to Section 3(a)(10) thereof, as an issuance of securities in exchange for bona fide outstanding claims, where the terms and conditions of such issuance are approved by a court after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear.

Since the issuance of the Settlement Shares described above, Hanover demonstrated to the Company’s satisfaction that it was entitled to receive an aggregate of 6,850,000 additional shares (“Additional Settlement Shares”) based on the adjustment formula described above, and that the issuance of such Additional Settlement Shares to Hanover, in the amounts and at the times requested by Hanover during the Calculation Period, would not result in Hanover exceeding the beneficial ownership limitation set forth above. Accordingly, during the Calculation Period, the Company issued and delivered to Hanover an aggregate of 6,850,000 Additional Settlement Shares pursuant to the terms of the Settlement Agreement approved by the Order.

The Calculation Period expired on June 18, 2013 and the True-Up Date occurred on June 19, 2013. Based on the adjustment formula described above, Hanover was entitled to receive an aggregate of 11,995,826 VWAP Shares. Accordingly, since Hanover previously had received an aggregate of 12,850,000 Settlement Shares and Additional Settlement Shares, on the True-Up Date Hanover returned to the Company for cancellation 854,174 shares of Common Stock pursuant to the terms of the Settlement Agreement approved by the Order. No additional shares of Common Stock are issuable to Hanover pursuant to the Settlement Agreement.

(ii) Accounts Payable Settlement (July 9, 2013)

On July 9, 2013, the Court entered an order (the “July Order”) approving, among other things, the fairness of the terms and conditions of an exchange pursuant to Section 3(a)(10) of the Securities Act in accordance with a stipulation of settlement (the “July Settlement Agreement”) between NewLead Holdings Ltd. and Hanover in the matter entitled Hanover Holdings I, LLC v. NewLead Holdings Ltd., Case No. 155723/2013 (the “July Action”). Hanover commenced the July Action against the Company on June 21, 2013 to recover an aggregate of $7,206 of past-due accounts payable of the Company, which Hanover had purchased from certain vendors of the Company pursuant to the terms of separate receivable purchase agreements between Hanover and each of such vendors (the “July Assigned Accounts”), plus fees and costs (the “July Claim”). The July Assigned Accounts relate to certain legal, insurance, broker, bunker, consulting and other services and supplies provided by certain vendors of the Company. The July Order provides for the full and final settlement of the July Claim and the July Action. The July Settlement Agreement became effective and binding upon the Company and Hanover upon execution of the July Order by the Court on July 9, 2013.

Pursuant to the terms of the July Settlement Agreement approved by the July Order, on July 10, 2013, the Company issued and delivered to Hanover 61,000,000 shares (the “July Settlement Shares”) of the Company’s common stock. The July Settlement Agreement provides that the July Settlement Shares will be subject to certain adjustments for certain period (which is the shorter of the following: (a) the 120-consecutive trading day period (subject to extension as set forth in the July Settlement Agreement) commencing on the trading day immediately following the date of issuance of the July Settlement Shares (the “July Initial Issuance Date”), and (b) the consecutive trading day period commencing on the trading day immediately following the July Initial Issuance Date and ending on the trading day that Hanover shall have received the aggregate cash proceeds from the resale of July Settlement Shares) to reflect the intention of the parties that the total number of common shares to be issued to Hanover pursuant to the July Settlement Agreement be based upon a specified discount to the trading volume weighted average price of the common shares for a specified period of time. Hanover should receive aggregate cash proceeds from the resale of July Settlement Shares equal to the sum of (i) $9,727, representing 135% of the total amount of the July Claim, and (ii) the total dollar amount of Hanover’s legal fees and expenses incurred in connection with the July Action, subject to the cap set forth above, supported by daily written reports to be delivered by Hanover to the Company. As a result, the Company ultimately may be required to issue to Hanover substantially more common shares than the number of July Settlement Shares initially issued, subject to certain limitations.

In addition, the July Settlement Agreement also provides that with respect to any single trading day during the period, Hanover shall not offer or sell any July Settlement Shares on, or over the course of, such trading day in excess of the greater of (i) 15% of the worldwide average daily trading volume in the Company's common shares on all national securities exchanges and automated quotation systems, if any, on which the common shares is listed or designated for quotation (as the case may be), excluding any sales of common shares by Hanover, for the 10 trading days immediately preceding such trading day and (ii) $65 worth of common shares. Hanover and the Company may modify this restriction by mutual written agreement.

The July Settlement Agreement further provides that in no event shall the number of shares of Company's common shares issued to Hanover or its designee in connection with the July Settlement Agreement, when aggregated with all other shares of common shares then beneficially owned by Hanover and its affiliates, result in the beneficial ownership by Hanover and its affiliates at any time of more than 9.99% of the Company's common shares.

The remaining terms of the July Settlement Agreement and July Order are substantially the same as the terms of the Settlement Agreement and Order executed in April.

m) The following sets forth the terms of the completed steps to the restructuring plan during the period from January 1, 2013 until August 30, 2013.

(i) Piraeus Bank Credit Facilities

On June 20, 2012, the Company entered into an agreement with Piraeus Bank that was subsequently amended on April 10, 2013 to proceed with the sale of two tanker vessels, Hiona and Hiotissa, for an aggregate amount of approximately $57,000 and to convert, subject to satisfaction of certain conditions precedent by the Company, the remaining outstanding debt of Hiona, Hiotissa and Grand Ocean, into common shares of the Company. The vessels were sold during July 2012 and the proceeds of such sale were applied towards (a) the prepayment of the total outstanding amounts due under the loan agreement for the two vessels, in an aggregate amount of approximately $51,100, (b) interest payable and (c) the payment of outstanding trade and vendor payments. On April 11, 2013, 46,250,000 common shares were issued to Piraeus Bank and vested immediately upon issuance. Pursuant to a Registration Rights Agreement entered into in connection with the agreement, as subsequently amended on April 10, 2013, Piraeus Bank may demand that the Company file a registration statement with respect to the shares, request that the Company file a registration statement on Form F-3 if the Company is entitled to use such form, or request that the common shares be covered by a registration statement that the Company is otherwise filing (i.e., piggy-back registration). On April 25, 2013, the Company was fully discharged and released from any and all obligations to Piraeus Bank under the credit facilities.

(ii) Portigon AG Credit Facility

On March 28, 2013, the Company agreed with Portigon AG ("Portigon") to certain amendments to the credit facility, which include, among others, that: (a) the outstanding balance of $25,250 is to be payable in 3 quarterly installments of $300, followed by 5 quarterly installments of $375, followed by 15 quarterly installments of $475, followed by a balloon payment of $15,350 due on the last payment date (the first repayment installment shall be repaid on June 30, 2013 and the balloon installment shall be repaid on January 31, 2019), (b) the Company is waived from the application of the minimum security cover provisions set out in the original agreement as of the date of the amendment until the earlier of (i) the date on which the bank is satisfied that the security cover ratio is not less than 100% and (ii) December 31, 2013 (inclusive), and (c) the Company was waived from the application of the financial covenants as of the date of the amendment until June 30, 2013 (inclusive). In addition, the Company will pay to Portigon a non-refundable restructuring fee of $250 on or before September 30, 2013. Furthermore, it was agreed that Portigon will have the option to demand the sale of the vessel Newlead Victoria at any time that the market value of the vessel is at least equal to the amount of the loan outstanding on that date. Portigon will be entitled to 75% of the balance of the proceeds after repayment of the outstanding loan balance, any other amounts owed under the loan agreement (i.e. accrued interest), any direct sale costs approved by Portigon and any trade debt for an amount which will not exceed in aggregate $500. Moreover, the vessel's excess cash must be applied towards the prepayment of the balloon installment, in accordance with the following, all as described in the amended loan facility: (i) if the Company is in compliance with the value to loan ratio, 50% of the excess cash must be applied towards prepayment of the loan facility; and (ii) if the Company is not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. As of August 30, 2013, the Company is in default in certain covenants under this facility.

(iii) Capital lease obligation with Lemissoler Maritime Company W.L.L.

On January 30, 2013, the Company was formally released from all of its obligations and liabilities under the relevant finance lease documentation.

n) Mojave Finance Inc. Credit Facility

On January 9, 2013 and July 9, 2013, the loan facility was further amended. Pursuant to the second and the third amendments, the loan is payable after an eighteen-month period following the drawdown date, with the $3,000 repayment due on October 11, 2013. As of August 30, 2013, the Company is in default on the payments of this facility.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEWLEAD HOLDINGS LTD.

By: /s/ Michail Zolotas

Michail Zolotas
Chief Executive Officer
Dated: August 30, 2013

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT is entered into as of this 4th day of February, 2013 (this "Agreement"), by and between NewLead Holdings Ltd., a Bermuda company (the "Company") and Good Faith Credit LLC, with a registered address of 825 Third Avenue, 34th Floor, New York, NY 10022 (the "Purchaser").

WITNESSETH:

WHEREAS, the Company desires to borrow money from the Purchaser in an aggregate principal amount of $1,000,000 (one million);

WHEREAS, the Purchaser desires to lend such money to the Company upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties and agreements set forth herein, the Parties hereto agree as follows:

ARTICLE I

SALE AND ISSUANCE OF THE NOTE

1.1 Authorization of Issuance and Sale of the Note; Aggregate Purchase Price. Subject to the terms and conditions hereof, the Company has authorized the issuance and sale to Purchaser of a promissory note, substantially in the form attached hereto as Exhibit A (the "Note"), in the aggregate principal amount of $1,000,000 (one million dollars).

1.2 Issuance and Closing. Subject to the terms and conditions hereof, the closing of the sale (the "Closing") shall take place on February [•], 2013 or such earlier date as the parties mutually agree (the "Closing Date"). On the Closing Date, the Company shall issue and sell to the Purchaser and, subject to and in reliance upon the representations, warranties, covenants, terms and conditions of this Agreement, the Purchaser shall purchase the Note.

1.3 Payment. On the Closing Date, in lieu of paying the purchase price for the Note to the Company, the Company authorizes and directs Purchaser to make payments as set forth on Schedule 1 hereto on the Company's behalf.

1.4 Financing Participation Right. To induce the Purchaser to purchase the Note, the Company hereby agrees that S. Goldman Advisors LLC (the "BD") will have the right to participate in the next two equity or equity-linked financings the Company does after the date hereof, provided that if the Company gets a proposal from a third party as to such a financing, BD must, in good faith, believe it can consummate a transaction within the same time period reasonably contemplated by such third party at an effective price per share and resulting in net proceeds to the Company at least equal to those believed to be achievable pursuant to the third party proposal. If the Company determines to proceed with a third party proposal, it shall notify BD in writing of such proposal, including the contemplated time frame and expected net proceeds and price (or formula for determining price) and BD shall have five (5) business days after receipt of such notice to determine whether to proceed with such financing.

ARTICLE II

SECURITIES ACT REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company that:

2.1 Purchaser Representation Regarding the Note. The Purchaser understands and acknowledges that the Note and the underlying securities have not been registered under the Securities Act of 1933 (the "Securities Act"), or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Purchaser is aware that the Company is under no obligation to effect any such registration with respect to the Note or the underlying securities or to file for or comply with any exemption from registration. The Purchaser has not been formed solely for the purpose of making this investment. The Purchaser is purchasing the Note to be acquired by the Purchaser hereunder for the Purchaser's own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same.

2.2 Legend. The Purchaser acknowledges the Note will contain a restrictive legend in the following form:

> THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

2.3 Purchaser Status. Each of the members of the Purchaser are, and the Purchaser is, an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

2.4 Experience of the Purchaser. The Purchaser has (1) been furnished with all information which it deems necessary to evaluate the merits and risks of the purchase of the Note; (2) had the opportunity to ask questions concerning the Note; (3) has had the opportunity to obtain any additional information it deems necessary to verify the accuracy of any information obtained concerning the Note; and (4) such knowledge and experience in financial and business matters that it is able to evaluate the merits and risks of its investment in the Company and to make an informed investment decision relating thereto.

2.5 General Solicitation. The Purchaser is not receiving the Note as a result of any advertisement, article, notice or other communication regarding the Note published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

2.6 Reliance on Representations and Warranties. Purchaser understands that the exemption of this transaction from registration under applicable U.S. Securities Laws is dependent on the accuracy of the foregoing representations and warranties and indemnifies the Company from any damages resulting from any inaccuracy therein.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

3.1 Organization, Good Standing and Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the Bermuda and has all requisite corporate power and authority to carry on its business as presently conducted and as proposed to be conducted.

3.2 Authorization. The Company has full power and authority to enter into this Agreement and the Note (together, the "Purchase Documents"). The Purchase Documents to which the Company is a party, when executed and delivered by the Company, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.

3.3 Valid Issuance of Shares. The Note that is being purchased by the Purchaser hereunder, when issued, sold and delivered in accordance with the terms of this Agreement and for the consideration expressed herein, will be duly and validly issued. The securities issuable upon conversion of the Note, when issued in compliance with the terms of such Note and this Agreement will be duly and validly issued, fully paid and nonassessable and, based in part upon the accuracy of the representations and warranties of the Purchaser in this Agreement, will be issued in compliance with all applicable federal and state securities laws.

3.4 No Violation. None of the execution, delivery and performance by the Company of the Purchase Documents and compliance with the terms and provisions thereof or the consummation of the transactions contemplated hereby or thereby will (a) contravene any applicable provision of any applicable law of any governmental authority, (b) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of the Company pursuant to, the terms of any material indenture, loan agreement, lease agreement, mortgage or deed of trust, or any other contractual obligation to which the Company is a party or by which it or any of its property or assets is bound, or violate any provision of the organization documents of the Company.

3.5 Government Consents and Filings. Assuming the accuracy of the representations made by the Purchaser in Article II of this Agreement, no authorization or approval or other action by, and no notice to or filing with, any governmental authority or other person or entity, and no consent or approval under any contractual obligation or instrument (other than those that have been duly obtained or made and which are in full force and effect) is required for the execution, delivery and performance of the Purchase Documents by the Company.

ARTICLE IV

COVENANTS OF THE COMPANY

4.1 Registration Rights. If the Company files a registration statement to register the sale of shares of common stock for any other stockholder of the Company and the shares of common stock underlying the Note are not then salable under Rule 144 promulgated under the Securities Act of 1933 and the Company is not prohibited from registering the shares of common stock underlying the Note by an agreement in effect as of the date of this Agreement, then the Company shall, by written notice to the Purchaser, offer the Purchaser the right to have such underlying shares of common stock included in such registration statement. The Purchaser shall have five business days after receipt of such notice to notify the Company in writing if the Purchaser wishes such underlying shares to be so included.

4.2 Reserved Stock.

(a) The Company shall ensure that there are sufficient authorized, unissued and unreserved shares of Reserved Stock (as defined below) available for issuance upon conversion of the Note pursuant to the terms and conditions of the Note and this Agreement. To the extent that there would not be sufficient authorized, unissued and unreserved shares of Reserved Stock of the Company available for issuance upon conversion of the Note pursuant to the terms and conditions of the Note and this Agreement, the Company shall take or cause to be taken all actions necessary to amend its organizational documents (to be effective no later than immediately prior to such conversion) such that there will be sufficient authorized, unissued and unreserved shares of common stock available for issuance upon such conversion, and the Company's failure to do so shall be a breach of this covenant.

(b) "Reserved Stock" means (i) the common stock issued or issuable upon conversion of the Note and (ii) any common stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

ARTICLE V

MISCELLANEOUS

5.1 Notices. All communications, notices, requests, consents or demands given or required under this Agreement shall be in writing and shall be deemed to have been duly given when delivered to, or received by prepaid registered or certified mail or recognized overnight courier addressed to, or upon receipt of a facsimile sent to, the Party for whom intended, at the address set forth opposite such party's name on the signature page.

5.2 Entire Agreement. This Agreement and any instruments to be executed hereunder, set forth the entire understanding of the Parties hereto with respect to its subject matter, and supersedes all other understandings. No waiver of any provision of this Agreement shall be deemed to be waiver of the same or any other provision in any other instance. Failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of its rights under such provision.

5.3 Successors and Assigns. This Agreement may not be assigned by either Party.

5.4 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

5.5 Severability. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, this Agreement shall be enforceable as if such provision were severed.

5.6 Currency. The parties hereto agree that all monetary amounts set forth herein are referenced in United States dollars, unless otherwise stated.

5.7 Counterparts. This Agreement may be executed in counterparts and by facsimile signatures. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof. All such counterparts shall together constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the date first set forth above.

GOOD FAITH CREDIT LLC

By:
Authorized Officer
ADDRESS

NEWLEAD HOLDINGS LTD.

By:____________________________
Michail Zolotas
Chief Executive Officer

Schedule 1

Exhibit A

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

NEWLEAD HOLDINGS LTD.

SENIOR CONVERTIBLE PROMISSORY NOTE

$1,000,000.00 February 5, 2013

FOR VALUE RECEIVED, NewLead Holdings Ltd., a Bermuda company (the "**Company**"), promises to pay to Good Faith Credit LLC ("**Holder**"), or its registered assigns, the principal sum of One Million Dollars ($1,000,000.00) together with (i) simple interest (the "**Cash Interest**") from the date of this Senior Convertible Promissory Note (this "**Note**") on the unpaid principal balance at a rate equal to ten percent (10%) per annum, computed daily and on the basis of the actual number of days elapsed and a year of 365 days, and (ii) the issuance of common shares of the Company, par value $0.01 per share (the "**Common Shares**"), at a rate of five percent (5%) (the "**PIK Interest**") of the outstanding principal balance per annum, computed daily and on the basis of the actual number of days elapsed and a year of 365 days, at the PIK Payment Price (as defined below), unless the Company elects to pay such amount due under (ii) in cash.

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which Holder, by the acceptance of this Note, agrees:

1. ***Payment Terms***.

(a) *Principal*. The outstanding principal balance is due and payable on August 4, 2014 or such earlier date as this Note may be prepaid on or which payment is accelerated as provided herein (the "**Maturity Date**").

(b) *Cash Interest and PIK Interest* Any accrued and unpaid Cash Interest on this Note and any accrued and unissued or unpaid PIK Interest shall be due and payable in semi-annual installments on August 15, 2013 and February 14, 2014, concluding with the final installments on the Maturity Date. If the Note Value (as defined below) is converted in accordance with Section 2, any accrued and unissued or unpaid PIK Interest shall be due and issuable or payable on the Conversion Date.

(c) *Voluntary Prepayment*. The outstanding principal balance of the Note may be prepaid by the Company at any time, together with any then accrued and unpaid Cash Interest and any then accrued and unissued or unpaid PIK Interest.

2. ***Conversion.***

(a) *Voluntary Conversion.* Subject to Section 2(e), at any time after the date hereof and until this Note is no longer outstanding, the outstanding principal balance and all accrued and unpaid Cash Interest thereon as of such date (collectively, the "**Note Value**") shall be convertible, in whole or in part, into Common Shares at Holder's option, at any time and from time to time, at a rate of one (1) Common Share for each $0.82, subject to adjustment pursuant to Section 6 (the "**Conversion Price**"), of Note Value on the Conversion Date (as defined below). Holder shall effect conversions by delivering to the Company a Notice of Conversion specifying therein the Note Value to be converted and the date on which such conversion shall be effected (such date, the "**Conversion Date**"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. Conversions hereunder shall have the effect of lowering the outstanding principal balance of the Note in an amount equal to the applicable conversion. Holder and the Company shall maintain records showing the Note Value(s) converted and the date(s) of such conversion(s).

(b) *Termination of Rights Under this Note.* Immediately upon the last Conversion Date on which the full Note Value has been converted, this Note shall no longer be deemed to be outstanding and all rights with respect to this Note shall immediately cease and terminate on the Conversion Date, except only the right of Holder to receive the shares to which it is entitled as a result of the conversion on the Conversion Date under the terms, and subject to conditions, of this Note.

(c) *Taxes or other Issuance Charges.* The issuance of any Common Shares upon conversion of this Note, and the delivery of certificates or other instruments representing the same, shall be made without charge to Holder for any tax or other charge in respect of such issuance. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any certificate or instrument in a name other than that of Holder, and the Company shall not be required to issue or deliver any such certificate or instrument unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(d) *Holder Not a Shareholder.* Holder shall not have, solely on account of such status as a holder of this Note, any rights of a shareholder of the Company, either at law or in equity, or any right to any notice of meetings of shareholders or of any other proceedings of the Company until such time as this Note has been converted pursuant to Section 2(a), at which time Holder shall be deemed to be the holder of record of Common Shares, as applicable, notwithstanding that the transfer books of the Company shall then be closed or certificates representing such Common Shares shall not then have been actually delivered to Holder.

(e) *Reservation of Common Shares Issuable Upon Conversion.* The Company shall at all times reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of effecting the conversion of this Note, such number of Common Shares from time to time issuable upon such conversion and, if at any time, the number of authorized but unissued Common Shares shall not be sufficient to effect the conversion of this Note, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Common Shares to such number of shares as shall be sufficient for such purpose, including, without limitation, using its best efforts to obtain the requisite shareholder approval of any necessary amendment to its Amended and Restated Memorandum of Association.

(f) *Fractional Shares.* No fractional Common Shares shall be issued upon conversion of this Note. In lieu thereof, the Common Shares otherwise issuable shall be rounded up or down to the nearest whole Common Share.

(g) *Securities Act of 1933.* Upon conversion of this Note, Holder may be required to execute and deliver to the Company an instrument, in form satisfactory to the Company, representing that the Common Shares issuable upon conversion hereof are being acquired for investment only and not with a view to distribution within the meaning of the Securities Act of 1933, as amended.

3. ***Events of Default.*** The occurrence of any of the following shall constitute an "**Event of Default**" under this Note:

(a) *Failure to Pay.* The Company shall fail to pay when due any Cash Interest or pay or issue when due any PIK Interest payment required under the terms of this Note on the date due and such payment shall not have been made within five (5) business days of the Company's receipt of written notice to the Company of such failure to pay; or

(b) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Holder in writing in connection with this Note, or as an inducement to Holder to enter into this Note, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

(c) *Voluntary Bankruptcy or Insolvency Proceedings.* The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) admit in writing its inability to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(d) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof, under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement.

4. ***Rights of Holder upon Event of Default or Qualified Financing.*** Upon the occurrence of any Event of Default (other than an Event of Default described in Sections 3(c) or 3(d)) and at any time thereafter during the continuance of such Event of Default, Holder may, by written notice to the Company, declare all outstanding Obligations (as defined below) payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence of any Event of Default described in Sections 3(c) and 3(d) or a Qualified Financing, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Holder may exercise any other right power or remedy permitted to it by law, either by suit in equity or by action at law, or both. In addition, the Cash Interest rate on this Note shall be increased from ten percent (10%) per annum to thirteen percent (13%) per annum, computed and compounding daily and on the basis of the actual number of days elapsed and a year of 365 days.

5. ***Interest and Anti-Dilution Adjustment on Incurrence of Future Debt Securities***. If and whenever on or after the date hereof the Company issues any debt security which has an interest rate of more than 15% (taking into account any original issue discount), then, immediately after such issuance, the interest rate on this Note shall be adjusted to such higher interest rate. Any such adjustment shall be made by raising the Cash Interest, rather than by increasing the PIK Interest on this Note. If and whenever on or after the date hereof the Company issues any additional debt security that is convertible into Common Shares and which has anti-dilution provisions that are more favorable than the provisions in Section 6 hereof, then this Note shall have the benefit of such anti-dilution provisions as if this Note contained such anti-dilution provisions effective immediately upon the issuance of the convertible debt security.

6. ***Certain Adjustments***. The number and class or series of shares into which this Note may be converted under Section 5 shall be subject to adjustment in accordance with the following provisions:

(a) *Adjustment for Reorganization, Recapitalization or Merger*. If, while this Note remains outstanding and has not been converted, there shall be a reorganization or recapitalization of the Company (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), any merger or consolidation of the Company with or into another entity (excluding a merger or consolidation in which the Company is the continuing entity that does not result in any reclassification or reorganization of the Common Shares) or any sale or conveyance to another corporation or entity of all or substantially all of the assets or other property of the Company in connection with which the Company is dissolved, all necessary or appropriate lawful provisions shall be made so that Holder shall thereafter be entitled to receive upon conversion of this Note, the greatest number of shares of stock or other securities or property that a holder of the class of securities deliverable upon conversion of this Note would have been entitled to receive in such reorganization, recapitalization or merger if this Note had been converted immediately prior to such reorganization or recapitalization, all subject to further adjustment as provided in this Section 6. If the per share consideration payable to Holder for such class of securities in connection with any such transaction is in a form other than cash or marketable securities, then the value of such consideration shall be determined in good faith by the Corporation's Board of Directors. The foregoing provisions of this paragraph shall similarly apply to successive reorganizations or recapitalizations and to the stock or securities of any other corporation that are at the time receivable upon the conversion of this Note. In all events, appropriate adjustment shall be made in the application of the provisions of this Note (including adjustment of the conversion price and number of shares into which this Note is then convertible pursuant to the terms and conditions of this Note) with respect to the rights and interests of the Lender after the transaction, to the end that the provisions of this Note shall be applicable after that event, as near as reasonably may be, in relation to any shares or other property deliverable or issuable after such reorganization, recapitalization or merger upon conversion of this Note.

(b) *Adjustments for Split Subdivision or Combination of Shares*. If the Company at any time while this Note remains outstanding and unconverted, shall split or subdivide any class of securities into which this Note may be converted into a different number of securities of the same class, the number of shares of such class issuable upon conversion of this Note immediately prior to such split or subdivision shall be proportionately increased and the conversion price for such class of securities shall be proportionately decreased. If the Corporation at any time while this Note, or any portion hereof, remains outstanding and unconverted shall combine any class of securities into which this Note may be converted, into a different number of securities of the same class, the number of shares of such class issuable upon conversion of this Note immediately prior to such combination shall be proportionately decreased and the conversion price for such class of securities shall be proportionately increased.

7. ***Definitions***. As used in this Note, the following capitalized terms have the following meanings:

"Event of Default" has the meaning given in Section 3 hereof.

"Holder" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Holder of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note, including, all interest, Common Shares, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"PIK Payment Price" shall mean an amount equal to ninety-five percent (95%) of the arithmetic average of the daily VWAPs of the Common Shares on the five (5) trading days prior to and beginning with the date two (2) business days before the Maturity Date or the Conversion Date.

"Qualified Financing" shall mean the issuance by the Company of more than Three Million Dollars ($3,000,000.00) in unsecured debt following the date hereof.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"VWAP" of any security on any trading day means the volume-weighted average price of such security on such trading day on the Principal Market, as reported by Bloomberg Financial, L.P., based on a trading day from 9:30 a.m., Eastern Time, to 4:00 p.m., Eastern Time, using the AQR Function, for such trading day (or if such source ceases to be available, comparable source selected by Holder and acceptable to the Company in its reasonable judgment); *provided, however,* that during any period the VWAP is being determined, the VWAP shall be subject to equitable adjustments reasonably acceptable to Holder for (i) stock splits, (ii) stock dividends, (iii) combinations, (iv) capital reorganizations, (v) issuance to all holders of Common Shares of rights or warrants to purchase shares of Common Shares, (vi) distribution by the Company to all holders of Common Shares of evidences of indebtedness of the Company or cash (other than regular quarterly cash dividends), and (vii) similar events relating to the Common Shares, in each case which occur, or with respect to which the "ex" date occurs, during such period; *provided, further, however*, that if on any trading day there shall be no reported volume-weighted average price of such security, the "VWAP" on such trading day shall mean the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question, as reported by the OTC Markets Group, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any FINRA member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution.

8. *Miscellaneous*.

(a) *Successors and Assigns; Transfer of this Note*

(i) Subject to the restrictions on transfer described in this Section 8(a), the rights and obligations of the Company and Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or any securities issued pursuant to, Holder will give written notice to the Company prior thereto, describing briefly the manner thereof, together with evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory evidence, the Company, as promptly as practicable, shall notify Holder that Holder may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 8(a) that the evidence is not reasonably satisfactory to the Company, the Company shall so notify Holder promptly after such determination has been made. Each Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of Holder.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company and Holder.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed, e-mailed or delivered to each party at the respective addresses of the parties as set forth below, or at such other address or facsimile number as the Company shall have furnished to Holder in writing.

If to the Company:

NewLead Holdings Ltd.
83 Akti Miaouli & Flessa
185 38 Piraeus, Greece
E-Mail: [________________]
Attention: Michail S. Zolotas

If to Holder:

Good Faith Credit LLC
825 Third Avenue, 34th Floor
New York, NY 10022

All such notices or communications shall be deemed to be received (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of nationally-recognized overnight courier, on the next business day after the date when sent; (iii) in the case of electronic mail, upon confirmed receipt; and (iv) in the case of mailing, on the third business day following the date on which the piece of mail containing such communication was posted.

(d) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

(e) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York, or of any other state.

(f) *Payment of Expenses.* Company agree to pay all debts and expenses, including reasonable attorneys' fees, which may be incurred by Holder in enforcing this Note and/or collecting any amount due under this Note.

9. *Waiver of Jury Trial; Judicial Reference.* Each of the Company and Holder of this Note (by accepting this Note) hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Note. Each of the Company and Holder of this Note (by accepting this Note): (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver; and (b) acknowledges that it and the other parties hereto have been induced to issue or accept this Note, as the case may be, by, among other things, the mutual waivers and certifications in this paragraph.

[Signature Page Follows]

The Company has caused this Note to be issued as of the date first written above.

NEWLEAD HOLDINGS LTD.

By: ______________________________

Name: Michail S. Zolotas

Title: CEO / Director

Exhibit 2.8

PROMISSORY NOTE

$7,500,000.00 December 28, 2012

FOR VALUE RECEIVED, Newlead Holdings, LTD., a company organized in Bermuda (the "**Maker**"), hereby promises to pay to the order of Kentucky Fuel Corporation, a Kentucky corporation and any subsequent successors or assigns as holders of this Note (the " **Holder**" or "**Holders**") in the manner hereinafter provided, the principal sum of Seven Million Five Hundred Thousand Dollars ($7,500,000.00 without interest on the outstanding principal balance from this date until balloon payment of all funds on this Note paid January 29, 2013. (the " **Payment Date**") in accordance with the provisions hereinafter set forth.

1. Payment of Principal; Security. Principal hereunder shall be payable in its entirety on the Payment Date, in consideration of Holder's having transferred, on or prior to December 28, 2012, to Williams Industries, LLC ("Williams"), certain ownership and mineral rights to the property (called the "**Five Mile Property**") described in that certain amended Asset Purchase Agreement between Holder and Williams dated May 10, 2012 (the "KFC-Williams APA"). Said transfer to Williams was and is part of an overall purchase transaction of the Five Mile Property by Maker under a related amended purchase agreement by and among Williams and other parties named therein, which related agreement was assigned to the Maker (the "Williams-CCE-Newlead Holdings APA") , (both the KFC-Williams APA and the Williams-CCE-Newlead Holdings APA are incorporated herein by reference), under the terms and conditions described in the Williams-CCE-Newlead Holdings APA and subject to clean title of the Five Mile Property and validity of the included leases. This Note is being guaranteed unconditionally by Williams under a written Guaranty, and is being secured by mortgages on and security interests in the Five Mile Property, as contemplated by the KFC-Williams APA.

2. Payment Information. Payment shall be made on the Payment Date into an account specified by the Holder.

3. Events of Default. An "**Event of Default**" shall exist under this Note in the event Maker shall fail to make the payment due under this Note on or before January 29,2013.

4. Payment of Taxes and Expenses. Holder agrees to pay all its taxes owed when payment is made under this Note.

5. Maker's Covenants. Maker agrees that (a) the obligation evidenced by this Note is an exempted transaction under the Truth-in-Lending Act, 15.U.S.C § 1601, et seq. (1982); and (b) said obligation constitutes a business loan for the purpose of the application of any laws that distinguish between consumer loans and business loans and that have as their purpose the protection of consumers in the state in which the Property (as herein defined) is located.

6. Severability. The parties hereto intend and believe that each provision of this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Note is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and that the rights, obligations and interests of Maker and Holder under the remainder of this Note shall continue in full force and effect.

7. Extension. This Note, or any payment hereunder, may be extended from time to time by agreement in writing between Maker and Holder without in any other way affecting the liability and obligations of Maker and Maker Parties, if any.

8. Governing Law. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. IN ANY LITIGATION IN CONNECTION WITH OR TO ENFORCE THIS NOTE, THE MAKER HEREBY IRREVOCABLY CONSENTS AND CONFERS PERSONAL JURISDICTION ON THE STATE COURTS OF DELAWARE OR ON THE UNITED STATES DISTRICT COURT OR THE UNITED STATES BANKRUPTCY COURT FOR THE DELAWARE DISTRICT.

9. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING THAT RELATES TO OR ARISE OUT OF THIS NOTE OR THE ACTS OR FAILURE TO ACT OF OR BY HOLDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE.

10. No Oral Modification. This Note may not be modified or discharged orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, modification or discharge is sought.

11. Time. Time is of the essence with regard to the performance of the obligations of Maker in this Note and each and every term, covenant and condition herein by or applicable to Maker.

12. Valid and Binding Obligation. Upon execution of this Promissory Note by the undersigned officer of the Maker, this Promissory Note is and shall be the valid, binding and enforceable obligation of the Maker in accordance with the terms hereof.

IN WITNESS WHEREOF, Maker has caused this Promissory Note to be duly executed by a duly authorized officer under seal on the date first above written.

MAKER: NEWLEAD HOLDINGS, LTD

By: ________________________
Name: ________________________
Title: ________________________

HOLDER: KENTUCKY FUEL CORPORATION

By: ________________________
Name: ________________________
Title: ________________________

PROMISSORY NOTE

$2,000,000.00 December 28, 2012

FOR VALUE RECEIVED, Newlead Holdings, LTD., a company organized in Bermuda (the "**Maker**"), hereby promises to pay to the order of Williams Industries, LLC, a Delaware limited liability company and any subsequent successors or assigns as holders of this Note (the " **Holder**" or "**Holders**") in the manner hereinafter provided, the principal sum of Two Million Dollars ($2,000,000.00) without interest on the outstanding principal balance from this date until balloon payment of all funds on this Note paid January 29, 2013. (the " **Payment Date**") in accordance with the provisions hereinafter set forth.

1. Payment of Principal. Principal hereunder shall be payable in its entirety on the Payment Date, in consideration of transfer of ownership and mineral rights to the property (called the "**Five Mile Property**") described in that certain amended Asset Purchase Agreement by and among Holder and other parties named therein, which agreement was assigned to the Maker (the "APA") , (incorporated herein by reference), under the terms and conditions described in the APA and subject to clean title of the Five Mile Property and validity of the included leases.

2. Payment Information. Payment shall be made on the Payment Date into an account specified by the Holder.

3. Events of Default. An "**Event of Default**" shall exist under this Note in the event Maker shall fail to make the payment due under this Note on or before January 29, 2013

4. Payment of Taxes and Expenses. Holder agrees to pay all its taxes owed when payment is made under this Note.

5. Maker's Covenants. Maker agrees that (a) the obligation evidenced by this Note is an exempted transaction under the Truth-in-Lending Act, 15.U.S.C § 1601, et seq. (1982); and (b) said obligation constitutes a business loan for the purpose of the application of any laws that distinguish between consumer loans and business loans and that have as their purpose the protection of consumers in the state in which the Property (as herein defined) is located.

6. Severability. The parties hereto intend and believe that each provision of this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Note is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and that the rights, obligations and interests of Maker and Holder under the remainder of this Note shall continue in full force and effect.

7. Extension. This Note, or any payment hereunder, may be extended from time to time by agreement in writing between Maker and Holder without in any other way affecting the liability and obligations of Maker and Maker Parties, if any.

8. Governing Law. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. IN ANY LITIGATION IN CONNECTION WITH OR TO ENFORCE THIS NOTE, THE MAKER HEREBY IRREVOCABLY CONSENTS AND CONFERS PERSONAL JURISDICTION ON THE STATE COURTS OF DELAWARE OR ON THE UNITED STATES DISTRICT COURT OR THE UNITED STATES BANKRUPTCY COURT FO THE DELAWARE DISTRICT.

9. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY ANI UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING THAT RELATES TO OR ARISE OUT OF THIS NOTE OR THE ACTS OR FAILURE TO ACT OF OR BY HOLDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE.

10. No Oral Modification. This Note may not be modified or discharged orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, modification or discharge is sought.

11. Time. Time is of the essence with regard to the performance of the obligations of Maker in this Note and each and every term, covenant and condition herein by or applicable to Maker.

12. Valid and Binding Obligation. Upon execution of this Promissory Note by the undersigned officer of the Maker, this Promissory Note is and shall be the valid, binding and enforceable obligation of the Maker in accordance with the terms hereof.

IN WITNESS WHEREOF, Maker has caused this Promissory Note to be duly executed by duly authorized office under seal on the date first above written.

MAKER: NEWLEAD HOLDINGS, LTD

By: ________________________
Name: ________________________
Title: ________________________

HOLDER: WILLIAMS INDUSTRIES, LLC

By: ________________________
Name: ________________________
Title: ________________________

PROMISSORY NOTE

$1,500,000.00 December 28, 2012

FOR VALUE RECEIVED, Newlead Holdings, LTD., a company organized in Bermuda (the "**Maker**"), hereby promises to pay to the order of RJLT Investments, LLC and any subsequent successors or assigns as holders of this Note (the "**Holder**" or "**Holders**") in the manner hereinafter provided, the principal sum of One Million Five Hundred Thousand Dollars ($1,500,000.00) without interest on the outstanding principal balance from this date until balloon payment of all funds on this Note paid January 29, 2013. (the "**Payment Date**") in accordance with the provisions hereinafter set forth.

1. Payment of Principal; Security. Principal hereunder shall be payable in its entirety on the Payment Date, in consideration of transfer of ownership and mineral rights to the property (called the "**Five Mile Property**") described in that certain amended Asset Purchase Agreement by and among Holder and other parties named therein, which agreement was assigned to the Maker (the "APA") , (incorporated herein by reference), under the terms and conditions described in the APA and subject to clean title of the Five Mile Property and validity of the included leases.

2. Payment Information. Payment shall be made on the Payment Date into an account specified by the Holder.

3. Events of Default. An "**Event of Default**" shall exist under this Note in the event Maker shall fail to make the payment due under this Note on or before January 29, 2013.

4. Payment of Taxes and Expenses. Holder agrees to pay all its taxes owed when payment is made under this Note.

5. Maker's Covenants. Maker agrees that (a) the obligation evidenced by this Note is an exempted transaction under the Truth-in-Lending Act, 15.U.S.C § 1601, et seq. (1982); and (b) said obligation constitutes a business loan for the purpose of the application of any laws that distinguish between consumer loans and business loans and that have as their purpose the protection of consumers in the state in which the Property (as herein defined) is located.

6. Severability. The parties hereto intend and believe that each provision of this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Note is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and that the rights, obligations and interests of Maker and Holder under the remainder of this Note shall continue in full force and effect.

7. Extension. This Note, or any payment hereunder, may be extended from time to time by agreement in writing between Maker and Holder without in any other way affecting the liability and obligations of Maker and Maker Parties, if any.

8. Governing Law. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. IN ANY LITIGATION IN CONNECTION WITH OR TO ENFORCE THIS NOTE, THE MAKER HEREBY IRREVOCABLY CONSENTS AND CONFERS PERSONAL JURISDICTION ON THE STATE COURTS OF DELAWARE OR ON THE UNITED STATES DISTRICT COURT OR THE UNITED STATES BANKRUPTCY COURT FO THE DELAWARE DISTRICT.

9. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY IRREVOCABLY ANI UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING THAT RELATES TO OR ARISE OUT OF THIS NOTE OR THE ACTS OR FAILURE TO ACT OF OR BY HOLDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE.

10. No Oral Modification. This Note may not be modified or discharged orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, modification or discharge is sought.

11. Time. Time is of the essence with regard to the performance of the obligations of Maker in this Note and each and every term, covenant and condition herein by or applicable to Maker.

12. Valid and Binding Obligation. Upon execution of this Promissory Note by the undersigned officer of the Maker, this Promissory Note is and shall be the valid, binding and enforceable obligation of the Maker in accordance with the terms hereof.

IN WITNESS WHEREOF, Maker has caused this Promissory Note to be duly executed by a duly authorized officer under seal on the date first above written.

MAKER: NEWLEAD HOLDINGS, LTD

By: ____________________
Name: ____________________
Title: ____________________

HOLDER: RJLT INVESTMENTS, LLC

By: ____________________
Name: ____________________
Title: ____________________

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT is entered into as of this 19th day of June, 2013 (this "Agreement"), by and between NewLead Holdings Ltd., a Bermuda company (the "Company") and TIGER EQUITY PARTNERS LTD., with a registered address at Vanterpool Plaza, 2nd floor, Wickhams Cay I, Road Town, Tortola, British Virgin Islands (the "Purchaser").

WITNESSETH:

WHEREAS, the Company desires to borrow money from the Purchaser in an aggregate principal amount of up to US$1,670,000 (United States Dollars one million six hundred and seventy thousand);

WHEREAS, the Purchaser desires to lend such money to the Company upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties and agreements set forth herein, the Parties hereto agree as follows:

ARTICLE I

SALE AND ISSUANCE OF THE NOTE

1.1 Authorization of Issuance and Sale of the Note; Aggregate Purchase Price. Subject to the terms and conditions hereof, the Company has authorized the issuance and sale to Purchaser of a promissory note, substantially in the form attached hereto as Exhibit A (the "Note"), in the aggregate principal amount of up to US$1,670,000 (United States Dollars one million six hundred and seventy thousand). For the avoidance of doubt, the final total amount the Purchaser will lend to the Company (i.e. the total principal amount of the note) will be up to the absolute discretion of the Purchaser.

1.2 Issuance and Closing. Subject to the terms and conditions hereof, the closing of the sale (the "Closing") shall take place on June 19, 2013 or such earlier date as the parties mutually agree (the "Closing Date"). On the Closing Date, the Company shall issue and sell to the Purchaser and, subject to and in reliance upon the representations, warranties, covenants, terms and conditions of this Agreement, the Purchaser shall purchase the Note.

1.3 Payment. On the Closing Date, or shortly thereafterl, the Purchaser shall deposit the principal amount of up to US$1,670,000 (United States Dollars one million six hundred and seventy thousand), in one or more tranches (in the absolute discretion of the Purchaser) in the following bank account:

Beficiary bank	: EFG EUROBANK ERGASIAS, 8 OTHONOS ATHENS GREECE
Swift Code	: EFGBGRAA
Account No	: 0026 002923 1200402691
IBAN No	: GR39 02 60029 0000 2312 0040 2691
Beneficiary Name	: NEWLEAD HOLDINGS LTD.
Address	: 83 AKTI MIAOULI & FLESSA, 185 38 PIRAEUS GREECE

1.4 Financing Participation Right. To induce the Purchaser to purchase the Note, the Company hereby agrees that Purchaser will have the right to participate in the next two equity or equity-linked financings the Company does after the date hereof, provided that if the Company gets a proposal from a third party as to such a financing, Purchaser must, in good faith, believe it can consummate a transaction within the same time period reasonably contemplated by such third party at an effective price per share and resulting in net proceeds to the Company at least equal to those believed to be achievable pursuant to the third party proposal. If the Company determines to proceed with a third

party proposal, it shall notify Purchaser in writing of such proposal, including the contemplated time frame and expected net proceeds and price (or formula for determining price) and Purchaser shall have five (5) business days after receipt of such notice to determine whether to proceed with such financing.

1.5 Additional Financial Option: The Purchaser confirms and agrees to provide the Company with additional lending (in the form of an additional note), and the Company agrees to issue such note, for an amount up to US$2,330,000 (United States Dollars two million three hundred and thirty thousand), in the absolute discretion of the Purchaser and subject to a written notice from the Purchaser ("Purchaser's Option"). Such Purchaser's Option is to be exercised up to one and a half year from the date of execution of this Agreement or at such later date may be mutually agreed between the Parties.

1.6 Board Position Right In the event the Purchaser exercises its' Option as per Article 1.5 hereinabove, subject to the Company's Internal Rules and Policies and any other mandatory law regulations and procedures, the Purchaser shall have the right to recommend for election 1 (one) member in the Company's Board of Directors.

ARTICLE II

SECURITIES ACT REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company that:

2.1 Purchaser Representation Regarding the Note. The Purchaser understands and acknowledges that the Note and the underlying securities have not been registered under the Securities Act of 1933 (the "Securities Act"), or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Purchaser is aware that the Company is under no obligation to effect any such registration with respect to the Note or the underlying securities or to file for or comply with any exemption from registration. The Purchaser has not been formed solely for the purpose of making this investment. The Purchaser is purchasing the Note to be acquired by the Purchaser hereunder for the Purchaser's own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same.

2.2 Legend. The Purchaser acknowledges the Note will contain a restrictive legend in the following form:

> THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

2.3 Purchaser Status. Each of the members of the Purchaser are, and the Purchaser is, an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

2.4 Experience of the Purchaser. The Purchaser has (1) been furnished with all information which it deems necessary to evaluate the merits and risks of the purchase of the Note; (2) had the opportunity to ask questions concerning the Note; (3) has had the opportunity to obtain any additional information it deems necessary to verify the accuracy of any information obtained concerning the Note; and (4) such knowledge and experience in financial and business matters that it is able to evaluate the merits and risks of its investment in the Company and to make an informed investment decision relating thereto.

2.5 General Solicitation. The Purchaser is not receiving the Note as a result of any advertisement, article, notice or other communication regarding the Note published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

2.6 Reliance on Representations and Warranties. Purchaser understands that the exemption of this transaction from registration under applicable U.S. Securities Laws is dependent on the accuracy of the foregoing representations and warranties and indemnifies the Company from any damages resulting from any inaccuracy therein.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

3.1 Organization, Good Standing and Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the Bermuda and has all requisite corporate power and authority to carry on its business as presently conducted and as proposed to be conducted.

3.2 Authorization. The Company has full power and authority to enter into this Agreement and the Note (together, the "Purchase Documents"). The Purchase Documents to which the Company is a party, when executed and delivered by the Company, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.

3.3 Valid Issuance of Shares. The Note that is being purchased by the Purchaser hereunder, when issued, sold and delivered in accordance with the terms of this Agreement and for the consideration expressed herein, will be duly and validly issued. The securities issuable upon conversion of the Note, when issued in compliance with the terms of such Note and this Agreement will be duly and validly issued, fully paid and nonassessable and, based in part upon the accuracy of the representations and warranties of the Purchaser in this Agreement, will be issued in compliance with all applicable federal and state securities laws.

3.4 No Violation. None of the execution, delivery and performance by the Company of the Purchase Documents and compliance with the terms and provisions thereof or the consummation of the transactions contemplated hereby or thereby will (a) contravene any applicable provision of any applicable law of any governmental authority, (b) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien upon any of the property or assets of the Company pursuant to, the terms of any material indenture, loan agreement, lease agreement, mortgage or deed of trust, or any other contractual obligation to which the Company is a party or by which it or any of its property or assets is bound, or violate any provision of the organization documents of the Company.

3.5 Government Consents and Filings. Assuming the accuracy of the representations made by the Purchaser in Article II of this Agreement, no authorization or approval or other action by, and no notice to or filing with, any governmental authority or other person or entity, and no consent or approval under any contractual obligation or instrument (other than those that have been duly obtained or made and which are in full force and effect) is required for the execution, delivery and performance of the Purchase Documents by the Company.

ARTICLE IV

COVENANTS OF THE COMPANY

4.1 Registration Rights. If the Company files a registration statement to register the sale of shares of common stock for any other stockholder of the Company and the shares of common stock underlying the Note are not then salable under Rule 144 promulgated under the Securities Act of 1933 and the Company is not prohibited from registering the shares of common stock underlying the Note by an agreement in effect as of the date of this Agreement, then the Company shall, by written notice to the Purchaser, offer the Purchaser the right to have such underlying shares of common stock included in such registration statement. The Purchaser shall have five business days after receipt of such notice to notify the Company in writing if the Purchaser wishes such underlying shares to be so included.

4.2 Reserved Stock.

(a) The Company shall ensure that there are sufficient authorized, unissued and unreserved shares of Reserved Stock (as defined below) available for issuance upon conversion of the Note pursuant to the terms and conditions of the Note and this Agreement. To the extent that there would not be sufficient authorized, unissued and unreserved shares of Reserved Stock of the Company available for issuance upon conversion of the Note pursuant to the terms and conditions of the Note and this Agreement, the Company shall take or cause to be taken all actions necessary to amend its organizational documents (to be effective no later than immediately prior to such conversion) such that there will be sufficient authorized, unissued and unreserved shares of common stock available for issuance upon such conversion, and the Company's failure to do so shall be a breach of this covenant.

(b) "Reserved Stock" means (i) the common stock issued or issuable upon conversion of the Note and (ii) any common stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

ARTICLE V

MISCELLANEOUS

5.1 Notices. All communications, notices, requests, consents or demands given or required under this Agreement shall be in writing and shall be deemed to have been duly given when delivered to, or received by prepaid registered or certified mail or recognized overnight courier addressed to, or upon receipt of a facsimile sent to, the Party for whom intended, at the address set forth opposite such party's name on the signature page.

5.2 Entire Agreement. This Agreement and any instruments to be executed hereunder, set forth the entire understanding of the Parties hereto with respect to its subject matter, and supersedes all other understandings. No waiver of any provision of this Agreement shall be deemed to be waiver of the same or any other provision in any other instance. Failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of its rights under such provision.

5.3 Successors and Assigns. This Agreement may not be assigned by either Party.

5.4 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

5.5 Severability. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, this Agreement shall be enforceable as if such provision were severed.

5.6 Currency. The parties hereto agree that all monetary amounts set forth herein are referenced in United States dollars, unless otherwise stated.

5.7 Counterparts. This Agreement may be executed in counterparts and by facsimile signatures. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof. All such counterparts shall together constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the date first set forth above.

TIGER EQUITY PARTNERS LTD.

Dimitrios TSOUVELEKAKIS
Attorney

NEWLEAD HOLDINGS LTD.

By:
Michail Zolotas
Chief Executive Officer

NewLead Holdings Ltd
Hamilton,
Bermuda

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NEWLEAD HOLDINGS LTD.

SENIOR CONVERTIBLE PROMISSORY NOTE

US$1,670,000.00 June 19, 2013

FOR VALUE RECEIVED, NewLead Holdings Ltd., a Bermuda company (the "**Company**"), promises to pay to TIGER EQUITY PARTNERS LTD. ("**Holder**"), or its registered assigns, the principal sum of One Million Six hundred and Seventy thousand US Dollars (US$1,670,000.00) together with (i) simple interest (the "**Cash Interest**") from the date of this Senior Convertible Promissory Note (this "**Note**") on the unpaid principal balance at a rate equal to eight percent (8%) per annum, computed daily and on the basis of the actual number of days elapsed and a year of 365 days, or (ii) the issuance of common shares of the Company, par value $0.01 per share (the "**Common Shares**"), at a rate of fifteen percent (15%) (the "**PIK Interest**") of the outstanding principal balance per annum, computed daily and on the basis of the actual number of days elapsed and a year of 365 days, at the PIK Payment Price (as defined below), which ever Company elects out of (i) and (ii) above at each specific Cash Interest or PIK Interest payment date as provided herein.

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which Holder, by the acceptance of this Note, agrees:

1. *Payment Terms*.

(a) *Principal*. The outstanding principal balance is due and payable on June 19, 2014 or such earlier date as this Note may be prepaid on or which payment is accelerated as provided herein (the "**Maturity Date**").

(b) *Cash Interest or PIK Interest* Any accrued and unpaid Cash Interest on this Note or any accrued and unissued or unpaid PIK Interest shall be due and payable in quarterly installments on 19 Septermber 2013 and every 3 months thereafter, concluding with the final installments on the Maturity Date. If the Note Value (as defined below) is converted in accordance with Section 2, any accrued and unissued or unpaid PIK Interest shall be due and issuable or payable on the Conversion Date.

(c) *Voluntary Prepayment*. The outstanding principal balance of the Note may be prepaid by the Company at any time, together with any then accrued and unpaid Cash Interest or any then accrued and unissued or unpaid PIK Interest.

2. *Conversion*.

(a) *Voluntary Conversion*. Subject to Section 2(e), at any time after the date hereof and until this Note is no longer outstanding, the outstanding principal balance (the "**Note Value**") shall be convertible, in whole or in part, into Common Shares at Holder's option, at any time and from time to time, at a rate of one (1) Common Share for each amount equaling to the PIK Payment Price as defined herein, subject to adjustment pursuant to Section 6 (the "**Conversion Price**"), of Note Value on the Conversion Date (as defined below). Holder shall effect conversions by delivering to the Company a Notice of Conversion specifying therein the Note Value to be converted and the date on which such conversion shall be effected (such date, the "**Conversion Date**"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. Conversions hereunder shall have the effect of lowering the outstanding principal balance of the Note in an amount equal to the applicable conversion. Holder and the Company shall maintain records showing the Note Value(s) converted and the date(s) of such conversion(s).

(b) *Termination of Rights Under this Note*. Immediately upon the last Conversion Date on which the full Note Value has been converted, this Note shall no longer be deemed to be outstanding and all rights with respect to this Note shall immediately cease and terminate on the Conversion Date, except only the right of Holder to receive the shares to which it is entitled as a result of the conversion on the Conversion Date under the terms, and subject to conditions, of this Note.

(c) *Taxes or other Issuance Charges*. The issuance of any Common Shares upon conversion of this Note, and the delivery of certificates or other instruments representing the same, shall be made without charge to Holder for any tax or other charge in respect of such issuance. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any certificate or instrument in a name other than that of Holder, and the Company shall not be required to issue or deliver any such certificate or instrument unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(d) *Holder Not a Shareholder*. Holder shall not have, solely on account of such status as a holder of this Note, any rights of a shareholder of the Company, either at law or in equity, or any right to any notice of meetings of shareholders or of any other proceedings of the Company until such time as this Note has been converted pursuant to Section 2(a), at which time Holder shall be deemed to be the holder of record of Common Shares, as applicable, notwithstanding that the transfer books of the Company shall then be closed or certificates representing such Common Shares shall not then have been actually delivered to Holder.

(e) *Reservation of Common Shares Issuable Upon Conversion*. The Company shall at all times reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of effecting the conversion of this Note, such number of Common Shares from time to time issuable upon such conversion and, if at any time, the number of authorized but unissued Common Shares shall not be sufficient to effect the conversion of this Note, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Common Shares to such number of shares as shall be sufficient for such purpose, including, without limitation, using its best efforts to obtain the requisite shareholder approval of any necessary amendment to its Amended and Restated Memorandum of Association.

(f) *Fractional Shares*. No fractional Common Shares shall be issued upon conversion of this Note. In lieu thereof, the Common Shares otherwise issuable shall be rounded up or down to the nearest whole Common Share.

(g) *Securities Act of 1933*. Upon conversion of this Note, Holder may be required to execute and deliver to the Company an instrument, in form satisfactory to the Company, representing that the Common Shares issuable upon conversion hereof are being acquired for investment only and not with a view to distribution within the meaning of the Securities Act of 1933, as amended.

3. ***Events of Default***. The occurrence of any of the following shall constitute an "**Event of Default**" under this Note:

(a) *Failure to Pay*. The Company shall fail to pay when due any Cash Interest or pay or issue when due any PIK Interest payment required under the terms of this Note on the date due and such payment shall not have been made within five (5) business days of the Company's receipt of written notice to the Company of such failure to pay; or

(b) *Representations and Warranties*. Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of the Company to Holder in writing in connection with this Note, or as an inducement to Holder to enter into this Note, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

(c) *Voluntary Bankruptcy or Insolvency Proceedings*. The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) admit in writing its inability to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(d) *Involuntary Bankruptcy or Insolvency Proceedings*. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its subsidiaries, if any, or the debts thereof, under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 45 days of commencement.

4. ***Rights of Holder upon Event of Default or Qualified Financing***. Upon the occurrence of any Event of Default (other than an Event of Default described in Sections 3(c) or 3(d)) and at any time thereafter during the continuance of such Event of Default, Holder may, by written notice to the Company, declare all outstanding Obligations (as defined below) payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence of any Event of Default described in Sections 3(c) and 3(d) or a Qualified Financing, immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Holder may exercise any other right power or remedy permitted to it by law, either by suit in equity or by action at law, or both. In addition, the Cash Interest rate or PIK Interest rate on this Note shall be increased by (5%) per annum, computed and compounding daily and on the basis of the actual number of days elapsed and a year of 365 days.

5. ***Interest and Anti-Dilution Adjustment on Incurrence of Future Debt Securities***. If and whenever on or after the date hereof the Company issues any debt security which has an interest rate of more than 20% (taking into account any original issue discount), then, immediately after such issuance, the interest rate on this Note shall be adjusted to such higher interest rate. Any such adjustment shall be made by raising either the Cash Interest, or by increasing the PIK Interest on this Note by the difference between the Cash Interest rate as defined herein and 20%. If and whenever on or after the date hereof the Company issues any additional debt security that is convertible into Common Shares and which has anti-dilution provisions that are more favorable than the provisions in Section 6 hereof, then this Note shall

have the benefit of such anti-dilution provisions as if this Note contained such anti-dilution provisions effective immediately upon the issuance of the convertible debt security.

6. ***Certain Adjustments***. The number and class or series of shares into which this Note may be converted under Section 5 shall be subject to adjustment in accordance with the following provisions:

(a) *Adjustment for Reorganization, Recapitalization or Merger*. If, while this Note remains outstanding and has not been converted, there shall be a reorganization or recapitalization of the Company (other than a combination, reclassification, exchange or subdivision of shares otherwise provided for herein), any merger or consolidation of the Company with or into another entity (excluding a merger or consolidation in which the Company is the continuing entity that does not result in any reclassification or reorganization of the Common Shares) or any sale or conveyance to another corporation or entity of all or substantially all of the assets or other property of the Company in connection with which the Company is dissolved, all necessary or appropriate lawful provisions shall be made so that Holder shall thereafter be entitled to receive upon conversion of this Note, the greatest number of shares of stock or other securities or property that a holder of the class of securities deliverable upon conversion of this Note would have been entitled to receive in such reorganization, recapitalization or merger if this Note had been converted immediately prior to such reorganization or recapitalization, all subject to further adjustment as provided in this Section 6. If the per share consideration payable to Holder for such class of securities in connection with any such transaction is in a form other than cash or marketable securities, then the value of such consideration shall be determined in good faith by the Corporation's Board of Directors. The foregoing provisions of this paragraph shall similarly apply to successive reorganizations or recapitalizations and to the stock or securities of any other corporation that are at the time receivable upon the conversion of this Note. In all events, appropriate adjustment shall be made in the application of the provisions of this Note (including adjustment of the conversion price and number of shares into which this Note is then convertible pursuant to the terms and conditions of this Note) with respect to the rights and interests of the Lender after the transaction, to the end that the provisions of this Note shall be applicable after that event, as near as reasonably may be, in relation to any shares or other property deliverable or issuable after such reorganization, recapitalization or merger upon conversion of this Note.

(b) *Adjustments for Split Subdivision or Combination of Shares*. If the Company at any time while this Note remains outstanding and unconverted, shall split or subdivide any class of securities into which this Note may be converted into a different number of securities of the same class, the number of shares of such class issuable upon conversion of this Note immediately prior to such split or subdivision shall be proportionately increased and the conversion price for such class of securities shall be proportionately decreased. If the Corporation at any time while this Note, or any portion hereof, remains outstanding and unconverted shall combine any class of securities into which this Note may be converted, into a different number of securities of the same class, the number of shares of such class issuable upon conversion of this Note immediately prior to such combination shall be proportionately decreased and the conversion price for such class of securities shall be proportionately increased.

7. ***Definitions***. As used in this Note, the following capitalized terms have the following meanings:

"**Event of Default**" has the meaning given in Section 3 hereof.

"**Holder**" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

"**Obligations**" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Holder of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note, including, all interest, Common Shares, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to

and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"**Person**" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"**PIK Payment Price**" shall mean an amount equal to ninety-five percent (95%) of the arithmetic average of the closing price of the Common Shares on the five (5) trading days prior to and beginning with the date two (2) business days before the Maturity Date or the Conversion Date or before any other PIK Interest payment date as provided herein.

"**Qualified Financing**" shall mean the issuance by the Company of more than Five Million Dollars ($5,000,000.00) in unsecured debt following the date hereof.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

8. ***Miscellaneous.***

(a) *Successors and Assigns; Transfer of this Note*

(i) Subject to the restrictions on transfer described in this Section 8(a), the rights and obligations of the Company and Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or any securities issued pursuant to, Holder will give written notice to the Company prior thereto, describing briefly the manner thereof, together with evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification (under any federal or state law then in effect). Upon receiving such written notice and reasonably satisfactory evidence, the Company, as promptly as practicable, shall notify Holder that Holder may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 8(a) that the evidence is not reasonably satisfactory to the Company, the Company shall so notify Holder promptly after such determination has been made. Each Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of Holder.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company and Holder.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed, e-mailed or delivered to each party at the respective addresses of the parties as set forth below, or at such other address or facsimile number as the Company shall have furnished to Holder in writing.

If to the Company:

NewLead Holdings Ltd.
83 Akti Miaouli & Flessa
185 38 Piraeus, Greece
Attention: Michail S. Zolotas

If to Holder:

TIGER EQUITY PARTNERS LTD.
Vanterpool Plaza, 2nd floor
Wickhams Cay I, Road Town
Tortola, British Virgin Islands
Attention: CEO

All such notices or communications shall be deemed to be received (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of nationally-recognized overnight courier, on the next business day after the date when sent; (iii) in the case of electronic mail, upon confirmed receipt; and (iv) in the case of mailing, on the third business day following the date on which the piece of mail containing such communication was posted.

(d) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

(e) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York, or of any other state.

(f) *Payment of Expenses.* Company agree to pay all debts and expenses, including reasonable attorneys' fees, which may be incurred by Holder in enforcing this Note and/or collecting any amount due under this Note.

9. *Waiver of Jury Trial; Judicial Reference.* Each of the Company and Holder of this Note (by accepting this Note) hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Note. Each of the Company and Holder of this Note (by accepting this Note): (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver; and (b) acknowledges that it and the other parties hereto have been induced to issue or accept this Note, as the case may be, by, among other things, the mutual waivers and certifications in this paragraph.

[Signature Page Follows]

The Company has caused this Note to be issued as of the date first written above.

NEWLEAD HOLDINGS LTD.

By: ________________________
Name: Michail S. Zolotas
Title: CEO / Director

NewLead Holdings Ltd
Hamilton,
Bermuda

Exhibit 4.6

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of this 1 day of January 2013, between Michail S. Zolotas (the "Executive") and NewLead Holdings, Ltd. (the "Company"), a Bermuda corporation.

1. Term of Employment. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, upon the terms set forth in this Agreement, for the period commencing as of January 1st, 2013 (the "Commencement Date") and ending on December 31, 2018 (the "Expiration Date"), unless sooner terminated in accordance with the provisions of Section 4 or extended as hereinafter provided (such period, as it may be extended or terminated, is the "Term"). Beginning on December 31, 2018 and on each December 31 thereafter, the Term shall extend for an additional one-year period from the then current Expiration Date of the Term, which next anniversary date shall become the new Expiration Date, unless at least 180 days prior to the current Expiration Date either Executive or the Company provides written notice to the other party electing not to extend the Term.

2. Title; Capacity. The Company will employ Executive, and Executive agrees to work for the Company, as its Chief Executive Officer and Chairman of the Board, to perform the duties and responsibilities inherent in such position and such other duties and responsibilities as the Company shall from time to time assign to Executive. Executive shall report to the Company's Board of Directors (the "Board"), and shall be subject to the supervision of, and shall have such authority as is delegated by the Board, which authority shall be sufficient to perform Executive's duties hereunder. The Board shall nominate Executive for election by the Company's shareholders to serve as the Chairman of the Company's Board during the Term. Executive's principal place of employment shall be Athens, Greece, although Executive will be required to travel from time to time in the course of performing his duties for the Company. Executive shall devote his full business time and reasonable best efforts in the performance of the foregoing services, provided that Executive may serve on the board of directors of charitable organizations that are not in conflict with Executive's primary responsibilities and obligations to the Company.

3. Compensation and Benefits.

3.1 Salary.

(a) Beginning on the Commencement Date and continuing through December 31, 2018, the Company shall pay the Executive a base salary at the rate of US$1,500,000 per annum.

(b) Commencing for 2015 and continuing thereafter for each additional calendar year in the Term, the Company's Board shall review the Executive's then current base salary for increases, but not decreases.

(c) The Company shall settle the Executive's base salary by delivering to the Executive shares of the Company's Common Stock under Rule S3, every year in advance beginning for the year 2014.

(d) For the year 2013, the Company shall settle the Executive's base salary by May 30th, 2013, as stipulated herein.

(e) For the 2013, the price per share shall be deemed to be the average value of the last thirty trading days preceding the date on which the shares are deemed to be delivered to the Executive.

(f) For the 2014 and for each subsequent year, the price per share shall be deemed to be the average of the last 365 days preceding the date on which the shares are deemed to be delivered to the Executive.

3.2 Annual Incentive.

(a) Commencing for 2013, for each calendar year in the Term (each, a "Performance Period"), Executive will be eligible to receive an annual bonus, in the sole discretion of the Board, in a target amount of 300% of Executive's then current base salary (the "Target Bonus"). The Target Bonus for each Performance Period will be based on such factors as the Board and Executive shall in good faith agree upon on an annual basis in writing, such factors to be agreed no later than 60 days following the start of each Performance Period save for 2013, which Target Bonus would be agreed by May 30th, 2013. The bonus factors shall include consideration for Executive's contributions to the Company's revenue growth, profit growth and any other targets as mutually agreed between Executive and the Company in good faith. Each bonus, if any, shall be paid on or before March 1 of the year following the Performance Period to which the bonus relates.

(b) The Company shall settle the Executive's annual bonus by delivering to the Executive shares of the Company's Common Stock or warrants.

(c) The price per share shall be deemed to be the average value of the last sixty trading days preceding the date on which the Target Bonus is agreed between the Company and the Executive.

3.3 Change in Control. Unless the terms or an Award or a Plan are more generous to Executive (in which event the terms of the Award and the Plan shall control), on the effective date of a Change in Control, the Company shall fully vest any Award held by the Executive.

3.4 Benefits. The Company shall contribute on Executive's behalf to the applicable Greek social security and social insurance programs. In addition, the Company shall reimburse Executive for the monthly premiums paid by Executive to purchase private family health insurance coverage and long term disability income insurance paying a benefit equal to the lesser of $10,000 per month and 60% of his initial base salary following an elimination period of not less than 120 days, and term life insurance equal to $2,500,000.

3.5 Reimbursement of Certain Expenses. The Company shall reimburse Executive for such reasonable and necessary business expenses incurred by Executive while Executive is employed by the Company, which are directly related to the furtherance of the Company's business. When traveling on Company business, the Executive may travel business class. Executive must submit any request for reimbursement no later than ninety (90) days following the date the business expense is incurred in accordance with the Company's reimbursement policy. Business expenses

must be substantiated by appropriate receipts and documentation. The Company may request additional documentation or a further explanation to substantiate any business expense submitted for reimbursement, and retains the discretion to approve or deny a request for reimbursement.

4. Termination of Term.

4.1 Termination Because of Expiration. Executive's employment shall terminate on the Expiration Date, but only if appropriate notice is given at least 180 days prior to the Expiration Date in accordance with Section 1.

4.2 Termination by Company for Cause. The Company may terminate the Executive's employment for Cause upon contemporaneous written notice by the Company to Executive.

4.3 Termination by Company without Cause. The Company may terminate the Executive's employment without Cause upon 90 days prior written notice to Executive.

4.4 Resignation by Executive for Good Reason. Executive may resign his employment for Good Reason, provided that, within sixty (60) days of the occurrence of the Company's act on which the Good Reason resignation is based, Executive notifies the Company in writing of his intent to resign for Good Reason and identifies the Company's acts on which the resignation is based. Executive's resignation shall become effective on the 30th day following the date the Company receives Executive's notice, but only if the Company fails to fully cure the acts on which Executive's resignation for Good Reason is based.

4.5 Resignation by Executive without Good Reason. Executive may resign his employment without Good Reason on 90 days prior written notice to the Company.

4.6 Death. Executive's employment shall terminate on his death.

4.7 Disability. The Company may terminate Executive's employment on 90 days prior notice following a determination that Executive is subject to a Disability.

5. Effect of Termination.

5.1 Termination on Expiration, for Cause, at the Election of Executive or on Death. If Executive's employment is terminated at the Expiration Date of the Term pursuant to Section 4.1, or the Company terminates Executive's employment for Cause pursuant to Section 4.2 or Executive resigns his employment without Good Reason pursuant to Section 4.5, the Company shall pay to Executive only the Accrued Obligations within thirty (30) days following the effective date of the termination of his employment.

5.2 Termination due to Death or Disability. If Executive's employment terminates because of his death pursuant to Section 4.6 or because of a Disability pursuant to Section 4.7, the Company shall pay to Executive or his estate the Accrued Obligations, continue to pay to Executive or his estate, as applicable, in US dollars his base salary from the date his employment terminates through the then current Expiration Date and pay to Executive a pro rated bonus for the year in which the termination of his employment occurs based on the Company's and Executive's actual achievement of the bonus factors in force for such year in accordance with Section 3.2. The pro rated bonus shall be payable in a lump sum in US dollars on or before March 1 of the year following the year in which the termination of Executive's employment occurs.

5.3 Termination without Cause or with Good Reason.

(a) If prior to the effective date of a Change in Control or after the second anniversary of the effective date of a Change in Control, the Company terminates Executive's employment without Cause pursuant to Section 4.3 or Executive resigns his employment for Good Reason pursuant to Section 4.4, the Company shall pay to Executive or his estate the Accrued Obligations, continue to pay to Executive or his estate, as applicable, in US dollars his base salary from the date his employment terminates through the then current Expiration Date, pay to Executive a pro rated bonus for the year in which the termination of Executive's employment occurs based on the Company's and Executive's actual achievement of the bonus factors in force for such year in accordance with Section 3.2 and shall fully vest any Award held by the Executive as of the date his employment terminates. The pro rated bonus shall be payable in a lump sum in US dollars on or before March 1 of the year following the year in which the termination of Executive's employment occurs.

(b) If on or after the effective date of a Change in Control and on or prior to the second anniversary of the effective date of a Change in Control, the Company terminates Executive's employment without Cause pursuant to Section 4.3 or Executive resigns his employment for Good Reason pursuant to Section 4.4, the Company shall pay to Executive the Accrued Obligations and an amount in US dollars equal to five (20) times the sum of Executive's then current base salary in cash and annual Target Bonus in cash , payable in a lump sum within 30 days following the date the termination of Executive's employment becomes effective. For purposes of clarity, the termination of Executive's employment without Cause or for Good Reason shall be deemed to be on the effective date of a Change in Control: (i) if Executive's employment with the Company is terminated prior to the effective date of a Change in Control Date; and (ii) it is reasonably demonstrated by Executive that such termination of employment (A) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with or in anticipation of a Change in Control.

5.4 Release Required. The severance benefits payable under Section 5.2 and 5.3 are conditioned on Executive (or his estate in the event of his death) executing and delivering to the Company within thirty (30) days following the date on which the termination of the Executive's employment becomes effective a complete and general release of all legal claims in favor of the Company, its affiliates and subsidiaries, and all of their directors, officers, employees and agents, in a form satisfactory to the Company.

6. Definitions.

6.1 "Accrued Obligations" means the sum of Executive's base salary, any accrued, but unpaid annual bonus from the prior Performance Period, accrued, but unused vacation and incurred, but unreimbursed expenses through the last day of Executive's actual employment by the Company.

6.2 "Award" means any stock option, restricted stock or other stock based awards granted to Executive at any time under the Equity Plan.

6.3 "Cause" means that: (i) Executive has engaged in dishonesty, gross negligence or gross misconduct that is materially injurious to the Company which, if curable, has not been cured by Executive within 30 days after he has received written notice from the Company stating with reasonable specificity the nature of such conduct; (ii) Executive's commission of, or his conviction or entry of nolo contendere to any crime involving fraud or embezzlement of Company property or to an indictable offense; or (iii) Executive's material breach of his duties under this Agreement, which, if curable, has not been cured by Executive within 30 days after he shall have received written notice from the Company stating with reasonable specificity the nature of such breach.

6.4 "Change in Control" means: (i) the sale or disposition, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of more than 50% of the assets of the Company to any "person" or "group" (as such terms are defined in Section 13(d)(3) and 14(d)(2) of the Exchange Act); (ii) any person or group is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in one or a series of related transactions within any twelve (12) month period ending on the date of the most recent acquisition by such person or persons, of the Company's outstanding equity representing more than 50% of the total voting power of the Company's equity; or (iii) the Company undergoes a merger, reorganization or other consolidation in which the owners of the Company's outstanding equity ownership immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity's voting power immediately after the transaction.

6.5 "Disability" means that Executive, due to a physical or mental disability, is unable to perform the services contemplated under this Agreement for a period of 120 consecutive days, or 180 days in the aggregate whether or not consecutive, during any 360-day period, as determined by a physician satisfactory to both Executive and the Company, provided that if Executive and the Company do not agree on a physician, Executive and the Company shall each select a physician and these two together shall select a third physician, whose determination as to whether Executive has a Disability shall be binding on all parties.

6.6 "Equity Plan" means the NewLead Holdings, Ltd. Second Amended and Restated 2005 Equity Incentive Plan, as amended, and any other stock option or equity incentive plan adopted and maintained by the Company from time to time.

6.7 "Good Reason" means, without Executive's written consent, (i) a material diminution in the responsibilities and duties assigned to Executive; (ii) the assignment to Executive of duties inconsistent in any material respect with the duties of the Chief Executive Officer and President; (iii) the removal of the Executive as Vice Chairman of the Company's Board of Directors while the Executive remains employed with the Company; (iv) a material reduction in base salary, Executive's annual bonus opportunity (as set forth in Section 3.2 of this Agreement) or other benefits or a failure to pay same when due; (v) a material breach of this Agreement by the Company; or (vi) the Company's failure to obtain the assignment and assumption of this Agreement by a successor in connection with a Change in Control as contemplated by Section 14.1 of this Agreement (unless such assumption occurs by operation of law).

7. Indemnification. Executive shall be entitled to indemnification rights in accordance with the Company's by-laws as in effect on the Commencement Date.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral relating to the subject matter of this Agreement.

9. Other Agreements. Executive represents that Executive's performance of all the terms of this Agreement as an Executive of the Company does not and will not breach any (i) other agreement to keep in confidence proprietary information, knowledge or data acquired by Executive in confidence or in trust prior to Executive's employment with the Company or (ii) other agreement to refrain from competing, directly or indirectly, with the business of any previous employer or any other party.

10. Jury Waiver. Executive and the Company agree to waive trial by jury with respect to any claims arising out of or relating to this Agreement or Executive's employment by the Company.

11. Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and Executive.

12. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the European Union and the Nation of Greece without regard to principles of conflicts of laws thereunder.

13. Notices. Any notice or other communication required or permitted by this Agreement to be given to a party shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by Greek registered or certified mail (return receipt requested), or sent via facsimile (with receipt of confirmation of complete transmission) to the party at the party's last known address or facsimile number or at such other address or facsimile number as the party may have previously specified by like notice. If by mail, delivery shall be deemed effective three business days after mailing in accordance with this Section.

14. Successors and Assigns.

14.1 Assumption by Successors. The Company shall require 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 to assume in writing prior to such succession and to agree to perform its obligations under this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Successions by virtue of the sale of stock shall be governed by operation of law.

14.2 Successor Benefits. This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation into which the Company may be merged or which may succeed to its assets or business, provided, however, that the obligations of Executive are personal and shall not be assigned by him.

15. Miscellaneous.

15.1 No Waiver. No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

15.2 Captions. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

15.3 Severability. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

15.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

____

Michail S. Zolotas

NEWLEAD HOLDINGS, LTD.

By:____________________________

Its:

Exhibit 4.19

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES MAY NOT BE PLEDGED AS COLLATERAL.

NEWLEAD HOLDINGS LTD.

WARRANT

Warrant No. 1 Date of Issuance: January 1, 2013

NEWLEAD HOLDINGS LTD., a Bermuda corporation (the **"Company"**), hereby certifies that, for value received, **CYPRESS CAMON INVESTMENT MANAGEMENT, LLC** or its registered assigns (the **"Holder"**), is entitled to purchase from the Company $6,400,000 (dollars six million four hundred thousand) in common shares, $0.01 par value per share of the Company (the **"Common Stock"**) (each such share, a **"Warrant Share"** and all such shares, the **"Warrant Shares"**) at an exercise price equal to market value per share (as adjusted from time to time as provided in Section 8, the **"Exercise Price"**), at any time and from time to time from and after the date hereof and through and including January 1, 2023 (the **"Expiration Date"**), and subject to the terms and conditions contained herein.

1. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the **"Warrant Register"**), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

2. Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a **"New Warrant"**), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be

deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

3. Exercise and Duration of Warrants. This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. At 5:00 p.m., eastern standard time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value.

4. Delivery of Warrant Shares.

(a) To effect exercises hereunder, the Holder shall deliver an executed Exercise Notice in the form attached hereto to the Company and the Warrant at its address for notice set forth herein and upon payment of the Exercise Price multiplied by the number of Warrant Shares that the Holder intends to purchase hereunder, the Company shall promptly (but in no event later than five Trading Days (as defined herein) after the Exercise Date (as defined herein)) issue and deliver to the Holder, a certificate for the Warrant Shares issuable upon such exercise, which, unless otherwise required by applicable law, shall be free of restrictive legends. The Company shall, upon request of the Holder and if no restrictive legend is required to appear on any physical certificate if issued, use its commercially reasonable best efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions, if available, provided, that, the Company may, but will not be required to change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through the Depository Trust Corporation. An **"Exercise Date"** means the date on which the Holder shall have delivered to the Company: (i) the Exercise Notice, appropriately completed and duly signed, (ii) the Warrant and (iii) if such Holder is not utilizing the cashless exercise provisions set forth in this Warrant, payment of the Exercise Price for the number of Warrant Shares so indicated by the Holder to be purchased. A **"Trading Day"** shall mean (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, (b) if the Common Stock is not then listed or quoted and traded on any Trading Market, then a day on which trading occurs on the OTC Bulletin Board (or any successor thereto), or (c) if trading does not occur on the OTC Bulletin Board (or any successor thereto), any business day. A **"Trading Market"** means any of the New York Stock Exchange, the NYSE Alternext US, The Nasdaq Global Select Market, The Nasdaq Global Market, The Nasdaq Capital Market or any national securities exchange, market or trading or quotation facility on which the Common Stock is then listed or quoted.

(b) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing the Warrant Shares upon exercise of the Warrant as required pursuant to the terms hereof.

(d) This Warrant shall be canceled upon its exercise and, if this Warrant is exercised in part, the Company shall, at the time that it delivers Warrant Shares to the Holder pursuant to such exercise as provided herein, issue a New Warrant, and deliver to the Holder a

certificate representing such New Warrant, with terms identical in all respects to this Warrant (except that such New Warrant shall be exercisable into the number of shares of Common Stock with respect to which this Warrant shall remain unexercised); provided, however, that the Holder shall be entitled to exercise all or any portion of such New Warrant at any time following the time at which this Warrant is exercised, regardless of whether the Company has actually issued such New Warrant or delivered to the Holder a certificate therefor.

5. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

6. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

7. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 8). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and non-assessable.

8. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 8.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines

outstanding shares of Common Stock into a smaller number of shares (by reverse stock split or otherwise), then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) Fundamental Transaction. In case the Company (a) consolidates with or merges into any other corporation and is not the continuing or surviving corporation of such consolidation of merger, or (b) permits any other corporation to consolidate with or merge into the Company and the Company is the continuing or surviving corporation but, in connection with such consolidation or merger, the Common Stock is changed into or exchanged for stock or other securities of any other corporation or cash or any other assets, or (c) transfers all or substantially all of its properties and assets to any other corporation, or (d) effects a capital reorganization or reclassification of the capital stock of the Company in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash and/or assets with respect to or in exchange for Common Stock (in any such case, a "**Fundamental Transaction**"), then, and in each such case, proper provision shall be made so that, upon the basis and upon the terms and in the manner provided in this subsection 8(b), the Holder, upon the exercise of this Warrant at any time after the consummation of such Fundamental Transaction, shall be entitled to receive (at the aggregate Exercise Price in effect for all shares of Common Stock issuable upon such exercise immediately prior to such consummation as adjusted to the time of such Fundamental Transaction), in lieu of shares of Common Stock issuable upon such exercise prior to such consummation, the stock and other securities, cash and/or assets to which such holder would have been entitled upon such consummation if the Holder had so exercised this Warrant immediately prior thereto (subject to adjustments subsequent to such corporate action as nearly equivalent as possible to the adjustments provided for in this Section) (the "**Alternate Consideration**") and if the holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or Person shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Warrant. The provisions of this paragraph (b) shall similarly apply to subsequent transactions analogous of a Fundamental Transaction type.

(c) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so

that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) Calculations. All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall not be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 8, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and setting forth a brief statement of the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder.

9. Payment of Exercise Price. The Holder may pay the Exercise Price in one of the following manners:

(a) Cash Exercise. The Holder may deliver immediately available funds; or

(b) Cashless Exercise. The Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y\,[(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing prices for the five Trading Days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued.

10. No Fractional Shares. No fractional shares of Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would, otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the closing price of one Warrant Share as reported by the applicable Trading Market on the Exercise Date.

11. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 5:00 p.m. (eastern time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 5:00 p.m. (eastern time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Company, to NewLead Holdings Ltd., 83 Akti Miaouli & Flessa Street, 18538 Piraeus, GREECE, Attn: President, or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in accordance with this Section.

12. No Stockholder Rights. This Warrant in and of itself shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company.

13. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant.

(b) Amendments; Waivers. No provision of this Warrant may be waived or amended except in a written instrument signed by the Company and the Holder. No waiver of any default with respect to any provision, condition or requirement of this Warrant shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

(c) All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of this Warrant and the transactions herein contemplated (**"Proceedings"**) (whether brought against a party hereto or its respective Affiliates, employees or agents) may be commenced non-exclusively in the state and federal courts sitting in New York City, New York (the **"New York Courts"**). The Company, and by acceptance of this Warrant, the Holder, hereby irrevocably submits to the non-exclusive jurisdiction of the New

York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. The Company, and by acceptance of this Warrant, the Holder, hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The Company, and by acceptance of this Warrant, the Holder, hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant or the transactions contemplated hereby. If either the Company or the Holder shall commence a Proceeding to enforce any provisions of this Warrant, then the prevailing party in such Proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Proceeding.

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

NEWLEAD HOLDINGS LTD.

By: ______________________
Name: Michael S. Zolotas
Title: CEO

ACKNOWLEDGED AND AGREED:

CYPRESS CAMON INVESTMENT MANAGEMENT, LLC

By: ______________________
Name: Dallas Groth
Title: Managing Member

NEWLEAD HOLDINGS LTD.
WARRANT ORIGINALLY ISSUED [ ], 2013
WARRANT NO. [ ]

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ______________________ the right represented by the above-captioned Warrant to purchase ___________ shares of Common Stock to which such Warrant relates and appoints ______________ attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _______________, ____

____
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

____
Address of Transferee

____

____

In the presence of:

____

NEWLEAD HOLDINGS LTD.
WARRANT ORIGINALLY ISSUED [ ], 2013
WARRANT NO. [ ]

EXERCISE NOTICE

To NEWLEAD HOLDINGS LTD.:

The undersigned hereby irrevocably elects to purchase ____________ shares of Common Stock pursuant to the attached Warrant.

The Holder intends that payment of the Exercise Price shall be made as:

______ a Cash Exercise with respect to ________________ Warrant Shares; and/or

______ a Cashless Exercise with respect to ________________ Warrant Shares, as permitted by Section 9 of the attached Warrant.

If such Holder is not utilizing the cashless exercise provisions set forth in the Warrant, the Holder encloses herewith $_______ in cash, certified or official bank check or checks or other immediately available funds, which sum represents the aggregate Exercise Price (as defined in the Warrant) for such Warrant Shares, together with any applicable taxes payable by the undersigned pursuant to the Warrant.

The undersigned requests that certificates for the shares of Common Stock issuable upon this exercise be issued in the name of

PLEASE INSERT SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER

(Please print name and address)

Exhibit 4.20

AMENDMENT TO WARRANT

THIS AMENDMENT TO WARRANT (this "Amendment") is made and entered into as of June 30th 2013 by and between NewLead Holdings Ltd, a Bermuda-registered company ("Newlead") and Cypress Camon Investment Management, LLC, a Delaware series limited liability company ("Cypress").

RECITALS:

WHEREAS, Newlead and Cypress entered into a Warrant dated as of January 1, 2013 and valid until January 1, 2023, (the "Warrant");

WHEREAS, pursuant to the Warrant, Cypress is entitled to purchase from Newlead US$6,400,000 (United States Dollars six million four hundred thousand) in common shares, $0.01 par value per share of Newlead;

WHEREAS, the exercise price of the Warrant was market value per share (the "Exercise Price"); and

WHEREAS, for clarity sake the parties agreed to amend the Exercise Price of the Warrant to US$0.40 per share.

AGREEMENT

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Amendments to First Paragraph. The Warrant is hereby amended, effective as of January 1, 2013 (the "Effective Date"), so that the first paragraph of the Warrant shall read in its entirety as follows:

   "**NEWLEAD HOLDINGS LTD.**, a Bermuda corporation (the **"Company"**), hereby certifies that, for value received, **CYPRESS CAMON INVESTMENT MANAGEMENT, LLC** or its registered assigns (the **"Holder"**), is entitled to purchase from the Company $6,400,000 (dollars six million four hundred thousand) in common shares, $0.01 par value per share of the Company (the **"Common Stock"**) (each such share, a **"Warrant Share"** and all such shares, the **"Warrant Shares"**) at an exercise price equal to US$0.40 per share (as adjusted from time to time as provided in Section 8, the **"Exercise Price"**), at any time and from time to time from and after the date hereof and through and including January 1, 2023 (the **"Expiration Date"**), and subject to the terms and conditions contained herein."

1. Amendments to Section 9(b).

(a) Section 9(b) of the Warrant is hereby amended effective as of the Effective Date, by amending and restating the definition for item "A" therein in its entirety to read as follows:

"A = the Closing Price (defined below) for the Warrant Shares immediately prior to (but not including) the Exercise Date."

(b) Section 9(b) of the Warrant is hereby further amended, effective as of the Effective Date, by adding thereto the following language immediately below the definition of the formula for a Cashless Exercise:

"As used herein, the "Closing Price" means, for any date, the price determined by the first of the following clauses that applies:

(a) if the Common Stock is then listed or quoted on any Trading Market, the average of the closing prices for the five (5) Trading Days immediately prior to (but not including) the Exercise Date, as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)); (b) if the Common Stock is not then listed on a Trading Market and if prices for the Common Stock are then reported in an over the counter market maintained by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the mean between the bid and asked prices per share of the Common Stock so reported on the Trading Day immediately preceding the Exercise Date; or (c) in all other cases, the fair market value of a share of Common Stock determined as of the Trading Day immediately preceding the Exercise Date by the Company's board of directors acting in good faith and certified in a resolution of such board of directors, based on the most recently completed arm's-length transaction involving a transfer of Common Stock between the Company and a Person other than an Affiliate of the Company, the closing of which occurred on such date or within the six-month period preceding such date, or if no such transaction has occurred on such date or within such six-month period, the fair market value of the Common Stock determined as of the Trading Day immediately preceding the Exercise Date by an independent financial expert."

3. No Other Changes. All other provisions of the Warrant not specifically referenced in this Amendment shall remain in full force and effect.

4. Governing Law. This Amendment shall be governed by, and shall be construed and interpreted in accordance with, the internal laws of the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the day and year first above written.

NEWLEAD HOLDINGS, LTD.

By: ______________________

Name: Michail Zolotas

Title: CEO & chairman

NewLead Holdings Ltd Hamilton, Bermuda

CYPRESS CAMON INVESTMENT MANAGEMENT, LLC

By: ______________________

Name: Dallas Groth

Title: Managing Member

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "**Agreement**") dated as of August 20, 2012 is entered into by and between NewLead Holdings Ltd., a Bermuda corporation (the "**Company**") and Focus Maritime Corp., a company incorporated under the laws of the Marshall Islands ("**Focus**").

WHEREAS, the Company is issuing shares of its Common Stock to Focus pursuant to an agreement between the Company and Focus to equitize Focus' holdings of the Company's 7% Convertible Senior Notes due 2015; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"**Affiliate**" means with respect to any Person, any Person that directly or indirectly controls or is controlled by or is under common control with, such Person.

"**Agreement**" shall have the meaning ascribed to such term in the Preamble.

"**Blackout Notice**" shall have the meaning ascribed to such term in Section 8(c) hereof.

"**Blackout Period**" shall have the meaning ascribed to such term in Section 8(c) hereof.

"**Blue Sky Application**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Commission**" means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act and the Exchange Act.

"**Common Stock**" means (a) the common stock, par value $0.01 per share, of the Company, (b) any other capital stock of any class or classes (however designated) of the Company, authorized on or after the date hereof, the holders of which shall have the right, without limitation as to amount, either to all or to a share of the balance of current dividends and liquidating distributions after the payment of dividends and distributions on any shares entitled to preference in the distribution of assets upon the voluntary or involuntary dissolution of the Company, and the holders of which shall ordinarily be entitled to vote for the election of a majority of directors of the Company, and (c) any other securities into which or for which any of the securities described in (a) or (b) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or other similar transaction.

"**Company**" shall have the meaning ascribed to such term in the Preamble.

"**Company Indemnified Person**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Demand Registration**" shall have the meaning ascribed to such term in Section 3(a) hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, or any successor federal statute, and the rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Focus**" shall have the meaning ascribed to such term in the Preamble.

"**Form F-1 and F-3**" means Forms F-1 and F-3, as the case may be, promulgated under the Securities Act and as in effect on the date hereof or any successor forms promulgated under the Securities Act or adopted by the Commission.

"**Losses**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Memorandum of Association**" means the Company's Memorandum of Association in effect on the date hereof and as amended, modified or restated from time to time.

"**Other Shareholders**" shall have the meaning ascribed to such term in Section 2(b) hereof.

"**Persons**" means an individual, corporation, limited liability company, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"**Registrable Shares**" means (i) the shares of Common Stock issued pursuant to an agreement between the Company and Focus to equitize Focus' holdings of the Company's 7% Convertible Senior Notes due 2015; and (ii) any shares of Common Stock or other securities issued or issuable in respect of such shares of Common Stock upon any stock split, stock dividend, recapitalization, reorganization, merger, consolidation, sale of assets or similar event. As to any particular Registrable Shares, such Registrable Shares shall cease to be Registrable Shares (A) when they have been registered under the Securities Act, the registration statement in connection therewith has been declared effective, and they have been disposed of pursuant to such effective registration statement, (B) upon the later of (x) when such shares may be freely distributed by the holder thereof in a public offering or otherwise without the need for registration or qualification of such securities under the Securities Act or any similar state law then in force in light of legal requirements or market conditions and without any restriction on the volume or the manner of sale or any other limitations under Rule 144 (or any successor provision) under the Securities Act or (y) the third anniversary of this Agreement, (C) when they shall have been otherwise transferred and the subsequent disposition of them shall not require registration under the Securities Act, (D) when they shall have ceased to be outstanding, or (E)

when they are transferred in a transaction pursuant to which the registration rights are not assigned in accordance with Section 11 of this Agreement.

"**Registration Expenses**" shall have the meaning ascribed to such term in Section 9(a) hereof.

"**Rule 144**" means Rule 144 promulgated under the Securities Act or any successor rule.

"**Rule 145**" means Rule 145 promulgated under the Securities Act or any successor rule.

"**Rule 415**" means Rule 415 promulgated by the Securities Act or any similar or successor rule.

"**Securities Act**" means the Securities Act of 1933, or any successor federal statute, and the rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Securities Registration**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Seller Indemnified Person**" shall have the meaning ascribed to such term in Section 7(b) hereof.

"**Selling Expenses**" shall have the meaning ascribed to such term in Section 9(a) hereof.

Section 2. "Piggy-Back" Registrations.

(a) If, at any time commencing on the date hereof, the Company shall propose to register under the Securities Act (other than pursuant to Sections 3 and 4 of this Agreement) any of its securities, whether for its own account or for the account of other security holders, or both (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan, a Rule 145 transaction, a registration of securities in an "at-the-market" offering, a shelf registration statement or a registration on any form which does not include substantially similar information as would be required to be included in a registration statement covering the sale of Registrable Shares), then the Company will, following the engagement of counsel to the Company to prepare the documents to be used in connection with such registration statement, give written notice to all holders of Registrable Shares of its intention so to do, provided that such notice must be provided at least ten (10) calendar days prior to the effectiveness of the relevant registration statement. Upon the written request of any such holder, received by the Company within ten (10) business days after the receipt of any such notice by such holder, to register any or all of its Registrable Shares, the Company will, subject to Section 2(c) below, use its commercially reasonable efforts to cause the Registrable Shares as to which registration shall have been so requested to be included in the securities to be covered by the registration statement proposed to be filed or filed by the Company, all to the extent required to permit the sale or other disposition by the holder of such Registrable Shares so registered, in accordance with the plan of distribution

set forth in such registration statement; provided that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 2 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. If no request for inclusion from a holder is received within the specified time, such holder shall have no further right to participate in such piggyback registration.

(b) If the registration of which the Company gives notice as provided above is for a registered public offering involving an underwriting, the Company shall so advise the holders of Registrable Shares as a part of the written notice given referred to in paragraph (a) above. In such event the right of any holder of Registrable Shares to registration pursuant to this Section 2 shall be conditioned upon such holder's participation in such underwriting to the extent provided herein. All holders of Registrable Shares proposing to distribute their securities through such underwriting shall (together with the shares of Common Stock to be registered by the Company and shares of Common Stock held by Persons who by virtue of agreements with the Company are entitled to include shares in such registration (the "**Other Shareholders**")) enter into an underwriting agreement and a lock-up agreement, each in customary form, with the underwriter or underwriters selected for underwriting by the Company and enter into other customary agreements (such as powers of attorney and custody agreements). If any holder of Registrable Shares disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the managing underwriter; provided, however that such withdrawal must be made prior to the pricing of such underwritten offering. Any Registrable Shares or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(c) Notwithstanding any other provision of this Section 2, if the Company or the underwriter determines that marketing factors require a limitation on the number of shares to be underwritten, the underwriter may exclude all Registrable Shares from, or limit the number of Registrable Shares to be included in, such registration and underwriting that would otherwise be underwritten pursuant to this Section 2, provided that all other securities requested to be included in such registration statement, other than securities being registered on behalf of the Company or on behalf of the holder thereof who had the right to require the Company to file the registration statement in question, shall be excluded first. The Company shall so advise in writing all holders of securities requesting registration of any limitations on the number of shares to be underwritten and the number of shares of securities that are entitled to be included in the registration and the Company shall be obligated to include in such registration statement only such limited portion (which may be none) of the Registrable Shares as the managing underwriter determines in good faith. If the managing underwriter determines that marketing factors require a limitation on the number of Registrable Shares to be registered under this Section 2, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares, subject to any rights of third parties which are senior to the rights of the holders of Registrable Shares. No "piggy-back" right under this Section 2 shall be construed to limit any registration required under Section 3.

(d) Notwithstanding the foregoing provisions, the Company may withdraw any registration statement referred to in this Section 2 without thereby incurring any liability to the holders of Registrable Shares.

(e) Notwithstanding anything to the contrary herein, Registrable Shares which are (i) subject to any lock-up or (ii) covered by an effective registration statement on Form F-3 will not be entitled to the registration rights set forth in this Section 2.

(f) The Company hereby represents and warrants to Focus that as of the date of this Agreement, no other party possesses any registration rights which have priority over the rights granted to the holders of Registrable Shares pursuant to this Agreement.

Section 3. Demand Registrations.

(a) At any time after the date hereof, the holders of Registrable Shares may request the Company to register for sale under the Securities Act all or any portion of the Registrable Shares held by such requesting holder or holders for sale in the manner specified in such notice (a "**Demand Registration**"); provided, that each Demand Registration be at least equal to 1,000,000 (as such number may be adjusted for stock splits, stock dividend and similar events) of the Company's then outstanding common shares; provided further, that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 3 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. In any event, all securities to be sold other than Registrable Shares will be excluded prior to any exclusion of Registrable Shares.

(b) Focus shall have the right to three (3) Demand Registrations pursuant to this Section 3, provided, that the Company will not be obligated to effect more than one Demand Registration in any six (6) month period.

(c) Notwithstanding anything to the contrary contained herein, the Company shall not be required to effect a registration pursuant to this Section 3 during the period commencing thirty (30) calendar days prior to the estimated filing date of, and ending on the date which is within one hundred eighty (180) calendar days after the effective date of a registration statement filed by the Company covering an underwritten public offering, which includes securities to be sold for the account of the Company.

(d) Following receipt of any notice under this Section 3, the Company shall immediately notify all holders of Registrable Shares from whom notice has not been received and may notify other holders that have piggyback registration rights and such holders shall then be entitled within ten (10) business days after receipt of such notice from the Company to request the Company to include in the requested registration all or any portion of their Registrable Shares. If no request for inclusion from a holder is received within the specified time, such

holder shall have no further right to participate in such registration. If all the shares of Common Stock requested to be registered by holders with registration rights are not permitted to be included in the registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares, provided that all securities to be sold other than Registrable Shares will be excluded prior to any exclusion of Registrable Shares. The Company shall within ninety (90) calendar days, cause to be filed with the Commission a registration statement on an appropriate form as shall be selected by the Company providing for the registration under the Securities Act of the Registrable Shares that the Company has been so requested to register by all such holders, to the extent necessary to permit the disposition of such Registrable Shares so to be registered in accordance with the intended methods of disposition thereof specified in such registration statement. The Company shall use its commercially reasonable efforts to have such registration statement declared effective by the Commission within seventy-five (75) calendar days following the filing of a registration statement pursuant to a Demand Registration if the registration statement is not reviewed by the Commission and within one hundred eighty (180) calendar days following the filing of a registration statement pursuant to a Demand Registration in the event that the registration statement is reviewed by the Commission, and to keep such registration statement continuously effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5. The Company shall not be obligated to register, pursuant to this Section 3, the Registrable Shares of any holder who fails to provide promptly to the Company such information as the Company may reasonably request at any time to enable the Company to comply with any applicable law or regulation or to facilitate preparation of the registration statement, including the number of shares of Common Stock that have been sold by the holder. The Company may at its option withdraw any registration statement which covers securities that are not Registrable Shares.

(e) If the holders requesting such registration intend to distribute the Registrable Shares covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 3 and the Company shall include such information in the written notice referred to in paragraph (d) above. The right of any holder to participate in an underwritten registration pursuant to this Section 3 shall be conditioned upon such holder's agreeing to participate in such underwriting and to permit inclusion of such holder's Registrable Shares in the underwriting. If such method of disposition is an underwritten public offering, the holders of at least a majority in interest of the Registrable Shares to be sold in such offering may designate the managing underwriter of such offering, subject to the approval of the Company, which approval shall not be unreasonably withheld or delayed.

(f) In addition to Registrable Shares, a registration statement filed pursuant to this Section 3 may, subject to the following provisions, also include (i) shares of Common Stock for sale by the Company for the Company's own account, (ii) shares of Common Stock held by officers or directors of the Company and (iii) shares of Common Stock held by Other Shareholders, in each case for sale in accordance with the method of disposition specified by the requesting holders. If such registration shall be underwritten, each holder of Registrable Shares the Company, such officers and directors and Other Shareholders proposing to distribute their shares through such underwriting shall enter into an underwriting agreement and a lock-up agreement, each in customary form, with the representative of the underwriter or underwriters

selected for such underwriting and enter into other customary agreements (such as powers of attorney and custody agreements). If the managing underwriter determines that marketing factors require a limitation of the number of Registrable Shares to be registered under this Section 3, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. In any event, all securities to be sold other than Registrable Shares will be excluded prior to any exclusion of Registrable Shares. No Registrable Shares or any other security excluded from the registration and underwriting by reason of the underwriter's marketing limitation shall be included in such registration and underwriting. If any holder of Registrable Shares, officer, director or Other Shareholder who has requested inclusion in such registration as provided above, disapproves of the terms of the underwriting, such holder of securities may elect to withdraw therefrom by written notice to the Company and the managing underwriter. The securities so withdrawn shall also be withdrawn from registration.

Section 4. Short-Form Registration on Form F-3. If at any time after the date hereof (i) Focus requests that the Company file a registration statement on Form F-3 for a public offering of all or any portion of the Registrable Shares held by such requesting holder or holders, and (ii) the Company is a registrant entitled to use Form F-3 to register such shares, then the Company within seventy-five (75) calendar days, shall cause to be filed with the Commission a registration statement on Form F-3 providing for the registration under the Securities Act of the Registrable Shares that the Company has been so requested to register by all such holders, to the extent necessary to permit the disposition of such Registrable Shares so to be registered in accordance with the intended methods of disposition thereof specified in such registration statement and shall use its commercially reasonable efforts to have such Form F-3 declared effective by the Commission within seventy-five (75) calendar days following the filing of the registration statement if such registration statement is not reviewed by the Commission and within one hundred eighty (180) calendar days following the filing of the registration statement in the event that such registration statement is reviewed by the Commission and to keep such registration statement continuously effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5; provided further that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 4 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. Whenever the Company is required by this Section 4 to effect the registration of Registrable Shares, each of the procedures and requirements of Section 3, including, but not limited to, the requirement that the Company notify all holders of Registrable Shares from whom notice has not been received and provide them with the opportunity to participate in the offering (provided, however that holders shall have no more than ten (10) business days to reply to the Company's notice in order to participate in the offering), shall apply to such registration. The obligations of the Company under this Section 4 shall expire at any time after the Company has effected three (3) registrations for the benefit of each of the holders of Registrable Shares pursuant to a registration on Form F-3 unless the Commission has required the Company to exclude Registrable Shares from such registration statement pursuant to Rule

415 or otherwise or a previously effective Form F-3 registration statement is no longer usable or has been withdrawn, in which case Focus shall be entitled to one additional registration statement on Form F-3 for each such event.

Section 5. Expiration of Obligations. The obligations of the Company to register Registrable Shares pursuant to Sections 2, 3 and 4 of this Agreement or to keep any registration statement effective shall expire when no Registrable Shares are outstanding or no shares under the registration statement are held by Focus.

Section 6. Effectiveness of Registration Statements. The Company will use its commercially reasonable efforts to maintain the effectiveness of any registration statement pursuant to which any of the Registrable Shares are being offered for the period set forth in Section 8(b); provided however that such period shall expire as set forth in Section 5.

Section 7. Indemnification; Procedures; Contribution.

(a) In the event that the Company registers any of the Registrable Shares under the Securities Act in accordance with this Agreement, the Company will, to the extent permitted by law, indemnify and hold harmless each holder of the Registrable Shares and each underwriter of the Registrable Shares (including their officers, directors, affiliates and partners) so registered (including any broker or dealer through whom such shares may be sold) and each Person, if any, who controls such holder or any such underwriter within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (each a **"Company Indemnified Person"**) from and against any and all losses, claims, damages, expenses or liabilities, joint or several (collectively, **"Losses"**), to which they or any of them become subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse each such Company Indemnified Person, if any, for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, solely insofar as such Losses (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the registration statement under which such Registrable Shares were registered under the Securities Act pursuant to this Agreement, any preliminary prospectus or final prospectus contained therein, or any free writing prospectus related thereto, or any amendment or supplement thereof, any filing with any state or federal securities commission or agency or any other prospectus, offering circular or other document incident to such registration (any such application, document or information herein called a **"Securities Registration"**), or based on any omission or alleged omission in any Securities Registration to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Shares under the securities laws thereof (any such application, document or information herein called a **"Blue Sky Application"**), (iii) any omission or alleged omission to state in any such Securities Registration or in any Blue Sky Application executed or filed by the Company, a material fact required to be stated therein or necessary to make the statements therein not misleading, (iv) any violation by the Company or

its agents of the Securities Act or any rule or regulation promulgated under the Securities Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such Securities Registration, or (v) any failure to register or qualify the Registrable Shares in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company (the undertaking of any underwriter chosen by the Company being attributed to the Company) will undertake such registration or qualification (provided that in such instance the Company shall not be so liable if it has used its commercially reasonable efforts to so register or qualify the Registrable Shares) and will reimburse each Company Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Loss (or actions in respect thereof), promptly after being so incurred; provided, however, that the Company will not be liable in any such case (i) through (v) above and will not be required to reimburse any such expenses: (A) if and to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in reliance upon and in conformity with written information furnished by any such Company Indemnified Person in writing specifically for use in such Securities Registration or Blue Sky Application; or (B) the sale was made during the Blackout Period after the holder received a Blackout Notice pursuant to Section 8(c).

(b) In the event of a registration of any of the Registrable Shares under the Securities Act in accordance with this Agreement, each holder of such Registrable Shares thereunder, severally and not jointly, will indemnify and hold harmless the Company, each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each officer of the Company who signs the registration statement, each director of the Company, each other holder of Registrable Shares, each underwriter and any broker or dealer through whom such shares may be sold and each Person who controls such underwriter or broker within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each a **"Seller Indemnified Person"**), against all Losses, to which a Seller Indemnified Person may become subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse each such Seller Indemnified Person, if any, for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, solely insofar as such Losses (or actions in respect thereof) arise out of or are based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in any Securities Registration or any Blue Sky Application or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Seller Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Losses (or actions in respect thereof), promptly after being so incurred, provided, however, that such holder will be liable hereunder in any such case if and only to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information pertaining to such holder, as such, furnished in writing to the Company by such holder specifically for use in such Securities Registration or any Blue Sky

Application; and provided, further, that the liability of each holder hereunder shall be limited to the proportion of any such Loss which is equal to the proportion that the public offering price of all securities sold by such holder under such registration statement bears to the total public offering price of all securities sold thereunder, but not in any event to exceed the net proceeds received by such holder from the sale of Registrable Shares covered by such registration statement; or

(ii) any sale made during the Blackout Period after the holder received a Blackout Notice pursuant to Section 8(c).

(c) Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to such indemnified party other than under this Section 7 and shall only relieve it from any liability which it may have to such indemnified party under this Section 7 if and to the extent the indemnifying party is prejudiced by such omission. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 7 for any reasonable legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected, provided, however, that, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be reasonable defenses available to it which are different from or additional to those available to the indemnifying party or that the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, the indemnified party shall have the right to select a separate counsel reasonably satisfactory to the indemnifying party and to assume such legal defenses and otherwise to participate in the defense of such action, with the reasonable expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the indemnifying party as incurred. No indemnifying party, in the defense of any such claim or action, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or action, and the indemnification agreements contained in Sections 7(a) and 7(b) shall not apply to any settlement entered into in violation of this sentence. Each indemnified party shall furnish such information regarding itself or the claim in question as an indemnifying party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in Section 7(a) or 7(b) from the indemnifying party for any reason is unavailable to (other than by reason of exceptions provided therein), or is

insufficient to hold harmless, an indemnified party hereunder in respect of any claim for indemnification, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such claim in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and the indemnified party, on the other hand, in connection with the actions that resulted in such claim, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. If, however, the foregoing allocation is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 7(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by a party as a result of any claim referred to in the immediately preceding paragraph shall be deemed to include, any reasonable legal or other fees, costs or expenses reasonably incurred by such party in connection with any investigation or proceeding. Notwithstanding anything in this Section 7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 7(d) to contribute any amount in excess of the net proceeds received by such indemnifying party from the sale of the Registrable Shares pursuant to the registration statement giving rise to such claims, less all amounts previously paid by such indemnifying party with respect to such claims. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The indemnities and obligations provided in this Section 7 shall survive the completion of any offering of Registrable Shares and the transfer of any Registrable Shares by such holder.

(g) The provisions of this Section 7 shall be in addition to any other rights to indemnification or contribution which an indemnified party may have pursuant to law, equity, contract or otherwise.

Section 8. Registration Procedures.

(a) If and whenever the Company is required by the provisions of this Agreement to effect the registration of any Registrable Shares under the Securities Act, the Company will, as expeditiously as possible:

(i) In the case of a registration statement under Section 3 or 4, prepare and file with the Commission a registration statement (which, in the case of an underwritten public offering pursuant to Section 3, shall be on Form F-1 or other form of general applicability satisfactory to the managing underwriter selected as therein provided and in the case of an offering under Section 4 shall be on Form F-3) with respect to such securities including executing an undertaking to file post-effective amendments and use its commercially reasonable efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby in accordance with the provisions contained herein;

(ii) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for the period specified herein and comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Shares covered by such registration statement;

(iii) Prior to filing any registration statement described in this Agreement, furnish to each holder of Registrable Shares upon request, within a reasonable time prior to such filing, copies of the registration statement and any amendments or supplements thereto and any prospectus forming a part thereof, which documents shall be subject to the review of counsel representing each holder, and use all commercially reasonable efforts to reflect in each such document when so filed with the Commission such comments as counsel representing each holder shall reasonably propose;

(iv) Furnish to each seller of Registrable Shares and to each underwriter, if applicable, such number of copies of the registration statement and each such amendment and supplement thereto (in each case including all exhibits) and the prospectus included therein (including each preliminary prospectus) as such Persons reasonably may request in order to facilitate the public sale or other disposition of the Registrable Shares covered by such registration statement;

(v) If the offering is underwritten, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the lead or managing underwriter(s) of such offering.

(vi) Provide a transfer agent, registrar and a CUSIP number for all Registrable Shares registered pursuant hereto, in each case not later than the date of the final prospectus for such registration.

(vii) Use its commercially reasonable efforts to register and qualify the Registrable Shares covered by such registration statement under the securities or "blue sky" laws

of such jurisdictions as the sellers of Registrable Shares or, in the case of an underwritten public offering, the managing underwriter reasonably shall request; provided, however, that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, unless the Company is already subject to service in such jurisdiction;

(viii) Use its commercially reasonable efforts to list the Registrable Shares covered by such registration statement with any securities exchange or quotation system on which the Common Stock of the Company is then listed;

(ix) File any "free writing prospectus" (as defined in Rule 405 under the Securities Act) that is required to be filed with the Commission in accordance with the Securities Act;

(x) Notify each holder of Registrable Shares, promptly after receiving notice thereof, of the time when the registration statement becomes effective or when any amendment or supplement or any prospectus forming a part of the registration statement has been filed;

(xi) Comply with all applicable rules and regulations under the Securities Act and Exchange Act;

(xii) Immediately notify each holder of Registrable Shares and each underwriter under such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event of which the Company has knowledge as a result of which the prospectus contained in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to such seller a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(xiii) Advise each holder of Registrable Shares after the Company shall receive notice or otherwise obtain knowledge of the issuance of any order by the Commission preventing or suspending the effectiveness of the registration statement or any amendment thereto or of the initiation or threatening of any proceeding for that purpose and promptly use all commercially reasonable efforts to prevent the issuance, or to obtain its withdrawal at the earliest possible moment, of any stop order with respect to the applicable registration statement or other order suspending the use of any preliminary or final prospectus;

(xiv) If the offering is underwritten and at the request of any seller of Registrable Shares, furnish on the date that Registrable Shares are delivered to the underwriters for sale pursuant to such registration (A) an opinion dated such date of counsel representing the

Company for the purposes of such registration, and (B) a letter dated such date from the independent public accountants retained by the Company, and each of the opinion and the letter shall be in customary form and covering substantially the same matters with respect to such registration statement and as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in an underwritten offerings of securities;

(xv) Upon reasonable notice and at reasonable times during normal business hours and without undue interference of the Company's business or operations, make available for inspection by each seller of Registrable Shares, any underwriter participating in any distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by such seller or underwriter, reasonable access to all financial and other records, pertinent corporate documents and properties of the Company, as such parties may reasonably request, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement; provided that the Company need not disclose any such information to any such seller or its representative unless and until such person has entered into a confidentiality agreement with the Company;

(xvi) Cooperate with the selling holders of Registrable Shares and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Shares to be sold, such certificates to be in such denominations and registered in such names as such holders or the managing underwriter may request at least two (2) business days prior to any sale of Registrable Shares;

(xvii) The Company shall make generally available to its security holders an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of a registration statement filed hereunder; and

(xviii) use its commercially reasonable efforts to make available the executive officers of the Company to participate with the holders and any underwriters in "road shows" or other selling efforts that may be reasonably requested by the holders in connecton with the methods of distributed for the Registrable Shares.

(b) For purposes of this Agreement, the period of distribution of Registrable Shares in a firm commitment underwritten public offering shall be deemed to extend until each underwriter has completed the distribution of all securities purchased by it, and the period of distribution of Registrable Shares in any other registration shall be deemed to extend until the earlier of the sale of all Registrable Shares covered thereby or one hundred eighty (180) calendar days after the effective date thereof, provided, however, in the case of any registration of Registrable Shares on Form F-3 or a successor form which are intended to be offered on a continuous or delayed basis, such 180 day-period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Shares are sold, provided that Rule 415, or any successor rule promulgated under the Securities Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Securities Act governing

the obligation to file a post-effective amendment, permit, in lieu of filing a post-effective amendment which

(i) includes any prospectus required by Section 10(a)(3) of the Securities Act or (ii) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (i) and

(ii) are contained in periodic reports filed pursuant to Section 13 or 15(d) of the Exchange Act in the registration statement.

(c) The Company shall at any time following the date hereof be entitled to postpone a registration under Section 3 or to require the holders of Registrable Shares to discontinue the disposition of their securities covered by a registration under Section 4 during any Blackout Period (as defined below); provided, however, that the Company may only delay a Demand Registration pursuant to this Section 8(c) by delivery of a Blackout Notice (as defined below) within thirty (30) calendar days of delivery of the request for registration under Section 3 and may delay such registration and require the holders of Registrable Shares to discontinue the disposition of their securities covered by a registration under Section 4 for up to one hundred ten (110) calendar days (or such earlier time as such transaction is consummated or no longer proposed or the material information has been made public) in any twelve (12) month period (the **"Blackout Period"**). The Company shall notify the holders of Registrable Shares in writing (a **"Blackout Notice"**) of any decision to postpone a registration under Section 3 or to discontinue sales of Registrable Shares covered by a registration Section 4 pursuant to this Section 8(c) and shall upon request include a general statement (which statement shall not include any material, non-public information other than the notice of the Blackout Period) of the reason for such postponement, an approximation of the anticipated delay and an undertaking by the Company to notify the holders as soon as a registration may be effected or sales of Registrable Shares covered by a registration under Section 4 may resume. In making any such determination to initiate or terminate a Blackout Period, the Company shall not be required to consult with or obtain the consent of any holder, and any such determination shall be the Company's sole responsibility. Each holder shall treat all notices received from the Company pursuant to this Section 8(c) in the strictest confidence and shall not disseminate such information. If the Company shall postpone the filing of a registration statement pursuant to a Blackout Period, the holders who were to participate therein shall have the right to withdraw the request for registration. Any such withdrawal shall be made by giving written notice to the Company within thirty (30) calendar days after receipt of the Blackout Notice. Such withdrawn registration request shall not be treated as a registration demand effected pursuant to Section 3 (and shall not be counted towards the number of demand registrations to be effected under Section 3(c)), and the Company shall pay all Registration Expenses in connection therewith.

(d) Whenever under the preceding Sections of this Agreement the holders of Registrable Shares are registering such shares pursuant to any registration statement, each such holder agrees to: (i) timely provide in writing to the Company, at its request, such information and materials as the Company may reasonably request in order to effect the registration of such Registrable Shares in compliance with federal and applicable state securities laws; (ii) provide

the Company with appropriate representations with respect to the accuracy of such information provided by such seller pursuant to subsection (i); or (iii) upon receipt of a Blackout Notice or a notice that an untrue statement or alleged untrue statement or omission or alleged omission was contained in a prospectus, immediately discontinue disposition of Registrable Shares, until such holder is advised by the Company in writing that such disposition may again be made. The provisions of such information shall be a condition to the Company's obligations to register the Registrable Shares.

(e) If for any reason the Commission does not permit all of the Registrable Shares to be included in a registration statement filed pursuant to this Agreement or if not permitted by law or Commission policy or position as determined by the Company in its reasonable discretion or for any other reason any Registrable Shares are not permitted by the Commission to be included in a registration statement filed under this Agreement, the Company may reduce, on a pro rata basis, the total number of Registrable Shares to be registered on behalf of Focus, subject to any other shares which may be registered under such registration statement being reduced only after the reduction of the Registrable Shares. Focus may require the Company to prepare and file, at any time after the later of (i) the date on which the Commission shall indicate as being the first date or time that such filing may be made or (ii) one hundred twenty (120) calendar days following the effective date of the previous registration statement filed pursuant to this Agreement, an additional registration statement covering the resale of all Registrable Shares not already covered by an existing and effective registration statement for an offering to be made on a continuous basis pursuant to Rule 415. The Company shall cause each such registration statement to be declared effective under the Securities Act no later than one hundred eighty (180) calendar days following the filing of such registration statement, and shall use its commercially reasonable efforts to keep such registration statement effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5.

(f) Notwithstanding anything to the contrary contained in this Agreement, in the event the Commission determines or the Company determines in accordance with Commission policy or practice any registration statement filed pursuant to this Agreement (i) constitutes a primary offering of securities by the Company or (ii) requires holders of Registrable Shares to be named as an underwriter and such party does not consent to being so named as an underwriter in such registration statement, the Company may reduce the total number of Registrable Shares to be registered on behalf of each of the holders of Registrable Shares, and the failure to include such Registrable Shares in any registration statement shall not cause the Company to be required to pay any penalty, financial or otherwise, as described in this Agreement. In the event of any such reduction in Registrable Shares, holders of Registrable Shares have the right to require, upon delivery of a written request to the Company, the Company to file a registration statement within ninety (90) calendar days of such request subject to any restrictions imposed by Rule 415, until such time as: (i) provided in Section 5 or (iii) the holders of Registrable Shares agree to be named as an underwriter in any such registration statement.

Section 9. <u>Expenses</u>.

(a) In the case of any registration statement under Sections 2, 3 or 4 of this Agreement, the Company shall bear all costs and expenses of each such registration, including,

but not limited to, all registration and filing fees, printing expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of the Financial Industry Regulatory Authority, Inc., transfer taxes, fees of transfer agents and registrars, costs of any insurance which might be obtained by the Company with respect to the offering by the Company, fees and expenses payable in connection with the listing of the Registrable Shares on any securities exchange on which the Registrable Shares are then listed or are to be listed, and fees and expenses of legal counsel to the selling holders of Registrable Shares in connection with the registration of their Registrable Shares (such fees and expenses of legal counsel not to exceed an aggregate amount of $50,000) (collectively, "**Registration Expenses**"). The Company shall have no obligation to pay or otherwise bear: (i) the cost and expenses of procuring underwriters' insurance in connection with the sale of Registrable Shares by holders of Registrable Shares, or (ii) any portion of the underwriters' or any broker/ dealers' commissions or discounts attributable to the Registrable Shares being offered and sold by the holders of Registrable Shares (collectively, the "**Selling Expenses**"). All Selling Expenses in connection with each registration statement under Sections 2, 3 or 4 shall be borne by the participating sellers (including the Company, where applicable) in proportion to the number of shares registered by each, or by such participating sellers other than the Company (to the extent the Company shall be a seller) as they may agree.

(b) The Company shall not be obligated to pay any expenses of the holders of the Registrable Shares in connection with any registration initiated pursuant to Section 3 at the request of the holders of the Registrable Shares if such registration statement is withdrawn, delayed or abandoned at the request of the holders except as provided in Section 8(c).

Section 10. Conditions to Registration Obligations. The Company shall not be obligated to effect the registration of Registrable Shares pursuant to Sections 2, 3 and 4 unless all holders of shares being registered consent to reasonable conditions imposed by the Company including, without limitation:

(a) conditions prohibiting the sale of shares by such holders until the registration shall have been effective for a specified period of time;

(b) conditions requiring such holder to comply with all prospectus delivery requirements of the Securities Act and with all anti-stabilization, anti-manipulation and similar provisions of Section 10 of the Exchange Act and any rules issued thereunder by the Commission, and to furnish to the Company information about sales made in such public offering;

(c) conditions prohibiting such holders upon receipt of telegraphic or written notice from the Company (until further notice) from effecting sales of shares, such notice being given to permit the Company to correct or update a registration statement or prospectus;

(d) conditions requiring that at the end of the period during which the Company is obligated to keep the registration statement effective under Section 6, the holders of shares included in the registration statement shall discontinue sales of shares pursuant to such

registration statement upon receipt of notice form the Company of its intention to remove from registration the shares covered by such registration statement that remain unsold, and requiring such holders to notify the Company of the number of shares registered that remain unsold immediately upon receipt of notice from the Company;

(e) conditions requiring the holders of Registrable Shares to enter into an underwriting agreement in form and substance reasonably satisfactory to the Company and the holders of Registrable Shares; and

(f) conditions requiring the holders of Registrable Shares to, if requested by any underwriter, to enter into a lock-up agreement in form and substance reasonably satisfactory to the underwriter in connection with any underwritten offering of securities by the Company for the Company's own account.

Section 11. Transferability of Registration Rights. For all purposes of this Agreement, the holder of Registrable Shares shall include not only Focus but (i) any assignee or transferee of the Registrable Shares who acquires and holds at least 1,000,000 Registrable Shares (subject to appropriate adjustment for any stock split, reverse stock split, stock dividend, recapitalization or similar transaction), or (ii) any of such Person's Affiliates; provided, however, that each such assignee or transferee agrees in writing to be bound by all of the provisions of this Agreement.

Section 12. Other Registration Rights. The Company shall not grant any registration rights to any existing holder of equity securities of the Company, or securities convertible into Common Stock of the Company held by any existing holder of such securities, which rights are more favorable than the registration rights granted to the holders hereunder; provided, that the Company may grant registration rights to existing holders of its equity securities (or securities convertible into Common Shares held by any existing holder of such securities) on a *pari passu* basis with the Registrable Shares so long as the grant of such rights does not conflict with or otherwise alter any rights granted to holders hereunder.

Section 13. Miscellaneous.

(a) No failure or delay on the part of any party to this Agreement in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

(b) Except as hereinafter provided, amendments or additions to this Agreement may be made, compliance with any covenant or provision set forth herein may be omitted or waived, and this Agreement may be terminated, if the Company shall obtain consent thereto in writing from Focus (unless it does not beneficially own any Registrable Shares) and, if they are not the beneficial owner of any of the Registrable Shares, the consent of such other beneficial owners as would aggregate at least 51% in interest of the Registrable Shares. Any waiver or consent may be given subject to satisfaction of conditions stated therein and any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) All notices or other communications that are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by internationally-recognized overnight courier or by electronic mail, with a copy thereof to be delivered by internationally-recognized overnight courier (as aforesaid) within 24 hours of such electronic mail, or by facsimile, with confirmation as provided above addressed as follows:

If to the Company to:

NewLead Holdings Ltd.
83 Akti Miaouli & Flessa Str.
Piraeus 185 38, Greece
Attn: Michael Zolotas
Fax No: +30 (213) 014-8019

With a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stuart H. Gelfond, Esq.
Fax No: (212) 859-4000

If to Focus to:

Focus Maritime Corp.
c/o Newfront Shipping S.A.
1-7 Flessa & 83 Akti Miaouli
185 38 Piraeus, Greece

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices or communications shall be deemed to be received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of internationally-recognized overnight courier, on the third business day after the date when sent and (c) in the case of facsimile transmission or electronic mail, upon confirmed receipt.

(d) This Agreement shall be binding upon and inure to the benefit of the Company and Focus and their respective heirs, successors and assigns, except that the Company shall not have the right to delegate its obligations hereunder or to assign its rights hereunder or any interest herein without the prior written consent of the holders of at least a majority in interest of the Registrable Shares, which shall include Focus as long as it owns any Registrable Shares.

(e) This Agreement constitute the entire agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof.

(f) The provisions of this Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a

provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; but this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

(g) In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

(h) The parties hereto acknowledge and agree that (i) each party and its counsel, if so represented, reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(i) This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, and without giving effect to choice of laws provisions that would lead to the application of any other law as the governing law hereof.

(j) Article, section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(k) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterparts.

(l) Other than any Registration Rights Agreements or provisions relating to registration rights that exist prior to the date of this Agreement, the Company represents that the rights granted to the holders of Registrable Shares hereunder do not in any way conflict with any other agreements to which the Company is a party or by which it is bound.

(m) From and after the date of this Agreement, upon the request of any of Focus or the Company, the Company and Focus, as applicable, shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

(o) Notwithstanding anything to the contrary contained herein, this Agreement shall not become effective unless and until the issuance of the shares of the Company's Common Stock to Focus pursuant an agreement between the Company and Focus to equitize Focus' holdings of the Company's 7% Convertible Senior Notes due 2015.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

NEWLEAD HOLDINGS LTD.

By: ______________________
Name: Michail S. Zolotas
Title: President & CEO

FOCUS MARITIME CORP.

By: ______________________
Name: Michail S. Zolotas
Title: Director

Exhibit 4.65

Dated 28 March 2013

NEWLEAD VICTORIA LTD.
as Borrower

and

NEWLEAD HOLDINGS LTD.
as Guarantor

and

PORTIGON AG, LONDON BRANCH
as Lender

SUPPLEMENTAL AGREEMENT

relating to a loan agreement dated 16 October 2007
(as novated, amended and restated by deeds of novation, amendment and restatement dated 31 March 2010 and 4 June 2010, respectively)

Watson, Farley & Williams

Index

Clause **Page**

THIS SUPPLEMENTAL AGREEMENT is made on [●] 2013

PARTIES

(1) **NEWLEAD VICTORIA LTD.**, a corporation incorporated and existing in Liberia whose registered office is at 80 Broad Street, Monrovia, Liberia (including its successors and assigns, the "**Borrower**");

(2) **NEWLEAD HOLDINGS LTD.**, a company incorporated in Bermuda whose registered office is at Canon's Court, 22 Victoria Street, Hamilton, Bermuda (including its successors and assigns, the "**Guarantor**"); and

(3) **PORTIGON AG, LONDON BRANCH**, (formerly known as WestLB AG, London Branch), a company incorporated in Germany, having its registered office at Herzogstrasse 15 in 40217 Dusseldorf, Germany and acting through its branch at Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA, England (including its successors and assigns, the "**Lender**")

BACKGROUND

(A) By a loan agreement dated 16 October 2007 (as novated, amended and restated by deeds of novation, amendment and restatement dated 31 March 2010 and 4 June 2010, the "**Loan Agreement**") made between (i) the Borrower as borrower, (ii) the Lender as lender, and it was agreed that the Lender would make available to the Borrower a loan facility of (originally) up to US$27,500,000 (United States Dollars twenty seven million five hundred thousand).

(B) The Lender has advanced to the Borrower the full amount of the Loan in the principal amount of US$27,500,000 (United States Dollars twenty seven million five hundred thousand) and as the date hereof, the principal amount of US$25,250,000 (United States Dollars twenty five million two hundred and fifty thousand) (the "**Loan**") remains outstanding.

(C) By a guarantee (the "**Guarantee**") dated 4 June 2010 executed by the Guarantor in favour of the Lender the Guarantor guaranteed the obligations of the Borrower under the Loan Agreement and the other Finance Documents (as defined in the Loan Agreement).

(D) The Borrower and the Guarantor have requested that the Lender agrees to (inter alia):

(i) defer the amortised repayment of the Loan so that it recommences on 30 June 2013;

(ii) waive the application of the minimum security cover provisions set out in clause 14.1 of the Loan Agreement (the "**First Waiver**") during the period from the date of this Agreement until the earlier of (i) the date on which the Lender is satisfied that the Security Cover Ratio (as defined in the Loan Agreement) is not less than 100 per cent. and (ii) 31 December 2013 (inclusive) (the "**First Waiver Period**");

(iii) waive the application of the Guarantor's financial covenants (the "**Second Waiver**") set out in clause 11.15 of the Guarantee (the "**Second Waiver**" and, together with the First Waiver, the "**Waivers**" and each a "**Waiver**") during the period commencing on the date of this Agreement and ending on 30 June 2013 (inclusive) (the "**Second Waiver Period**"); and

(iv) the amendment and/or variation of certain other provisions of the Loan Agreement.

(E) This Agreement sets out the terms and conditions on which the Lender agrees to:

(i) the Waivers;

(ii) the consequential amendments to the Loan Agreement, the Guarantee and the other Finance Documents in connection with those matters; and

(iii) certain other amendments and/or variations to the Loan Agreement, the Guarantee and the other Finance Documents.

NOW THEREFORE IT IS HEREBY AGREED

1 DEFINITIONS

1.1 Defined expressions.

Words and expressions defined in the Loan Agreement (as hereby amended) and the recitals hereto and not otherwise defined herein shall have the same meanings when used in this Supplemental Agreement.

1.2 Definitions.

In this Supplemental Agreement the words and expressions specified below shall have the meanings attributed to them below:

"Effective Date" means the date on which the conditions precedent in Clause 4 are satisfied;

"First Waiver" has the meaning given in Recital (C)(ii);

"First Waiver Period" has the meaning given in Recital (C)(ii);

"Mortgage Addendum" means the first addendum to the Mortgage, executed or to be executed by the Borrower in favour of the Lender in such form as the Lender may approve or require;

"Second Waiver" has the meaning given in Recital (C)(iii);

"Second Waiver Period" has the meaning given in Recital (C)(iii); and

"Waiver" has the meaning given in Recital (C)(iii).

1.3 Construction of terms.

Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations. Clause headings are inserted for convenience of reference only and shall be ignored in construing this Supplemental Agreement. References to Clauses are to clauses of this Supplemental Agreement save as may be otherwise expressly provided in this Supplemental Agreement.

2 REPRESENTATIONS AND WARRANTIES

2.1 Repetition of representations and warranties.

The Borrower and the Guarantor hereby represent and warrant to the Lender, as at the date of this Supplemental Agreement, that the representations and warranties set forth in clause 9 of the Loan Agreement and, in the case of the Guarantor, clause 10 the Guarantee (each updated mutatis mutandis to the date of this Supplemental Agreement) are true and correct as if all references therein to "this Agreement" or, in the case of the Guarantee, this "Guarantee" were references to the Loan Agreement and the Guarantee, respectively, each as amended by this Supplemental Agreement.

2.2 Further representations and warranties.

The Borrower and the Guarantor hereby further represent and warrant to the Lender that as at the date of this Supplemental Agreement:

(a) each is duly incorporated and validly existing and in good standing under the laws of, in the case of the Borrower, Liberia and, in the case of the Guarantor, Bermuda and has full power to enter into and perform its obligations under this Supplemental Agreement and has complied with all statutory and other requirements relative to its business, and does not have an established place of business in any part of the United Kingdom or the United States of America;

(b) all necessary governmental or other official consents, authorisations, approvals, licences, consents or waivers for the execution, delivery, performance, validity and/or enforceability of this Supplemental Agreement and all other documents to be executed in connection with the amendments to the Loan Agreement (in the case of the Borrower including, but not limited to, the Mortgage Addendum and the other Finance Documents as contemplated hereby have been obtained and will be maintained in full force and effect, from the date of this Supplemental Agreement and so long as any moneys are owing under any of the Finance Documents and while all or any part of the Commitment remains outstanding;

(c) each has taken all necessary corporate and other action to authorise the execution, delivery and performance of its obligations under this Supplemental Agreement and such other documents to which it is a party (in the case of the Borrower including, but not limited to, the Mortgage Addendum) and such documents do or will upon execution thereof constitute its valid and binding obligations enforceable in accordance with their respective terms;

(d) the execution, delivery and performance of this Supplemental Agreement and all such other documents as contemplated hereby (in the case of the Borrower including, but not limited to, the Mortgage Addendum) does not and will not, from the date of this Supplemental Agreement and so long as any moneys are owing under any of the Finance Documents and while all or any part of the Loan remains outstanding, constitute a breach of any contractual restriction or any existing applicable law, regulation, consent or authorisation binding on the Borrower and/or the Guarantor or on any of their property or assets and will not result in the creation or imposition of any security interest, lien, charge or encumbrance (other than under the Finance Documents) on any of such property or assets; and

(e) each has fully disclosed in writing to the Lender all facts which it knows or which it should reasonably know and which are material for disclosure to the Lender in the context of this Supplemental Agreement and all information furnished by the Borrower and/or the Guarantor or on its behalf relating to its business and affairs in connection with this Supplemental Agreement was and remains true, correct and complete in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading.

3 AGREEMENT OF THE LENDER

3.1 Agreement.

The Lender, relying upon each of the representations and warranties set out in Clauses 2.1 and 2.2 of this Supplemental Agreement, hereby agrees with the Borrower and the Guarantor, subject to and upon the terms and conditions of this Supplemental Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in Clause 4, to:

(a) the Waivers;

(b) the consequential amendments to the Loan Agreement, the Guarantee and the other Finance Documents in relation to the Waivers; and

(c) the amendments/variations of the Loan Agreement and the other Finance Documents set out in Clause 5.

3.2 Continuing effect.

The Borrower and the Guarantor agree and confirm that the Loan Agreement, the Guarantee and the Finance Documents to which each is a party shall remain in full force and effect and each of the Borrower and the Guarantor shall remain liable under the Loan Agreement, the Guarantee and/or the Finance Documents to which each is a party for all obligations and liabilities assumed by it thereunder.

3.3 Effective Date. The agreement of the Lender contained in Clause 3.1 shall have effect on and from the Effective Date.

4 CONDITIONS

4.1 Conditions precedent.

The agreements of the Lender contained in Clause 3.1 of this Supplemental Agreement shall be expressly subject to the condition that the Lender shall have received in form and substance satisfactory to it and its legal advisers on or before the Effective Date the following:

(a) evidence that the persons executing this Supplemental Agreement on behalf of the Borrower and the Guarantor are duly authorised to execute the same;

(b) true and complete copy of the resolution passed at separate meeting of the directors and shareholders of the Borrower and the directors of the Guarantor authorising and approving the execution of this Supplemental Agreement and, in the case of the Borrower, the Mortgage Addendum and any other document or action to which it is or is to be a party and authorising its directors or other representatives to execute the same on its behalf;

(c) the original of any power of attorney issued by the Borrower and the Guarantor pursuant to such resolutions aforesaid;

(d) the Mortgage Addendum has been, duly executed by the Borrower together with evidence that the Mortgage Addendum has been duly registered in accordance with the laws of Liberia;

(e) certified copies of all documents (with a certified translation if an original is not in English) evidencing any other necessary action, approvals or consents with respect to this Supplemental Agreement and the Mortgage Addendum (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Lender deems appropriate;

(f) such legal opinions as the Lender may require in respect of the matters contained in this Supplemental Agreement and the Mortgage Addendum; and

(g) evidence that the agent referred to in clause 29.4 of the Loan Agreement has accepted its appointment as agent for service of process under this Supplemental Agreement.

5 VARIATIONS TO LOAN AGREEMENT, GUARANTEE AND FINANCE DOCUMENTS

5.1 Specific amendments to Loan Agreement and Guarantee.

In consideration of the agreement of the Lender contained in Clause 3.1 of this Supplemental Agreement, the Borrower and the Guarantor hereby agree with the Lender that upon satisfaction of the conditions referred to in Clause 4.1, the provisions of the Loan Agreement or, as the case may be, the Guarantee shall be varied and/or amended and/or supplemented with effect on and from the Effective Date as follows:

(a) by inserting in clause 1.1 of the Loan Agreement the definitions of "Mortgage Addendum", and "First Waiver Period" set out in Clause 1.2;

(b) the definition of, and references throughout each of the Finance Documents to, the Mortgage shall be construed as if the same referred to the Mortgage as amended and supplemented by the Mortgage Addendum;

(c) by substituting the definition of "Mortgage" in clause 1.1 of the Loan Agreement with the following:

""**Mortgage**" means the first preferred Liberian ship mortgage on the Ship dated 4 June 2010 executed by the Borrower in favour of the Lender as amended and supplemented by the Mortgage Addendum;";

(d) by inserting the words "(including, for the avoidance of doubt and without limitation, any Interest Period during the First Waiver Period)" after the words "Interest Period" in the second line of clause 4.1 of the Loan Agreement;

(e) by substituting clause 7.1 of the Loan Agreement in its entirety with the following new clause:

"**7.1** **Repayment.** Save as previously repaid or prepaid, the Borrower shall repay the Loan:

(a) by 23 consecutive 3-monthly repayment instalments:

(i) in the case of the first three instalments, each in the amount of $300,000;

(ii) in the case of the fourth to eighth instalments (inclusive), each in the amount of $375,000; and

(iii) in the case of the ninth to twenty-third instalments (inclusive), each in the amount of $475,000; and

(b) subject to Clause 7.11, a balloon instalment of $15,350,000 (the "**Balloon Instalment**").";

(f) by substituting clause 7.2 of the Loan Agreement in its entirety with the following new clause:

"**7.2** **Repayment Dates.** Save as previously repaid or prepaid, the first repayment instalment in respect of the Loan shall be repaid on 30 June 2013, each subsequent repayment instalment shall be repaid at 3-monthly intervals thereafter and the last repayment instalment, together with the Balloon Instalment, shall be repaid on 31 January 2019.";

(g) by substituting clause 7.11 of the Loan Agreement in its entirety with the following new clause:

"**7.11** **Prepayment out of Excess Earnings.** If on 31 March, 30 June, 30 September and 31 December in each calendar year during the period of 30 June 2013 (the "**First Date**") to the earlier of (i) the date on which the Balloon Instalment has been prepaid in full

in accordance with this Clause 7.11 and (ii) the end of the Security Period (each an "**Excess Cash Calculation Date**"), with the first such 3-month period commencing on the First Date, the Lender determines (on the basis of the relevant cash flow statement provided under Clause 10.6(c)) that the aggregate of the daily Earnings of the Ship for such 3-month period exceeds the aggregate of:

(a) the expenditure necessarily incurred during such 3-month period by the Borrower in operating, insuring, maintaining, repairing and generally trading the Ship (but excluding any exceptional and extraordinary expenses);

(b) sums paid by the Borrower in respect of principal on, and interest in respect of, the Loan pursuant to this Agreement during such 3-month period; and

(c) general and administrative expenditure properly and reasonably incurred by the Borrower during such 3-month periods not exceeding, in aggregate, $450,000 in each 12-month period commencing on 1 November in each year,

then the Borrower shall within 75 days of the relevant Excess Cash Calculation Date, pay to the Lender an amount equal to the Relevant Percentage of such excess which amount shall be applied by the Lender against the Balloon Instalment (and the Borrower hereby irrevocably authorises the Lender to make such application),

In this Clause 7.11, "**Relevant Percentage**" means if, on the relevant Excess Cash Calculation Date:

(A) the Borrower is in compliance with Clause 14.1, 50 per cent.; and

(B) the Borrower is not in compliance with Clause 14.1 or the application of the security cover provision set out in that Clause has been waived by the Lender, 100 per cent.";

(h) by substituting clause 10.6 (a) of the Loan Agreement with the following new clause:

"(a) as soon as possible, but in no event later than 180 days after the end of each financial year of the Corporate Guarantor and the Borrower:

(i) in the case of the Borrower the annual audited accounts or, if not available, the annual management accounts duly certified as to their correctness by the Corporate Guarantor's chief financial officer; and

(ii) in the case of the Corporate Guarantor, the audited consolidated accounts of the Group;";

(i) by substituting clause 10.6(c) of the Loan Agreement with the following new clause:

"(c) as soon as possible, but in no event later than 60 days after the end of each 3-month period in each financial year of the Borrower (ending on 31 March, 30 June, 30 September and 31 December), a cash flow statement, in the form set out in Schedule 3 hereto, in respect of that 3-month period evidencing the Borrower's Earnings and expenditure during that period certified as to its correctness by the chief financial officer of the Corporate Guarantor; and"

(j) by adding the words "(other than during the First Waiver Period)" after the words "Security Period" in the second line of clause 11.4 of the Loan Agreement;

(k) by substituting the hanging paragraph in clause 14.1 of the Loan Agreement in its entirety with the following new hanging paragraph:

"In this Clause 14.1 "**Relevant Percentage**" means:

(i) during the First Waiver Period, 0 per cent.; and

(ii) at all times thereafter, 125 per cent.";

(l) by adding the words "Each payment order of withdrawal or transfer of any part of the balance standing to the credit of the Earnings Account at any relevant time made by the Borrower in accordance with, and to the extent permitted under, the Finance Documents shall be accompanied by copies of the relevant invoices (and any other document which the Lender may reasonably require) evidencing the purpose of such payment to the satisfaction of the Lender." at the end of clause 17.1 of the Loan Agreement;

(m) by substituting clause 19.1 of the Loan Agreement with the following new clause:

"**19.1 Restructuring fee.** The Borrower shall pay to the Lender a non-refundable restructuring fee of $250,000 on the earlier of (i) the date on which the Lender notifies the Borrower that the Lender determines (on the basis of the accounts provided to it pursuant to Clause 10.6) the Borrower having sufficient cash reserves to make such payment and (ii) 30 September 2013.";

(n) by adding the following as a new Schedule 3 to the Loan Agreement:

" **SCHEDULE 3**

[To be issued on the Corporate Guarantor's headed paper]

To: Portigon AG
Woolgate Exchange
25 Basinghall Street
London EC2V 5HA
England

[Date]

m.v. NewLead Victoria – Cash Sweep calculation for the [●] quarter of [●]

Opening balance for period: plus	[ ]
Total Income (received) less	[ ]
Voyage expenses	[ ]
Operating expenses	[ ]
DD, SS provision	[ ]
G&A expenses	[ ]
Loan repayments (paid)	[ ]
Loan interest (paid)	[ ]
[Other]	[ ]

Cash surplus / (deficit)		[ ]
Excess Cash to be applied as Loan prepayment	[●]%	[ ]
Cash surplus / (deficit) – b/f to next cash sweep calculation period		[ ]

[ ]
Chief Financial Officer
NewLead Holdings Ltd.";

(o) by inserting in clause 1.2 of the Guarantee the definition of "Second Waiver Period" set out in Clause 1.2;

(p) by adding the words "(other than during the Second Waiver Period)" after the words "ensure that" in the first line of clause 11.15 of the Guarantee;

(q) by construing all references therein to "this Agreement" where the context admits as being references to "this Agreement as the same is amended and supplemented by this Supplemental Agreement and as the same may from time to time be further supplemented and/or amended"; and

(r) by construing references to each of the Finance Documents as being references to each such document as it is from time to time supplemented and/or amended.

5.2 Amendments to Finance Documents

With effect on and from the Effective Date each of the Finance Documents other than the Loan Agreement and the Guarantee shall be, and shall be deemed by this Agreement to have been, amended as follows:

(a) the definition of, and references throughout each of the Finance Documents to, the Loan Agreement, the Guarantee and any of the other Finance Documents shall be construed as if the same referred to the Loan Agreement, the Guarantee and those Finance Documents as amended and supplemented by this Supplemental Agreement; and

(b) by construing references throughout each of the Finance Documents to "this Agreement", "this Deed", "hereunder and other like expressions as if the same referred to such Finance Documents as amended and supplemented by this Supplemental Agreement.

5.3 Finance Documents to remain in full force and effect

The Finance Documents shall remain in full force and effect as amended and supplemented by:

(a) the amendments to the Finance Documents contained or referred to in Clauses 5.1 and 5.2; and

(b) such further or consequential modifications as may be necessary to make the same consistent with, and to give full effect to, the terms of this Supplemental Agreement.

6 PAYMENT OF OVERDUE INTEREST

6.1 Confirmation and no waiver

The Borrower hereby acknowledges and confirms that the amount of overdue interest which has accrued on the Loan, pursuant to clause 4 of the Loan Agreement, during the period 30 December 2011 to 30 March 2012 is $240,777.39. In addition default interest has accrued, and continues to accrue, on the Loan (pursuant to clause 6 of the Loan Agreement). All accrued and unpaid interest and default interest shall be paid in full by not later than 30 June 2013. The Borrower's confirmation in this Clause 6 is without prejudice to, and shall not be construed as waiver or diminution of, our rights to the payment of such interest under the Loan Agreement, the other Finance Documents or at law, which are hereby fully reserved.

7 EXPENSES

7.1 Fees and expenses

The provisions of clause 19 (fees and expenses) of the Loan Agreement shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary amendments.

8 COMMUNICATIONS

8.1 General

The provisions of clause 27 (notices) of the Loan Agreement, as amended and supplemented by this Agreement, shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

9 SUPPLEMENTAL

9.1 Counterparts

This Agreement may be executed in any number of counterparts.

9.2 Third Party rights

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

10 LAW AND JURISDICTION

10.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

10.2 Incorporation of the Loan Agreement provisions

The provisions of clause 29 (law and jurisdiction) of the Loan Agreement, as amended and supplemented by this Agreement, shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary medications.

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

EXECUTION PAGE

BORROWER

SIGNED by MICHAIL S. LIVANOS)
for and on behalf of)
NEWLEAD VICTORIA LTD.)
in the presence of:)

GUARANTOR

SIGNED by MICHAIL S. LIVANOS)
for and on behalf of)
NEWLEAD HOLDINGS LTD.)
in the presence of:)

LENDER

SIGNED by IRENE GRAFF)
for and on behalf of)
PORTIGON AG, LONDON BRANCH)
in the presence of:)

Dated 28 March 2013

NEWLEAD VICTORIA LTD.
as Obligor

and

PORTIGON AG, LONDON BRANCH

FEE AGREEMENT

Watson, Farley & Williams

Index

THIS AGREEMENT is made on 28 March 2013

PARTIES

(1) **NEWLEAD VICTORIA LTD.**, a corporation incorporated in Liberia whose registered office is at 80 Broad Street, Monrovia, Liberia (including its successors and assigns, the "**Obligor**"); and

(2) **PORTIGON AG, LONDON BRANCH**, (formerly known as WestLB AG, London Branch), a company incorporated in Germany, having its registered office at Herzogstrasse 15 in 40217 Dusseldorf, Germany and acting through its branch at Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA, England (including its successors and assigns, "**Portigon**").

BACKGROUND

(A) By a loan agreement dated 16 October 2007 (as novated, amended and restated by deeds of novation, amendment and restatement dated 31 March 2010 and 4 June 2010 and as further amended by a supplemental agreement bearing the same date as this Agreement (the "**Supplemental Agreement**"), the "**Loan Agreement**") made between (i) the Obligor as borrower, (ii) Portigon as lender, Portigon made available to the Obligor a loan facility of (originally) US$27,500,000 (the "**Loan**") of which the current principal amount outstanding is US$25,250,000.

(B) It is one of the conditions to the continuing availability of the Loan under the Loan Agreement that the Obligor enters into this Agreement in order to provide for (inter alia) a payment of a fee, in consideration of the Lender entering into the Supplemental Agreement and effecting the waivers and all other amendments to the Loan Agreement contained therein, payable in the amount and at the times set out in this Agreement.

NOW THEREFORE IT IS HEREBY AGREED

1 DEFINITIONS

1.1 Definition by incorporation

Words and expressions defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used in this Agreement.

1.2 Further defined terms

In this Agreement the words and expressions specified below shall have the meanings attributed to them below:

"**Available Proceeds**" means the balance of the Sale Proceeds or the Total Loss Proceeds (as applicable) which remain after repaying the Loan and all other amounts under the Loan Agreement;

"**Delivery Date**" has the meaning given in Clause 3.1;

"**Fee**" means, on any sale (including, without limitation, pursuant to Portigon's power of enforcement) or Total Loss of the Ship, an amount equal to 75 per cent. of the Available Proceeds;

"**Fee Document**" means this Agreement and each of the documents referred to in Clause 4.1(a) and, in the plural, means all of them;

"Sale Proceeds" means the cash amount actually received on the sale of the Ship, net of any reasonable and direct costs in connection with the sale approved by Portigon and any trade debt (excluding any trade debt payable to any member of the Group) in respect of the Ship in an amount not exceeding, in aggregate, $500,000 (or the equivalent in any other currency);

"Ship" means the 2002-built Panamax bulk carrier of approximately 75,966 metric tons deadweight registered in the ownership of the Obligor under the Liberian flag with the name "NEWLEAD VICTORIA"; and

"Total Loss Proceeds" means the amount actually received from the insurers in respect of a Total Loss of the Ship, net of any reasonable and direct costs in connection with the collection of such amount approved by Portigon.

1.3 Construction

Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations. Clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement. References to Clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement.

2 OPTION

2.1 Option to demand sale of the Ship

The Obligor hereby grants Portigon the option (the "**Option**") to demand the sale of the Ship, such demand to be made in writing if Portigon determines, on the basis of a valuation of the Ship complying with, and obtained pursuant to, clause 14.4 of the Loan Agreement, that the market value of the Ship is at least equal to the amount of the Loan on that date of that valuation. Upon Portigon's exercise of the Option the Obligor shall:

(a) immediately following the making of such demand, appoint at least 2 international independent sale and purchase ship brokers to market the Ship for sale;

(b) promptly communicate to Portigon all offers received from the acquisition of the Ship; and

(c) use its best endeavours to complete such a sale on terms which take account of the circumstances prevailing in the second hand ship sale and purchase market at the relevant time.

3 PAYMENT OF FEE

3.1 Fee Instalment

On the date (the "**Delivery Date**") on which:

(a) the Ship is sold, pursuant to Clause 2;

(b) the Obligor is obliged to prepay the Loan in accordance with clause 7.7 of the Loan Agreement; or

(c) the Ship is sold pursuant to the exercise by Portigon of its powers of enforcement following an Event of Default,

the Obligor shall pay to Portigon the Fee.

4 UNDERTAKINGS

4.1 Documents and security

The Obligor undertakes to deliver to Portigon in form and substance satisfactory to it:

(a) a second preferred mortgage and a second priority assignment of the Earnings, Insurances and Requisition Compensation in respect of the Ship, each executed in favour of Portigon and securing the Obligor's obligations under this Agreement;

(b) evidence of due authorisation and execution by the Obligor of each Fee Document;

(c) evidence that the mortgage referred to in sub-clause (a) above has been duly registered against the Ship with second priority (ranking only after the Mortgage) in accordance with the laws of Liberia; and

(d) such legal opinions as Portigon shall require in relation to this Agreement and the other documents referred to in this Clause 4.1.

The Obligor undertakes that the documents referred to above in this Clause 4.1 will be delivered on or prior to the date of this Agreement.

4.2 Costs of preservation of rights, enforcement etc.

The Obligor shall pay to Portigon on its demand the amount of all expenses incurred by it in connection with any matter arising out of any Fee Document, including any advice, claim or proceedings relating to that Fee Document.

4.3 Method of payments

Any amount due under this Agreement shall be paid:

(a) in immediately available funds;

(b) to such account as Portigon may from time to time notify to the Obligor;

(c) without any form of set off, cross claim or condition; and

(d) free and clear of any tax deduction except a tax deduction which the Obligor is required by law to make.

4.4 Grossing-up for taxes

If the Obligor is required by law to make a tax deduction, the amount due to Portigon shall be increased by the amount necessary to ensure that Portigon receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

4.5 Accrual of interest

Any amount due and unpaid under this Agreement shall carry interest after the date on which Portigon demands payment of it until it is actually paid. Interest under this Agreement shall be calculated and accrue in the same way as interest under clause 4 or, as the case may be, 6 of the Loan Agreement.

4.6 Consents

The Obligor will maintain in force and promptly obtain or renew, and will promptly send certified copies to Portigon of, all consents required:

(a) for the Obligor to perform its obligations under this Agreement and the Fee Documents; and

(b) for the validity or enforceability of the Fee Documents.

4.7 Maintenance of security interests

The Obligor will:

(a) at its own cost, do all that it reasonably can to ensure that each Fee Document validly creates the obligations and, where applicable, the Security Interests which it purports to create; and

(b) pay any stamp, registration or similar tax in respect of any Fee Document, give any notice or take, or procure to be taken, any other step which may be or become necessary or desirable for any Fee Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any security interest which it creates.

5 JUDGMENTS AND CURRENCY INDEMNITY

5.1 Currency indemnity

Clause 20.4 of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Agreement.

6 SET-OFF

6.1 Application of credit balances

Portigon may without prior notice:

(a) apply any balance (whether or not then due) which at any time stands to the credit of any account in the name of the Obligor at any office in any country of Portigon in or towards satisfaction of any sum then due from the Obligor to Portigon under any Fee Document; and

(b) for that purpose:

  (i) break, or alter the maturity of, all or any part of a deposit of the Obligor;

  (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; and

  (iii) enter into any other transaction or make any entry with regard to the credit balance which Portigon considers appropriate.

6.2 Existing rights unaffected

Portigon shall not be obliged to exercise any of its rights under Clause 5.1; and those rights shall be without prejudice and in addition to any right of set off, combination of accounts, charge, lien or other right or remedy to which Portigon is entitled (whether under the general law or any document).

7 SUPPLEMENTAL

7.1 No impairment of rights

If Portigon omits to exercise, delays in exercising or invalidly exercises any of its rights under a Fee Document, that shall not impair that or any other right of Portigon under that Fee Document.

7.2 Severability of provisions

If any provision of a Fee Document is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

7.3 Third party rights

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

7.4 No partnership

This Agreement shall not have the effect of creating any partnership between the Obligor and Portigon.

8 ASSIGNMENT

8.1 Assignment by Portigon

Portigon may assign its rights under and in connection with this Agreement to the same extent as it may assign its rights under the Loan Agreement.

9 NOTICES

9.1 Notices

The provisions of clause 27 of the Loan Agreement shall apply to any notices or demands under this Agreement.

10 GOVERNING LAW AND JURISDICTION

10.1 English law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

10.2 Exclusive English jurisdiction

Subject to Clause 10.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

10.3 Choice of forum for the exclusive benefit of Portigon

Clause 10.2 is for the exclusive benefit of Portigon, which reserve the rights:

(a) to commence proceedings in relation to any Dispute in the courts of any country other than England and which have or claim jurisdiction to that Dispute; and

(b) to commence such proceedings in the courts of any such country or countries concurrently with or in addition to proceedings in England or without commencing proceedings in England.

The Obligor shall not commence any proceedings in any country other than England in relation to a Dispute.

10.4 Process agent

The Obligor irrevocably appoints HFW Nominees Limited at its office for the time being, presently at Friary Court, 65 Crutched Friars, London EC3N 2AE, England, to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

10.5 Portigon's rights unaffected

Nothing in this Clause 10 shall exclude or limit any right which Portigon may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

10.6 Meaning of "proceedings" and "Dispute"

In this Clause 10, "**proceedings**" means proceedings of any kind, including an application for a provisional or protective measure and a "**Dispute**" means any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement.

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

EXECUTION PAGE

OBLIGOR

SIGNED by)
MICHAIL S. LIVANOS)
for and on behalf of)
NEWLEAD VICTORIA LTD.)
in the presence of:)

PORTIGON

SIGNED by)
IRENE GRAFF)
for and on behalf of)
PORTIGON AG, LONDON BRANCH)
in the presence of:)

Exhibit 4.67

Dated 10th April 2012

NewLead Holdings (US) Corp as Borrower	(1)
Mojave Finance Inc as Lender	(2)
NewLead Holdings Ltd as Third Party	(3)

LOAN AGREEMENT

THIS AGREEMENT is dated on 10th April 2012 and made **BETWEEN**:

(1) **NewLead Holdings (US) Corp.**, a company established under the laws of Delaware with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (**the Borrower**);

(2) **Mojave Finance Inc** a company established under the laws of Marshall Islands with its registered office at Trust Company Complex, Ajeltaek Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (**the Lender**);

(3) **NewLead Holdings Ltd**, a company established under the laws of Bermuda with its registered office at Canon's Court, 22 Victoria Street, Hamilton Bermuda (as **Third Party**);

WHEREAS:

The Lender has agreed to advance the Loan to the Borrower for general corporate purposes

NOW IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, terms and expressions defined in the respective Leases shall have the same meanings when used in this Agreement and, unless the context otherwise requires:

Applicable Law means:

(a) in relation to any jurisdiction, any law, regulation, treaty, directive, decision, rule, regulatory requirement, judgment, order, ordinance request, guideline or direction or any other act of any Governmental Entity of such jurisdiction whether or not having the force of law and with which any Party is required to comply, or with which it would, in the normal course of its business, comply; and

(b) in relation to the Lender, any applicable Regulation to which the Lender is subject or with which it would, in the normal course of its business, comply.

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

Business Day means a day (other than Saturday or Sunday) on which banks are open for business in Athens, in London and in New York City.

Default means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;

Default Rate means the rate of interest determined pursuant to Clause 6.3;

Event of Default means any of the events listed in Clause 11;

Final Payment Date means the lapse of three months from the Utilisation Date or, if such anniversary is not a Business Day, the immediately preceding Business Day;

Finance Documents means this Agreement and/or any of the Pledge Agreements and/or any other agreement or document in connection with the above mentioned.

Indebtedness includes any obligation, whether incurred as principal or as surety, for the payment or repayment of money and whether present or future, actual or contingent;

LIBOR means the applicable Screen Rate for the 3-months LIBOR as of 11.00 a.m. (London time) on the Quotation Day for the offering of deposits in USD and for a period comparable to 3 months and if no Screen Rate is available for a relevant period, the rate available for the Lender for borrowing money in the same currency of the Loan from a bank institution of the Lender's choice;

Loan means the amount of US$ 3,000,000, which will be made available to the Borrower by the Lender subject to the terms of this Agreement;

Losses means any losses, costs, payments, charges, penalties, demands, liabilities, claims, actions, proceedings, fines, damages, judgements, orders, fees, premiums, expenses and other sanctions of any nature; and **Loss** shall be construed accordingly;

Margin means 4%;

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end, if there is one, or, if there is not, on the immediately preceding Business Day; and

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

NewLead MojaveUnits mean the 52% of the units in NewLead Mojave LLC, a company to be incorporated under the laws of Delaware according to a Limited Liability Company Agreement to be entered into between NewLead Holdings Ltd and the Lender, which will be owned by NewLead Holdings Ltd;

NewLead JMEG Units mean the 50% of the units in NewLead JMEG LLC, a company to be incorporated under the laws of Delaware according to a Limited Liability Company Agreement to be entered between J Mining & Energy Group Inc and the Borrower, which will be owned by the Borrower;

Obligor means the Borrower;

Party means any party to this Agreement;

Pledge Agreements means each and both Pledge Agreements for the pledge of NewLead Mojave Units and NewLead JMEG Units;

Proceedings means any corporate action, legal proceedings and other procedures and steps of the nature referred to in Clause 11.1.5(a) to (d);

Quotation Day means, in relation to any period for which an interest rate is to be determined, two London business days before the first day of that period;

Relevant Authority means any national, supranational, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity; which has jurisdiction over the Borrower, NewLead Holdings Ltd and NewLead JMEG LLC (as applicable);

Security means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

Screen Rate means the British Bankers' Association Interest Settlement Rate for the USD and period displayed on the appropriate page of the Reuters screen. If each agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Borrower;

Security Documents means the Pledge Agreements and/or any other agreement or document in connection with the above mentioned;

Security Period means the period from the date of execution of this Agreement to the date on which (a) the lapse of three months falls or (b) the loan has been repaid in full (together with interest thereon and all other amounts due to the Lender under the Finance Documents) whatever falls last;

Stake means the capital interest in the Borrower;

Taxes includes all present and future taxes, levies, imposts, duties, fees or charges or withholdings of whatever nature and howsoever described, including any value added or similar tax, imposed, levied, collected or assessed by any Government Entity or Taxing authority anywhere in the world together with interest payable in respect of any of the same and penalties imposed or levied in respect of any of the same and **Tax** and **Taxation** shall be construed accordingly;

Units mean limited liability company units of membership interest, including without limitation membership interests, governance rights, and financial rights related thereto and any and all related rights under the relevant limited liability company agreement and any and all other related agreements, as the case may be;

Unpaid Sum means any sum due and payable but unpaid by the Borrower under the Finance Documents to which it is a party;

Utilisation Date means, in respect of the Loan, the date, being a Business Day, on which that Loan is to be made;

1.2 **Headings**

Clause headings are inserted for convenience of reference only, have no legal effect and shall be ignored in the interpretation of this Agreement.

1.3 **Interpretation**

In this Agreement, unless a contrary indication appears:

1.3.1 references to Clauses are to be construed as references to the Clauses of this Agreement;

1.3.2 references to (or to any specified provision of) this Agreement or any other document shall include this Agreement, that document or the relevant provision as it may from time to time be amended but so that the above is without prejudice to any requirement in any Finance Document that the prior consent of any party be obtained;

1.3.3 a reference to an "**amendment**" includes a supplement, novation, restatement or re-enactment and "**amended**" will be construed accordingly;

1.3.4 words importing the plural shall include the singular and vice versa, and words importing a gender include every gender;

1.3.5 references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons and any Government Entity, whether or not having separate legal personality and references to any Party shall be construed so as to include the successors, permitted assignees and permitted transferees of the relevant Party;

1.3.6 references to any provision of law is a reference to such provision as applied, amended, extended or re-enacted and includes any subordinate legislation, except it shall not include any provision thereof adopted after the date hereof that, by its terms, would apply to a Party only if this Agreement did not contain a provision to the contrary, unless the application of such statutory provision is approved by the Borrower;

1.3.7 a reference to an "**approval**" shall be construed as a reference to any approval, consent, authorisation, exemption, permit, licence, registration, filing or enrolment by or with any competent authority;

1.3.8 a reference to "**including**" shall be construed as a reference to "**including without limitation**", so that any list of items or matters appearing after the word "including" shall be deemed not to be an exhaustive list, but shall be deemed rather to be a representative list, of those items or matters forming a part of the category described prior to the word "including".

2. The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a loan for the amount of US$ 3,000,000.

2.2 Purpose

The Borrower shall apply the Loan exclusively for general corporate purposes.

2.3 Finance Parties' rights and obligations

2.3.1 The obligations of each Party under the Finance Documents are several. Failure by a Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Party is responsible for the obligations of any other Party under the Finance Documents.

2.3.2 The rights of each Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Party from the Borrower shall be a separate and independent debt.

3 Conditions

3.1 Documents, evidence and general conditions precedent

The obligation of the Lender to advance the Loan shall be subject to the conditions that:

3.1.1 the Lender has received in form and substance satisfactory to it the following documents: (a) an original of this Agreement duly signed by the Borrower; and (b) any other document, opinion, assurance or authorisation that the Lender reasonably considers necessary or desirable in connection with the performance of, and the transactions contemplated by, any Finance Document or the validity and enforceability of any Finance Document;

3.1.2 the representations and warranties set out in Clause 9 are true and correct on and as of each such time as if each was made with respect to the facts and circumstances existing at such time; and

3.1.3 no Default shall have occurred and be continuing or would result from the drawdown of the Loan hereunder.

3.2 Waiver of conditions precedent

The conditions specified in this Clause 3.1 are inserted solely for the benefit of the Lender and may be waived on its behalf in whole or in part.

3.3 Perfection of Pledge Agreement

3.3.1 The Borrower agrees that the Lender may, at its absolute discretion:

(a) register the Pledge Agreement with the relevant registry or registries (as deemed appropriate by the Lender); and

(b) execute all documents and take all action reasonably necessary to ensure that the Lender benefits from first priority perfected lien in or on the NewLead JMEG Units and the NewLead Mojave Units pursuant to the Pledge Agreements.

4 Drawdown

4.1 Agreement to advance Loans

4.1.1 Subject to the terms and conditions of this Agreement, the Loan will be borrowed in one advance.

4.1.2 The Borrower must provide the Lender with at least one Business Day written notice of its intention to borrow under this Agreement stating the date on which the Lender is to make the Loan available to the Borrower and to be credited to SunTrust Bank, Account No: 1000149097445, ABA No: 053100465, SWIFT: SNTRUS3A.

4.1.3 The swift order of the above mentioned credit constitutes proof of the Utilization Date and of the drawdown of the Loan.

5 Loan

5.1 Repayment of Loan

The Borrower shall repay the Loan in three equal monthly instalments, the first paid at the lapse of one month after Utilization Date and each consequent one at the lapse of each following month.

5.2 Prepayment of Loan

5.2.1 The Borrower may prepay the Loan in full or in part (and any interest accrued thereon) at any time. The Borrower must give the Lender, 3 Business Days written notice of its intention to repay in the amount specified for such purpose in that notice. Once given, any such notice shall be irrevocable.

5.2.2 Any partial prepayment under this Agreement shall be applied in satisfaction pro tanto of the Borrower's periodic obligations with respect to the repayment of principal in relation to the Loan, in inverse order of maturity.

5.3.4 The Borrower and/or NewLead Holdings Ltd will have the obligation to prepay the Loan or any part of it accordingly in case of selling the NewLead JMEG Units and/or the NewLead Mojave LLC Units or any part of them.

5.3 **Re-borrowing**

The Borrower may not re-borrow any part of the Loan which is repaid.

6 **Interest**

6.1 **Calculation of Interest**

The rate of interest in respect of the Loan will be based on fix interest rate 3months LIBOR plus the Margin per annum.

6.2 **Payment of Interest**

6.2.1 The Borrower shall pay accrued interest for the whole Loan on Final Payment Date or in case of Prepayment on the date of full repayment of the Loan.

6.2.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

6.3 **Default Interest**

If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which is one percentage point higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a loan under this Agreement.

7 **Costs and Expenses**

7.1 **Transaction expenses**

The Borrower shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees and travel expenses) reasonably incurred by any of it in connection with the negotiation, preparation, printing, execution and syndication of:

7.1.1 this Agreement, the Finance Documents and any other documents referred to in this Agreement; and

7.1.2 any other Finance Documents executed after the date of this Agreement.

7.2 **Amendment costs**

If the Borrower requests an amendment, waiver or consent to or under any Finance Document, the Borrower shall, within seven Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

7.3 **Enforcement costs**

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under any Finance Document.

8 Tax gross-up and indemnities

8.1 Tax gross-up

8.1.1 The Borrower shall make all payments to be made by it without any Tax deduction, unless a Tax deduction is required by law.

8.1.2 The Borrower shall promptly upon becoming aware that it must make a Tax deduction (or that there is any change in the rate or the basis of a Tax deduction) notify the Lender accordingly.

8.1.3 If a Tax deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax deduction) leaves an amount equal to the payment which would have been due if no Tax deduction had been required.

8.1.4 If the Borrower is required to make a Tax deduction, the Borrower shall make that Tax deduction and any payment required in connection with that Tax deduction within the time allowed and in the minimum amount required by law.

8.1.5 Within three Business days of making either a Tax deduction or any payment required in connection with that Tax deduction, the Borrower shall deliver to the Lender evidence reasonably that the Tax deduction has been made or (as applicable) any appropriate payment paid to the relevant Taxing authority.

8.2 Tax indemnity

8.2.1 The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of any Tax in respect of a Finance Document.

8.2.2 Clause 8.2.1 shall not apply with respect to any Tax assessed on the Lender:

(i) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for Tax purposes; or

(ii) under the law of the jurisdiction in which the Lender's Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Party.

8.3 Stamp Taxes

The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any and all Losses the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document or any of the transactions contemplated thereby.

9 Representations and warranties

The Borrower makes the representations and warranties set out in this Clause 9 on the date of this Agreement.

9.1 Status

9.1.1 It is a company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

9.1.2 It has the power to own its assets and carry on its business as it is being conducted.

9.2 **Binding obligations**

The obligations expressed to be assumed by it in the Finance Documents are legal, valid, binding and enforceable obligations.

9.3 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) any Applicable Law applicable to it;

(b) its constitutional documents; or

(c) any agreement or instrument binding upon it or any of its assets.

9.4 **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents and the transactions contemplated by those agreements.

9.5 **No Default**

No Default has occurred and is continuing.

9.6 **Governing law and enforcement**

9.6.1 The choice of governing law stipulated in the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

9.6.2 Any judgment in relation to a Finance Document obtained in the place stipulated therein as having jurisdiction in relation thereto will be recognised and enforced in its jurisdiction of incorporation.

9.7 **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any of its Finance Documents.

9.8 **No filing or stamp Taxes**

9.8.1 Subject to the following provisions of this Clause 9.8, under the laws of its jurisdiction of incorporation it is not necessary that any of the Finance Documents be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated thereby.

9.8.2 The Parties agree that notwithstanding any provision of the Security Documents registration of any of the Pledge Agreements will be a condition subsequent to the Loan.

9.9 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

9.10 **Title warranty**

In respect of the NewLead Mojave Units and NewLead JMEG Units, NewLead Holdings Ltd and the Borrower respectively will have full legal and beneficial ownership, free from any Security.

9.11 **Applicable Law**

The Borrower is in compliance with all Applicable Laws to which it is subject and in respect of which any non-compliance would, or would be reasonably likely to, have a material adverse effect on its ability to perform its obligations under the Finance Documents.

9.12 **Survival and Repetition**

The representations and warranties in this Clause 9 will (a) survive the execution of this Agreement and (b) be deemed to be repeated by the Borrower on the Utilisation Date.

9.13 **Litigation**

No litigation, arbitration or administration proceedings are current or, to its knowledge, pending or threatened, which have or, if adversely determined, are reasonably likely to have a materially adverse effect on the Borrower, its ability to repay the Loan or the enforceability of the Finance Documents.

9.14 Others

The Borrower and/or NewLead Holdings Ltd warrant that:

a) each and any has not incurred any Indebtedness that remains outstanding and that will not create any outstanding Indebtedness, especially in relation with Taxes and social security contributions;

b) each and any is and reasonably expects to remain solvent and pay its own liabilities as the same become due and shall not incur any Indebtedness;

c) each and any is continuously maintained and shall continuously maintain its existence and be qualified to carry on its business.

10 **Undertakings**

10.1 The Borrower undertakes in favour of the Lender that all undertakings (a) remain in force throughout the Security Period and (b) shall be performed at no cost to the Lender.

10.1.1 **Performance of obligations**

It shall perform all of its obligations under the Finance Documents.

10.1.2 **Single Purpose Covenant**

The Borrower shall not, without the prior written consent of the Lender:

(a) cease to be validly existing and/or in good standing, or cease to be resident for Tax purposes, in its jurisdiction of incorporation as at the date of this Agreement;

(b) permit any alteration in its management, including the replacement of the CEO;

(c) permit any change of control over its Stake; or

(d) permit the merger with any other Person.

10.1.3 Negative Pledge

The Borrower and/or NewLead Holdings Ltd shall not, without the prior written consent of the Lender

(a) permit to create or subsist any Security in respect of the NewLead JMEG Units and/or NewLead Mojave Units or any related rights; or

(b) create or subsist any Security in respect of the NewLead JMEG Units and/or NewLead Mojave Units or any related rights; or

(c) enter into any other arrangement having a similar economic effect as (a) or (b) above,except to the extent contemplated under the Finance Documents; or

(d) permit to create or subsist any Security over the assets of the Borrower and/or NewLead JMEG LLC and/or NewLead Mojave LLC; or

(e) create or subsist any Security over the assets of the Borrower and/or NewLead JMEG LLC and/or NewLead Mojave LLC.

10.1.4 Notification of Default

It shall notify the Lender of any Default that is continuing as soon as practicable after becoming aware of its occurrence.

10.1.5 Further Assurance

It shall execute, acknowledge, deliver, file and register all such additional agreements, instruments, certificates, documents and assurances and perform such other acts or things as the Lender shall reasonably request in relation to the Finance Documents.

10.1.6 Subsequent Obligations

a) During the term of the Loan the Borrower will be a party with J Mining & Energy Group Inc to the Limited Liability Company Agreement for the incorporation of NewLead JMEG LLC, in which the Borrower will acquire and hold 50% of the Units in NewLead JMEG LLC. The terms of this agreement shall have the consent of the Lender and will not be amended without its prior written consent.

b) During the term of the Loan NewLead Holdings Ltd, owner of 100% of the Stake of the Borrower, will be a party with the Lender to the Limited Liability Company Agreement for the incorporation of NewLead Mojave LLC, in which NewLead Holdings Ltd will contribute its participation in the Borrower and will acquire and hold 50% of the units in NewLead Mojave LLC. The terms of this agreement shall have the consent of the Lender and will not be amended without the prior written consent.

c) After the execution of the above agreements the Borrower and NewLead Holdings Ltd will execute each Pledge Agreement accordingly.

11 Events of default

11.1 Each of the events and circumstances set out in Clause 11.1 is an Event of Default.

11.1.1 Non-Payment

The Borrower fails to pay any amount due from it under any of the Finance Documents in the currency and in the manner stipulated on the due date.

The Borrower and/or NewLead Holdings Ltd and/or any Newlead Mojave LLC and/or Newlead JMEG LLC and/or any entity associated or affiliated to the foregoing fail to pay any amount due from them under any agreements with any bank or financial institution.

11.1.2 **Events of default with no grace period**

The Parties breach any of their obligations under the Finance Documents,

11.1.3 **Misrepresentations / Undertakings**

Any representation made by any of the Parties , in any of the Finance Documents proves to have been incorrect in any respect on the date as of which it was made or the Borrower fails to promptly comply with the terms of any Finance Documents.

11.1.4 **Insolvency**

(a) The Borrower and/or, NewLead Holdings Ltd and/or NewLead JMEG LLC is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) A moratorium is declared in respect of any Indebtedness of the Borrower and/or NewLead Holdings Ltd and/or NewLead JMEG LLC.

11.1.5 **Insolvency proceedings**

Any Proceedings are taken in relation to:

(a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower and/or, NewLead Holdings Ltd and/or NewLead JMEG LLC ;

(b) a composition, compromise, assignment or arrangement with any creditor of the Borrower and/or NewLead Holdings Ltd and/or NewLead JMEG LLC;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower and/or NewLead Holdings Ltd and/or NewLead JMEG LLC or any of their respective assets; or

(d) enforcement of any Security over any assets of the Borrower and/or NewLead Holdings Ltd and/or NewLead JMEG LLC.

or any analogous procedure or step is taken in any jurisdiction.

11.1.6 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower and/or NewLead Holdings Ltd and/or NewLead JMEG LLC.

11.1.7 **Material Adverse Change**

There occurs, in the reasonable opinion of the Lender, a material adverse change in the financial condition of the Borrower and/or NewLead JMEG LLC.

11.1.8 **Cessation of business**

The Borrower, suspends or ceases or threatens to suspend or cease to carry on its business.

11.1.9 **Others**

It becomes illegal for any of the Parties to make or maintain any of their obligations under the Finance Documents and /or any of the Finance Documents are not effective in accordance with their terms, and /or NewLead Holdings Ltd. and/or the Borrower cease to own the NewLead Mojave Units and or NewLead JMEG Units accordingly and/or Michael Zolotas ceases to be and/or is threatened to cease to be for whatever reason the beneficial owner of at least 20% of NewLead Holdings Ltd, and/or Michael Zolotas ceases to manage Newlead Holdings Ltd. and/or any change of the Chairman and /or the Chief Executive Officer and /or the Chief Financial Officer of NewLead Holdings Ltd. takes place and/orthe stock of NewLead Holdings Ltd ceases to be listed in NASDAQ Stock Market or any equivalent Exchange.

11.2 **Lenders' rights**

On and at any time after the occurrence of an Event of Default which is continuing, the Lender may, by notice to the Borrower declare that the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived.

12 **Indemnities**

12.1 **Miscellaneous Indemnities**

The Borrower shall, within three Business Days of demand, indemnify the Lender against any and all Losses incurred as a result of:

12.1.1 the occurrence of any Default; or

12.1.2 a failure by the Borrower to pay any amount due under a Finance Document on its due date.

12.2 **Indemnity to the Lenders' Representatives**

The Borrower shall promptly indemnify each Lender's Representative against any and all Losses incurred by such Lender's Representative (acting reasonably) as a result of acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

13 **Assignment, transfers and lending offices**

13.1 **Benefit and burden**

This Agreement shall be binding upon, and enure for the benefit of, the Parties.

13.2 **No assignment by Borrower or Guarantor**

The Borrower may not assign or transfer all or any of its rights and/or obligations under the Finance Documents without having the prior written consent of the Lender.

13.3 **Assignments and transfers by the Lender**

The Lender may assign all or any of its rights under any of the Finance Documents without the prior written consent of the Borrower.

13.4 **Limitation of responsibility of Existing Lender**

13.4.1 Unless expressly agreed to the contrary, the Existing Lender makes no representation or warranty and assumes no responsibility to a new lender (after assignment according to Clause 13.3) for:

(a) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

(b) the financial condition of the Obligor;

(c) the performance and observance by the Obligor of their obligations under the Finance Documents or any other documents; or

(d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by any Applicable Law are excluded.

14 **Conduct of business by the Parties**

Without prejudice to any other provisions of this Agreement, no provision of this Agreement will:

14.1 interfere with the right of any Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;

14.2 oblige any Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

14.3 oblige any Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

15 **Notices**

15.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

15.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party of this Agreement for any communication or document to be made or delivered under or in connection with the Finance Documents is:

15.2.1 In the case of the Borrower, that identified with its name below;

Michael Zolotas

c/o NewLead Holdings Ltd

83, Akti Miaouli & Flessa Street

13588 Piraeus

Greece

15.2.2 In the case of the Lender, that identified with its name below,

Fotios Karatzenis

67, Thisseos Ave.,

14671 Nea Erythrea

Greece

15.3 Delivery

15.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(a) if by way of fax, when received in legible form; or

(b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

15.4 English language

15.4.1 Any notice given under or in connection with any Finance Document must be in English.

15.4.2 All other documents provided under or in connection with any Finance Document must be:

(a) in English; or

(b) if not in English, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

16 Confidentiality

Each Party agrees that it shall keep confidential the terms of this Agreement, each other Finance Document and all ancillary documents and shall not disclose the same to any other person except (a) as required by Applicable Law, governmental regulations or applicable accounting policies; (b) as required to permit due performance of the terms of this Agreement; (c) to legal, financial or other professional advisors who are bound by a professional duty of confidentiality; (d) in the case of the Finance Parties, to potential assignees or transferees, subject to prior receipt by the relevant Finance Party of an appropriate confidentiality undertaking from such potential assignees or transferees; (f) where necessary for the purposes of enforcing this Agreement; or (g) with the prior written consent of the other Parties.

17 Partial invalidity; remedies and waivers

17.1 If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

17.2 No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

17.3 Any term of the Finance Documents may be amended or waived with the agreement of the relevant parties of the Finance Documents.

18 Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

19 Governing law

This Agreement and any non-contractual obligations connected with it are governed by English law.

20 Enforcement

20.1 Jurisdiction

20.1.1 Any dispute arising out of or connected with this Agreement, including a dispute as to the validity or existence of this Agreement shall be resolved by arbitration in London in "the London Court of International Arbitration" conducted in the English language by three (3) arbitrators pursuant to the rules of the International Court of Arbitration, save that, unless the Parties agree otherwise.

21.1. The third arbitrator, who shall act as chairman of the tribunal, shall be chosen by the two arbitrators appointed by or on behalf of the Parties. If he is not chosen by the two arbitrators within thirty (30) days of the date of appointment of the later of the two party-appointed arbitrators to be appointed, he shall be appointed by the International Chamber of Commerce; and the Parties agree to waive any right of appeal against the arbitration award.

22. Service of porcess

The Borrower irrevocably appoints Michael Zolotas, (83, Akti Miaouli & Flessa Street, 13588 Piraeus, Greece), as its agent for service of process in any proceedings before the English courts in connection with this Agreement. The Borrower agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings. This Clause does not affect any other method of service allowed by law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNATURE PAGE - LOAN AGREEMENT

Borrower

SIGNED	)	
for and on behalf of	)	
NewLead Holdings (US) Corp	)	

Lender

SIGNED	)	
for and on behalf of	)	
Mojave Finance Inc	)	Fotios Karatzenis

Third Party

SIGNED	)	
for and on behalf of	)	
NewLead Holdings Ltd	)	MICHAEL ZOLOTAS

PLEDGE AGREEMENT

This PLEDGE AGREEMENT (the "**Agreement**"), dated April 11, 2012, is made in London by Newlead Holdings (US) Corp., a company established under the laws of Delaware with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (the "**Pledgor**"), in favor of Mojave Finance Inc., a company established under the laws of Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Masrhall Islands MH96960 (the "**Pledgee**").

RECITALS:

WHEREAS, Pledgee, as Lender has granted to the Pledgor as Borrower a loan made in the principal amount of $3,000,000 under the terms and conditions of a Loan Agreement dated 10th April 2012 (the "**Loan Agreement**"); and

WHEREAS, Pledgor desires to secure its obligations under the Loan Agreement for the benefit of Pledgee, by a pledge and grant of a security interest in all of Pledgor's right, title and interest in the limited liability company units of membership interest of NewLead JMEG LLC held by the Pledgor as described on Exhibit A attached hereto and incorporated herein, including any and all warrants to purchase additional units of Pledgee which may be issued from time to time to the Pledgor in connection with the pledged units, (the "**Pledged Membership Interests**") to secure the payment and performance of the Obligations (as defined below).

NOW, THEREFORE, in consideration of the foregoing, Pledgor hereby agrees with Pledgee as follows:

SECTION 1. Pledge.

Pledgor hereby pledges to Pledgee and grants to Pledgee a security interest in all of Pledgor's right, title and interest in the Pledged Membership Interests, including without limitation all of Pledgor's membership interests, governance rights, and financial rights related thereto, and together with any and all after-acquired units in Pledgee NewLead JMEG LLC and property relating thereto, any and all proceeds thereof, all of Pledgor's interest and rights in all successor entities to NewLead JMEG LLC in connection with the Pledged Membership Interests, and any and all related rights under the limited liability company agreement entered into and between J Mining & Energy Group, Inc and the Pledgor (the "**Limited Liability Company Agreement**") and any and all other related agreements (the "**Pledged Collateral**").

SECTION 2. Security for Obligations.

This Agreement secures the obligations of the Pledgor under the Loan Agreement as it is in force and as it may be from to time supplemented, varied or amended and any documents related thereto and it secures all obligations of the Pledgor now or hereafter existing under this Agreement (all such obligations of the Pledgor being the "**Obligations**").

SECTION 3. Delivery of Pledged Collateral.

(a) All certificates or instruments representing or evidencing the Pledged Collateral will be delivered on or before this date to and held by Pledgee pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignments in blank, all in form and substance satisfactory to the Pledgee. In addition, Pledgor authorizes Pledgee to file UCC financing statements in appropriate offices, describing the Pledged Collateral as collateral of Pledgee. Such filings, along with any continuation statements, amendments and other filings as Pledgee may deem appropriate from time-to-time, may be filed without Pledgor's further consent or signature.

(b) Legend. In addition to any other legend required, the certificates representing the Pledged Collateral will bear an endorsement in substantially the following form: *"500 units of membership interest represented by this certificate are pledged under, and are subject to, the terms and conditions of a Pledge Agreement dated 11th April 2012 between Mojave Finance Inc. and Newlead Holdings (US) Corp, the registered owner of such units, as security for performance of the obligations of the latter under a Loan Agreement and cannot be sold, assigned, transferred, pledged or disposed of except as provided in such Pledge Agreement."*

SECTION 4. Representations and Warranties.

Pledgor represent, warrant and covenant to Pledgee that as of the date hereof and until the Obligations have been paid in full, the following:

(a) Pledgor is duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) The Pledged Collateral has been duly authorized and validly issued and is fully paid and non-assessable.

(c) Pledgor is the legal and beneficial owner of the Pledged Collateral free and clear of any liens, security interests, options or other charges or encumbrances except for the security interest created by this Agreement.

(d) The pledge of the Pledged Collateral pursuant to this Agreement creates a valid security interest in the Pledged Collateral, securing the payment of the Obligations.

(e) Pledgor has full power and authority to execute and deliver this Agreement and to perform its respective obligations hereunder.

(f) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either: (i) for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by the Pledgor; or (ii) for the exercise by the Pledgee of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally and except as may be applicable to Pledgee under

applicable statutes, rules, regulations, or any directives, letters or orders issued pursuant thereto).

(g) The entering into and performance of this Agreement and the transactions related hereto do not conflict with any other agreement to which the Pledgor is a party.

(h) Pledgor will substantially benefit from the loan provided by the Pledgee under the Loan Agreement.

(i) Pledgor has the authority to enter into and to perform this Agreement and the transactions related hereto, and the individual party signing on behalf of the Pledgor has been fully authorized to execute this Agreement.

SECTION 5. Further Assurances.

Pledgor agrees that at any time and from time-to-time, at its own expense it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Pledgee may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Pledgee to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral.

SECTION 6. Default.

Additionally to the circumstances that constitute an event of default under the Loan Agreement, the following shall further constitute an event of default (all such events being the **"Event of Default"**):

(a) The Pledgor opts in to Article 8 of the Code without the Pledgees's written consent;

(b) This Agreement shall not or shall no longer be effective in granting to Pledgee a first priority perfected lien in or on the Pledged Collateral.

SECTION 7. Voting Rights; Distributions.

(a) So long as no Event of Default or event which, with the giving of notice or the lapse of time, or both, would become an Event of Default shall have occurred and be continuing, Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement; provided, however, that the Pledgor shall not exercise and refrain from exercising any such right if, in Pledgee's reasonable judgment, such action would have a material adverse effect on the value of the Pledged Collateral or any part thereof and shall not exercise and refrain from exercising its right to opt in to Article 8 of the Code without the Pledgee's written consent.

(b) Notwithstanding whether or not an Event of Default has occurred, Pledgee shall be entitled to receive and retain, and apply as payment on Loan Agreement, any and all dividends, distributions and interest paid in respect of the Pledged Collateral including all;

(i) distributions, interest paid or payable in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, the Pledged Collateral,

(ii) distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in-surplus, and

(iii) cash paid, payable or otherwise distributed in redemption of, or in exchange for, any Pledged Collateral.

(c) Pledgee shall execute and deliver (or cause to be executed and delivered) all such proxies and other instruments as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the voting and other rights which they are entitled to exercise pursuant to Section 7(a).

(d) Upon the occurrence and during the continuance of an Event of Default, or an event which, with the giving of notice or the lapse of time, or both, would become an Event of Default:

(i) all rights of the Pledgor to exercise the voting and other consensual rights which they would otherwise be entitled to exercise pursuant to Section 7(a) shall cease, and all such rights shall thereupon become immediately vested in Pledgee which shall thereupon have the sole right to exercise such voting and other consensual rights; and

(ii) the principal of the Loan Agreement, all interest thereon, and all other obligations thereunder, shall be immediately due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived.

SECTION 8. Further Covenants.

Until all the Obligations have been paid in full:

(a) Pledgor agrees that it will not without the consent of Pledgee: (i) sell or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral; (ii) create or permit to exist any lien or security interest, or other charge or encumbrance upon or with respect to any of the Pledged Collateral, except for the security interest under this Agreement; (iii) change the jurisdiction of its organization; or (iv) change its legal name or organizational structure; (v) no amendment of the Limited Liability Company Agreement is being made, without the prior written consent of the Pledgee.

(b) The Pledgor agrees that it will: (i) cause the issuer of the Pledged Membership Interest not to issue any interests or other securities in addition to or in substitution for the Pledged Membership Interest, except to Pledgor; and (ii) pledge hereunder, immediately upon their acquisition (directly or indirectly) thereof, any and all additional membership interests or other securities of the issuer of the Pledged Membership Interest.

(c) In the event the Pledgor desire to sell any of the Pledged Collateral, Pledgee shall not grant approval for such sale unless the proceeds of such sale are immediately and directly paid to Pledgee pursuant to the terms of the Loan Agreement.

SECTION 9. Pledgee Appointed Attorney-in-Fact.

The Pledgor hereby appoints the Pledgee as Pledgor's attorney-in-fact, with full authority in the place and stead of the Pledgor and in the name of the Pledgor or otherwise, from time-to-time in Pledgee's discretion to take any action and to execute any instrument which Pledgee may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to the Pledgor representing any distribution or interest payment in respect of the Pledged Collateral or any part thereof and to give full discharge for the same.

SECTION 10. Pledgee May Perform.

If the Pledgor fails to perform any agreement contained herein, Pledgee may itself perform, or cause performance of such agreement, and the expenses of Pledgee incurred in connection therewith shall be payable by the Pledgor.

SECTION 11. Reasonable Care.

The Pledgee shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged Collateral is accorded treatment substantially equal to that which Pledgee accords its own property.

SECTION 12. Remedies upon Default.

If any Event of Default occurs, then:

(a) Pledgee may exercise in respect of the Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of Delaware (the "**Code**"), and Pledgee may also, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Pledgee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Pledgee may deem commercially reasonable. The Pledgor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to the Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Pledgee shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. Pledgee may adjourn any public or private sale from time-to-time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Any cash held by Pledgee as Pledged Collateral and all cash proceeds received by Pledgee in respect of any sale of, collection from, or other realization upon all or any part of the Pledged Collateral may, in the discretion of Pledgee, be held by Pledgee as collateral for, or then or at any time thereafter be applied in whole or in part by

Pledgee against, all or any part of the Obligations as Pledgee shall elect. Any surplus of such cash or cash proceeds held by Pledgee and remaining after payment in full of all the Obligations shall be paid over to whomsoever may be lawfully entitled to receive such surplus.

SECTION 13. Expenses.

The Pledgor will upon demand pay to Pledgee the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts, which Pledgee may incur in connection with: (i) the creation, attachment and perfection of the security interest; (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Pledged Collateral; (iii) the exercise or enforcement of any of the rights of Pledgee hereunder; or (iv) the failure of the Pledgor to perform or observe any of the provisions hereof.

SECTION 14. Amendments.

No amendment or waiver of any provision of this Agreement nor consent to any departure by the Pledgor herefrom, shall in any event be effective unless the same shall be in writing and signed by Pledgee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 15. Addresses for Notices.

All notices and other communications provided for hereunder shall be in writing and, if to the Pledgor, sent to:

Michael Zolotas
c/o NewLead Holdings Ltd
83, Akti Miaouli & Flessa Street
13588 Piraeus
Greece

and, if to Pledgee, sent to:

Fotios Karatzenis
67, Thisseos Ave.,
14671 Nea Erythrea
Greece

or to such other address as shall be designated by such party in a written notice to the other party complying with the delivery terms of this Section 15.

SECTION 16. Continuing Security Interest.

This Agreement shall create a continuing security interest in the Pledged Collateral and shall: (i) remain in full force and effect until satisfaction in full of the Obligations; (ii) be binding upon the Pledgor, its successors and assigns; and

(iii) inure, together with the rights and remedies of Pledgee hereunder, to the benefit of Pledgee, its successors, transferees and assigns. Upon the satisfaction in full of the Obligations, Pledgor shall be entitled to the return, upon its request and at its own expense, of such of the Pledged Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof.

SECTION 17. Governing Law; Terms.

This Agreement shall be governed by, and construed in accordance with the laws of the State of Delaware except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular Pledged Collateral are governed by the laws of a jurisdiction other than the State of Delaware. Unless otherwise defined herein or in the Loan Agreement, terms defined in Article 9 of the Code that are used herein are as defined in the Code.

Any dispute arising out of or connected with this Agreement, including a dispute as to the validity or existence of this Agreement shall be resolved by arbitration in London in "the London Court of International Arbitration" conducted in the English language by three (3) arbitrators pursuant to the rules of the International Court of Arbitration, save that, unless the Parties agree otherwise.

The third arbitrator, who shall act as chairman of the tribunal, shall be chosen by the two arbitrators appointed by or on behalf of the Parties. If he is not chosen by the two arbitrators within thirty (30) days of the date of appointment of the later of the two party-appointed arbitrators to be appointed, he shall be appointed by the International Chamber of Commerce; and the Parties agree to waive any right of appeal against the arbitration award.

IN WITNESS WHEREOF, the Pledgor and the Pledgee have caused this Agreement to be duly executed and delivered by its respective officers thereunto duly authorized as of the date first above written.

For and on behalf of the
Pledgor:

____

For and on behalf of the
Pledgee:

____

Fotios Kuzatzenis

Exhibit A

Pledged Membership Interests

No.	Entity Name	Certificate No.	Units
1	NewLead JMEG LLC	1	500(50%)

Exhibit 4.69

Dated 9th July 2012

NewLead Holdings (US) Corp as Borrower	(1)
Mojave Finance Inc as Lender	(2)
NewLead Holdings Ltd as Third Party	(3)

AMENDMENT TO THE LOAN AGREEMENT DATED 10th APRIL 2012

THIS AMENDMENT is dated on 9th July 2012 and made **BETWEEN**:

(1) **NewLead Holdings (US) Corp.**, a company established under the laws of Delaware with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (the **Borrower**);

(2) **Mojave Finance Inc** a company established under the laws of Marshall Islands with its registered office at Trust Company Complex, Ajeltaek Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **Lender**);

(3) **NewLead Holdings Ltd**, a company established under the laws of Bermuda with its registered office at Canon's Court, 22 Victoria Street, Hamilton Bermuda (as **Third Party**);

WHEREAS:

The Lender has agreed to advance a loan of US$3,000,000 to the Borrower according to the terms and conditions of a Loan Agreement dated 10th April 2012, signed among the Borrower, the Lender and NewLead Holdings Ltd as third party.

NOW IT IS AGREED between the Parties that the repayment of the Loan is extended for six (6) months.
As a result of the extension of the repayment of the Loan, the Parties hereby agree the following amendments to the Loan Agreement:

1. "**1. Definitions and interpretation**

   1.1 Definitions

   ...

   Final Payment Date means the lapse of nine months from the Utilisation Date or, if such anniversary is not a Business Day, the immediately preceding Business Day;

   ...

   LIBOR means the applicable Screen Rate for the 3-months LIBOR (for the period from Utilization Date until 10th July 2012) and for 6-months LIBOR (for the period from 11th July 2012 until Final Payment Date) as of 11.00 a.m. (London time) on the Quotation Day for the offering of deposits in USD and for a period comparable to 3 or 6 months accordingly and if no Screen Rate is available for a relevant period, the rate available for the Lender for borrowing money in the same currency of the Loan from a bank institution of the Lender's choice;

   ..."

2. "**5. Loan**

   5.1 Repayment of Loan

   The Borrower shall repay the Loan at the lapse of nine months after Utilization Date."

   "**5.2 Prepayment of Loan**

   ...

   5.2.2 Any partial prepayment under this Agreement shall be applied in satisfaction pro tanto of the Borrower's periodic obligations with respect to clause 7.2(b) and thereafter with respect to the repayment of principal in relation to the Loan."

3. "**6 Interest**

   6.1 Calculation of Interest

   According to the Loan Agreement dated 10th April 2012, the rate of interest in respect of the Loan was based on fix interest rate 3months LIBOR plus the Margin per Annum.
   For the period from 11th July 2012 until the Final Payment Date the rate of interest in respect of the Loan will be based on fix interest rate 6months LIBOR plus the Margin per annum.

   ..."

4. "**7.2 Amendment costs**

(a) If the Borrower requests an amendment, waiver or consent to or under any Finance Document, the Borrower shall, within seven Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

(b) An amount of US$ 300,000 will be paid by the Borrower to the to the Lender in three equal monthly instalments, the first paid on the 30th October 2012 and each consequent one at the lapse of each following month. The above mentioned amount includes the amount corresponding to interest of the Loan payable until the 10th July 2012, in accordance with clause 6 of the Loan Agreement and a fee for the amendment of the Loan Agreement."

For the rest, the business relationship between the Parties is governed by the Loan Agreement dated 10th April 2012 as it is amended now and as it may be from to time supplemented, varied or amended as well as the Security Documents as defined in the Loan Agreement and as amended from time to time.

This Amendment Agreement has been entered into on the date stated at the beginning of this agreement.

SIGNATURE PAGE – AMENDMENT TO THE LOAN AGREEMENT

Borrower

SIGNED)
for and on behalf of)
NewLead Holdings (US) Corp) Michael S. Zolotas

Lender

MOJAVE FINANCE INC.

SIGNED)
for and on behalf of)
Mojave Finance Inc) Fotios Karatzenis

Third Party

SIGNED)
for and on behalf of)
NewLead Holdings Ltd) Michail S. Zolotas

Exhibit 4.70

Dated 9th January 2013

NewLead Holdings (US) Corp as Borrower	(1)
Mojave Finance Inc as Lender	(2)
NewLead Holdings Ltd as Third Party	(3)

2nd AMENDMENT TO THE LOAN AGREEMENT
DATED 10th APRIL 2012

THIS AMENDMENT is dated on 9^{th} January 2013 and made **BETWEEN**:

(1) **NewLead Holdings (US) Corp.**, a company established under the laws of Delaware with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (the **Borrower**);

(2) **Mojave Finance Inc** a company established under the laws of Marshall Islands with its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **Lender**);

(3) **NewLead Holdings Ltd**, a company established under the laws of Bermuda with its registered office at Canon's Court, 22 Victoria Street, Hamilton Bermuda (as **Third Party**);

WHEREAS:

The Lender has agreed to advance a loan of US$3,000,000 to the Borrower for a there (3) months period, according to the terms and conditions of a Loan Agreement dated 10^{th} April 2012, signed among the Borrower, the Lender and NewLead Holdings Ltd as third party (the **Loan Agreement**).

The Parties have agreed to extend the repayment of the Loan for six (6) months according to the terms and conditions of the Amendment of the Loan Agreement dated 9th June 2012.

NOW IT IS AGREED between the Parties that the repayment of the Loan is extended for six (6) more months.

As a result of this extension of the repayment of the Loan, the Parties hereby agree the following amendments to the Loan Agreement:

1. "**1. Definitions and interpretation**

   1.1 Definitions

   ...

   Final Payment Date means the lapse of fifteen months from the Utilisation Date or, if such anniversary is not a Business Day, the immediately preceding Business Day;

   ...

   LIBOR means the applicable Screen Rate for the 3-months LIBOR (for the period from Utilization Date until 10^{th} July 2012), for the 6-months LIBOR (for the period from 11th July 2012 until 10^{th} January 2013) and for the 6-months LIBOR (for the period from 10^{th} January 2013 until Final Payment Date) as of 11.00 a.m. (London time) on the Quotation Day for the offering of deposits in USD and for a period comparable to 3 or 6 months accordingly and if no Screen Rate is available for a relevant period, the rate available for the Lender for borrowing money in the same currency of the Loan from a bank institution of the Lender's choice;

   ..."

2. "**5. Loan**

   5.1 Repayment of Loan

   The Borrower shall repay the Loan at the lapse of fifteen months after Utilization Date."

   "**5.2 Prepayment of Loan**

   ...

   5.2.2 Any partial prepayment under this Agreement shall be applied in satisfaction pro tanto of the Borrower's periodic obligations with respect to clause 7.2(c) and thereafter with respect to the repayment of principal in relation to the Loan."

3. "**6 Interest**

   6.1 Calculation of interest

According to the Loan Agreement dated 10th April 2012, the rate of interest in respect of the Loan was based on fix interest rate 3months LIBOR plus the Margin per Annum.
According to the Amendment of the Loan Agreement dated 9th June 2012, the rate of interest for the period from 11th July 2012 until 10th January 2013 was based on fix interest rate 6months LIBOR plus the Margin per annum.
For the period from 10th January 2013 until the Final Payment Date the rate of interest in respect of the Loan will be based on fix interest rate 6months LIBOR plus the Margin per annum.
..."

4. "**7.2 Amendment costs**
[...]
(c) An amount of US$ 300,000 will be paid by the Borrower to the Lender on the 30th April 2013. The above mentioned amount includes the amount corresponding to interest of the Loan payable until the 10th January 2013, in accordance with clause 6 of the Loan Agreement and a fee for the 2nd amendment of the Loan Agreement."

For the rest, the business relationship between the Parties is governed by the Loan Agreement dated 10th April 2012, as it is amended by the Amendment of the Loan Agreement dated 9th July 2012 and now and as it may be from to time supplemented, varied or amended as well as the Security Documents as defined in the Loan Agreement and as amended from time to time.

This Amendment Agreement has been entered into on the date stated at the beginning of this agreement.

SIGNATURE PAGE – AMENDMENT TO THE LOAN AGREEMENT

Borrower

SIGNED)
for and on behalf of)
NewLead Holdings (US) Corp)

NewLead Holdings (US) Corp. CORPORATE SEAL Delaware

Lender

SIGNED)
for and on behalf of)
Mojave Finance Inc)

MOJAVE FINANCE INC.

Third Party

SIGNED)
for and on behalf of)
NewLead Holdings Ltd)

NewLead Holdings Ltd Hamilton, Bermuda

Exhibit 4.71

Dated 9th July 2013

NewLead Holdings (US) Corp as Borrower		(1)
Mojave Finance Inc as Lender		(2)
NewLead Holdings Ltd as Third Party		(3)

3rd AMENDMENT TO THE LOAN AGREEMENT
DATED 10th APRIL 2012

THIS AMENDMENT is dated on 9th July 2013 and made **BETWEEN**:

(1) **NewLead Holdings (US) Corp.**, a company established under the laws of Delaware with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (the **Borrower**);

(2) **Mojave Finance Inc** a company established under the laws of Marshall Islands with its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **Lender**);

(3) **NewLead Holdings Ltd**, a company established under the laws of Bermuda with its registered office at Canon's Court, 22 Victoria Street, Hamilton Bermuda (as **Third Party**);

WHEREAS:

The Lender has agreed to advance a loan of US$3,000,000 to the Borrower for a there (3) months period, according to the terms and conditions of a Loan Agreement dated 10th April 2012, signed among the Borrower, the Lender and NewLead Holdings Ltd as third party (the **Loan Agreement**).

The Parties have agreed to extend the repayment of the Loan for twelve (12) months according to the terms and conditions of the Amendments of the Loan Agreement dated 9th June 2012 and 9th January 2013.

NOW IT IS AGREED between the Parties that the repayment of the Loan is extended for three (3) more months.

As a result of this extension of the repayment of the Loan, the Parties hereby agree the following amendments to the Loan Agreement:

1. **"1. Definitions and interpretation**

   1.1 Definitions

   ...

   Final Payment Date means the lapse of eighteen months from the Utilisation Date or, if such anniversary is not a Business Day, the immediately preceding Business Day;

   ...

   LIBOR means the applicable Screen Rate for the 3-months LIBOR (for the period from Utilization Date until 10th July 2012), for the 6-months LIBOR (for the period from 11th July 2012 until 10th January 2013), for the 6-months LIBOR (for the period from 10th January 2013 until 10th July 2013) and for the 3-months LIBOR (for the period from 10th July 2013 until Final Payment Date) as of 11.00 a.m. (London time) on the Quotation Day for the offering of deposits in USD and for a period comparable to 3 or 6 months accordingly and if no Screen Rate is available for a relevant period, the rate available for the Lender for borrowing money in the same currency of the Loan from a bank institution of the Lender's choice;

   ..."

2. **"5. Loan**

   5.1 Repayment of Loan

   The Borrower shall repay the Loan at the lapse of eighteen months after Utilization Date."

3. **"6 Interest**

   6.1 Calculation of interest

   According to the Loan Agreement dated 10th April 2012, the rate of interest in respect of the Loan was based on fix interest rate 3months LIBOR plus the Margin per Annum.

   According to the Amendment of the Loan Agreement dated 9th June 2012, the rate of interest for the period from 11th July 2012 until 10th January 2013 was based on fix interest rate 6months LIBOR plus the Margin per annum.

According to the Amendment of the Loan Agreement dated 9th January 2013, the rate of interest for the period from 10th January 2013 until 10th July 2013 was based on fix interest rate 6months LIBOR plus the Margin per annum.

For the period from 10th July 2013 until the Final Payment Date the rate of interest in respect of the Loan will be based on fix interest rate 3months LIBOR plus the Margin per annum.

..."

4. "**7.2 Amendment costs**

[...]

(c) An amount of US$ 300,000 will be paid by the Borrower to the Lender on the Final Repayment Date. The above mentioned amount includes the amount corresponding to interest of the Loan payable until the Final Repayment Date , in accordance with clause 6 of the Loan Agreement and a fee for the 2nd and 3rd amendment of the Loan Agreement."

For the rest, the business relationship between the Parties is governed by the Loan Agreement dated 10th April 2012, as it is amended by the Amendments of the Loan Agreement dated 9th July 2012, 9th January 2013 and now and as it may be from to time supplemented, varied or amended as well as the Security Documents as defined in the Loan Agreement and as amended from time to time.

This Amendment Agreement has been entered into on the date stated at the beginning of this agreement.

SIGNATURE PAGE – AMENDMENT TO THE LOAN AGREEMENT

Borrower

SIGNED)
for and on behalf of)
NewLead Holdings (US) Corp) Michael Zolotas

Lender

MOJAVE FINANCE INC.

SIGNED)
for and on behalf of)
Mojave Finance Inc) FOTIOS KARATZENIS.

Third Party

SIGNED)
for and on behalf of)
NewLead Holdings Ltd) Michael Zolotas

Exhibit 4.72

Dated: 08/03/2013

Oppenheim Capital Ltd.

(as Lender)

- and -

NewLeadJMEG LCC

(as Borrower)

LOAN AGREEMENT
for a secured fixed 24% interest rate
Revolving Credit Facility of up to
US$1,350,000 (United States Dollars One
Million Three Hundred and Fifty Thousand)

THIS AGREEMENT is made this 8th day of March, 2013

BY AND BETWEEN:

1. **Oppenheim Capital Ltd,** a British Virgin Island Company with registered offices at Mill Mall Tower, 2nd Floor Wickhams Cay I P.O. Box 4406 Road Town, Tortola British Virgin Islands, (hereinafter called the **"Lender"**);

2. **New Lead JMEG LLC,** a Delaware registered limited liability company with registered offices at 4000 S. Faber PL DR., Suite 300 Charleston, SC 29405, (hereinafter called the **"Borrower"**).

AND IT IS HEREBY AGREED as follows:

1. PURPOSE, DEFINITIONS AND INTERPRETATION

1.1 Purpose

This Agreement sets out the terms and conditions upon and subject to which it is agreed that the Lender will make available to the Borrower a fixed interest rate revolving credit facility in an amount up to United States Dollars One Million Three Hundred and Fifty Thousand (US$1,350,000) for the purpose of being used for the partial bridge financing for the purchase of Five Miles and ELK Valley Coal Mines (the **"Properties"**).

1.2 Definitions

In this Agreement, unless the context otherwise requires each term or expression defined in the recital of the parties and in this Clause shall have the meaning given to it in the recital of the parties and in this Clause and:

"Agreement" means this Agreement as the same may from time to time be supplemented and/or amended;

"Banking Day" means any day on which Lenders and foreign exchange markets in New York, London, Athens and in each country or place in or at which any act is required to be done under this Agreement, Lenders are open for the transaction of business of the nature contemplated in this Agreement;

"Borrower" means the Borrower specified in the preamble of this Agreement;

"Dollars" and "$" mean the lawful currency of the United States of America and in respect of all payments to be made means funds which are for same day settlement in the New York Clearing House InterBank Payments System (or such other U.S. dollar funds as may at the relevant time be customary for the settlement of international Banking transactions denominated in Dollars);

"Drawdown Date" means each Banking Day, not earlier than the date of this Agreement, during the Availability Period, upon which the Borrower has requested that an Advance be made available in the manner provided in Clause 2 or (as the context requires) the date on which such Advance is actually made by the Lender to the Borrower hereunder;

"Revolving Credit Facility" means the total amount of up to (but not exceeding) United States Dollars One Million Three Hundred and Fifty Thousand (US$1,350,000) to be made available by the Lender to the Borrower under this Agreement in two or more tranches and otherwise subject to and on the terms and conditions herein contained;

"Final Maturity Date" means 12 months from the final draw-dawn unless the Lender agrees, at its sole discretion to extend to such later date as the Lender may determine;

"Interest Rate" means the rate of interest payable in respect of the Revolving Credit Facility or the relevant part thereof (as the case may be) ascertained in accordance with the provisions of Clause 3;

"Loan" means the aggregate principal amount at any relevant time advanced to the Borrower and outstanding under this Agreement;

"Month" means a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, Provided that (a) if such period started on the last Banking Day in a calendar month or if there is no such numerically corresponding day, such period shall end on the last Banking Day in the relevant calendar month and (b) if such numerically corresponding day is not a Banking Day, such period shall end on the next following Banking Day in the same calendar month or if there is no such Banking Day, such period shall end on the preceding Banking Day (and "months" and "monthly" shall be construed accordingly);

"Outstanding Indebtedness" means the aggregate of the Loan and interest thereon to be payable by the Borrower to or recoverable from the Borrower by the Lender (or in respect of which the Borrower agree in this Agreement to indemnify the Lender) whether actually or contingently, presently or in the future together with interest thereon as provided in this Agreement;

1.3 In this Agreement:

(a) where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms, bodies corporate and bodies unincorporated;

(b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement and references to Clauses and Schedules are to Clauses of and Schedules to this Agreement save as may be otherwise expressly provided;

(c) references to:

(i) any document are to be construed as references to such document as amended and/or supplemented from time to time and references to any enactment shall include re-enactments, amendments and extension thereof;

(ii) the Lender shall include its successors and assigns and references to the Borrower shall include its respective successors and permitted assigns, if any;

(iii) persons include bodies corporate and unincorporated; and

(iv) assets include property, rights and assets of every nature.

(d) reference to the opinion of the Lender or a determination or acceptance of the Lender or to documents, acts or persons acceptable to the satisfaction of the Lender or the like, shall be construed as reference to opinion, determination, acceptance or satisfaction of the Lender at the sole discretion of the Lender and such opinion, determination, acceptance or satisfaction of the Lender shall be conclusive and binding on the Borrower.

2. THE REVOLVING CREDIT AND THE DRAWDOWN OF THE LOAN

2.1 **Agreement to lend** Subject to and upon the terms of this Agreement and in reliance (inter alia) on the representations and warranties set forth in Clause 6 and at the request of the Borrower, the Lender agrees to lend to the Borrower a fixed interest rate Revolving Credit Facility of up to but not exceeding the principal amount of United States Dollars One Million Three Hundred and Fifty Thousand (US$1,350,000) for the purpose described in clause 1.1. The Revolving Credit Facility shall be made available to the Borrower in one tranche at the time, in the amount and in the manner specified in Clause 2.3.

2.2 **Drawdown Notice and Commitment to Borrow** Subject to the terms and conditions of this Agreement, an Advance may be made following receipt by the Lender from the Borrower of a Drawdown Notice. A Drawdown Notice shall be effective on actual receipt by the Lender.

2.3 **Availability** Upon receipt of a Drawdown Notice complying with the terms of this Agreement the Lender shall, subject to the provisions of Clause 7, on the date specified in such Drawdown Notice make available the relevant Advance to the Borrower.

2.4 **Termination of the Revolving Credit** The Revolving Credit Facility shall be reduced to zero on the Final Maturity Date and no Advance shall be made to the Borrower under this Agreement thereafter.

2.5 **Cancellation of the Revolving Credit Facility** The Borrower shall be entitled to cancel any undrawn part of the Revolving Credit Facility under this Agreement upon giving the Lender not less than three (3) Business Days' notice in writing to that effect, provided that no Drawdown Notice has been given to the Lender for the full amount of the Revolving Credit Facility or in respect of the portion thereof in respect of which cancellation is required by the Borrower. Any such notice of cancellation, once given, shall be irrevocable. Any amount cancelled may not be drawn.

3. **INTEREST RATE** Subject to the terms of this Agreement, the Borrower shall pay interest on the amount of the Loan or any part thereof at the Interest Rate applicable to each Interest Tranche at the fixed rate 24% per annum determined by the Lender.

4. REPAYMENT - PREPAYMENT OF THE REVOLVING CREDIT FACILITY

4.1 **Repayment**

The Outstanding Indebtedness shall be repaid (and it is expressly undertaken by the Borrower to repay the Outstanding Indebtedness) by a single installment on the Final Maturity Date whereon the Borrower shall also pay to the Lender any and all other monies then and payable under this Agreement. Provided however that the Lender shall, following written request of the Borrower, extent the Revolving Credit Facility for any period the Lender shall at its sole and absolute discretion determine;

4.2 **Voluntary prepayment** The Borrower may prepay the Loan in whole, provided that the Lender shall have received from the Borrower not less than three banking days prior notice of its intention to make such prepayment and specifying the date on which such prepayment is to be made

5. PAYMENTS, TAXES, LOAN ACCOUNT AND COMPUTATION

5.1 **Payments – No set-off or Counterclaims** If at any time it shall become unlawful or impracticable for the Borrower to make payment under this Agreement to the relevant account, the Borrower may request and the Lender may agree to alternative arrangements for the payment of the amounts due by the Borrower to the Lender under this Agreement.

5.2 **Payments on Banking Days** All payments shall be made on a Banking Day. If the due date for payment falls on a day which is not a Banking Day, the payment or payments shall be made on the next following Banking Day unless such Banking Day falls in the next calendar month in which case payment shall be made on the immediately preceding Banking Day.

5.3 **Computation** All interest and other payments payable by reference to a rate per annum under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 360 day year.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Borrower hereby represents and warrants to the Lender that:

Continuing representations and warranties

(a) **Due Incorporation/Valid Existence** the Borrower is duly incorporated and validly existing and in good standing under the laws of their respective countries of incorporation as limited liability company, and have power to

own their respective property and assets, to carry on their respective business as the same are now being lawfully conducted;

(b) **Financial Condition** the financial condition of the Borrower has not suffered any material deterioration since that condition was last disclosed to the Lender;

(c) **No Immunity** neither the Borrower nor any of their respective assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgement, execution or other enforcement);

(d) **Valid Choice of Law** the choice of law agreed to govern this Agreement is valid and binding on the Borrower.

6.2 The Borrower hereby further represents and warrants to the Lender that:

Initial representations and warranties

(a) **Direct obligations - Pari Passu** the obligations of the Borrower under this Agreement are direct, general and unconditional obligations of the Borrower and rank at least pari passu with all other present and future unsecured and unsubordinated Indebtedness of the Borrower with the exception of any obligations which are mandatorily preferred by law;

(b) **Information** all information, accounts, statements of financial position, exhibits and reports furnished by the Borrower and its Related Companies to the Lender in connection with the negotiation and preparation of this Agreement are true and accurate in all material respects and not misleading, do not omit material facts and all reasonable enquiries have been made to verify the facts and statements contained therein; to the knowledge of the Directors/Officers of the Borrower, there are no other facts the omission of which would make any fact or statement therein misleading and, in the case of accounts and statements of financial position, they have been prepared in accordance with generally accepted accounting principles which have been consistently applied;

(c) **No Default** no Default has occurred and is continuing;

(d) **No Taxes** no Taxes are imposed by deduction, withholding or otherwise on any payment to be made by the Borrower under this Agreement or are imposed on or by virtue of the execution or delivery of this Agreement or any document or instrument to be executed or delivered hereunder or thereunder. In case that any Tax exists now or will be imposed in the future, it will be borne by the Borrower;

(e) **No Default under other Indebtedness** the Borrower is not in Default under any agreement relating to Indebtedness to which it is a party or by which it may be bound;

6.3 **Representations Correct** At the time of entering into this Agreement all above representations and warranties or any other information given by the Borrower to the Lender are true and accurate.

6.4 **Repetition of Representations and Warranties** The representations and warranties in this Clause 6 (except in relation to the representations and warranties in Clause 6.2) shall be deemed to be repeated by the Borrower on each Drawdown Date and on each Interest Payment Date throughout the Security Period.

7. CONDITIONS PRECEDENT

7.1 **No change of circumstances** The obligation of the Lender to advance the Revolving Credit Facility or any part thereof is subject to the further condition that at the time of the giving of the Drawdown Notice and on each Drawdown Date:

(a) the representations and warranties set out in Clause 6 are true and correct on and as of each such time as if each was made with respect to the facts and circumstances existing at such time;

(b) no Default shall have occurred and be continuing or would result from the drawdown.

7.2 **Waiver of conditions precedent** The conditions specified in this Clause 7 are inserted solely for the benefit of the Lender and may be waived by the Lender in whole or in part and with or without conditions. Without prejudice to any of the other provisions of this Agreement, in the event that the Lender, in its sole and absolute discretion, makes the Revolving Credit Facility available to the Borrower prior to the satisfaction of all or any of the conditions referred to in Clause 7.1, the Borrower hereby covenants and undertakes to satisfy or procure the satisfaction of such condition or conditions within such period as the Lender may, in its sole and absolute discretion, agree or specify.

8. COVENANTS

The Borrower undertake with the Lender that, from the date of this Agreement and as long as any moneys are due and/or owing and/or outstanding under this Agreement or any of the other Security Documents, the Borrower will:

8.1 **Information Covenants**

(a) **Information on adverse change or Default** promptly inform the Lender of any occurrence which came to the knowledge of the Borrower which might adversely affect the ability of the Borrower to perform its respective obligations under this Agreement and of any Default forthwith upon becoming aware thereof and will from time to time, if so requested by the Lender, confirm to the Lender in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing;

8.2 **Maintenance of Business and legal Structure**

(a) **Maintenance of Business Structure** not change the nature, organisation and conduct of its business

(b) **Know your customer and money laundering compliance** provide the Lender with such documents and evidence as the Lender shall from time to time require, based on law and regulations applicable from time to time and the Lender's own internal guidelines applicable from time to time to identify the Borrowers and the other Security Parties, including the ultimate legal and beneficial owner or owners of such entities, and any other persons involved or affected by the transaction(s) contemplated by this Agreement; and

8.3 **Observance of Covenants**

(a) **Use of the Loan** use the Loan exclusively for the purpose specified in this Agreement;

(b) **Compliance with Covenants** duly and punctually perform each of the obligations expressed to be assumed by it under this Agreement and the other Security Documents;

(c) **Payment on Demand** pay to the Lender on demand any sum of money which is payable by the Borrower to the Lender under this Agreement but in respect of which it is not specified in any other Clause when it is due and payable; and

(d) **Evidence of Compliance** upon request by the Lender from time to time provide such information and evidence to the Lender as the Lender would reasonably require to demonstrate compliance with the covenants and undertakings set forth in this Agreement;

8.4 **Validity of Securities – Taxes etc.**

(a) **Validity** ensure and procure that all governmental or other consents required by law and/or any other steps required for the validity, enforceability and legality of this Agreement and the other Security Documents are maintained in full force and effect and/or appropriately taken;

(b) **Taxes** pay all Taxes, assessments and other governmental charges when the same fall due, except to the extent that the same are being contested in good faith by appropriate proceedings and adequate reserves have been set aside for their payment if such proceedings fail; and

(c) **Additional Documents** from time to time and within ten (10) days after the Lender's request execute and deliver to the Lender or procure the execution and delivery to the Lender of all such documents as shall be deemed desirable at the reasonable discretion of the Lender for giving full effect to this Agreement, and for perfecting, protecting the value of or enforcing any rights or securities granted to the Lender under any one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto and in case that any conditions precedent (with the Lender's

consent) have not been fulfilled prior to the Drawdown, such conditions shall be complied with within fourteen (14) days of Drawdown (unless the Lender agrees otherwise in writing) and failure to comply with this covenant shall be an Event of Default.

9. EVENTS OF DEFAULT

There shall be an Event of Default whenever an event described in Clauses 9.1 to 9.9 occurs:

9.1 Non Performance of Obligations

(a) the Borrower or any other Security Party fails to pay any sum due from the Borrower or, as the case may be such Security Party, under this Agreement and/or any of the other Security Documents at the time, in the currency and in the manner stipulated herein and/or any of the other Security Documents, or, in the case of any sum payable on demand, within three (3) Banking Days of such demand; or

(b) the Borrower or any other Security Party fails to observe and perform any one or more of the covenants, terms or obligations contained in this Agreement and/or any other Security Document; or

(c) the Borrower or any other Security Party commits any breach of or omits to observe any of the covenants, terms, obligations or undertakings under this Agreement and/or any of the other Security Documents (other than failure to pay any sum when due or to comply with any obligation concerning the Insurances) and, in respect of any such breach or omission which in the reasonable opinion of the Lender is capable of remedy, such action as the Lender may require shall not have been taken within ten (10) days of the Lender notifying the Borrower and/or the relevant Security Party of such required action to remedy the breach or omission; or

9.2 Events affecting the Security Parties

(a) any Security Party is adjudicated or found bankrupt or insolvent or any judgement or order is made by any competent court or resolution passed or petition (which is not in the reasonable opinion of the Lender frivolous and is not being contested in good faith by such Security Party) presented for the winding-up or dissolution of any Security Party or for the appointment of a liquidator, trustee, receiver, administrator or conservator of the whole or any part of the undertakings, assets, rights or revenues of any Security Party; or

(b) any Security Party becomes or is deemed to be insolvent or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition, compromise or other arrangement for the benefit of its creditors generally or good faith proceedings are commenced in relation to any Security Party under any law, regulation or procedure relating to reconstruction or readjustment of debts; or

(c) an encumbrancer takes possession or a receiver or similar officer is appointed of the whole or any part of the undertakings, assets, rights or revenues of any Security Party or a distress, execution, sequestration or other process is levied or enforced upon or sued out against any of the undertakings, assets, rights or revenues of any Security Party and is not discharged within fifteen (15) days; or

(d) all or a material part of the undertakings, assets, rights or revenues of any Security Party are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government; or

(e) any event occurs or proceeding is taken with respect to any Security Party in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in sub-Clauses 9.2(a) to 9.2(d); or

(f) any Security Party suspends or ceases or threatens to suspend or cease to carry on its business; or

(g) there occurs, in the reasonable opinion of the Lender, a materially adverse change in the financial condition of any Security Party; or

(h) any other event occurs or circumstances arise which, in the reasonable opinion of the Lender, materially and adversely affects either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of this Agreement and/or any of the other Security Documents, or (ii) the security created by this Agreement and/or any of the Security Documents; or

(i) there is any material change in the beneficial ownership of the shares in the Borrower and/or in any other corporate Security Party; or

9.3 **Representations Incorrect** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to this Agreement or any of the other Security Documents or in any notice, certificate or statement referred to in or delivered under this Agreement or any of the other Security Documents is or proves to have been incorrect in any material respect; or

9.4 **Cross-default of the Borrower** any Indebtedness of the Borrower is not paid when due or becomes due and payable, or any creditor of the Borrower becomes entitled to declare any such Indebtedness due and payable prior to the date when it would otherwise have become due, or any guarantee or indemnity given or any obligation or covenant undertaken or agreement made by the Borrower in respect of Indebtedness is not honoured when due; or

9.5 **Events affecting the Security Documents**

(a) this Agreement or any of the other Security Documents shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Security Documents shall at any time and for any reason be contested by any party thereto (other than the Lender), or if any such party shall deny that it has any, or any further, liability thereunder or it becomes impossible or unlawful

for the Borrower to fulfil any of its covenants and obligations contained in this Agreement or any of the Security Documents or for the Lender to exercise the rights vested in it thereunder or otherwise; or

(b) any consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Borrower to authorise or otherwise in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement and/or any of the other Security Documents or the performance by the Borrower of its obligations under this Agreement and/or any of the other Security Documents is modified in a manner unacceptable to the Lender or is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect; or

9.6 **Consequences of Default** The Lender may without prejudice to any other rights of the Lender (which will continue to be in force concurrently with the following), at any time after the happening of an Event of Default:

(a) by notice to the Borrower declare that the obligation of the Lender to make the Revolving Credit Facility available shall be terminated, whereupon the Revolving Credit Facility shall be reduced to zero forthwith; and/or

(b) by notice to the Borrower declare that the Loan and all interest and commitment commission accrued and all other sums payable under this Agreement and the other Security Documents have become due and payable, whereupon the same shall, immediately or in accordance with the terms of such notice, become due and payable without any further diligence, presentment, demand of payment, protest or notice or any other procedure from the Lender which are expressly waived by the Borrower.

9.7 **Insolvency Events of Default** If an event occurs in respect of the Borrower or the other Security Parties of the type described in sub-Clauses 9.2(a) to (c), the obligation of the Lender to make the Revolving Credit Facility available shall terminate immediately upon receipt by the Lender of the relevant information (as such receipt shall be conclusively certified by a certificate of the Lender) and all amounts payable under sub-Clause 9.9(b) above shall become immediately due and payable without any notice or other formality which is hereby expressly waived by the Borrower.

9.8 **Proof of Default** It is agreed that (i) the non-payment of any sum of money in time will be proved conclusively by mere passage of time and (ii) the occurrence of this (non payment) shall be proved conclusively by a mere written statement of the Lender (save for manifest error).

9.9 **Exclusion of Lender's liability** Neither the Lender nor any receiver or manager appointed by the Lender, shall have any liability to the Borrower or any other Security Party:

(a) for any loss caused by an exercise of rights under, or enforcement of an Encumbrance created by, a Security Document or by any failure or delay to exercise such a right or to enforce such an Encumbrance; or

(b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such an Encumbrance or for any reduction (however caused) in the value of such an asset,

except that this does not exempt the Lender or a receiver or manager from liability for losses shown to have been caused by the wilful misconduct or gross negligence of the Lender's own officers and employees or (as the case may be) such receiver's or manager's own partners or employees.

10. INDEMNITIES - EXPENSES - FEES

10.1 **Indemnity** The Borrower shall on demand (and it is hereby expressly undertaken by the Borrower to) indemnify the Lender, without prejudice to any of the other rights of the Lender under any of the Security Documents, against any loss or expense which the Lender shall certify as sustained or incurred as a consequence of (i) any default in payment by any of the Security Parties of any sum under any of the Security Documents when due, (ii) the occurrence of any Event of Default, (iii) any prepayment of the Loan or part thereof being made or any other repayment of the Loan or part thereof being made otherwise than on an Interest Payment Date relating to the part of the Loan prepaid or repaid or (iv) any drawdown not being made for any reason (excluding any default by the Lender) after a Drawdown Notice has been given, including, in any such case, but not limited to, any loss or expense sustained or incurred in maintaining or funding the Loan or any part thereof or in liquidating or re-employing deposits from third parties acquired to effect or maintain the Loan or any part thereof.

10.2 **Expenses** The Borrower shall (and it is hereby expressly undertaken by the Borrower) pay to the Lender on demand:

(a) **Initial and Amendment expenses** all expenses (including legal, printing and out-of-pocket expenses) incurred by the Lender in connection with the negotiation, preparation and execution of this Agreement and the other Security Documents and of any amendment or extension of or the granting of any waiver or consent under this Agreement and/or any of the Security Documents;

(b) **Enforcement expenses** all expenses (including legal and out-of- pocket expenses) incurred by the Lender in contemplation of, or otherwise in connection with, the enforcement of, or preservation of any rights under, this Agreement and/or any of the other Security Documents, or otherwise in respect of the moneys owing under this Agreement and/or any of the other Security Documents or the contemplation or preparation of the above, whether they have been effected or not; and

10.3 **Maintenance of the Indemnities** The indemnities contained in this Clause 10 shall apply irrespective of any indulgence granted to the Borrower or any other party from time to time and shall continue to be in full force and effect notwithstanding any payment in favour of the Lender and any sum due from the Borrower under this Clause 10 will be due as a separate debt and shall not be affected by judgment being obtained for any other sums due under any one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto.

10.4 **Communications Indemnity** It is hereby agreed in connection with communications that:

(a) express authority is hereby given by the Borrower to the Lender to accept (at the sole discretion of the Lender) all tested or untested communications given by facsimile, telex, cable or otherwise, regarding any or all of the notices, requests, instructions or other communications under this Agreement, subject to any restrictions imposed by the Lender relating to such communications including, without limitation (if so required by the Lender), the obligation to confirm such communications by letter;

(b) the Borrower shall recognise any and all of the said notices, requests, instructions or other communications as legal, valid and binding, when these notices, requests, instructions or communications come from the telex and fax numbers mentioned in Clause 13.7 or any other telex usually used by it or its managing company;

(c) the Borrower hereby assumes full responsibility for the execution of the said notices, requests, instructions or communications by the Lender and promises and recognises that the Lender shall not be held responsible for any loss, liability or expense that may result from such notices, requests, instructions or other communications. It is hereby undertaken by the Borrower to indemnify in full the Lender from and against all actions, proceedings, damages, costs, claims, demands, expenses and any and all direct and/or indirect losses which the Lender or any third party may suffer, incur or sustain by reason of the Lender following such notices, requests, instructions or communications;

(d) the Lender shall have the right to ask the Borrower to furnish any information the Lender may require to establish the authority of any person purporting to act on behalf of the Borrower for these notices, requests, instructions or communications but it is expressly agreed that there is no obligation for the Lender to do so. The Lender shall be fully protected in, and the Lender shall incur no liability to the Borrower for acting upon the said notices, requests, instructions or communications which were believed by the Lender in good faith to have been given by the Borrower or by any of their authorised representative(s); and

(e) it is undertaken by the Borrower to safeguard the function and the security of the electronic and mechanical appliance(s) such as telex(es), fax(es) etc., as well as the code word list, if any, and to take adequate precautions to protect it from loss and to prevent its terms becoming known to any persons not directly concerned with its use. The Borrower shall hold the Lender harmless and indemnified from all claims, losses, damages and expenses which the Lender may incur by reason of the failure of the Borrower to comply with the obligations under this Clause and/or this Agreement.

11. SECURITY AND SET-OFF

11.1 **Securities** As security for the due and punctual repayment of the Loan and payment of interest thereon as provided in this Agreement and of all other Outstanding Indebtedness, the Borrower shall ensure and procure that the following Security Document are duly executed and, where required, registered in favour of the Lender

in form and substance satisfactory to the Lender at the time specified herein or otherwise as required by the Lender and ensure that such security consists of:

(a) Assignment of the contract for sale and purchase of US Steam Coal between RAG Verkauf as a buyer and the Borrower as a seller in an amount up to United States Dollars One Million Three Hundred and Fifty Thousand (US$1,350,000); This assignment refers to 01.02.2013 contract signed for the quantity of 130,000 mt +/-10% US Steam Coal per month.

11.2 **Maintenance of Securities** It is hereby undertaken by the Borrower that the Security Document shall both at the date of execution and delivery thereof and so long as any moneys are owing and/or due under this Agreement or under the other Security Document be valid and binding obligations of the respective Security Parties thereto and rights of the Lender enforceable in accordance with their respective terms and that they will, at the expense of the Borrower, execute, sign, perfect and do any and every such further assurance, document, act, omission or thing as in the opinion of the Lender may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.

11.3 **Application of funds** Unless the Lender determines otherwise, all moneys received or recovered by the Lender under or pursuant to any of the Security Document shall be applied by the Lender in the following manner:

(i) firstly in or towards payment of Expenses and all sums other than principal or interest which may be due to the Lender under this Agreement and the Security Document or any of them, at the time of application;

(ii) secondly in or towards payment of any default interest;

(iii) thirdly in or towards payment of any arrears of interest due in respect of the Loan or any part thereof;

(iv) fourthly in or towards repayment of the Loan or any part thereof which is due and payable; and

(v) fifthly in or towards payment to the Lender for any loss suffered by reason of any such payment in respect of principal not being effected on an Interest Payment Date relating to the part of the Loan repaid; and

(vi) sixthly the surplus (if any) shall be paid to the Borrower, or to whomsoever else shall be entitled thereto.

11.4 **Waiver of right of appropriation** The Borrower hereby irrevocably waives any rights of appropriation to which it may be entitled.

12 UNLAWFULNESS, INCREASED COSTS

12.1 **Unlawfulness** If any change in, or introduction of, any law, regulation or regulatory requirement or any request of any central Lender, monetary, regulatory or other authority or any order of any court renders it unlawful or contrary to any such regulation, requirement, request or order for the Lender to advance the Revolving Credit Facility or to maintain or fund the Loan, notice shall be given promptly by the Lender to the Borrower whereupon the Revolving Credit Facility shall be reduced to zero and the Borrower shall be obliged to prepay the Loan in accordance with such notice, together with accrued interest thereon to the date of prepayment and all other sums payable by the Borrower under this Agreement.

In any such event the Borrower and the Lender shall negotiate in good faith (but without incurring any legal obligations) with a view to agreeing the terms for making the Loan available from another jurisdiction or providing the Loan from alternative sources.

12.2 **Change of circumstances** If any change in or in the interpretation of any applicable law or regulation, by any government or governmental authority or agency, makes it unlawful for the Lender to maintain or give effect to its obligations or to claim or receive any amount payable to the Lender under this Agreement, then the Lender may serve written notice on the Borrower declaring its obligations under this Agreement terminated in whole or in part, whereupon the same shall terminate forthwith and the Borrower will immediately repay the Loan and accrued interest to the date of prepayment together with all other Outstanding Indebtedness to the Lender pursuant to the terms of the notice.

13. GENERAL

13.1 Assignment, Participation

(a) **Binding Effect** This Agreement shall be binding upon and inure to the benefit of the Lender and the Borrower and their respective successors and assigns.

(b) **No Assignment by the Borrower** The Borrower and any other parties to the Security Documents may not assign any rights and/or obligations under this Agreement or any of the other Security Documents or any documents executed pursuant to this Agreement and/or the other Security Documents.

(c) **Assignment by the Lender** The Lender may at any time (following consultation with the Borrower and adequate notice being given to the Borrower and the other Security Parties but without the consent of the Borrower), assign, transfer, or offer participation to any Subsidiary or holding company of the Lender or any Subsidiary of such holding company or (with the consent of the Borrower, such consent not to be unreasonably withheld) to any other Lender, in whole or in part, or in any manner dispose of all or any of its rights and/or obligations arising or accruing under this Agreement or any of the other Security Documents or any documents executed pursuant to this Agreement and/or the other Security Documents.

(d) **Documentation** If the Lender assigns, transfers or in any other manner grants participation in respect of all or any part of its rights or benefits or transfers all or any of its obligations as provided in this Clause 14.1 the Borrower undertakes, immediately on being requested to do so by the Lender, to enter into and procure that each Security Party enters into (at the Lender's expense) such documents as may be necessary or desirable to transfer to the assignee, transferee or participant all or the relevant part of the interest of the Lender in the Security Documents and all relevant references in this Agreement to the Lender shall thereafter be construed as a reference to the Lender and/or assignee, transferee or participant of the Lender to the extent of their respective interests and, in the case of a transfer of all or part of the obligations of the Lender, the Borrower shall thereafter look only to the assignee, transferee or participant in respect of that proportion of the obligations of the Lender under this Agreement assumed by such assignee, transferee or participant. The Borrower hereby expressly consents to any subsequent transfer of the rights and obligations of the Lender and undertake that they shall join in and execute such supplemental or substitute agreements as may be necessary to enable the Lender to assign and/or transfer and/or grant participation in respect of its rights and obligations to another branch or to one or more Lenders or financial institutions in a syndicate or otherwise.

13.2 **Cumulative Remedies** The rights and remedies of the Lender contained in this Agreement and the other Security Documents are cumulative and not exclusive of each other nor of any other rights or remedies conferred by law.

13.3 **Amendments** This Agreement and any other Security Documents shall not be amended or varied in their respective terms by any oral agreement or representation or in any other manner other than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of the parties hereto or thereto.

13.4 **Invalidity of Terms** In the event of any provision contained in one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto being invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction whatsoever, such provision shall be ineffective as to the jurisdiction only without affecting the remaining provisions hereof or thereof. If, however, this event becomes known to the Lender prior to the Drawdown of the Revolving Credit Facility or of any part thereof the Lender shall be entitled to refuse drawdown until this discrepancy is remedied. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by the law to the intent that this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto shall be deemed to be valid binding and enforceable in accordance with their respective terms.

13.5 **Inconsistency of Terms** In the event of any inconsistency between the provisions of this Agreement and the provisions of a Security Document the provisions of this Agreement shall prevail.

13.6 **Language and genuineness of documents**

(a) **Language** All certificates, instruments and other documents to be delivered under or supplied in connection with this Agreement or any of the other Security Documents shall be in the English language (or such other language as the Lender shall agree) or shall be accompanied by a certified Greek translation upon which the Lender shall be entitled to rely.

(b) **Certification of signature** Signatures on Board or shareholder resolutions, Secretary's certificates and any other documents are, at the discretion of the Lender, to be verified for their genuineness by appropriate Consul or other competent authority.

13.7 **Notices**

(a) Every notice, request, demand or other communication under the Agreement or, unless otherwise provided therein, any of the Security Documents shall.

(i) be in writing delivered personally or be first-class prepaid letter (airmail if available), or cable or shall be served through a process server or subject to Clause 10.4 by telex or fax;

(ii) be deemed to have been received, subject as otherwise provided in this Agreement or the relevant Security Document, in the case of a telex, at the time of despatch with confirmed answerback of the addressee appearing at the beginning and end of the communication, in the case of fax, at the time of dispatch as per transmission report (provided that if the date of despatch is not a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day), in the case of a cable 24 hours after despatch and in the case of a letter when delivered or served personally or five (5) days after it has been put into the post; and

(iii) be sent:

if to be sent, to the Borrower to 4000 S. Faber PL DR., Suite 300 Charleston, SC 29405

if to be sent to the Lender, to 77, Strovolou Str. Strovolos Center Office 201 2018 Nicosia CYPRUS c/o Alliott.

or to such other person, address, telex or fax number as is notified by the relevant Security Party or the Lender (as the case may be) to the other parties to this Agreement and, in the case of any such change of address, telex or fax number notified to the Lender, the same shall not become effective until notice of such change is actually received by the Lender and a copy of the notice of such change is signed by the Lender.

13.8 **Confidentiality**

(a) Each of the parties hereto agree and undertake to keep confidential any documentation and any confidential information concerning the business, affairs, directors or employees of the other which comes into its possession during this Agreement and not to use any such documentation, information for any purpose other than for which it was provided.

(b) The Borrower acknowledges and accepts that the Lender may be required by law or that it may be appropriate for the Lender to disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Security Documents to governmental or regulatory agencies and authorities.

(c) The Borrower acknowledges and accepts that in case of occurrence of any of the Events of Default the Lender may disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Security Documents to third parties to the extend that this is necessary for the enforcement or the contemplation of enforcement of the Lender's rights or for any other purpose for which in the opinion of the Lender, such disclosure should be useful or appropriate for the interests of the Lender or otherwise and the Borrower expressly authorise any such disclosure and delivery.

(d) The Borrower acknowledges and accepts that the Lender may be prohibited or it may be inappropriate for the Lender to disclose information to the Borrower by reason of law or duties of confidentiality owed or to be owed to other persons.

14 APPLICABLE LAW AND JURISDICTION

14.1 **Law**

(a) This Agreement shall be governed by and construed in accordance with English Law.

14.2 **Submission to Jurisdiction**

(a) For the exclusive benefit of the Lender, each of the Borrower agrees that any legal action or proceedings arising out or in connection with this Agreement against the Borrower or any of its assets may be brought in the English Courts.

The Borrower irrevocably and unconditionally submits to the jurisdiction of such courts and irrevocably designates, appoints and empowers Messrs. ...., or its successors to receive for it and on its behalf, service of process issued out of the English courts in any such legal action or proceedings. The appointment of the Process Agent for English Proceedings shall be valid and binding from the date notice of such appointment is given by the Lender to the Borrower. The foregoing shall not limit the right of the Lender to start proceedings in any other country or to serve process in any other manner permitted by law. Finally, the Borrower hereby waives any objections to the inconvenience of England as a forum.

(b) The submission to the jurisdiction of the English Courts shall not (and shall not be construed so as to) limit the right of the Lender to take proceedings against the Borrower in the courts of any other competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

(c) The parties further agree that subject to Clause 14.2(b) the Courts of England shall have exclusive jurisdiction to determine any claim which the Borrower may have against the Lender arising out of or in connection with this Agreement and the Borrower hereby waives any objections to proceedings with respect to this Agreement in such courts on the grounds of venue or inconvenient forum.

14.3 **Proceedings in any other country** If it is decided by the Lender that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by the Borrower and it is agreed and undertaken by the Borrower to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and the Borrower agrees that any judgment or order obtained in an English court shall be conclusive and binding on the Borrower and shall be enforceable without review in the courts of any other jurisdiction.

In this Clause 14 "proceedings" means proceedings of any kind, including an application for a provisional or protective measure.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorised officers or Attorneys on the day and year first before written.

THE LENDER

SIGNED by: ______________________
Name: Dimitrios Tsouvelekakis
Title: ..D..TSOUVELEKAKIS DIRECTOR

THE BORROWER

SIGNED by: ______________________
Name: Michail S. Zolotas
Title: Chairman

Exhibit 4.73

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

This Amended and Restated Registration Rights Agreement (the "**Agreement**") dated as of 10 April, 2013 is entered into by and between NewLead Holdings Ltd., a Bermuda corporation (the "**Company**") and Piraeus Bank A.E., a company incorporated under the laws of Greece (**"Piraeus"**).

WHEREAS, the Company entered into that certain Principal Agreement, dated as of June 20, 2012, by and between the Company and Piraeus (the "**Principal Agreement**");

WHEREAS, in connection with the Principal Agreement, the Company entered into the Registration Rights Agreement, dated as of June 2012, by and between the Company and Piraeus (the "**Original Registration Rights Agreement**");

WHEREAS, the Company is entering into the Amendment Agreement, dated as of 10 April, 2013, by and between the Company and Piraeus (the "**Amendment Agreement**") to amend the Principal Agreement;

WHEREAS, the Company is issuing shares of its Common Stock to Piraeus pursuant to the Principal Agreement, as amended by the Amendment Agreement; and

WHEREAS, in connection with entering into the Amendment Agreement, the Company has agreed to enter into this Agreement, which amends and restates the Original Registration Rights Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"**Affiliate**" means with respect to any Person, any Person that directly or indirectly controls or is controlled by or is under common control with, such Person.

"**Agreement**" shall have the meaning ascribed to such term in the Preamble.

"**Amendment Agreement**" shall have the meaning ascribed to such term in the Recitals.

"**Blackout Notice**" shall have the meaning ascribed to such term in Section 8(c) hereof.

"**Blackout Period**" shall have the meaning ascribed to such term in Section 8(c) hereof.

"**Blue Sky Application**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Commission**" means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act and the Exchange Act.

"**Common Stock**" means (a) the common stock, par value $0.01 per share, of the Company, (b) any other capital stock of any class or classes (however designated) of the Company, authorized on or after the date hereof, the holders of which shall have the right, without limitation as to amount, either to all or to a share of the balance of current dividends and liquidating distributions after the payment of dividends and distributions on any shares entitled to preference in the distribution of assets upon the voluntary or involuntary dissolution of the Company, and the holders of which shall ordinarily be entitled to vote for the election of a majority of directors of the Company, and (c) any other securities into which or for which any of the securities described in (a) or (b) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or other similar transaction.

"**Company**" shall have the meaning ascribed to such term in the Preamble.

"**Company Indemnified Person**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Demand Registration**" shall have the meaning ascribed to such term in Section 3(a) hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, or any successor federal statute, and the rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Form F-1 and F-3**" means Forms F-1 and F-3, as the case may be, promulgated under the Securities Act and as in effect on the date hereof or any successor forms promulgated under the Securities Act or adopted by the Commission.

"**Losses**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Memorandum of Association**" means the Company's Memorandum of Association in effect on the date hereof and as amended, modified or restated from time to time.

"**Original Registration Rights Agreement**" shall have the meaning ascribed to such term in the Recitals.

"**Other Shareholders**" shall have the meaning ascribed to such term in Section 2(b) hereof.

"**Persons**" means an individual, corporation, limited liability company, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"**Piraeus**" shall have the meaning ascribed to such term in the Preamble.

"**Principal Agreement**" shall have the meaning ascribed to such term in the Recitals.

"**Registrable Shares**" means (i) the shares of Common Stock issued pursuant to the Principal Agreement; and (ii) any shares of Common Stock or other securities issued or issuable in respect of such shares of Common Stock upon any stock split, stock dividend, recapitalization, reorganization, merger, consolidation, sale of assets or similar event. As to any particular Registrable Shares, such Registrable Shares shall cease to be Registrable Shares (A) when they have been registered under the Securities Act, the registration statement in connection therewith has been declared effective, and they have been disposed of pursuant to such effective registration statement, (B) upon the later of (x) when such shares may be freely distributed by the holder thereof in a public offering or otherwise without the need for registration or qualification of such securities under the Securities Act or any similar state law then in force in light of legal requirements or market conditions and without any restriction on the volume or the manner of sale or any other limitations under Rule 144 (or any successor provision) under the Securities Act or (y) the third anniversary of this Agreement, (C) when they shall have been otherwise transferred and the subsequent disposition of them shall not require registration under the Securities Act, (D) when they shall have ceased to be outstanding, or (E) when they are transferred in a transaction pursuant to which the registration rights are not assigned in accordance with Section 11 of this Agreement.

"**Registration Expenses**" shall have the meaning ascribed to such term in Section 9(a) hereof.

"**Rule 144**" means Rule 144 promulgated under the Securities Act or any successor rule.

"**Rule 145**" means Rule 145 promulgated under the Securities Act or any successor rule.

"**Rule 415**" means Rule 415 promulgated by the Securities Act or any similar or successor rule.

"**Securities Act**" means the Securities Act of 1933, or any successor federal statute, and the rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Securities Registration**" shall have the meaning ascribed to such term in Section 7(a) hereof.

"**Seller Indemnified Person**" shall have the meaning ascribed to such term in Section 7(b) hereof.

"**Selling Expenses**" shall have the meaning ascribed to such term in Section 9(a) hereof.

Section 2. "Piggy-Back" Registrations.

(a) If, at any time commencing on the date hereof, the Company shall propose to register under the Securities Act (other than pursuant to Sections 3 and 4 of this Agreement) any of its securities, whether for its own account or for the account of other security holders, or both (other than (i) a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan, (ii) a Rule 145 transaction, (iii) a registration of securities in an "at-the-market" offering, (iv) a shelf registration statement or (v) a registration on any form which does not include substantially similar information as would be required to be included in a registration statement covering the sale of Registrable Shares, provided that such registration statements described in clause (iii), (iv) and (v) do not include securities held by Focus Maritime Corp. or any Affiliate of Focus Maritime Corp. (other than the Company) or any securities held by a Person which securities were transferred, directly or indirectly, to such Person by Focus Maritime Corp.), then the Company will, promptly following the engagement of counsel to the Company to prepare the documents to be used in connection with such registration statement, give written notice to all holders of Registrable Shares of its intention so to do, provided that such notice must be provided at least ten (10) calendar days prior to the effectiveness of the relevant registration statement. Upon the written request of any such holder, received by the Company within ten (10) business days after the receipt of any such notice by such holder, to register any or all of its Registrable Shares, the Company shall, subject to Section 2(c) below, use its best efforts to cause the Registrable Shares as to which registration shall have been so requested to be included in the securities to be covered by the registration statement proposed to be filed or filed by the Company, all to the extent required to permit the sale or other disposition by the holder of such Registrable Shares so registered, in accordance with the plan of distribution set forth in such registration statement; provided that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 2 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. If no request for inclusion from a holder (other than a holder of Registrable Shares) is received within the specified time, such holder shall have no further right to participate in such piggyback registration.

(b) If the registration of which the Company gives notice as provided above is for a registered public offering involving an underwriting, the Company shall so advise the holders of Registrable Shares as a part of the written notice given referred to in paragraph (a) above. In such event the right of any holder of Registrable Shares to registration pursuant to this Section 2 shall be conditioned upon such holder's participation in such underwriting to the extent provided herein. All holders of Registrable Shares proposing to distribute their securities through such underwriting shall (together with the shares of Common Stock to be registered by the Company and shares of Common Stock held by Persons who by virtue of agreements with the Company are entitled to include shares in such registration (the "**Other Shareholders**")), if so requested

by the underwriter, enter into an underwriting agreement and a lock-up agreement, each in customary form, with the underwriter or underwriters selected for underwriting by the Company and enter into other customary agreements (such as powers of attorney and custody agreements). If any holder of Registrable Shares disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the managing underwriter; provided, however that such withdrawal must be made prior to the pricing of such underwritten offering. Any Registrable Shares or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(c) Notwithstanding any other provision of this Section 2, if, in connection with any underwritten public offering, the Company or the underwriter determines that marketing factors require a limitation on the number of shares to be underwritten, the underwriter may exclude all Registrable Shares from, or limit the number of Registrable Shares to be included in, such registration and underwriting that would otherwise be underwritten pursuant to this Section 2, provided that all other securities requested to be included in such registration statement, other than securities being registered on behalf of the Company or on behalf of the holder thereof who had the right to require the Company to file the registration statement in question, shall be excluded first. The Company shall so advise in writing all holders of securities requesting registration of any limitations on the number of shares to be underwritten and the number of shares of securities that are entitled to be included in the registration and the Company shall be obligated to include in such registration statement only such limited portion (which may be none) of the Registrable Shares as the managing underwriter determines in good faith. If the managing underwriter determines that marketing factors require a limitation on the number of Registrable Shares to be registered under this Section 2, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. No "piggy-back" right under this Section 2 shall be construed to limit any registration required under Section 3.

(d) Notwithstanding the foregoing provisions, the Company may withdraw any registration statement referred to in this Section 2 without thereby incurring any liability to the holders of Registrable Shares.

(e) Notwithstanding anything to the contrary herein, Registrable Shares which are (i) subject to any lock-up or (ii) covered by an effective registration statement on Form F-3 will not be entitled to the registration rights set forth in this Section 2.

(f) The Company hereby represents and warrants to Piraeus that as of the date of this Agreement, no other party possesses any registration rights which have priority over the rights granted to the holders of Registrable Shares pursuant to this Agreement.

Section 3. Demand Registrations.

(a) At any time after the date hereof, the holders of Registrable Shares may request the Company to register for sale under the Securities Act all or any portion of the Registrable Shares held by such requesting holder or holders for sale in the manner specified in such notice (a **"Demand Registration"**); provided, that each Demand Registration be at least equal to

1,000,000 shares or such lesser amount agreed to by the Company (as such number may be adjusted for stock splits, stock dividend and similar events) of the Company's then outstanding common shares; provided further, that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 3 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. In any event, all securities to be sold other than (i) Registrable Shares, (ii) shares of Common Stock held by Prime Shipping Holding Ltd. and its Affiliates which are subject to registration rights and (iii) shares of Common Stock held by any other security holder with registration rights pursuant to an agreement under which such holder's demand for registration of its securities is deemed to be simultaneous with the demand to register the Registrable Shares or who otherwise has unsubordinated registration rights will be excluded prior to any exclusion of Registrable Shares, and all shares of Common Stock held by Focus Maritime Corp., any Affiliate of Focus Maritime Corp. or any direct or indirect transferee of shares previously held by Focus Maritime Corp. shall be excluded prior to any exclusion of Registrable Shares.

(b) Piraeus shall have the right to three (3) Demand Registrations pursuant to this Section 3, provided, that the Company will not be obligated to effect more than one Demand Registration in any six (6) month period; provided further, that if for any reason the Commission does not permit all of the Registrable Shares to be included in a registration statement filed pursuant to this Agreement, (i) Piraeus shall have the right to an unlimited number of Demand Registrations pursuant to this Section 3 and (ii) the Company shall use its best efforts to prepare and file, as promptly as practicable but in no event later than ten (10) days after the date on which the Commission shall indicate as being the first date or time that such filing may be made, an additional registration statement covering the resale of all Registrable Shares not already covered by an existing and effective registration statement.

(c) Notwithstanding anything to the contrary contained herein, the Company shall not be required to effect a registration pursuant to this Section 3 during the period commencing thirty (30) calendar days prior to the estimated filing date of, and ending on the date which is within one hundred eighty (180) calendar days after the effective date of a registration statement filed by the Company covering an underwritten public offering, which includes securities to be sold for the account of the Company.

(d) Following receipt of any notice under this Section 3, the Company shall immediately give written notice to all holders of Registrable Shares from whom notice has not been received and may notify other holders that have piggyback registration rights and such holders shall then be entitled within ten (10) business days after receipt of such notice from the Company to request the Company to include in the requested registration all or any portion of their Registrable Shares. If no request for inclusion from a holder is received within the specified time, such holder shall have no further right to participate in such registration. If all the shares of Common Stock requested to be registered by holders with registration rights are not permitted by United States federal law, state law or other law or Commission rule or policy to be included in

the registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares, provided that all securities to be sold other than (i) Registrable Shares, (ii) shares of Common Stock held by Prime Shipping Holding Ltd. and its Affiliates which are subject to registration rights and (iii) shares of Common Stock held by any other security holder with registration rights pursuant to an agreement under which such holder's demand for registration of its securities is deemed to be simultaneous with the demand to register the Registrable Shares or who otherwise has unsubordinated registration rights will be excluded prior to any exclusion of Registrable Shares, and all shares of Common Stock held by Focus Maritime Corp., any Affiliate of Focus Maritime Corp. or any direct or indirect transferee of shares previously held by Focus Maritime Corp shall be excluded prior to any exclusion of Registrable Shares. The Company shall within ninety (90) calendar days, cause to be filed with the Commission a registration statement on an appropriate form as shall be selected by the Company providing for the registration under the Securities Act of the Registrable Shares that the Company has been so requested to register by all such holders, to the extent necessary to permit the disposition of such Registrable Shares so to be registered in accordance with the intended methods of disposition thereof specified in such registration statement. The Company shall use its commercially reasonable efforts to have such registration statement declared effective by the Commission within seventy-five (75) calendar days following the filing of a registration statement pursuant to a Demand Registration if the registration statement is not reviewed by the Commission and within one hundred eighty (180) calendar days following the filing of a registration statement pursuant to a Demand Registration in the event that the registration statement is reviewed by the Commission, and to keep such registration statement continuously effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5. The Company may at its option withdraw any registration statement which covers securities that are not Registrable Shares.

(e) If the holders requesting such registration intend to distribute the Registrable Shares covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 3 and the Company shall include such information in the written notice referred to in paragraph (d) above. The right of any holder to participate in an underwritten registration pursuant to this Section 3 shall be conditioned upon such holder's agreeing to participate in such underwriting and to permit inclusion of such holder's Registrable Shares in the underwriting. If such method of disposition is an underwritten public offering, the holders of at least a majority in interest of the Registrable Shares to be sold in such offering may designate the managing underwriter of such offering, subject to the approval of the Company, which approval shall not be unreasonably withheld or delayed.

(f) In addition to Registrable Shares, a registration statement filed pursuant to this Section 3 may, subject to the following provisions, also include (i) shares of Common Stock for sale by the Company for the Company's own account, (ii) shares of Common Stock held by officers or directors of the Company and (iii) shares of Common Stock held by Other Shareholders, in each case for sale in accordance with the method of disposition specified by the requesting holders. If such registration shall be underwritten, each holder of Registrable Shares the Company, such officers and directors and Other Shareholders proposing to distribute their shares through such underwriting shall, if requested by the underwriter, enter into an

underwriting agreement and a lock-up agreement, each in customary form, with the representative of the underwriter or underwriters selected for such underwriting and enter into other customary agreements (such as powers of attorney and custody agreements). If the managing underwriter determines that marketing factors require a limitation of the number of Registrable Shares to be registered under this Section 3, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. In any event, all securities to be sold other than (i) Registrable Shares, (ii) shares of Common Stock held by Prime Shipping Holding Ltd. and its Affiliates which are subject to registration rights and (iii) shares of Common Stock held by any other security holder with registration rights pursuant to an agreement under which such holder's demand for registration of its securities is deemed to be simultaneous with the demand to register the Registrable Shares or who otherwise has unsubordinated registration rights will be excluded prior to any exclusion of Registrable Shares, and all shares of Common Stock held by Focus Maritime Corp., any Affiliate of Focus Maritime Corp. or any direct or indirect transferee of shares previously held by Focus Maritime Corp. shall be excluded prior to any exclusion of Registrable Shares. No Registrable Shares or any other security excluded from the registration and underwriting by reason of the underwriter's marketing limitation shall be included in such registration and underwriting. If any holder of Registrable Shares, officer, director or Other Shareholder who has requested inclusion in such registration as provided above, disapproves of the terms of the underwriting, such holder of securities may elect to withdraw therefrom by written notice to the Company and the managing underwriter. The securities so withdrawn shall also be withdrawn from registration.

Section 4. Short-Form Registration on Form F-3. If at any time after the date hereof (i) Piraeus requests that the Company file a registration statement on Form F-3 for a public offering of all or any portion of the Registrable Shares held by such requesting holder or holders, and (ii) the Company is a registrant entitled to use Form F-3 to register such shares, then the Company within seventy-five (75) calendar days, shall cause to be filed with the Commission a registration statement on Form F-3 providing for the registration under the Securities Act of the Registrable Shares that the Company has been so requested to register by all such holders, to the extent necessary to permit the disposition of such Registrable Shares so to be registered in accordance with the intended methods of disposition thereof specified in such registration statement and shall use its best efforts to have such Form F-3 declared effective by the Commission within seventy-five (75) calendar days following the filing of the registration statement if such registration statement is not reviewed by the Commission and within one hundred eighty (180) calendar days following the filing of the registration statement in the event that such registration statement is reviewed by the Commission and to keep such registration statement continuously effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5; provided further that the number of Registrable Shares to be included in the registration shall be no greater than the amount permitted by United States federal law, state law or other law or Commission rule or policy. If United States federal law, state law or other law or Commission rule or policy requires a limitation of the number of Registrable Shares to be registered under this Section 4 pursuant to any particular registration statement, then Registrable Shares shall be excluded in such manner that the securities to be sold shall be allocated among the selling holders pro rata based on their ownership of Registrable Shares. In any event, all securities to be sold other than (i) Registrable Shares, (ii) shares of

Common Stock held by Prime Shipping Holding Ltd. and its Affiliates which are subject to registration rights and (iii) shares of Common Stock held by any other security holder with registration rights pursuant to an agreement under which such holder's demand for registration of its securities is deemed to be simultaneous with the demand to register the Registrable Shares or who otherwise has unsubordinated registration rights will be excluded prior to any exclusion of Registrable Shares, and all shares of Common Stock held by Focus Maritime Corp., any Affiliate of Focus Maritime Corp. or any direct or indirect transferee of shares previously held by Focus Maritime Corp. shall be excluded prior to any exclusion of Registrable Shares. Whenever the Company is required by this Section 4 to effect the registration of Registrable Shares, each of the procedures and requirements of Section 3, including, but not limited to, the requirement that the Company give written notice to all holders of Registrable Shares from whom notice has not been received and provide them with the opportunity to participate in the offering (provided, however that holders shall have no more than ten (10) business days to reply to the Company's written notice in order to participate in the offering), shall apply to such registration. The obligations of the Company under this Section 4 shall expire at any time after the Company has effected three (3) registrations for the benefit of each of the holders of Registrable Shares pursuant to a registration on Form F-3 unless the Commission has required the Company to exclude Registrable Shares from such registration statement pursuant to Rule 415 or otherwise or a previously effective Form F-3 registration statement is no longer usable or has been withdrawn, in which case Piraeus shall be entitled to one additional registration statement on Form F-3 for each such event.

Section 5. Expiration of Obligations. The obligations of the Company to register Registrable Shares pursuant to Sections 2, 3 and 4 of this Agreement or to keep any registration statement effective shall expire when no Registrable Shares are outstanding or no shares under the registration statement are held by Piraeus.

Section 6. Effectiveness of Registration Statements. The Company will use its commercially reasonable efforts to maintain the effectiveness of any registration statement pursuant to which any of the Registrable Shares are being offered for the period set forth in Section 8(b); provided however that such period shall expire as set forth in Section 5.

Section 7. Indemnification; Procedures; Contribution.

(a) In the event that the Company registers any of the Registrable Shares under the Securities Act in accordance with this Agreement, the Company will, to the extent permitted by law, indemnify and hold harmless each holder of the Registrable Shares and each underwriter of the Registrable Shares (including their officers, directors, affiliates and partners) so registered (including any broker or dealer through whom such shares may be sold) and each Person, if any, who controls such holder or any such underwriter within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (each a "**Company Indemnified Person**") from and against any and all losses, claims, damages, expenses or liabilities, joint or several (collectively, "**Losses**"), to which they or any of them become subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse each such Company Indemnified Person, if any, for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any

actions whether or not resulting in any liability, solely insofar as such Losses (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the registration statement under which such Registrable Shares were registered under the Securities Act pursuant to this Agreement, any preliminary prospectus or final prospectus contained therein, or any free writing prospectus related thereto, or any amendment or supplement thereof, any filing with any state or federal securities commission or agency or any other prospectus, offering circular or other document incident to such registration (any such application, document or information herein called a "**Securities Registration**"), or based on any omission or alleged omission in any Securities Registration to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Shares under the securities laws thereof (any such application, document or information herein called a "**Blue Sky Application**"), (iii) any omission or alleged omission to state in any such Securities Registration or in any Blue Sky Application executed or filed by the Company, a material fact required to be stated therein or necessary to make the statements therein not misleading, (iv) any violation by the Company or its agents of the Securities Act or any rule or regulation promulgated under the Securities Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such Securities Registration, or (v) any failure to register or qualify the Registrable Shares in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company (the undertaking of any underwriter chosen by the Company being attributed to the Company) will undertake such registration or qualification (provided that in such instance the Company shall not be so liable if it has used its commercially reasonable efforts to so register or qualify the Registrable Shares) and will reimburse each Company Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Loss (or actions in respect thereof), promptly after being so incurred; provided, however, that the Company will not be liable in any such case (i) through (v) above and will not be required to reimburse any such expenses: (A) if and to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in reliance upon and in conformity with written information furnished by any such Company Indemnified Person in writing specifically for use in such Securities Registration or Blue Sky Application; or (B) the sale was made during the Blackout Period after the holder received a Blackout Notice pursuant to Section 8(c).

(b) In the event of a registration of any of the Registrable Shares under the Securities Act in accordance with this Agreement, each holder of such Registrable Shares thereunder, severally and not jointly, will indemnify and hold harmless the Company, each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each officer of the Company who signs the registration statement, each director of the Company, each other holder of Registrable Shares, each underwriter and any broker or dealer through whom such shares may be sold and each Person who controls such underwriter or broker within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each a "**Seller Indemnified Person**"), against all Losses, to which a Seller

Indemnified Person may become subject under the Securities Act or under any other statute or at common law or otherwise, and, except as hereinafter provided, will reimburse each such Seller Indemnified Person, if any, for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, promptly after being incurred, solely insofar as such Losses (or actions in respect thereof) arise out of or are based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in any Securities Registration or any Blue Sky Application or omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, provided, however, that such holder will be liable hereunder in any such case if and only to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information pertaining to such holder, as such, furnished in writing to the Company by such holder specifically for use in such Securities Registration or any Blue Sky Application; and provided, further, that the liability of each holder hereunder shall be limited to the proportion of any such Loss which is equal to the proportion that the public offering price of all securities sold by such holder under such registration statement bears to the total public offering price of all securities sold thereunder, but not in any event to exceed the net proceeds (net of the cost of the Registrable Shares sold and all expenses paid by such holder and not reimbursed by the Company and the amount of any damages that such holder has otherwise been required to pay by reason of such untrue statement or omission) received by such holder from the sale of Registrable Shares covered by such registration statement; or

(ii) any sale made by such holder during the Blackout Period after the holder received a Blackout Notice pursuant to Section 8(c).

(c) Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to such indemnified party other than under this Section 7 and shall only relieve it from any liability which it may have to such indemnified party under this Section 7 if and to the extent the indemnifying party is prejudiced by such omission. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 7 for any reasonable legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected, provided, however, that, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be reasonable defenses available to it which are different from or additional to those available to the indemnifying party or that the interests of the indemnified

party reasonably may be deemed to conflict with the interests of the indemnifying party, the indemnified party shall have the right to select a separate counsel reasonably satisfactory to the indemnifying party and to assume such legal defenses and otherwise to participate in the defense of such action, with the reasonable expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the indemnifying party as incurred. No indemnifying party, in the defense of any such claim or action, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or action, and the indemnification agreements contained in Sections 7(a) and 7(b) shall not apply to any settlement entered into in violation of this sentence. Each indemnified party shall furnish such information regarding itself or the claim in question as an indemnifying party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in Section 7(a) or 7(b) from the indemnifying party for any reason is unavailable to (other than by reason of exceptions provided therein), or is insufficient to hold harmless, an indemnified party hereunder in respect of any claim for indemnification, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such claim in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and the indemnified party, on the other hand, in connection with the actions that resulted in such claim, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. If, however, the foregoing allocation is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 7(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by a party as a result of any claim referred to in the immediately preceding paragraph shall be deemed to include, any reasonable legal or other fees, costs or expenses reasonably incurred by such party in connection with any investigation or proceeding. Notwithstanding anything in this Section 7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 7(d) to contribute any amount in excess of the net proceeds (net of the cost of the Registrable Shares sold and all expenses paid by such holder and not reimbursed by the Company and the amount of any damages that such holder has otherwise been required to pay by reason of such untrue statement or omission) received by such indemnifying party from the sale of the Registrable Shares

pursuant to the registration statement giving rise to such claims, less all amounts previously paid by such indemnifying party with respect to such claims. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The indemnities and obligations provided in this Section 7 shall survive the completion of any offering of Registrable Shares and the transfer of any Registrable Shares by such holder.

(g) The provisions of this Section 7 shall be in addition to any other rights to indemnification or contribution which an indemnified party may have pursuant to law, equity, contract or otherwise.

Section 8. Registration Procedures.

(a) If and whenever the Company is required by the provisions of this Agreement to effect the registration of any Registrable Shares under the Securities Act, the Company will, as expeditiously as possible:

(i) Subject to time periods for registration of Registrable Shares contained herein, in the case of a registration statement under Section 3 or 4, prepare and file with the Commission a registration statement (which, in the case of an underwritten public offering pursuant to Section 3, shall be on Form F-1 or other form of general applicability satisfactory to the managing underwriter selected as therein provided and in the case of an offering under Section 4 shall be on Form F-3) with respect to such securities including executing an undertaking to file post-effective amendments and use its commercially reasonable efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby in accordance with the provisions contained herein;

(ii) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for the period specified herein and comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Shares covered by such registration statement;

(iii) Prior to filing any registration statement described in this Agreement, furnish to each holder of Registrable Shares upon request, within a reasonable time prior to such filing, copies of the registration statement and any amendments or supplements thereto and any prospectus forming a part thereof, which documents shall be subject to the review of counsel representing each holder, and use all commercially reasonable efforts to reflect in each such

document when so filed with the Commission such comments as counsel representing each holder shall reasonably propose;

(iv) Furnish to each seller of Registrable Shares and to each underwriter, if applicable, such number of copies of the registration statement and each such amendment and supplement thereto (in each case including all exhibits) and the prospectus included therein (including each preliminary prospectus) as such Persons reasonably may request in order to facilitate the public sale or other disposition of the Registrable Shares covered by such registration statement;

(v) If the offering is underwritten, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the lead or managing underwriter(s) of such offering.

(vi) Provide a transfer agent, registrar and a CUSIP number for all Registrable Shares registered pursuant hereto, in each case not later than the date of the final prospectus for such registration.

(vii) Use its best efforts to register and qualify the Registrable Shares covered by such registration statement under the securities or "blue sky" laws of such jurisdictions as the sellers of Registrable Shares or, in the case of an underwritten public offering, the managing underwriter reasonably shall request; provided, however, that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, unless the Company is already subject to service in such jurisdiction;

(viii) Use its best efforts to list the Registrable Shares covered by such registration statement with any securities exchange or quotation system on which the Common Stock of the Company is then listed, quoted or traded;

(ix) File any "free writing prospectus" (as defined in Rule 405 under the Securities Act) that is required to be filed with the Commission in accordance with the Securities Act;

(x) Notify each holder of Registrable Shares, promptly after receiving notice thereof, of the time when the registration statement becomes effective or when any amendment or supplement or any prospectus forming a part of the registration statement has been filed;

(xi) Comply with all applicable rules and regulations under the Securities Act and Exchange Act;

(xii) Immediately notify each holder of Registrable Shares and each underwriter under such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event of which the Company has knowledge as a result of which the prospectus contained in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a

material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to such seller a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(xiii) Advise each holder of Registrable Shares after the Company shall receive notice or otherwise obtain knowledge of the issuance of any order by the Commission preventing or suspending the effectiveness of the registration statement or any amendment thereto or of the initiation or threatening of any proceeding for that purpose and promptly use all commercially reasonable efforts to prevent the issuance, or to obtain its withdrawal at the earliest possible moment, of any stop order with respect to the applicable registration statement or other order suspending the use of any preliminary or final prospectus;

(xiv) If the offering is underwritten and at the request of any seller of Registrable Shares, furnish on the date that Registrable Shares are delivered to the underwriters for sale pursuant to such registration (A) an opinion dated such date of counsel representing the Company for the purposes of such registration, and (B) a letter dated such date from the independent public accountants retained by the Company, and each of the opinion and the letter shall be in customary form and covering substantially the same matters with respect to such registration statement and as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to the underwriters in an underwritten offerings of securities;

(xv) Upon reasonable notice and at reasonable times during normal business hours and without undue interference of the Company's business or operations, make available for inspection by each seller of Registrable Shares, any underwriter participating in any distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by such seller or underwriter, reasonable access to all financial and other records, pertinent corporate documents and properties of the Company, as such parties may reasonably request, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement; provided that the Company need not disclose any such information to any such seller or its representative unless and until such person has entered into a confidentiality agreement with the Company;

(xvi) Cooperate with the selling holders of Registrable Shares and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Shares to be sold, such certificates to be in such denominations and registered in such names as such holders or the managing underwriter may request at least two (2) business days prior to any sale of Registrable Shares;

(xvii) Make generally available to its security holders an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the

Company's fiscal quarter next following the effective date of a registration statement filed hereunder; and

(xviii) Use its commercially reasonable efforts to make available the executive officers of the Company to participate with the holders and any underwriters in "road shows" or other selling efforts that may be reasonably requested by the holders in connection with the methods of distributed for the Registrable Shares.

(b) For purposes of this Agreement, the period of distribution of Registrable Shares in a firm commitment underwritten public offering shall be deemed to extend until each underwriter has completed the distribution of all securities purchased by it, and the period of distribution of Registrable Shares in any other registration shall be deemed to extend until the earlier of the sale of all Registrable Shares covered thereby or one hundred eighty (180) calendar days after the effective date thereof, provided, however, in the case of any registration of Registrable Shares on Form F-3 or a successor form which are intended to be offered on a continuous or delayed basis, such 180 day-period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Shares are sold, provided that Rule 415, or any successor rule promulgated under the Securities Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Securities Act governing the obligation to file a post-effective amendment, permit, in lieu of filing a post-effective amendment which

(i) includes any prospectus required by Section 10(a)(3) of the Securities Act or (ii) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (i) and

(ii) are contained in periodic reports filed pursuant to Section 13 or 15(d) of the Exchange Act in the registration statement.

(c) The Company shall at any time following the date hereof be entitled to postpone a registration under Section 3 and to require the holders of Registrable Shares to discontinue the disposition of their securities covered by a registration under Section 4 during any Blackout Period (as defined below); provided, however, that the Company may only delay a Demand Registration pursuant to this Section 8(c) by delivery of a Blackout Notice (as defined below) within thirty (30) calendar days of delivery of the request for registration under Section 3 and may delay such registration and require the holders of Registrable Shares to discontinue the disposition of their securities covered by a registration under Section 4 for up to one hundred ten (110) calendar days (or such earlier time as such transaction is consummated or no longer proposed or the material information has been made public) in any twelve (12) month period (the "**Blackout Period**"). The Company shall notify the holders of Registrable Shares in writing (a "**Blackout Notice**") of any decision to postpone a registration under Section 3 or to discontinue sales of Registrable Shares covered by a registration under Section 4 pursuant to this Section 8(c) and shall upon request include a general statement (which statement shall not include any material, non-public information other than the notice of the Blackout Period) of the reason for such postponement, an approximation of the anticipated delay and an undertaking by the

Company to notify the holders as soon as a registration may be effected or sales of Registrable Shares covered by a registration under Section 4 may resume. In making any such determination to initiate or terminate a Blackout Period, the Company shall not be required to consult with or obtain the consent of any holder, and any such determination shall be the Company's sole responsibility. Each holder shall treat all notices received from the Company pursuant to this Section 8(c) in the strictest confidence and shall not disseminate such information. If the Company shall postpone the filing of a registration statement pursuant to a Blackout Period, the holders who were to participate therein shall have the right to withdraw the request for registration. Any such withdrawal shall be made by giving written notice to the Company within thirty (30) calendar days after receipt of the Blackout Notice. Such withdrawn registration request shall not be treated as a registration demand effected pursuant to Section 3 (and shall not be counted towards the number of demand registrations to be effected under Section 3(b)), and the Company shall pay all Registration Expenses in connection therewith.

(d) Whenever under the preceding Sections of this Agreement the holders of Registrable Shares are registering such shares pursuant to any registration statement, each such holder agrees to: (i) timely provide in writing to the Company, at its request, such information and materials as the Company may reasonably request in order to facilitate preparation of the registration statement and effect the registration of such Registrable Shares in compliance with federal and applicable state securities laws, provided, that, at least ten (10) business days prior to the first anticipated filing date of any registration statement or shorter period as may be agreed by such holder, the Company notifies such holder of the information the Company requires from such holder; (ii) provide the Company with appropriate representations with respect to the accuracy of such information provided by such seller pursuant to subsection (i); or (iii) upon receipt of a Blackout Notice or a notice that an untrue statement or alleged untrue statement or omission or alleged omission was contained in a prospectus, immediately discontinue disposition of Registrable Shares, until such holder is advised by the Company in writing that such disposition may again be made. The provisions of such information shall be a condition to the Company's obligations to register the Registrable Shares.

(e) If for any reason the Commission does not permit all of the Registrable Shares to be included in a registration statement filed pursuant to this Agreement or if not permitted by law or Commission policy or position as determined by the Company in its reasonable discretion or for any other reason any Registrable Shares are not permitted by the Commission to be included in a registration statement filed under this Agreement, the Company may reduce, on a pro rata basis, the total number of Registrable Shares to be registered on behalf of Piraeus, subject to any other shares which may be registered under such registration statement being reduced only after the reduction of the Registrable Shares. Piraeus may require the Company to prepare and file, at any time after the later of (i) the date on which the Commission shall indicate as being the first date or time that such filing may be made or (ii) one hundred twenty (120) calendar days following the effective date of the previous registration statement filed pursuant to this Agreement, an additional registration statement covering the resale of all Registrable Shares not already covered by an existing and effective registration statement for an offering to be made on a continuous basis pursuant to Rule 415. The Company shall cause each such registration statement to be declared effective under the Securities Act no later than one hundred eighty (180) calendar days following the filing of such registration statement, and shall use its best efforts to

keep such registration statement effective for the period specified in Section 8(b); provided however that such period shall expire as set forth in Section 5.

(f) Notwithstanding anything to the contrary contained in this Agreement, in the event the Commission determines or the Company determines in accordance with Commission policy or practice any registration statement filed pursuant to this Agreement (i) constitutes a primary offering of securities by the Company or (ii) requires holders of Registrable Shares to be named as an underwriter and such party does not consent to being so named as an underwriter in such registration statement, the Company may reduce the total number of Registrable Shares to be registered on behalf of each of the holders of Registrable Shares, and the failure to include such Registrable Shares in any registration statement shall not cause the Company to be required to pay any penalty, financial or otherwise, as described in this Agreement. In the event of any such reduction in Registrable Shares, holders of Registrable Shares have the right to require, upon delivery of a written request to the Company, the Company to file a registration statement within ninety (90) calendar days of such request subject to any restrictions imposed by Rule 415, until such time as: (i) provided in Section 5 or (iii) the holders of Registrable Shares agree to be named as an underwriter in any such registration statement.

Section 9. Expenses.

(a) In the case of any registration statement under Sections 2, 3 or 4 of this Agreement, the Company shall bear all costs and expenses of each such registration, including, but not limited to, all registration and filing fees, printing expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of the Financial Industry Regulatory Authority, Inc., transfer taxes, fees of transfer agents and registrars, costs of any insurance which might be obtained by the Company with respect to the offering by the Company, fees and expenses payable in connection with the listing of the Registrable Shares on any securities exchange on which the Registrable Shares are then listed or are to be listed, and fees and expenses of legal counsel to the selling holders of Registrable Shares in connection with the registration of their Registrable Shares (such fees and expenses of legal counsel not to exceed an aggregate amount of $50,000) (collectively, "**Registration Expenses**"). The Company shall have no obligation to pay or otherwise bear: (i) the cost and expenses of procuring underwriters' insurance in connection with the sale of Registrable Shares by holders of Registrable Shares, or (ii) any portion of the underwriters' or any broker/ dealers' commissions or discounts attributable to the Registrable Shares being offered and sold by the holders of Registrable Shares (collectively, the "**Selling Expenses**"). All Selling Expenses in connection with each registration statement under Sections 2, 3 or 4 shall be borne by the participating sellers (including the Company, where applicable) in proportion to the number of shares registered by each, or by such participating sellers other than the Company (to the extent the Company shall be a seller) as they may agree.

(b) The Company shall not be obligated to pay any expenses of the holders of the Registrable Shares in connection with any registration initiated pursuant to Section 3 at the request of the holders of the Registrable Shares if such registration statement is withdrawn, delayed or abandoned at the request of the holders except as provided in Section 8(c).

Section 10. Conditions to Registration Obligations. The Company shall not be obligated to effect the registration of Registrable Shares pursuant to Sections 2, 3 and 4 unless all holders of shares being registered consent to reasonable conditions imposed by the Company including, without limitation:

(a) conditions prohibiting the sale of shares by such holders until the registration shall have been effective for a specified period of time;

(b) conditions requiring such holder to comply with all prospectus delivery requirements of the Securities Act and with all anti-stabilization, anti-manipulation and similar provisions of Section 10 of the Exchange Act and any rules issued thereunder by the Commission, and to furnish to the Company information about sales made in such public offering;

(c) conditions prohibiting such holders upon receipt of telegraphic or written notice from the Company (until further notice) from effecting sales of shares, such notice being given only when necessary in order to permit the Company to correct or update a registration statement or prospectus;

(d) conditions requiring that at the end of the period during which the Company is obligated to keep the registration statement effective under Section 6, the holders of shares included in the registration statement shall discontinue sales of shares pursuant to such registration statement upon receipt of notice from the Company of its intention to remove from registration the shares covered by such registration statement that remain unsold, and requiring such holders to notify the Company of the number of shares registered that remain unsold immediately upon receipt of notice from the Company;

(e) conditions requiring the holders of Registrable Shares to enter into an underwriting agreement in form and substance reasonably satisfactory to the Company and the holders of Registrable Shares; and

(f) conditions requiring the holders of Registrable Shares to, if requested by any underwriter, to enter into a lock-up agreement in form and substance reasonably satisfactory to the underwriter in connection with any underwritten offering of securities by the Company for the Company's own account.

Section 11. Transferability of Registration Rights. For all purposes of this Agreement, the holder of Registrable Shares shall include not only Piraeus but (i) any assignee or transferee of the Registrable Shares who acquires and holds at least 1,000,000 Registrable Shares (subject to appropriate adjustment for any stock split, reverse stock split, stock dividend, recapitalization or similar transaction), or (ii) any of such Person's Affiliates; provided, however, that each such assignee or transferee agrees in writing to be bound by all of the provisions of this Agreement.

Section 12. Other Registration Rights.

(a) The Company shall not grant any registration rights to any existing holder of equity securities of the Company, or securities convertible into Common Stock of the Company held by any existing holder of such securities, which rights are more favorable than the registration rights granted to the holders hereunder; provided, that the Company may grant registration rights to existing holders of its equity securities (or securities convertible into Common Shares held by any existing holder of such securities) on a *pari passu* basis with the Registrable Shares so long as the grant of such rights does not conflict with or otherwise alter any rights granted to holders hereunder.

(b) Prior to the date a registration statement(s) covering all of the Registrable Shares is declared effective or, the Company shall not file any other registration statements or any amendment thereof with the Commission under the Securities Act or request the acceleration of the effectiveness of any other registration Statement previously filed with the Commission, that cover shares of Common Stock held by Focus Maritime Corp., any Affiliate of Focus Maritime Corp. (other than the Company) or any direct or indirect transferee of shares previously held by Focus Maritime Corp.

Section 13. Miscellaneous.

(a) No failure or delay on the part of any party to this Agreement in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

(b) Except as hereinafter provided, amendments or additions to this Agreement may be made, compliance with any covenant or provision set forth herein may be omitted or waived, and this Agreement may be terminated, if the Company shall obtain consent thereto in writing from Piraeus (unless it does not beneficially own any Registrable Shares) and, if they are not the beneficial owner of any of the Registrable Shares, the consent of such other beneficial owners as would aggregate at least 51% in interest of the Registrable Shares. Any waiver or consent may be given subject to satisfaction of conditions stated therein and any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) All notices or other communications that are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by internationally-recognized overnight courier or by electronic mail, with a copy thereof to be delivered by internationally-recognized overnight courier (as aforesaid) within 24 hours of such electronic mail, or by facsimile, with confirmation as provided above addressed as follows:

If to the Company to:

NewLead Holdings Ltd.
83 Akti Miaouli & Flessa Str.
Piraeus 185 38, Greece
Attn: Michael Zolotas
Fax No: +30 (213) 014-8019

With a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stuart H. Gelfond, Esq.
Fax No: (212) 859-4000

If to Piraeus to:

Piraeus Bank A.E.
4 Amerikis Street
Athens 10564, Greece
Attention: Dimitri Voukas
Fax No: +30 210 333 5080

With a copy to:

Norton Rose LLP
3 More London Riverside
London SE1 2AQ
Attention: Thomas Vita
Fax No: +44 207 283 6500

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices or communications shall be deemed to be received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of internationally-recognized overnight courier, on the third business day after the date when sent and (c) in the case of facsimile transmission or electronic mail, upon confirmed receipt.

(d) This Agreement shall be binding upon and inure to the benefit of the Company and Piraeus and their respective heirs, successors and assigns, except that the Company shall not have the right to delegate its obligations hereunder or to assign its rights hereunder or any interest herein without the prior written consent of the holders of at least a majority in interest of the Registrable Shares, which shall include Piraeus as long as it owns any Registrable Shares.

(e) This Agreement and the Principal Agreement, as amended by the Amendment Agreement, (and any agreements described in the Principal Agreement) constitute the entire

agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof.

(f) The provisions of this Agreement and the Principal Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a provision contained in this Agreement and the Principal Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement and the Principal Agreement; but this Agreement and the Principal Agreement, shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

(g) In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

(h) The parties hereto acknowledge and agree that (i) each party and its counsel, if so represented, reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(i) This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, and without giving effect to choice of laws provisions that would lead to the application of any other law as the governing law hereof.

(j) Article, section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(k) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterparts.

(l) Other than any Registration Rights Agreements or provisions relating to registration rights that exist prior to the date of this Agreement, the Company represents that the rights granted to the holders of Registrable Shares hereunder do not in any way conflict with any other agreements to which the Company is a party or by which it is bound.

(m) From and after the date of this Agreement, upon the request of any of Piraeus or the Company, the Company and Piraeus, as applicable, shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

(o) Notwithstanding anything to the contrary contained herein, this Agreement shall not become effective unless and until the closing contemplated by the Principal Agreement, as amended by the Amendment Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

NEWLEAD HOLDINGS LTD.

By:________________________
Name: Michail Zolotas
Title: Attorney-in-fact

PIRAEUS BANK A.E.

By:________________________
Name: ~~H. Youngi~~ I. Dallas
Title: Authorised Signatories

BUSINESS AGREEMENT RELATING TO FIVE MILE AND ELK VALLEY PROPERTY

THIS AGREEMENT, made and entered into this 18th day of December, 2012, by and between Newlead Holdings Ltd, a Bermuda-registered company ("Newlead"), Cypress Camon Energy, LLC, a Delaware series limited liability company ("Cypress"), Cypress Camon Investment Management, LLC, a Texas limited liability company ("CCIM") and Dallas Groth, an individual residing in the State of Texas ("Groth"), signing on behalf of himself and the minority owners of Cypress, (CCIM, Groth and the minority owners together as "Owners").

WHEREAS, Cypress has acquired the right to purchase both title and mineral/excavation rights to a parcel of land in or near Breathitt County, Kentucky, which parcel is more fully described in Exhibit A (referred to as "Five Mile"), and a parcel of land in Campbell and Scott Counties, Tennessee, which parcel is more fully described in Exhibit B (referred to as "Elk Valley"), which parcels, including all improvements now or hereafter placed thereon, shall hereinafter be referred to collectively as the "Property"; and

WHEREAS, Cypress is obligated to remit payment of Eleven Million Dollars ($11,000,000) to the Seller of Five Mile by on or before January 29th, 2013 and is obligated to remit payment of Thirty Million Dollars ($30,000,000) to the Seller of Elk Valley on or before February 15th, 2013, and is obligated to remit payment of Twenty Five Million Dollars ($25,000,000) to the Seller of Elk Valley on or before February 15th, 2014; and

WHEREAS, Newlead, Cypress, CCIM, Groth and the Owners (hereinafter collectively referred to as "Parties") agree that to facilitate Cypress' obligations to remit payment to Sellers of the Property, Newlead shall purchase and hold the Property and shall purchase Cypress to manage excavation from the Property, and the Owners agree to sell Cypress to Newlead under the terms described below; and

WHEREAS, the parties, through this and subsequent Agreements, desire to provide for:

(a) acquisition of and holding of the Property, including all mineral rights,

(b) construction of improvements thereon,

(c) developing, managing coal deposits on the property and marketing the coal excavated from all or portions of the Property both before, during and after the completion of said improvements, and

(d) various other matters relating thereto.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable considerations, the parties hereto agree as follows:

1. Acquisition of the Property and Cypress. Cypress has executed purchase agreements Attached hereto as Exhibit A and Exhibit B by this reference made a part hereof is a legal description of the property to be acquired by the Parties. Cypress hereby agrees to assign these purchase agreements and all the rights described therein to Newlead. In addition, the Owners hereby agree to transfer all ownership in Cypress to Newlead in exchange for the promises made in this Agreement, and specifically in exchange for warrants for shares in Newlead worth $9,400,000.00 at market closing price on the date prior to the award of the warrants. The warrants for shares in Newlead shall be issued in the name of CCIM, unless otherwise designated by Groth. Current employees of Cypress will be offered employment agreements with Cypress once Newlead owns Cypress, including an employment agreement with Dallas Groth to remain as CEO of Cypress, which shall state at minimum that,

> "The management of the all of the operations of Cypress, will be borne by Dallas Groth as Chief Executive Officer of Cypress. The Parties further agree that Dallas Groth will be offered an employment contract for the position of Chief Executive Officer for an initial term of five (5) years, with an option to renew every year thereafter, on an annual basis, for an additional period of five (5) years, with the total potential term of employment for Dallas Groth being up to ten (10) years, except as may be expressly agreed to in writing by both of the Parties."

2. Extraction of Coal from the Property. It is the intention of the Parties that Cypress, under the ownership of Newlead, shall excavate coal from the Property. Newlead shall be responsible for all financial matters related to the mines, including provision of working capital and infrastructure improvements. Newlead expects to contribute at least Two Million Dollars at Five Mile and Three Million Five Hundred Thousand Dollars at Elk Valley for infrastructure improvement to the Property.

3. Bonus Agreement. After Newlead's purchase of both Five Mile and Elk Valley and Newlead's purchase of Cypress, Newlead agrees to pay CCIM a performance bonus of one dollar ($1) per metric ton of coal or other mineral that Cypress extracts from Five Mile and from Elk Valley.

4. Control and Management. The control and management of the Property and its development shall be vested in Newlead, with certain rights and responsibilities being contracted to Cypress under the management/extraction agreement.

5. Records and Accounts. Cypress will be responsible for meeting the same accounting standards that Newlead is obligated to keep. Current and complete records and accounts shall be kept of all transactions of Cypress regarding its extraction of coal from the Property. Such records and accounts shall be maintained on the cash basis in accordance with generally accepted principles of accounting applicable to the business conducted by the Parties and consistently applied. Copies of all financial statements and federal and state income tax returns of the coal operation from the Property shall be distributed to Newlead within one hundred twenty (120) days after the end of each calendar year. Newlead shall have the right to

inspect the records and accounts at all reasonable times, and no less than will be necessary to meet regulatory requirements for either Party.

6. Confidentiality. The parties agree this Agreement shall remain strictly confidential. The parties further agree that no part of this Agreement shall be disclosed to any third party except with the written consent of the non-disclosing party, at the advice of legal counsel, or as required by law. In addition, neither party (including affiliates of such party) will attempt, directly or indirectly, to contact the other party's transaction relationships, including but not exclusive of individuals, corporations, banks, lending institutions, or others on matters contained within this Agreement. Neither party may contact or negotiate with a confidential source or make use of any confidential information of the other party, except through such other party or with the express written consent of such other party as to each such contact and/or use, after having entered into a commission agreement with such other party. The parties or their affiliates shall not contact, deal with, or otherwise become involved in any transaction with any corporation, partnership, individual, any banks or lending institutions and so forth which have been introduced by the other party without the express written permission of the introducing party.

7. Notices. Any notice which may or is required to be given hereunder shall be deemed given when deposited, registered or certified, in the United States Mail, addressed to the Parties at the addressed set forth after their respective names below, or at such different addresses as to either Party as it shall have theretofore advised the other party in writing.

If to ______________:

____
____
____
____
Attention: ______________

If to Cypress:

25 Highland Park Village
Suite 100-761
Dallas, TX 75205
Attention: Dallas Groth, CEO

If to CCIM:

25 Highland Park Village
Suite 100-761
Dallas, TX 75205
Attention: Dallas Groth, Managing Member

If to Dallas Groth:

25 Highland Park Village
Suite 100-761
Dallas, TX 75205

8. Arbitration of Disputes. Any dispute or controversy or claim arising out of or relating in any manner to this agreement or the breach thereof shall be settled and determined exclusively by arbitration conducted in Charlotte, North Carolina, in accordance with the rules of the America Arbitration Association; such arbitration shall be in lieu of any other remedy or procedure whatsoever. The award rendered in such arbitration shall be binding and conclusive upon all persons having or claiming any interest whatsoever in the subject matter of this Agreement and shall be final and not subject to any form of appeal or review; judgment upon such award may be entered in any court having jurisdiction thereof.

9. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties shall be determined in accordance with the applicable provisions of the laws of the State of Delaware.

10. Binding Effect. This Agreement shall be binding upon the Parties and their permitted assigns, successors in interest and representatives.

11. Validity. In the event that any provisions of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

12. Agreement Termination. This Agreement shall remain in full force and effect indefinitely; provided, however, that this Agreement may be terminated by the unanimous action of the Parties, and further, that this Agreement shall terminate and have no further effect if the Parties fail to agree upon acceptable forms of agreement for the purchase of Cypress and the employment of Groth. This Agreement shall not be terminated by the bankruptcy or insolvency of any Party.

13. Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior written or oral agreements between them (or between the officers, owners or affiliates of the Parties, respecting the Property, including the Joint Venture Agreement executed November 15, 2012. There are no representations, agreements, arrangements or understandings, oral or written between the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

14. Amendment. This Agreement is subject to amendment only in writing with the unanimous written consent of the Parties, and such amendment shall be effective as of such date as may be determined by them.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the day and year first above written.

Newlead Holdings Ltd.:

By:____________________

Name: Michael S. Zolotas

Title: President & CEO

Cypress Camon Energy, LLC:

By:____________________

Name: DALLAS Groth

Title: CEO

Dallas Groth

For Himself____________________

Cypress Camon Investment Management, LLC:

By:____________________

Name: DALLAS Groth

Title: Managing Member

ASSET PURCHASE AGREEMENT

This is an Asset Purchase Agreement (this "*Agreement*"), dated as of June 13th, 2012, (the "*Effective Date*") between (i) Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company ("*Buyer*"), and (ii) Williams Industries, LLC, a Delaware limited liability company ("*Seller*").

RECITALS

A. Seller owns certain Assets (as defined below) with respect to the business of mining coal and activities directly or indirectly relating thereto.

B. Buyer desires to purchase the Assets and to assume the Assumed Liabilities (defined below) from Seller, and Seller desires to sell, convey, assign and transfer to the Assets and the Assumed Liabilities to Buyer, all in the manner and subject to the terms and conditions set forth in this Agreement.

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

ARTICLE 1 – DEFINITIONS

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

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

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

"Assignment of Leases" means an Assignment of Leases substantially in the form attached hereto as *Exhibit B*.

"Assumption of Liabilities" means an Assumption of Liabilities substantially in the form attached hereto as *Exhibit C*.

"Benefit Plan" means each "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA), each "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA), and each other employee benefit plan, fund, program, agreement or arrangement in each case, that is sponsored, maintained or contributed to or required to be contributed by Seller or any of its subsidiaries or by any trade or business, whether or not incorporated (an "*ERISA Affiliate*"), that together with Seller or any subsidiaries would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA, or to which Seller, individually or collectively, or any of their subsidiaries or any ERISA Affiliate is a party, for the benefit of any employee or former employee of the Business.

"Bill of Sale" means the Bill of Sale between Buyer and Seller, substantially in the form attached hereto as *Exhibit D*.

"Business" means (a) the coal mining and related operations, facilities and activities of Seller related to the Seller Permits, the Strong Brothers Permit and the Andy Tipple, and the related developed and undeveloped coal reserves owned or leased by Seller in Breathitt County, Kentucky, and (b) the Fivemile Permit and related developed and undeveloped coal reserves leased by Fivemile in Breathitt County, Kentucky.

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

"Buyer's Knowledge" means the actual knowledge of Cypress Camon Energy, LLC – Five Mile Series.

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

"Code" means the Internal Revenue Code of 1986, as amended.

"Deed(s)" means the Deed(s) substantially in the form attached hereto as *Exhibit E* conveying general or special warranty titles to the Owned Real Property consistent with the conveyance in to Seller.

"Employee Benefit Plan" means any bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation, fringe benefit, cafeteria, employment, consulting, severance or termination pay, hospitalization or other medical, life or other insurance, supplemental unemployment benefits, profit-sharing, pension or retirement plan, program, agreement or arrangement, any other "employee benefit pension plan," "employee welfare benefit plan," or a "multi-employer plan" (within the meaning of Sections 3(2), 3(1) and 3(37), respectively, of ERISA), or any other employee benefit plan, program, agreement or arrangement whatsoever, whether written or unwritten, for the benefit of any former employee or representative of a Person.

"Employees" means any and all employees of Seller and its Affiliates.

"Environmental Law" means any applicable federal, state or local Law, statute, rule, regulation or ordinance relating to the regulation, pollution, preservation or protection of human health, safety, the environment, or natural resources or to emissions, discharges, Releases or threatened Releases of pollutants, contaminants, Hazardous Materials or wastes into the environment (including ambient air, soil surface water, ground water, wetlands, land or subsurface strata), including, but not limited to, common law claims such as nuisance, negligence and trespass.

"Environmental Permit" means any permit, approval, certificate, registration, license or other authorization required under any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"GAAP" means generally accepted accounting principles, consistently applied.

"Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision.

"Hazardous Materials" means (a) petroleum or petroleum products, fractions, derivatives or additives, natural or synthetic gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and radon gas; (b) any substances defined as or included in the definition of "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "extremely hazardous substances,"

{J1621139.3}

"restricted hazardous wastes," "toxic substances," toxic chemicals or "toxic pollutants," "contaminants" or "pollutants" or words of similar import under any Environmental Law; (c) radioactive materials, substances and waste, and radiation; and (d) any other substance exposure to which is regulated under any Environmental Law.

"Indebtedness" of any Person means any obligations of such Person, whether or not contingent, (a) for borrowed money, (b) evidenced by notes, bonds, indentures or similar instruments, (c) for the deferred purchase price of goods and services, other than trade payables incurred in the ordinary course of business, (d) under capital leases, and (e) in the nature of guarantees of the obligations described in clauses (a) through (d) above of any other Person.

"Intellectual Property" means all domestic patents and patent rights, trademarks and trademark rights, service marks and service mark rights, service name and service name rights, brand names, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, designs, computer programs, business telephones, facsimile and e-mail addresses, websites and technology, and software (including all source codes) and related documentation, drawings, know-how, methods, processes, technology, engineering specifications, procedures, bills of material, trade secrets, all pending applications for and registrations of patents, trademarks, service marks and copyrights and any other intangible property used in or associated with the conduct of the Business and the ownership of the Assets (as defined below), including all of Seller's rights to any such property which is owned by and licensed from others and any goodwill associated with any of the above.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority and includes, without limitation, all Environmental Laws.

"Liabilities" means all Indebtedness, obligations, claims and other liabilities of a Person, whether absolute, accrued, contingent, fixed or otherwise or whether due or to become due.

"Liens" means any mortgage, pledge, assessment, security interest, lease, judgment lien, tax lien, mechanic's lien, material man's lien, other lien, adverse Claim, levy, charge, option, right of first refusal, charge, debenture, indenture, deed of trust, right-of-way, restriction, encroachment, license, lease, security agreement, or other encumbrance of any kind, and other restrictions or limitations on the use or ownership of real or personal property or irregularities in title thereto or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

"Material Adverse Effect" means (a) an adverse effect on the validity or enforceability of this Agreement or any of the Related Agreements in any material respect, (b) an adverse effect on the condition (financial or other), business, assets, results of operations, ability to conduct business or properties of Seller or Buyer (as applicable), or the Assets, taken as a whole, in any material respect, or (c) an impairment of the ability of Seller or Buyer (as applicable) to fulfill its obligations under this Agreement or any of the Related Agreements in any material respect.

"Order" means any writ, judgment, decree, injunction, or similar order of any Governmental Authority, in each such case whether preliminary or final.

"Permits" means the Five Mile Permit, the Strong Brothers Permit, and the Sellers Permits as set forth in Section 2.1(f).

"Permitted Lien" means any Lien (a) which is assumed or consented to by the Buyer herein (including, without limitation, Liens included in the Assumed Liabilities); (b) created by the Buyer; (c) constituting easements, rights-of-way, restrictions or minor defects or irregularities in title incurred in the ordinary course of the coal mining business and encumbrances consisting of zoning restrictions, easements, licenses or restrictions on the use of the Real Property (as defined below) or minor imperfections in title thereto; (d) imposed by any Governmental Authority for Taxes, assessments, or charges not yet due or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the Seller in accordance with GAAP; (e) that would not be charged to Seller based on the warranty given by Seller in a transfer by special warranty deed; and (f) constituting any extension, renewal or replacement of the foregoing.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, entity, trust, union, association or Governmental Authority.

"Proceeding" means any action, suit, proceeding, arbitration, investigation or audit, formal or informal, whether or not by any Governmental Authority.

"Related Agreements" means the (a) the Assignment of Contracts, (b) the Assignment of Leases, (c) the Assumption of Liabilities, (d) the Bill of Sale, (e) the Deeds, and (f) any other agreement, certificate or similar document to be executed by any party hereto in connection with this Agreement.

"Release" means any release, issuance, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment or into or out of any property, including the movement of Hazardous Materials through the air, soil, surface water, ground water or property other than as specifically authorized by and in compliance with all Environmental Laws and Environmental Permits.

"Seller's Knowledge" means the actual knowledge of Lloyd Williams.

"SMCRA" shall mean the Surface Mining Control and Reclamation Act, as amended.

"Taxes" means any and all taxes, fees, levies, duties, tariffs, import and other charges, imposed by any taxing authority, together with any related interest, penalties or other additions to tax, or additional amounts imposed by any taxing authority, and without limiting the generality of the foregoing, shall include net income alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, franchise, profits, license, transfer, recording, escheat, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profit, environmental, custom duty, or other tax, governmental fee or other like assessment or charge of any kind whatsoever.

"Tax Returns" means all federal, state, local, provincial and foreign returns, declarations, claims for refunds, forms, statements, reports, schedules, and information returns or statements, and any amendments thereof (including, without limitation, any related or supporting information or Schedule attached thereto) required to be filed with any Taxing authority in connection with any Tax or Taxes.

"WARN" means the Worker Training Adjustment and Renotification Act.

1.2 Other Defined Terms. In addition, the following terms shall have the meanings ascribed to them in the corresponding section of this Agreement:

{J1621139.3}

Definition	**Section**
Agreement	Preamble
Andy Tipple Leased Real Property	2.1(a)
Assets	2.1
Assumed Liabilities	2.3(a)
Buyer	Preamble
Buyer Indemnitees	10.2
Claiming Party	10.4(a)
Closing	3.1
Closing Date	3.1
Commitment Letter	5.6
Contracts	2.1(j)
Damages	10.2
Effective Date	Preamble
Excluded Assets	2.2
Excluded Liabilities	2.7
Fivemile	2.1(h)
Fivemile Leased Real Property	2.1(c)
Fivemile Permit	2.1(h)
Indemnifying Party	10.4(a)
Indemnitee Claim	10.4(a)
Leased Real Property	2.1(c)
OSM	8.1(a)
Owned Equipment	2.1(d)(i)
Owned Real Property	2.1(a)
Permits	2.1(h)
Purchase Price	3.3(a)
Real Property	2.1(c)
Related Person	6.1(a)
Seller	Preamble
Seller Indemnitees	11.3
Seller Permits	2.1(f)
Strong Brothers Leased Real Property	2.1(b)
Strong Brothers Permit	2.1(g)
Third Party Claim	10.4(b)

1.3 Rules of Interpretation.

(a) The singular includes the plural and the plural includes the singular.

(b) The word "or" is not exclusive.

(c) A reference to a Person includes its permitted successors and permitted assigns.

(d) The words "include," "includes" and "including" are not limiting.

(e) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.

(f) References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

(g) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(h) References to "days" shall mean calendar days, unless the term "*Business Days*" shall be used.

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

ARTICLE 2 – PURCHASE AND SALE OF THE ASSETS

2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions contained in this Agreement, Seller shall, or shall cause its Affiliate to, sell, assign, transfer and convey to Buyer, and Buyer shall purchase, acquire and accept from Seller or its Affiliate, all of Seller's or its Affiliate's right, title, and interest in and to the following assets (the "*Assets*"):

(a) the owned real property related to the Andy Tipple and identified on *Schedule 2.1(a)(i)* and all improvements located thereon and all other rights, privileges, easements and other appurtenances relating thereto (the "*Owned Real Property*") and the leased real property related to the Andy Tipple and identified on *Schedule 2.1(a)(ii)* and all improvements owned by Seller located thereon and all other rights, privileges, easements and other appurtenance relating thereto (the "*Andy Tipple Leased Real Property*");

(b) the leased real property related to the Strong Brothers Permit and identified on *Schedule 2.1(b)* and all improvements owned by Seller or its Affiliate located thereon and all other rights, privileges, easements and other appurtenance relating thereto (the "*Strong Brothers Leased Real Property*");

(c) the leased real property related to the Fivemile Permit and identified on *Schedule 2.1(c)*, subject to Section 11.14 of this Agreement, and all rights, privileges, easements and other appurtenance relating thereto (the "*Fivemile Leased Real Property,*" and together with the Andy Tipple Leased Real Property and the Strong Brothers Leased Real Property, the "*Leased Real Property*") (in turn, the Leased Real Property and Owned Real Property are sometimes collectively referred to as the "*Real Property*");

{J1621139.3}

(d) (i) all of Seller's or its Affiliate's owned equipment referenced on *Schedule 2.1(d)(i)*.

(ii) all of Seller's or its Affiliate's permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with or issued by any Governmental Authority, which have been issued or granted to or are owned, used or held by Seller (and all pending applications therefor) in connection with the Business (the "*Seller Permits*"), to the extent transfer is permitted by Law, and which are listed on *Schedule 2.1(d)(ii)*;

(e) the permit formerly owned by Terrance Strong d/b/a Strong Brothers Mining and listed on *Schedule 2.1(e)* (the "*Strong Brothers Permit*"), to the extent transfer is permitted by Law;

(f) the permit formerly owned by Fivemile Energy, LLC and/or Fivemile Energy, Inc. (collectively, "*Fivemile*") and listed on *Schedule 2.1(f)* (the "*Fivemile Permit*," and together with the Seller Permits and the Strong Brothers Permit, the "*Permits*"), to the extent transfer is permitted by Law;

(g) all Intellectual Property owned or licensed by Seller or titled in any Affiliate of Seller for use in the conduct of the Business;

(h) all rights and interests of Seller or its Affiliate in, to and under the contracts listed on *Schedule 2.1(h)* hereto (the "*Contracts*");

(i) all stockpiled coal inventory and pit inventory, wherever located, as of the Five Mile Closing;

(j) all parts and supplies inventory;

(k) all prepaid royalties that relate to the Leased Real Property and all prepaid amounts that relate to the Contracts; and

(l) all maps, reserve studies, engineering reports, and other records relating to the Assets.

The Assets will be delivered free and clear of all Liens other than Permitted Liens. The Assets will otherwise be transferred on an AS IS, WHERE IS basis and with all faults, subject to the representations and warranties made in Section 4 hereof.

2.2 Excluded Assets. Notwithstanding any provision of Section 2.1, Seller shall retain all of its right, title and interest in the following assets (collectively, the "*Excluded Assets*") and the definition of Assets shall not include any of the following:

(a) Any and all personal property and fixtures, including but not limited to all machinery and equipment, furniture, tools, computer hardware and systems, trucks and other motorized vehicles, parts, supplies and all other tangible personal property;

{J1621139.3}

(b) all performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayments made with respect thereto, or certificates of deposit or other sums or amounts or assets posted by Seller to secure any of the foregoing for reclamation or otherwise;

(c) all assets, if any, in Seller's executive or incentive compensation, bonus, deferred compensation, pension, profit sharing, savings, retirement, stock option, stock purchase, group life, health or accident insurance or other employee benefit plans, and all contracts and other agreements and documents relating to all such plans;

(d) all coal inventory where title has transferred to a third party;

(e) all cash and cash equivalents of Seller as of the Closing Date;

(f) any and all rights, Claims, credits, allowances, rebates, refunds, causes of action, or rights of set-off of the Seller or any Affiliate of the Seller, known or unknown, pending or threatened;

(g) any and all prepaid items, deposits, and retainers, excepting prepaid royalties;

(h) all insurance policies and any rights or Claims arising from such policies;

(i) all Tax refunds, rebates, overpayments and other rights (including, without limitation, rights to indemnification) and Claims of the Seller in respect of or relating to Tax or other liabilities not assumed by the Buyer or in respect of or relating to any other Excluded Assets;

(j) all books, records, files or other documentation and written materials relating to any Excluded Assets;

(k) the capital stock, corporate books and records of Seller; and

(l) all permits listed on _Schedule 2.2(l)_.

2.3 Assumed Liabilities.

(a) At the Closing, Buyer will assume only the following specifically listed Liabilities and obligations of Seller and no other Liabilities (the "*Assumed Liabilities*"):

(i) all Liabilities for and obligations of Seller relating to the Assets arising after the Closing Date as applicable for such Assets, including all Liabilities and obligations arising in connection with the Contracts, other than Liabilities and obligations arising from breaches thereof or otherwise prior to the Closing Date; provided that Buyer will be allocated real property and personal property taxes for the period of its ownership of the Assets in 2012;

(ii) all Liabilities related to the Permits for reclamation prescribed by Law, contract or otherwise; provided, however, that the Seller and its Affiliates shall retain the Liability for any fines and penalties related to the Permits arising out of notices of violation, notices of non-compliance or orders, in each case for actions occurring prior to the Closing Date or arising within thirty (30) days after Closing for conditions existing prior to the Closing Date.

(b) Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation. All such other liabilities and obligations shall be retained by and remain liabilities and obligations of Seller and Seller agrees to perform and discharge such liabilities according with their respective terms.

2.4 Non-Assignment of Assets. This Agreement shall not constitute an agreement to assign or transfer any assets of Seller, if an attempted transfer or assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (or with respect thereto), would constitute a breach thereof or in any way negatively affect the rights of Seller or Buyer, as the assignee or transferee of such asset, as the case may be, thereunder. If the Closing cannot occur without such authorization, consent, approval, license or permit for the transfer or assignment of any Purchased Asset of Seller at or before the Closing, and such consent is not obtained, at Buyer's election the consent may be obtained after Closing and Seller will cooperate with Buyer without further consideration (other than as provided in clause (b) of this Section 2.4) in any arrangement reasonably acceptable to Buyer and Seller, designed to both (a) provide Buyer with the benefits of any such asset, and (b) cause Buyer to bear all costs and obligations of or under any such asset arising after Closing. Any transfer or assignment to Buyer of any asset that shall require the consent, approval, authorization of, or granting of any license or permit by any third party for such assignment or transfer as aforesaid shall be made subject to such consent, approval, authorization, license or permit being obtained.

2.5 Amounts Held in Trust. Any amounts received by Buyer after the Closing with respect to any Excluded Asset shall be held by Buyer in trust for Seller until promptly paid to Seller. Likewise, any amounts received by Seller after the Closing with respect to any Purchased Asset shall be held by Seller in trust for Buyer until promptly paid to Buyer.

2.6 Transfer Taxes. Buyer shall be liable for all sales, use and other transfer Taxes, for all filing and recording fees, arising from or relating to the consummation of the transactions contemplated by this Agreement.

2.7 Excluded Liabilities. Buyer shall not assume or become liable for, and the Assumed Liabilities shall not include, any Liabilities of Seller or any Affiliate of Seller, except for those specifically assumed pursuant to Section 2.3 (the Liabilities of Seller and its Affiliates not assumed by Buyer or its Affiliates are referred to as "*Excluded Liabilities*"). Without limiting the generality of the preceding sentence, the Excluded Liabilities include:

(a) any Liability related to any accounts payable or any indebtedness of Seller or any Affiliate of Seller;

(b) any Liability with respect to any goods sold or any service provided by Seller or any Affiliate of Seller prior to the Closing Date, including any such Liability (i) pursuant to any express or implied representation, warranty, agreement, coal specification, undertaking or guarantee made by Seller or any Affiliate of Seller or alleged to have been made by Seller or any Affiliate of

{J1621139.3}

Seller, (ii) imposed or asserted to be imposed by operation of law or (iii) pursuant to any doctrine of product liability;

(c) any Liability or obligation with respect to any litigation arising from the operation of the Business prior to the Closing Date;

(d) any Liability that relates to any Employee or former Employee or to any employee or former employee of any of Seller's Affiliates (or any individual who applied for employment with Seller or any Affiliate of Seller);

(e) any Liability arising under or relating to any Employee Benefit Plan of Seller;

(f) any Liabilities of Seller, its Affiliates or its predecessors in interest, whether known or unknown, as a result of participation in any collective bargaining agreement, obligations under the Coal Industry Retiree Health Benefit Act of 1992, and any and all other prior labor, employment, Employee Benefit Plans and related Liabilities of Seller;

(g) any Liability of Seller or any Affiliates of Seller for Taxes, other than real property and personal property Taxes to be paid by Buyer pursuant to Section 2.3(a)(i) and the transfer taxes to be paid by Buyer pursuant to Section 2.6; and

(h) any Liability of Seller or any Affiliates of Seller for the unpaid Taxes of any Person under Treas. Reg. § 1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise.

(i) any Liability for reclamation of any areas not covered by the Permits, and any fines and penalties (whether or not covered by the Permits) arising out of notices of violation, notices of non-compliance or orders, in each case for actions occurring prior to the Closing Date or arising after Closing for conditions existing prior to the Closing Date.

ARTICLE 3 – PURCHASE PRICE; CLOSING AND DELIVERIES

3.1 Closing. The parties shall hold a closing for the purchase and sale of the Assets as soon as reasonably possible after satisfaction of the conditions to closing in Article 7, but in no event later than thirty (30) days following the Effective Date. The date on which the Closing occurs is referred to in this Agreement as the *"Closing Date."*

3.2 Seller's Deliveries. The sale, transfer, assignment and delivery by Seller of the Strong Brothers Assets, Strong Brothers Permits, Andy Terminal Assets, Andy Terminal Permits, Five Mile Permits and all other Assets purchased hereunder to Buyer, as herein provided, shall be effected on the Closing Date by Seller's execution and delivery of the Related Agreements to which it is a party, and other instruments of transfer and conveyance reasonably satisfactory in form and substance to counsel for Buyer and Seller, which shall include, without limitation, and in each case subject to Buyer's compliance with Section 8.2(c) of this Agreement, all documents of title and instruments of conveyance necessary to transfer record and/or beneficial ownership to Buyer of Five Mile Permits, and any other property constituting the Five Mile Permits owned by Seller or its Affiliates which

{J1621139.3}

requires execution, endorsement and/or delivery of a document in order to vest record or beneficial ownership thereof in Buyer.

3.3 Buyer's Deliveries. At the Closing:

(a) Buyer shall pay to Seller at the Closing, by wire transfer to an account designated by Seller, an amount equal to Eleven Million Nine Hundred Thousand Dollars ($11,900,000.00) (the "*Purchase Price*"), reduced by usual, reasonable and ordinary expense pro-rations; and

(b) Buyer shall execute and deliver to Seller the Related Agreements to which it is a party and such other agreements as are reasonably satisfactory in form and substance to counsel for Buyer and Seller.

3.4 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets as set forth in *Schedule 3.4* hereto subject to Section 11.14 of this Agreement. The parties hereto shall report the transactions contemplated herein for all tax purposes in accordance with such allocation and, in any proceeding related to the determination of any Tax, neither party hereto shall contend or represent that such allocation is not a correct allocation.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller, subject to Section 11.14 of this Agreement, makes the representations and warranties set forth below which are true, correct and complete on the date hereof and shall be true, correct and complete in all material respects to the best of Seller's Knowledge as of the Closing:

4.1 Organization. Seller is duly organized and validly existing under the Laws of its state of organization, and is authorized to do business in every jurisdiction in which the failure to be so qualified could result in a Material Adverse Effect. Seller has all requisite corporate or limited liability company power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

4.2 Authorization and Validity. Seller has all requisite corporate or limited liability company power and authority to enter into this Agreement and the Related Agreements to which it is a party, subject to the receipt of the consents, waivers, authorizations and approvals set forth on *Schedule 4.2*. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by all necessary corporate or limited liability company action by Seller. This Agreement and the Related Agreements to which Seller is a party have been, or will be, duly executed by Seller and constitute its valid and binding obligation, enforceable against it in accordance with their terms.

4.3 No Conflict or Violation. Subject to the receipt of the consents, waivers, authorizations and approvals set forth on *Schedule 4.3*, the execution, delivery and performance by Seller of this Agreement and the Related Agreements to which it is a party (a) do not and will not violate or conflict with any provision of the organizational or governing documents, or bylaws of Seller, (b) do not and will not violate any provision of any Law or any Order applicable to Seller, (c) do not and will not

{J1621139.3}

violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Seller is a party or by which it is bound or to which any of Seller's properties or assets are subject, except for any such violation, conflict, breach or default which would not have a Material Adverse Effect, (d) contravene, conflict with, or violate (with or without notice or lapse of time, or both), any terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permits, or (e) result in the imposition or creation of any Lien upon or with respect to any of the Assets.

4.4 Consents and Approvals. *Schedule 4.4* sets forth a true and complete list of each material consent, waiver, authorization or approval of any Governmental Authority or of any other Person that is required in connection with the execution, delivery and performance of this Agreement.

4.5 Compliance with Law. Except as set forth on *Schedule 4.5*, Seller is in compliance with all Laws and has not received written notice of any violation of any Law, nor is Seller in default with respect to any Order, applicable to the Assets, other than violations or defaults the consequences of which would not have a Material Adverse Effect. No event has occurred, nor does any circumstance exist, that (with or without notice or lapse of time) (a) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Law or Order, or (b) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

4.6 Litigation. Except as set forth on *Schedule 4.6*, there are no Claims, actions, suits, Proceedings or investigations related to the Assets pending or, to Seller's Knowledge, threatened, before any federal or state court or Governmental Authority brought by or against Seller that could reasonably be expected to have a Material Adverse Effect.

4.7 Title and Ownership. At the Closing, Seller will have the right to transfer the Assets to Buyer free and clear of all Liens, other than Permitted Liens.

4.8 Contracts. Other than as set forth on *Schedule 4.8*, neither Seller nor, to Seller's Knowledge, any other party to any of the Contracts has threatened or commenced any action against any of the parties to any of the Contracts or given or received any written notice of any material default or violation under any Contract that was not withdrawn or dismissed. Each of the Contracts is, or will be at the Closing, valid, binding and in full force and effect, except as otherwise set forth on *Schedule 4.8*.

4.9 Permits. *Schedule 2.1(d)(ii)*, *Schedule 2.1(e)* and *Schedule 2.1(f)* sets forth a complete and correct list of all operational permits for the Assets, whether for coal mining, reclamation, or other operational purposes, currently held by Seller in connection with the Business. The Permits collectively constitute all of the permits legally capable of being transferred and are necessary to allow Seller to lawfully conduct and operate, own and use the Assets as currently used in the Business. There will not be a Material Adverse Effect on or with respect to such Permits as a result of the consummation of any of the transactions contemplated in this Agreement or in the Related Agreements. Each Permit is valid and in full force and effect. Except as set forth in *Schedule 4.9*:

(a) Seller is, and at all times has been, in material compliance with all of the terms and requirements of each Permit;

(b) No event has occurred, nor does any circumstance exist, that may (with or without notice or lapse of time) (i) constitute or could result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Permit or (ii) could result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Permit;

(c) No Seller has received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Permit, or (ii) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any such Permits; and

(d) All applications required to have been filed for the renewal of the Permits have been duly filed on a timely basis with the appropriate Governmental Authority, and all other filings required to have been made with respect to such Permits have been duly made on a timely basis with the appropriate Governmental Authority.

4.10 Labor Matters. Except as may be set forth on *Schedule 4.10*, Seller represents and warrants that:

(a) No Employee is currently represented by a labor union or other collective labor organization or association;

(b) There are no collective bargaining agreements or memoranda of understanding by which Seller is bound or applicable to any Employees;

(c) To the Knowledge of Seller, there is no union or independent organizational activity among any Employees underway;

(d) No liability under Title IV of ERISA has been or is reasonably expected to be incurred by Seller or Affiliate. The Pension Benefit Guaranty Corporation has not notified Seller or Affiliate regarding the institution of proceedings to terminate any Employee Benefit Plan that is subject to Title IV of ERISA, nor, to the Knowledge of Seller, could any such notification reasonably be expected. All contributions required to be made with respect to any Employee Benefit Plan pursuant to Section 412 of the Code and Section 302 of ERISA or any collective bargaining agreement have been made on or before their due dates (including any extensions thereof). No Employee Benefit Plan has any accumulated or waived funding deficiencies within the meaning of Section 412 of the Code or 302 of ERISA, nor have any extensions of any amortization period been applied for with respect thereto. No Employee Benefit Plan is a "multiemployer plan" as such term is defined in Section 3(37) of ERISA;

(e) There is no pending litigation relating to the employment, termination of employment, compensation or employee benefits of any Employee, nor, to the Knowledge of Seller, is any such litigation threatened;

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(f) The execution and delivery of, and performance of the transactions contemplated in, this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Employee Benefit Plan, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee; and

(g) (i) Seller is in compliance in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, occupational safety and health and wages and hours; (ii) there is no unfair labor practice complaint or charge relating to the Business pending or, to the Knowledge of Seller, threatened before the National Labor Relations Board; and (iii) there is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Seller, threatened against or affecting the Business, and there has been no such job action during the past three years. The Business is in compliance with WARN and no Seller has any liability under WARN.

4.11 Real Property.

(a) *Schedule 2.1(a)(i)*, *Schedule 2.1(a)(ii)*, *Schedule 2.1(b)* and *Schedule 2.1(c)*, subject to Section 11.14, as of Closing shall accurately and completely depict the Real Property in all material respects.

(b) Seller has good and marketable fee simple title to each surface parcel of the Owned Real Property, free and clear of any Liens, except for Permitted Liens. Seller is in possession of the Real Property through a valid and effective deed or lease. Seller has rights of ingress and egress with respect to the Real Property and the improvements conveyed by such Seller that are adequate for the use and operation of such Real Property and improvements in a manner that is consistent with the current use and operation of such Real Property. To the Knowledge of Seller, none of the Real Property or the improvements conveyed to Buyer, or the use thereof, contravenes or violates any building, zoning, administrative, occupational safety and health or other applicable Law in any material respect.

(c) Seller has obtained all material easements and rights of way required to use and operate the Real Property as a coal mining operation and all such easements and rights of way are included in the Assets.

(d) Except as set forth on *Schedule 4.12(d)*, Seller has not received notice of, and has no actual Knowledge of, any material Proceedings pending or, to the Knowledge of Seller, threatened regarding the ownership, use or possession of the Real Property, including subsidence claims, condemnation, expropriation or similar Claims.

(e) Except as set forth on *Schedule 4.12(e)*, Seller is not a party to any lease, assignment or similar arrangement under which Seller is a lessor or assignor with respect to any of the Real Property, or under which any portion of the Real Property is made available for use by any third party.

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(f) Seller has made available to Buyer, or will make available to Buyer prior to the Closing, true and complete copies of all deeds, leases, mortgages, deeds of trust, certificates of occupancy, title insurance policies, title reports, surveys and similar documents, and all amendments thereof, with respect to the Real Property, in Seller's possession. All leases for mineral rights to the Real Property as are identified on *Schedules 2.1(b) and 2.1(c)* are or as of Closing shall be enforceable in accordance with the terms of each such lease. To the knowledge of Seller, all other contracts, agreements and writings referring or relating to the Real Property are enforceable in accordance with the terms of each applicable instrument.

(g) All facilities owned, leased or subleased are supplied with utilities and other services necessary for the operation of said facilities.

4.12 Environmental Matters. Except as set forth on *Schedule 4.13*:

(a) Seller is in compliance in all material respects with all Environmental Laws;

(b) During the prior five (5) years, Seller has not received, nor does it expect, any communications, whether from a Governmental Authority, citizens group, Employee or otherwise, that allege that the Business or its properties are not in compliance with any Environmental Law, or any actual or threatened obligation to bear the cost of any environmental, health or safety Liabilities, except for such communications that have been resolved in all material respects.

(c) To the Knowledge of Seller, no material Release has occurred on or beneath the Real Property, except for inventories of Hazardous Materials to be used, and wastes generated therefrom, in the ordinary course of Business of Seller (which inventories and wastes, if any, were and are stored or disposed of in accordance with applicable Environmental Laws) and except for any such Release which would not result in a Material Adverse Effect.

(d) There are no pending or, to the Knowledge of Seller, threatened claims, Liens, or other restrictions of any nature, resulting from any environmental, health, and safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Assets.

(e) There are no Hazardous Materials present on or in the environment at any of the Assets, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of such Assets. Neither Seller, nor any other Person for whose conduct Seller is or may be held responsible, or to any other Person, has permitted or conducted, or is aware of, any hazardous activity conducted with respect to any of the Assets involving Hazardous Materials or the Release thereof, except such activities as are and were in full compliance with all applicable Environmental Laws.

(f) Seller has delivered to Buyer, or will deliver to Buyer prior to the Closing, true and complete copies and results of all reports, studies, analyses, tests or monitoring possessed or initiated by or on behalf of Seller pertaining to Hazardous Materials or Hazardous Activities in, or under, any Asset, or concerning compliance by Seller, or any other Person for whose conduct Seller is or may be held responsible, with Environmental Laws.

4.13 Assets. The buildings, plants, facilities, structures and equipment included in the Assets are suitable for the purposes for which they presently are used, and are sufficient for the continued conduct of each Seller's business after the Closing in substantially the same manner as conducted prior to the Closing.

4.14 Taxes. Except as may be set forth on *Schedule 4.15*:

(a) None of the Assets are subject to any Liens for the failure to file or pay any Taxes. There are no Proceedings, investigations or claims now pending or, to the knowledge of Seller, proposed against Seller, nor are there any matters under discussion with the IRS or any other Governmental Authority, relating to any Taxes or assessments, or any claims or deficiencies with respect thereto.

(b) No Seller is a United States real property holding corporation within the meaning of section 897(c)(2) of the IRC during the applicable period specified in section 897(c)(1)(A)(ii) of the Code, and Buyer is not required to withhold tax on the purchase of the Assets by reason of section 1445 of the IRC or any other Law. No Seller is a "foreign person" within the meaning of section 1445 of the Code.

4.15 Disclaimer of Other Representations and Warranties. Except as expressly set forth in this Article 4, Seller makes no representation or warranty, express or implied, at law or in equity, in respect of any of its assets (including, without limitation, the Assets), liabilities or operations, including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in this Article 4, Buyer is purchasing the Assets on an "as-is, where-is" basis. Without limited the generality of the foregoing, Seller makes no representation or warranty regarding any assets other than the Assets and none shall be implied at law or in equity.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF BUYER

In order to induce Seller to enter into this Agreement, Buyer makes the representations and warranties set forth below, which are true, correct and complete in all material respects on the date hereof and shall be true, correct and complete in all material respects as of the Closing:

5.1 Organization. Buyer is duly organized and validly existing under the Laws of the state of Delaware, and is authorized to do business in every jurisdiction in which the failure to be so qualified could result in a Material Adverse Effect. Buyer has all requisite limited liability company power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

5.2 Authorization and Validity. Buyer has all requisite limited liability company power and authority to enter into this Agreement and the Related Agreements to which it is a party. The execution and delivery of this Agreement and the Related Agreements to which it is a party and the performance of the obligations hereunder and thereunder have been duly authorized by all necessary limited liability company action by Buyer. This Agreement and the Related Agreements to which

Buyer is a party have been, or will be, duly executed by Buyer and constitute its valid and binding obligation, enforceable against it in accordance with their terms.

5.3 Consents and Approvals. Except as disclosed on *Schedule 5.3*, no consent, approval or action of, filing with or notice to, any Governmental Authority or any other Person, on the part of Buyer is required in connection with the execution, delivery and performance of this Agreement or any of the Related Agreements to which Buyer is a party or the consummation of the transactions contemplated hereby or thereby.

5.4 No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and the Related Agreements to which it is a party (a) do not and will not violate or conflict with any provision of the certificate of formation, or limited liability company agreement of Buyer, (b) to Buyer's Knowledge after due inquiry, do not and will not violate any provision of any Law or any Order applicable to Buyer, and (c) do not and will not violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Buyer is a party or by which it is bound or to which any of Buyer's properties or assets are subject, except for any such violation, conflict, breach or default which would not reasonably be expected to have a Material Adverse Effect.

5.5 Permitting. Buyer has not been subject to any bond forfeiture, permit suspension or revocation or similar effort or Proceeding instituted by any Governmental Authority.

ARTICLE 6 – REPRESENTATIONS AND WARRANTIES

6.1 Warranties Exclusive.

(a) Buyer acknowledges that the representations and warranties contained in Article 4 are the only representations or warranties given by Seller and that all other express or implied (including but not limited to merchantability or fitness) warranties are disclaimed. Buyer acknowledges that Seller and Seller's Affiliates and their respective Related Persons have made no representation or warranty concerning any future revenues, costs, expenditures, cash flow, results of operations, financial condition or prospects that may result from the ownership, use or sale of the Assets or the assumption of the Assumed Liabilities. In addition, Buyer acknowledges that the Real Property has been held for mining or mining related purposes. Neither Seller nor any Related Person warrants or represents subjacent or lateral support of the surface or subsurface of the Real Property, nor does Seller or any Related Person warrant or represent that the Real Property is safe, habitable, or otherwise suitable for mining or for any other purpose. "*Related Person*" means, with respect to a specific Person, any officer, director, employee, agent, shareholder, representative, successor or assign of such Person.

6.2 Survival of Representations and Warranties. Except for the representations and warranties in Sections 4.7 and 4.12, which shall survive without limit, and Section 4.15, Taxes, which shall survive for a period equal to the applicable statute of limitations, the representations and warranties of Seller set forth in this Agreement or any Related Agreement shall survive the Closing for a period of eighteen (18) months, and shall thereafter (together with any obligation of indemnification related thereto) be of no further force or effect whatsoever. Any proceeding by Buyer against Seller related to any such representations or warranties must be instituted within the foregoing unlimited, statutory or eighteen (18) month periods, as applicable or shall be thereafter waived and barred.

ARTICLE 7 – CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

7.1 Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Seller in its sole discretion:

(a) Representations, Warranties and Obligations of Buyer. All representations and warranties made by Buyer in Article 5 taken as a whole, shall be true and correct in all material respects on the date of this Agreement and on and as of the Closing Date (except to the extent that any such representation and warranty is made as of a specified date, in which case such representation and warranty shall continue to be made as of such specified date), and the covenants and agreements of Buyer to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Seller shall have received a certificate, dated the Closing Date and signed by an officer of Buyer, to that effect. Neither the representations and warranties of Buyer, nor the indemnification obligations of Buyer, shall be affected, qualified, modified or deemed waived by reason of the fact that Seller should have known that any representation or warranty is or might be inaccurate in any respect.

7.2 Conditions Precedent to Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations, Warranties and Obligations of Seller. All representations and warranties made by Seller in Article 4 shall be true and correct in all material respects on the date of this Agreement and on and as of the Closing Date (except to the extent that any such representation and warranty is made as of a specified date, in which case such representation and warranty shall continue to be made as of such specified date), and the covenants and agreements of Seller to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Buyer shall have received a certificate, dated the Closing Date and signed by an officer of Seller, to that effect. Neither the representations and warranties of Seller, nor the indemnification obligations of Seller, shall be affected, qualified, modified or deemed waived by reason of the fact that Buyer should have known that any representation or warranty is or might be inaccurate in any respect.

(b) No Changes. Between the date hereof and the Closing Date, there shall have been (i) no Material Adverse Effect in the Assets; and (ii) no material damage or loss to any of the Assets by fire, flood, casualty, Act of God, act of Governmental Authority, act of public enemy or other cause, regardless of insurance coverage for such damage or loss.

(c) Business. All the property rights, Deeds, leases, consents and Permits necessary for Buyer to acquire the Assets and operate them immediately after the Closing (i) shall have been obtained or be assignable to Buyer at the Closing without consent (except as provided above) and without material change and (ii) be in full force and effect.

(d) Payments. Seller shall have provided to Buyer evidence satisfactory to Buyer that all outstanding civil penalties or federal reclamation Taxes associated with the Assets, including all interest and penalties relating thereto, have been paid or that arrangements satisfactory to Buyer have been made for their payment.

7.3 Conditions to each Party's Obligations. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver on or before the Closing of the following conditions:

(a) Injunctions. There shall not be outstanding any Order prohibiting the consummation of the transactions contemplated by this Agreement and no action shall have been commenced which could reasonably be expected to prohibit the consummation of the transactions contemplated hereby in Buyer's discretion.

(b) No Change in Law. There shall not have been any action taken or any statute enacted by any Governmental Authority which in any material respect would render the parties unable to consummate the transactions contemplated hereby or make the transactions contemplated hereby illegal or prohibit the consummation of the transactions contemplated hereby.

(c) Financing. Buyer shall have received financing from a lender of Buyer's choosing in an amount sufficient to fund the Purchase Price.

(d) Schedules and Exhibits. The schedules and exhibits referenced in this Agreement shall have been completed to the satisfaction of Buyer and Seller in their sole and absolute discretion.

ARTICLE 8 – COVENANTS

8.1 Covenants of Seller. Seller covenants as follows:

(a) Permit Blocking. In the event that, prior to the Closing, Seller or any Affiliates of Seller, or any Person "owned or controlled" by any Seller or any Affiliates, or to the Knowledge of Seller any other Person retained by Seller, or any of them, as a contract miner or the like, is notified by the Federal Office of Surface Mining ("*OSM*") or the agency of any state administering the SMCRA (or any comparable state Law) that it is ineligible to receive additional surface mining permits, i.e., "permit blocked," Seller shall use its commercially reasonable efforts to eliminate such designation. As used in this Section 8.1(a), "owned or controlled" shall be defined as set forth in 30 C.F.R. Section 773.5 (1991).

(b) Access to Properties and Records; Confidentiality. Seller shall afford to Buyer, and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours throughout the period before the Closing (or the earlier termination of this Agreement pursuant to Article 10) to all Owned Real Property, and books and records of Seller relating to the Assets and the Assumed Liabilities. Seller shall also furnish Buyer and its representatives with copies of all

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Permits to be assumed by Buyer hereunder, and other existing documents and data to the extent such items are in its possession and relate to the Assets, all as Buyer may reasonably request. Upon reasonable prior notice, Seller shall also afford Buyer reasonable access, taking into account Seller's resources and other commitments, during normal business hours, to all Assets throughout the period before the Closing. Seller shall assist Buyer in obtaining all necessary land owner consents to permit Buyer and its representatives to conduct such drilling and testing of coal reserves located on the Owned Property, as Buyer deems reasonably necessary. In conducting any review or inspection of the Assets, Buyer shall conduct itself in a manner to minimize damage to the Assets and such properties. All information provided to Buyer or its agents or representatives by or on behalf of Seller or its agents or representatives (whether pursuant to this Section or otherwise) will be governed and protected by Section 8.2(f).

(c) No Negotiation. Until such time, if any, as this Agreement is terminated pursuant to Article 9, the Seller shall not, nor shall Seller permit any of its respective Affiliates or representatives to, (a) directly or indirectly entertain, solicit, initiate, accept or encourage any inquiries, offers or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyer and its Affiliates) relating to any transaction involving the sale or lease of any of the Assets.

(d) Conduct of Operations.

(i) From the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller will not take any action or knowingly permit to be done anything that would be or represent a misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement on the part of Seller under this Agreement, and Seller shall cause the deliveries for which it is responsible at the Closing to be duly and timely made.

(ii) Seller covenants and agrees that from the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller shall:

(a) operate the Business in the ordinary course of business and take no action that would impair the going concern value of Seller's businesses;

(b) not modify, terminate or waive any right under any leases for the Leased Real Property or any material contracts that are part of the Assets or enter into any contract that cannot be terminated upon ninety days written notice by Buyer without payment or penalty;

(c) not allow any of the Assets to be subject to any Lien other than Permitted Liens, or sell, trade or otherwise dispose of any Assets; and

(d) maintain and use the Assets in material compliance with all Laws, Permits and Orders applicable to Seller;

(e) maintain its corporate existence and good standing; and

(f) not enter into any contract to do anything inconsistent with the foregoing obligations.

(iii) From the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller agrees to promptly notify Buyer in writing if it becomes aware of any fact or condition that causes or constitutes a material breach by Seller of any of its representations or warranties as of the date of this Agreement, or if Seller becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute such a breach by Seller had its representations and warranties been made as of the time of the occurrence or discovery of such fact or condition. Should any such fact or condition require any change in the Schedules if the Schedules were dated the date of the occurrence or discovery of any such fact or condition, Seller will promptly deliver to Buyer a supplement to the Schedules specifying such change. During the same period, Seller agrees to promptly notify Buyer of the occurrence of any breach of any covenant of Seller in this Agreement or of the occurrence of any event that may make the satisfaction of the conditions in Section 7.2 impossible or unlikely. No disclosure by Seller pursuant to this Section 8.1(d)(iii), nor any supplement of the Schedules by Seller as contemplated above, however, shall be deemed to amend or supplement the Schedules for purposes of the conditions to Closing provided in Section 7.2, to prevent or cure any misrepresentation or breach of a warranty or covenant, or to otherwise amend or supplement any of the conditions to Closing provided in Section 7.2.

8.2 Covenants of Buyer. Buyer covenants as follows:

(a) Access to Books and Records. Buyer agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information that are part of the Assets according to its normal document retention policies. In addition, from and after the Closing, Buyer agrees that it will, at Seller's sole cost, provide reasonable access to Seller and its attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Assets or the Assumed Liabilities necessary to properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, Tax audit, Tax protest, suit, proceeding or answer, provided such access does not compromise the confidential nature of Buyer's business records. Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Assets or the Assumed Liabilities.

(b) Notification by Buyer of Certain Matters. Buyer agrees to notify Seller in writing within a reasonable time after Buyer's or its authorized representatives' discovery of any information prior to the Closing Date relating to Seller or the operations by Seller (including the financial condition, assets and properties) of the Business which constitutes (or would constitute) or indicates (or would indicate) a breach of any representation, warranty or covenant of Seller contained herein.

(c) Permit Matters. Buyer shall prepare, and provide to Seller no later than three (3) Business Days prior to the Closing Date, proposed final drafts of all such documents and information as are or will be necessary to obtain, and thereafter shall diligently pursue (i) to the extent transfer is permitted under applicable Law, the transfer to Buyer of any Permits that were not transferred to Buyer on or prior to the Closing and (ii) the obtaining of any necessary replacements of any Permits (as used in this subsection (c), such documents and information are referred to collectively as the "*Permit Transfer Documents and Information*"). At the Closing, Buyer shall file the Permit Transfer Documents and Information. Seller shall cooperate with Buyer in all commercially reasonable ways to

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file and prosecute such applications, at the sole cost and expense of Buyer. To the extent allowed by and in accordance with applicable Law, Seller hereby grants to Buyer the right, after the Closing, to conduct operations under any of the Permits until such time as the transfer or replacement, if applicable, of the Permits to Buyer is complete, but in no event for longer than One Hundred Eighty (180) days after the Closing, subject to extension with the consent of Seller, such extension not to be unreasonably withheld. Buyer shall (A) comply with all conditions and requirements of, or pertaining to, any such Permits that Buyer operates under after the Closing, and (B) indemnify Seller from and against any and all losses incurred or suffered by Seller as a result or consequence of this arrangement regarding the use of such Permits by Buyer, other than and to the extent that any such losses are incurred or suffered by Seller as a direct result of Seller's conduct or inaction prior to the Closing.

(d) Transfer of Permits to Buyer. At the Closing, Buyer shall provide Seller with evidence satisfactory to Seller, in Seller's sole discretion, that Buyer has (i) posted substitute bonds for the Permits in the amount set forth on *Schedule 8.2(e)* hereto, and (ii) filed or is prepared to file within five (5) Business Days applications with all applicable Governmental Authorities for the transfer of the Permits. Buyer shall cause the existing bonds (and all security with respect thereto referenced on *Schedule 8.2(d)*) obtained by Seller or its Affiliates with respect to the Permits to be terminated, released, and returned to Seller no later than Sixty (60) days after the Closing Date, and shall take all such actions and execute all such documents as may be necessary to effect such termination, release, and return, provided that Buyer shall not be responsible for delays by Governmental Authorities outside its control.

(e) Replacement of Guarantees. Buyer shall replace and cause Seller and its Affiliates and Related Persons to be discharged from, effective as of the Closing Date, all corporate and/or personal guarantees and indemnities related to the Assets issued by Seller or by any of Seller's Affiliates or Related Persons on behalf of Seller set forth in *Schedule 8.2(e)*. Without limitation of the preceding sentence, Buyer shall indemnify and hold harmless Seller, its Affiliates, and Seller's and its Affiliates' Related Persons from and against any and all Liabilities and Claims related to any draw made by any beneficiary of any such guaranty or indemnity and any Proceeding related to or arising out of any such guaranty or indemnity.

(f) Confidentiality. Buyer shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents (collectively, "*Representatives*") to hold, in confidence any and all information, whether written or oral, concerning the Business, the Assets and the transactions contemplated hereby, except to the extent that Buyer can show that such information (a) is generally available to and known by the public through no fault of Buyer, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Buyer, any of its Affiliates or their respective Representatives prior to the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Buyer or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Buyer shall promptly notify Seller in writing and shall disclose only that portion of such information which Buyer is advised by its counsel in writing is legally required to be disclosed, provided that Buyer shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Effective upon, and only upon, the Closing, the obligations set forth in this Section 8.2(f) shall terminate with respect to information relating solely to the Assets.

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(g) Non-Solicitation of Employees. Buyer recognizes and agrees that Seller and its Affiliates have invested substantial time and effort in attracting and retaining their Employees. Accordingly, for a period of eighteen (18) months from the Effective Date (*"Non-Solicitation Period"*), neither Buyer nor any of its Affiliates shall directly or indirectly induce or solicit any of Seller's Employees to leave his/her employment with Seller or any of its Affiliates nor will Buyer employ or offer employment to any of Seller's Employees during the Non-Solicitation Period.

8.3 Covenants of the Parties.

(a) Consents. The parties shall promptly apply for and diligently prosecute all applications for, and shall use commercially reasonable efforts promptly to obtain, such consents, authorizations and approvals from such Governmental Authorities and third parties as shall be necessary or appropriate to permit the consummation of the transactions contemplated by this Agreement, and shall use commercially reasonable efforts to bring about the satisfaction as soon as practicable of all the conditions necessary to effect the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the parties hereto agree that as a condition to obtaining the consent of any third party to any coal supply contract or any other Contract to permit the consummation of the transactions contemplated hereby, no party hereto shall have any obligation to, unless such obligation is contained in the underlying agreement, (i) pay any remuneration to third parties in exchange for such party's consent or approval; (ii) file any lawsuit or take other legal action as against such third party with respect to any thereof; or (iii) make any amendment thereof or waive any rights thereunder if as a result of such amendment or waiver such coal supply contract or any other Contract would contain terms and conditions that are less favorable in any material respect than the terms and conditions of such coal supply contract or other Contract as in existence on the Closing Date. Notwithstanding the foregoing, if any consent is not or cannot be obtained, or if an attempted assignment or consent for which such consent is required would be ineffective or would affect Buyer's rights so that it would not receive all of the benefits for which consent is required, each party to this Agreement will use its respective commercially reasonable efforts to provide Buyer with the benefits and relieve Seller of the burdens of the contract for which consent is required.

(b) Further Assurances. Each of the parties shall, at all times, and from time to time, either before or after the Closing Date, upon the request of the appropriate party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be required to complete the transactions contemplated in this Agreement or in the Related Agreements. After the Closing Date each party shall, and shall use its reasonable best efforts to assure that any necessary third party shall, execute such documents and do such other acts and things as any other party may reasonably require for the purpose of giving to that other party the full benefit of all the provisions of this Agreement and the Related Agreements to which it is a party or an intended beneficiary, and as may be reasonably required to complete the transactions contemplated in this Agreement or in the Related Agreements.

8.4 Transition. Seller shall cooperate with Buyer and shall provide commercially reasonable assistance in effecting transfers of vendor accounts and services at the time of the Closing so as to avoid interruption or temporary cessation of operations as a result of change of ownership.

ARTICLE 9 – TERMINATION

9.1 Termination. This Agreement may be terminated:

(a) By Seller if the Closing has not occurred on or before June 30, 2012;

(b) By mutual consent of Buyer and Seller prior to Closing;

(c) By either Seller or Buyer anytime after the 90^{th} day from the date of this Agreement, or such later date to which the Closing has been extended pursuant to the terms hereof, if the Closing has not occurred by such date; provided, however, that as of such date the party terminating this Agreement is not in material default under this Agreement; or

(d) Provided the terminating party is not otherwise in material default or breach of this Agreement, and has not failed or refused to close without justification hereunder, by either Buyer or Seller, without prejudice to other rights and remedies which the terminating party may have, if the other party shall (i) have materially failed to perform its covenants or agreements contained herein required to be performed on or prior to the Closing Date, or (ii) have materially breached any of its representations or warranties contained herein; provided, however, that in the case of clause (i) or (ii), the defaulting party shall have a period of ten (10) days following written notice from the non-defaulting party to cure any breach of this Agreement, if such breach is curable.

9.2 Effect of Termination; Remedies. In the event of termination pursuant to Section 9.1, this Agreement shall become null and void and have no effect (other than Articles 9 and 10, which shall survive termination), with no Liability on the part of Seller or Buyer, or their respective Affiliates or Related Persons, with respect to this Agreement, except for (i) the Liability of a party for its own expenses pursuant to Section 10.1; and (ii) any Liability provided for in this Section, provided, however that any such termination shall be without prejudice to the rights of any party hereto arising out of the material breach by any other party of any covenant or agreement contained in this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.1 Survival; Right to Indemnification.

(a) All representations, warranties, covenants and obligations set forth in this Agreement, the certificates delivered pursuant to Sections 7.1(a) and 7.2(a), and any other certificate or document delivered pursuant to this Agreement will survive the Closing and continue in full force and effect for the periods provided in Section 6.2. The right to indemnification, payment of damages or other remedies based on such representations, warranties, covenants and obligations will not be affected by the Closing, by any earlier termination of this Agreement, or by any investigation conducted by any Person with respect to, or any knowledge acquired by any Person at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to, the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Damages (hereafter defined) or other remedy based on such representations, warranties, covenants and obligations.

(b) Notwithstanding any other provision of this Agreement to the contrary, any and all indemnification and hold-harmless and related obligations of Seller shall be subject to a Basket and Cap as such terms are defined in this Section 10.1(b). Seller shall have no obligation to indemnify any Buyer Indemnitees as defined below or hold any such Buyer Indemnitees harmless as to any claim unless and until the dollar amount of Damages (as defined below) in respect of such claim(s) exceed, in the aggregate, Seventy-Five Thousand Dollars ($75,000.00) (the "*Basket*"). In addition, Seller shall have no obligation to indemnify any Buyer Indemnitees as defined below or hold any such Buyer Indemnitees harmless as to any claim whatsoever once the aggregate dollar amount of Damages (as defined below) in respect of the claims as to which any Buyer Indemnitees as defined below have asserted against Seller has reached One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "*Cap*").

10.2 Indemnification and Payment of Damages by Seller. Subject to the Basket and Cap, Seller agrees to defend, indemnify and hold Buyer and its respective directors, officers, employees, shareholders, members, managers, Affiliates, successors and assigns (collectively, "*Buyer Indemnitees*") harmless from and against, and to pay to Buyer Indemnitees the amount of, any and all losses, claims, damages (including without limitation, direct, indirect, special incidental and consequential damages), Liabilities, deficiencies, Proceedings, demands, assessments, Orders, costs and other expenses (including without limitation, costs of investigation and defense and reasonable attorneys' and accountants' fees), of any nature and of any kind whatsoever (collectively, "*Damages*"), that may be suffered or incurred by them (or any of them) resulting from, arising, directly or indirectly, out of or in connection with:

(a) any misrepresentation or breach of warranty made by Seller in this Agreement;

(b) any breach by Seller of any covenant, agreement or obligation of Seller in this Agreement;

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(c) all Liabilities, claims, demands or Proceedings of or against Seller made or brought against Buyer by reason of the transactions contemplated in this Agreement, except for the Assumed Liabilities;

(d) the ownership or use of the Assets prior to the Closing, or any Taxes or other Liabilities relating to the ownership or use of the Assets, prior to the Closing, including unpaid civil penalties or federal reclamation Taxes due Kentucky Department for Natural Resources or OSM, as appropriate; and

(e) any loss, cost or damage under a corporate guaranty replaced pursuant to Section 8.2(e) hereof occurring prior to the Closing Date or arising after Closing for conditions existing prior to the Closing Date.

The remedies provided in this Section 10 shall not be exclusive of or limit any other remedies that may be available to any Buyer Indemnitee, whether at law, in equity, by contract or otherwise.

10.3 Indemnification By Buyer. Buyer shall defend, indemnify and hold Seller and its respective directors, officers, employees, shareholders, members, managers, Affiliates, successors, heirs and assigns (collectively, "*Seller Indemnitees*") harmless from and against, and will pay to Seller Indemnitees the amount of, all Damages that may be suffered or incurred by them (or any of them) resulting from, arising, directly or indirectly, out of or in connection with:

(a) any misrepresentation or breach of warranty made by Buyer in this Agreement;

(b) any breach by Buyer of any covenant, agreement or obligation of Buyer in this Agreement;

(c) all Liabilities, claims, demands or Proceedings of or against Buyer made or brought against Seller by reason of the transactions contemplated in this Agreement; and

(d) the ownership or use of the Assets after the Closing, or any Taxes or other Liabilities relating to the ownership or use of the Assets, after the Closing, including unpaid civil penalties or federal reclamation Taxes due Kentucky Department for Natural Resources or OSM, as appropriate.

The remedies provided in this Section 10 shall not be exclusive of or limit any other remedies that may be available to any Seller Indemnitee, whether at law, in equity, by contract or otherwise.

10.4 Procedure for Indemnification.

(a) Promptly after receipt by a party (the "*Claiming Party*") of notice of the commencement or assertion of any Claim, Proceeding or Order (each an "*Indemnitee Claim*") against it or any other Buyer Indemnitee (in the case of Buyer) or Seller Indemnitee (in the case of Seller), and if a claim is to be made by the Claiming Party against any other party (the "*Indemnifying Party*") for indemnification with respect to that Indemnitee Claim, the Claiming Party shall promptly give notice to the Indemnifying Party of the commencement or assertion of such Indemnitee Claim; provided, that the failure to so notify the Indemnifying Party of the commencement or assertion of such Indemnitee Claim will not relieve the Indemnifying Party of any liability that it may have to any Buyer Indemnitee
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or Seller Indemnitee (as applicable) hereunder, except to the extent that such Indemnifying Party demonstrates that the defense of such action was materially prejudiced by the Claiming Party's failure to give such notice. The notice contemplated herein shall describe the Indemnitee Claim and the specific facts and circumstances in reasonable detail, shall include a copy of any related notices or written claims from third-parties, and shall indicate the amount, if known, or an estimate, if possible, of the Damages that have been or may be suffered or incurred.

(b) The Indemnifying Party shall defend or compromise any Indemnitee Claim by a third party ("*Third Party Claim*"), at its own expense and by its own counsel, who shall be reasonably acceptable to the Claiming Party. The Claiming Party may participate, at its own expense, in the defense of any Indemnitee Claim assumed by the Indemnifying Party. The Indemnifying Party shall not, without the approval of the Claiming Party (which approval shall not be unreasonably withheld or delayed), compromise a Third Party Claim defended by the Indemnifying Party which would require the Claiming Party to perform or take any action, to refrain from performing or taking any action, or to pay any additional Persons in the future.

(c) If a Claiming Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary Damages for which it would be entitled to indemnification under this Agreement, the Claiming Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its Consent (which may not be unreasonably withheld or delayed).

(d) If, within ten (10) Business Days of the Indemnifying Party's receipt of notice involving a Third Party Claim, the Indemnifying Party has not notified the Claiming Party that the Indemnifying Party will assume the defense, the Claiming Party may assume control of the defense or compromise of such Indemnitee Claim, and the costs and expenses of such defense, including costs of investigation and reasonable attorneys' fees, shall be added to the Indemnitee Claim. The Claiming Party shall have the right to compromise such Indemnitee Claim without the Consent of the Indemnifying Party.

(e) The party assuming the defense of any Indemnitee Claim shall keep the other party(s) reasonably informed at all times of the progress and development of the party's defense of and compromise efforts with respect to such Indemnitee Claim, and shall furnish the other party(s) with copies of all relevant pleadings, correspondence and other papers. In addition, the parties to this Agreement shall cooperate with each other, and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Indemnitee Claim.

(f) For the avoidance of doubt, any and all obligations of Seller to provide indemnification under this Agreement, and any and all procedures and provisions relating to any such indemnification claims asserted against Seller, shall be subject to the Basket and Cap notwithstanding any other provision, express or implied, to the contrary.

ARTICLE 11 – MISCELLANEOUS

11.1 Expenses. Whether or not the transactions contemplated hereby are consummated, Seller and Buyer shall bear their own expenses, including, without limitation, fees, disbursements and other costs of any brokers, finders, investment bankers, attorneys, accountants and other advisors, in connection with this Agreement and the transactions contemplated hereby.

11.2 Specific Performance. The parties hereto acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement or the Related Agreements are not performed in accordance with their specific terms or otherwise are breached. Accordingly, the parties hereto agree that Seller and Buyer shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement or the Related Agreements and to enforce specifically this Agreement or the Related Agreements and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over Buyer and Seller and the matter, in addition to any other remedy to which it may be entitled, at law or in equity.

11.3 Notices. All notices under this Agreement shall be given to the parties at the following addresses (i) by personal delivery; (ii) by facsimile transmission; (iii) by registered or certified mail, postage prepaid, return receipt requested; or (iv) by nationally recognized overnight or other express courier services:

(a) If to Seller:

Williams Industries, LLC
1121 Boyce Road, Suite 2200
Pittsburgh, PA 15241
Attention: Lloyd Williams, President
Telephone: (724) 941-6850
Facsimile: (724) 941-6953

(b) If to Seller:

Cypress Camon Energy, LLC – Five Mile Series
P.O. Box 12688
Dallas, Texas 75225
Attention: Dallas Groth, CEO
Telephone: (214) 281-8060
Facsimile: (214) 299-8001

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, on the date of delivery if delivered during normal business hours of the recipient, and if not delivered during such normal business hours, on the next Business Day following delivery; (ii) if by facsimile transmission, on the next Business Day following dispatch of such facsimile; (iii) if by courier service, on the third (3rd) Business Day after dispatch thereof; and (iv) if by mail, on the fifth (5th) Business Day after dispatch thereof. Any party hereto may change its address by notice to all parties hereto delivered in accordance with this Section 11.3.

11.4 Amendments. No supplement, modification or waiver of this Agreement shall be binding unless in writing and executed by each party hereto.

11.5 Waiver. At any time prior to the Closing, Buyer or Seller may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the obligations of the other party or any of the conditions to its own obligations contained herein to the extent permitted by Law. Any agreement on the part of Buyer, on the one hand, and Seller, on the other hand, to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of Buyer and Seller. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other similar or dissimilar provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

11.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Seller or Buyer (whether by operation of law or otherwise) without the prior written consent of the other party, except that Buyer shall have the right to assign its rights hereunder, in whole or in part, to an Affiliate, provided however, that Buyer shall remain liable for all of Buyer's obligations hereunder notwithstanding any such assignment. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

11.8 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns, and nothing in this Agreement, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature under or by reason of this Agreement.

11.9 Counterparts. This Agreement may be executed in one or more counterparts (including via facsimile or e-mail signatures), each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties hereto.

11.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable. In such case, the parties hereto shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable so as to preserve as nearly as possible the contemplated economic effects of the transactions contemplated hereby.

11.11 Entire Agreement. This Agreement and the Exhibits and Schedules hereto and the Related Agreements constitute the entire agreement among the parties hereto and supersede all prior agreements and understandings oral or written, among the parties hereto with respect to the subject matter hereof and thereof. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as set forth specifically herein or contemplated hereby.

11.12 Governing Law. This Agreement shall be governed by and construed according to the Laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

11.13 Schedules and Exhibits. BUYER AND SELLER ACKNOWLEDGE THAT THE SCHEDULES AND EXHIBITS REFERENCED IN THIS AGREEMENT HAVE NOT BEEN ENTIRELY COMPLETED AND ARE BEING INCLUDED IN DRAFT FORM SUBJECT TO COMPLETION AND UPDATING. FURTHER, IT IS ACKNOWLEDGED THAT AS TO SOME OF THE INFORMATION TO BE PROVIDED, FOR EXAMPLE AND WITHOUT LIMITATION, SOME OF THE INFORMATION TO BE SUMMARIZED OR REFERENCED ON SCHEDULES RELATING TO FIVEMILE LEASES AND CONSENTS, SELLER HAS SOME KNOWLEDGE. THE PARTIES AGREE TO COOPERATE AND TO USE THEIR COMMERCIALLY REASONABLE EFFORTS TO COMPLETE AND SUPPLEMENT THE SCHEDULES AND EXHIBITS WITHIN ONE WEEK FROM THE DATE OF THIS AGREEMENT. IF NOT SO COMPLETED WITHIN SUCH TIME, EITHER PARTY SHALL HAVE THE RIGHT TO EXTEND SUCH TIME FOR COMPLETION (AND CLOSING) BY AN ADDITIONAL THREE BUSINESS DAYS (OR FOR SUCH LONGER PERIOD AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES IN THEIR DISCRETION).

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

SELLER:

WILLIAMS INDUSTRIES, LLC

By:
Name: Lloyd Williams
Title: President

BUYER:

CYPRESS CAMON ENERGY, LLC – FIVE MILE SERIES

By:
Name: DALLAS GROTH
Title: CEO / President

AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT TO ASSET PURCHASE AGREEMENT (this ***"Amendment"***) is made and entered into as of October 15, 2012 by and among Williams Industries, LLC, a Delaware limited liability company (the ***"Seller"***) and Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company (***"Buyer"***).

RECITALS:

WHEREAS, Seller purchased certain assets, including the purchase of certain real estate and equipment and the assignment and subleasing of certain coal leases (the ***"Assets"***) from Kentucky Fuel Corporation, a Delaware corporation (***"KFC"***) pursuant to the terms and conditions of an asset Purchase Agreement dated as of May 10, 2012 (the ***"KFC Agreement"***), as amended by Amendment Extending Closing Deadline dated June 9, 2012 and Second Amendment to Asset Purchase Agreement dated as of an even date herewith (the ***"KFC Second Amendment"***) by and between Seller, KFC and James C. Justice Companies, Inc., a Delaware corporation and the ultimate parent entity of the KFC (the ***"KFC Parent"***).

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated as of June 13, 2012 (the ***"Purchase Agreement"***), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the ***"Sale"***), the Assets that Seller acquired from KFC in accordance with the terms of the Purchase Agreement; and

WHEREAS, the KFC Second Amendment entered into by Seller and KFC amended the KFC Purchase Agreement to, among other things, (i) extend the Closing Date to no later than November 9, 2012, (ii) to provide for specific indemnification by KFC, guaranteed by KFC Parent, of that certain litigation proceeding (the ***"NLTM Litigation"***) initiated against KFC by The New London Tobacco Market, Inc. in the United States Court for the Eastern District of Kentucky (Case No. 6:12-CV-0091-GFVT), (iii) amend and restate the Schedules to the KFC Agreement and (iv) to provide that instead of the assignment of certain coal leases from KFC to Seller, such coal leases, which are not directly in the name of KFC as lessee thereunder, shall be subleased from KFC to Seller; and

WHEREAS, Seller and Buyer desire and agree to amend the Purchase Agreement to, among other things, (i) extend the Closing Date and (ii) provide applicable conforming changes to reflect the other amendments made in the KFC Second Amendment, all in accordance with the terms set forth in this Amendment; and

WHEREAS, the Seller and Buyer desire to remove from the purchase and sale of assets contemplated under the Purchase Agreement, and likewise to remove all references in such documents to, any and all of the Strong Brothers Leased Real Property, the Strong Brothers Leases and any and all other Assets directly relating thereto (collectively, the "***Strong Brothers Assets***") and as a result of such removal of the Strong Brothers Assets from the sale transaction from KFC to Seller, the Seller and Buyer agree that the Purchase Price shall be reduced from a total of Eleven Million Nine Hundred Thousand and 00/100 Dollars ($11,900,000.00) to a total of Ten Million Nine Hundred Thousand and 00/100 Dollars ($10,900,000.00).

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Extension of Closing Date. Section 3.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

> "3.1 **Closing**. The parties shall hold a closing for the purchase and sale of the Assets as soon as reasonably possible after satisfaction of the conditions to closing in Article 7, but in no event later than 5:00 p.m. Eastern Time on the earlier of (a) the day that is Fourteen (14) Business Days from the date as of which both Parties have executed this Amendment or (b) November 9, 2012, or as otherwise mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to in this Agreement as the ***"Closing Date."***

The Seller and Buyer also agree that the Purchase Agreement is further amended to adjust the deadline(s) for pre-Closing tasks as necessary to allow a Closing to occur on or before the time frame set forth in the revised Section 3.1 above.

3. Removal of Strong Brothers Assets from the Transaction; Revised Purchase Price; Related Amendments.

(a) Notwithstanding anything to the contrary contained in the Purchase Agreement or in the prior amendment(s) thereto (including without limitation the Schedules and Exhibits thereto), the parties amend the Purchase Agreement and all prior amendments thereto (including without limitation the Schedules and Exhibits thereto) so as to remove from the purchase and sale of assets contemplated thereby, and likewise to remove all references in such documents to, the Strong Brothers Assets. As a result of the removal of the Strong Brothers Assets from the purchase and sale of assets under the Purchase Agreement as amended, the purchase price to be paid by Purchaser at Closing under Section 3.3(a) shall be reduced to Ten Million Nine Hundred Thousand Dollars ($10,900,000.00).

(b) Without limitation of the foregoing, the following specific sections, subsections and Schedules shall be amended to effectuate the intent of Section 3(a) of this Amendment:

(i) Section 3.3(a) of the Purchase Agreement is hereby amended by deleting the amount *"Eleven Million Nine Hundred Thousand Dollars ($11,900,000.00)"* and inserting in lieu thereof the amount *"Ten Million Nine Hundred Thousand Dollars ($10,900,000.00)"* as the purchase price to be paid at Closing as further provided in Section 3.3(a).

(ii) Section 2.1(b) is hereby deleted from the Purchase Agreement and in lieu thereof the language *"(b) RESERVED"* is hereby inserted. Section 2.1(b) referenced and defined Strong Brothers Leased Real Property.

(iii) Section 2.1(c) is hereby amended by deleting therefrom the reference to *"the Strong Brothers Leased Real Property"*, so that Section 2.1(c) as amended reads as follows:

> "(c) the leased real property related to the Fivemile Permit and identified on *Schedule 2.1(c)*, subject to Section 11.14 of this Agreement, and all rights, privileges, easements and other appurtenances relating thereto (the *"Fivemile Leased Real Property,"* and together with the Andy Tipple Leased Real Property, the *"Leased Real Property"*) (in turn, the Leased Real Property and Owned Real Property are sometimes collectively referred to as the *"Real Property"*);"

(iv) Section 2.1(e) is hereby deleted and in lieu thereof the language *"(e) RESERVED"* is hereby inserted. Section 2.1(e) had referenced and defined the Strong Brothers Permit.

(v) Section 2.1(f) is hereby amended by deleting therefrom the reference to *"the Strong Brothers Permit"*, so that Section 2.1(c) as amended reads as follows:

> "(f) the permit owned by Fivemile Energy, LLC and/or Fivemile Energy, Inc. (collectively, *"Fivemile"*) and listed on *Schedule 2.1(h)* (the *"Fivemile Permit,"* and together with the Seller Permits, the *"Permits"*), to the extent transfer is permitted by Law."

(vi) Section 1.2 (Other Defined Terms) is hereby amended by deleting the references to *"Strong Brothers Leased Real Property 2.1(b)"* and *"Strong Brothers Permit 2.1(g)"*

(vii) Section 3.2 (Seller's Deliveries) is hereby amended by deleting therefrom the words *"Strong Brothers Assets, Strong Brothers Permits"* and adjusting the grammar accordingly.

(viii) As provided in Section 5 of this Amendment, the Seller Disclosure Schedules to the Purchase Agreement are hereby amended and restated as attached as *Exhibit B* hereto, which such Amended and Restated Seller Disclosure Schedules include the following amendments:

(A) deleting *Schedule 2.1(b)* (Strong Brothers Leased Real Property),

(B) deleting *Schedule 2.1(e)* (Strong Brothers Permit);

(C) amending the reference in clause 1 of *Schedule 2.1(h)* (Contracts) the reference to *"Schedule 2.1(b) (Strong Brothers Leased Real Property)"*;

(D) amending *Schedule 4.5* (Compliance with Law) by deleting the entire paragraph relating to the Strong Brothers Permit and notices of violation and cessation order relating thereto and replacing it with the amended *Schedule 4.5* included in *Exhibit B* hereto;

(E) amending *Schedule 8.2(d)* (Bonds) by deleting the second line item in its entirety, including particularly the words *"Strong Brothers Permit"* and the amount *"$298,800"*; and,

(F) deleting all references to the Duff and Wells lease from the Schedules wherever such references may have appeared.

4. Special Indemnification by KFC. Buyer and Seller acknowledge that (i) KFC has provided certain special indemnification to both Seller and Buyer with respect to the NLTM Litigation as set forth in Section 3 of the KFC Second Amendment and (ii) the KFC Parent has unconditionally guaranteed such special indemnification obligations of KFC to Seller and Buyer in Section 4 of the KFC Second Amendment in accordance with the terms and conditions of a Guaranty and Suretyship Agreement in substantially the form attached as *Exhibit A* hereto.

5. Amended and Restated Schedules. The Schedules to the Purchase Agreement relating to, among other things, leases, regulatory matters and litigation have been amended and restated by Seller as of the date hereof to reflect the amended schedules to the KFC Agreement that have been provided by KFC pursuant to the KFC Second Amendment, as set forth on *Exhibit B* to this Amendment.

6. Subleases In Lieu of Assignments, As To Certain Leased Property. The Parties agree that, in order to eliminate certain consents from the Schedules to the Purchase Agreement (as amended by this Amendment), they shall enter into subleases instead of assignments of the various leases that comprise the FiveMile Leased Property that was not directly leased by KFC in KFC's own name, and therefore subleased by KFC to Seller under the KFC Agreement, the form of which sublease shall be substantially as set forth in *Appendix I* to this Amendment unless the parties mutually agree to and execute different sublease form. Collectively, such leases that will be subleased to Purchaser are hereinafter referred to as the ***"Subleased Property."*** Seller and Purchaser hereby acknowledge and agree that in Section 7 of the KFC Second Amendment that KFC represented and warranted to Seller and Buyer that no consent is required from the lessors under any of the leases related to the FiveMile Leased Property with respect to the sublease of such leases to Seller, and the subsequent sublease of such subleases by Seller to Buyer. Additionally, the Parties agree that all amounts due to KFC and/or Seller as the sublessors with respect to each of the leases for the Subleased Property shall be paid directly to an escrow or paying agent that is mutually agreed upon by the Parties and has executed and delivered an appropriate escrow or paying agent agreement with the Parties, with such escrow or paying agent making direct payment of all royalty amounts and other amounts due under such leases to the original lessors under such leases, including direct payment of any override

payments due to The New London Tobacco Market, Inc. pursuant to the Brownlow Assignment (as defined in Schedule 2.1(h) of the Purchase Agreement).

7. Additional Covenants Concerning Consents, and Restrictions on Assignments. Anything in this Amendment to the contrary notwithstanding, this Amendment and the assignments, subleases, agreements and instruments that are either exhibits hereto or are otherwise delivered at Closing, shall not constitute an agreement to assign or transfer any right or interest of Seller in or to the Subleased Property or any other of the Assets or any claim or right or any benefit arising thereunder or resulting therefrom if such assignment or transfer, without the consent of a third party thereto, would constitute a breach or other contravention of such right or interest of Seller in the Subleased Property or any other of the Assets or any such related claim or right or benefit. Seller will use its best efforts to obtain any required consents, including, without limitation, the consents set forth in the Schedules as amended by this Amendment, if such consents are required (and the Parties acknowledge that consents to assignment of (i) that certain Land Lease dated as of August 1, 1992 between CSX Transportation, Inc. as lessor and KFC as lessee and successor-in-interest to LLC Kentucky, LLC and Cyprus Southern Realty Corporation and (ii) that certain Private Sidetrack Agreement, dated January 13, 2006, by and between CSX Transportation, Inc. and KFC as successor-in-interest to Kentucky Fuel Hazard Corporation (collectively, the ***"CSX Agreements"***) are two such required consents). If any such consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Seller thereunder so that Purchaser would not in fact receive all such rights, Seller and Purchaser will cooperate in a mutually agreeable arrangement under which the Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Amendment, including contract mining, sub-contracting, sub-licensing, or sub-leasing to the Purchaser which Seller would use its best efforts to enforce for the benefit of the Purchaser, with Purchaser fulfilling, honoring and assuming Seller's obligations, and any and all rights of Seller against a third party thereto. The Seller will promptly pay to the Purchaser all monies received by Seller under any right or interest of Seller in such Subleased Property or any other of the Assets or any such related claim or right or any benefit arising thereunder.

7. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall remain in full force and effect.

8. Entire Agreement. The Purchase Agreement, as amended by this Amendment, constitutes the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

9. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

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Execution Version

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment to Asset Purchase Agreement as of the date first above written.

WILLIAMS INDUSTRIES, LLC

By:
Name: Lloyd Williams
Title: President

CYPRESS CAMON ENERGY, LLC – FIVE MILE SERIES

By: Dallas Groth
Name: DALLAS Groth
Title: CEO - president

Exhibit A
To
Amendment to Asset Purchase Agreement

Copy of Form of Guaranty and Suretyship Agreement from KFC Parent

Attached

GUARANTY AND SURETYSHIP AGREEMENT

THIS GUARANTY AND SURETYSHIP AGREEMENT (this ***"Guaranty"***) is given as of ______________, 2012 by **JAMES C. JUSTICE COMPANIES, INC.**, a Delaware corporation (hereinafter called "**Guarantor**") and the ultimate parent entity of Kentucky Fuel Corporation, a Delaware corporation (***"KFC"***) to each of WILLIAMS INDUSTRIES, LLC, a Delaware limited liability company (***"Williams Industries"***) and CYPRESS CAMON ENERGY, LLC – FIVE MILE SERIES, a Delaware series limited liability company (***"Cypress"*** and together with Williams Industries, sometimes hereinafter individually referred to as a "**Beneficiary**" and collectively as the ***"Beneficiaries"***).

WITNESSETH:

WHEREAS, Williams Industries, Guarantor and KFC entered into that certain Second Amendment to Asset Purchase Agreement dated as of October 15, 2012 (the ***"Amendment"***) that amended that certain Asset Purchase Agreement dated as of May 10, 2012 entered into by KFC as seller and Williams Industries as the buyer of certain assets of KFC (the ***"Purchase Agreement"***) by providing for, among other things, certain special indemnification by KFC to the Buyer Indemnitees (as defined under the Amendment) with respect to any Damages that may be suffered or incurred by them (or any of them) resulting from, arising directly or indirectly, out of or in connection with the NTLM Litigation, which Amendment requires the Guarantor to execute and deliver to the Beneficiaries this Guaranty as a condition precedent to Williams Industries' obligations to consummate the transactions contemplated by the Purchase Agreement and the Amendment; and

WHEREAS, in accordance with the terms of the Amendment, the Guarantor agrees as follows:

(a) Guarantor does hereby unconditionally, irrevocably and absolutely guarantee to the Beneficiaries, as a primary obligor and not merely as a surety, the complete and timely payment by the Seller for its Special Indemnification obligations set forth in the Amendment subject to the procedures and other provisions contained therein (the ***"Obligations"***). This Guaranty is a guaranty of payment and not merely a guaranty of collection.

(b) Guarantor hereby waives: (i) notice of acceptance of this Guaranty, and of the creation or existence of any of the Obligations and of any action by any of the Beneficiaries in reliance hereon or in connection herewith; (ii) presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest with respect to the Obligations; and (iii) any requirement that suit be brought against, or any other action by any of the Beneficiaries be taken against, or any notice of default or other notice be given to, or any demand be made on, the Seller or any other person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against Guarantor; provided, however, the Beneficiaries shall notify the Guarantor in writing if Seller is obligated to but fails to make payment when due of any

Obligations, whereupon Guarantor shall make such payment within fifteen (15) days of such notice.

(c) The Guarantor hereby expressly waives any and all notice with respect to (i) acceptance of this Guaranty by the Beneficiaries and the Beneficiaries' intention to act in reliance upon this Guaranty, (ii) the incurring of the Obligations by Seller and the amount, terms and conditions thereof, , and (iii) presentment, demand, dishonor or protest of any kind, (v) failure of any other guarantor or surety to satisfy the Obligations. provided, however, the Beneficiaries shall notify the Guarantor in writing if Seller is obligated to but fails to make payment when due of any Obligations, whereupon Guarantor shall make such payment within fifteen (15) days of such notice.

(d) Guarantor agrees that upon the failure of Seller to pay all or any portion of the Obligations when due (whether by demand, stated maturity, acceleration or otherwise), and receipt of written notice of such failure or default as provided above, Guarantor will pay, or cause to be paid to the Beneficiaries, within fifteen (15) days of the date of such notice, all Obligations then due, without defalcation or offset of any kind, without the Beneficiaries being required to pursue any of its rights against the Seller or against any other Person, including any other guarantor, and without being required to liquidate or realize upon any collateral securing satisfaction of the Obligations. In the event of the commencement of a case by or against the Seller under applicable bankruptcy or insolvency laws, the Beneficiaries shall have the right, as to the Guarantor, to declare all Obligations immediately due and payable, whether or not either Beneficiary is able to accelerate the same as against the Seller. In any right of action accruing to the Beneficiaries under this Guaranty, a Beneficiary may elect to proceed against (i) the Guarantor only, without first having commenced any action against the Seller, any other guarantor or surety or any collateral security, (ii) the Guarantor together with Seller, or (iii) Seller and then the Guarantor, it being specifically understood and agreed that a Beneficiary is not required to enforce any remedies against the Seller, any other Person liable to the Seller for satisfaction of the Obligations or any collateral securing satisfaction of the Obligations, nor is a Beneficiary required to enforce or resort to any remedies with respect to any lien, security interest or encumbrance that may be granted to the Beneficiaries as security for satisfaction of the Obligations.

(e) The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by a Beneficiary for any reason whatsoever (including the bankruptcy or reorganization of the Seller or its Affiliates), and the Guarantor shall remain liable hereunder in respect of such payments or obligations or interest thereon as if such payment had not been made. A Beneficiary shall not be obligated to file any claim relating to the Obligations owing to it in the event that the Seller or any of its Affiliates becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of such Beneficiary to file such a claim shall not affect the Guarantor's obligations hereunder. The Guarantor's obligations hereunder are independent of the obligations of the Seller; provided, however, the Beneficiaries shall notify the Guarantor in writing if Seller is obligated to but fails to make payment when due of any Obligations, whereupon Guarantor shall have both the right and obligation to make such payment within fifteen (15) days of such notice. The liability of Guarantor hereunder is not affected or impaired by (i) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation in such event, or (ii) the extension of time for the payment of any sum, in whole or in part, owing or payable to Williams Industries under the Purchase Agreement or the Amendment or to any Beneficiary under this Guaranty or the extension of the time for the performance of any other obligation under or arising out of or on account of the Purchase Agreement, Amendment or this Guaranty, or (iii) any failure, omission or delay on the part of Williams Industries to enforce, assert or exercise any right, power or remedy conferred on it in the Purchase Agreement or the Amendment or any action on Williams Industries' part granting indulgence or extension in any form, or (iv) any failure, omission or delay on the part of any Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in this Guaranty or any action on a Beneficiary's part granting indulgence or extension in any form, or (v) the acceptance, receipt, release, modification, or waiver of, or failure to perfect any interest under or to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or (vi) any payment to a Beneficiary by the Seller that such Beneficiary subsequently returns to the Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or (vii) any amendment, modification or other alteration of the Purchase Agreement or the Amendment, or (viii) any indemnity agreement the Seller may have from any party, or (ix) any insurance that may be available to cover any loss. The Guarantor waives any right to any deferral or modification of Guarantor's obligations hereunder by virtue of any such debtor-relief proceeding involving the Seller or any of its Affiliates.

(f) Subject to its right to fifteen (15) day notice of any Seller failure to pay when due any Obligations, Guarantor shall not be entitled to make any defense against any claim asserted by a Beneficiary in any suit or action instituted by such Beneficiary to enforce this Guaranty, the Purchase Agreement or the Amendment, or to be excused from any liability hereunder which the Seller could not make or invoke, and Guarantor hereby expressly waives any defense in law or in equity which is not or would not be available to the Seller, it being the intent hereof that the liability of Guarantor hereunder is primary and unconditional.

(g) It is fully understood that this Guaranty shall be valid and enforceable and shall not terminate until the date on which any and all Obligations, to the extent any arise or exist within the applicable time periods set forth in the Amendment, have been paid in full.

(h) This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of Guarantor, and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the Beneficiaries.

(i) Guarantor represents that it will receive a direct and material benefit from the Obligations.

(j) Guarantor agrees that all payments that may arise under this Guaranty shall be made in United States Dollars and in immediately available funds, without set-off, counterclaim, recoupment or other deduction of any nature.

(k) The Guarantor represents and warrants that: (i) the Guarantor has the power and authority to enter into and perform the obligations of the Guarantor under this Guaranty; (ii) the execution, delivery and performance of this Guaranty does not and will not conflict with any agreement to which the Guarantor is bound, nor is the consent of any governmental authority or other Person required in connection therewith; (iii) this Guaranty has been duly and validly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms; and (iv) nothing exists to impair the effectiveness of the liability of the Guarantor hereunder or the immediate effectiveness thereof. All representations and warranties contained in this Guaranty shall survive the execution of this Guaranty and the termination hereof.

(l) This Guaranty shall be governed and construed in accordance with the substantive laws of the State of Delaware without reference to principles of conflicts of law.

(m) Guarantor hereby irrevocably submits to the jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America located in the State of Delaware over any dispute or proceeding arising out of or relating to this Guaranty, and Guarantor irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. Guarantor hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the venue of any dispute arising out of or relating to this Guaranty brought in such court or any defense of inconvenient forum for the maintenance of such dispute or proceeding. Guarantor agrees that a judgment in any dispute heard in the venue specified by this section may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

(n) WAIVER OF JURY TRAIL. GUARANTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT GUARANTOR MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. GUARANTOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

(o) Nothing herein or in any other document referenced herein shall require, or be construed or interpreted to require, Guarantor to pay any attorneys' fees, costs and expenses that are not reasonable, notwithstanding any other provisions hereof or the provisions of any such other document.

(p) If any one or more of the provisions contained in this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such holding shall not affect any other provision of this Guaranty, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(q) All capitalized terms used herein and not otherwise defined herein, shall have the meanings as ascribed to such terms in the Purchase Agreement or the Amendment, as applicable.

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GUARANTOR ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS GUARANTY, INCLUDING THE WAIVER OF JURY TRIAL AND CONFESSION OF JUDGMENT PROVISIONS AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE.

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

GUARANTOR:

WITNESS:	**JAMES C. JUSTICE COMPANIES, INC.**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________

{J1683820.2}

Exhibit B
To
Amendment to Asset Purchase Agreement

Amended and Restated Seller Disclosure Schedules

Attached

{J1683820.2}

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT (this ***"Amendment"***) is made and entered into as of November 6, 2012 by and among Williams Industries, LLC, a Delaware limited liability company (the ***"Seller"***) and Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company (***"Buyer"***). The Seller and the Buyer are sometimes referred to herein individually as a ***"Party"*** and collectively, as the ***"Parties."***

RECITALS:

WHEREAS, Seller purchased certain assets, including the purchase of certain real estate and equipment and the assignment and subleasing of certain coal leases (the ***"Assets"***) from Kentucky Fuel Corporation, a Delaware corporation (***"KFC"***) pursuant to the terms and conditions of an asset Purchase Agreement dated as of May 10, 2012 (the ***"KFC Agreement"***), as amended by Amendment Extending Closing Deadline dated June 9, 2012 and Second Amendment to Asset Purchase Agreement dated as of an even date herewith (the ***"KFC Second Amendment"***) by and between Seller, KFC and James C. Justice Companies, Inc., a Delaware corporation and the ultimate parent entity of the KFC (the ***"KFC Parent"***).

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated as of June 13, 2012, pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the ***"Sale"***), the Assets that Seller acquired from KFC in accordance with the terms of the Purchase Agreement and that certain Amendment to Asset Purchase Agreement dated as of October 15, 2012 (collectively, the ***"Purchase Agreement"***); and

WHEREAS, Seller and Buyer desire and agree to further amend the Purchase Agreement to, among other things, (i) extend the Closing Date, (ii) increase the Purchase Price from Ten Million Nine Hundred Thousand and 00/100 Dollars ($10,900,000) to Eleven Million and 00/100 Dollars ($11,000,000), and (iii) amend certain of the schedules to the Purchase Agreement as provided herein, all in accordance with the terms set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Extension of Closing Date. Section 3.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

> "3.1 **Closing**. The parties shall hold a closing for the purchase and sale of the Assets as soon as reasonably possible after satisfaction of the conditions to closing in Article 7, but in no event later than 6:00 p.m. Eastern Time on January 29, 2013, or as otherwise mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to in this Agreement as the ***"Closing Date."***

The Seller and Buyer also agree that the Purchase Agreement is further amended to adjust the deadline(s) for pre-Closing tasks as necessary to allow a Closing to occur on or before the time frame set forth in the revised Section 3.1 above.

3. Increase of Purchase Price. The Parties agree that Section 3.3(a) of the Purchase Agreement is hereby amended by deleting the amount *"Ten Million Nine Hundred Thousand Dollars ($10,900,000)"* and inserting in lieu thereof the amount *"Eleven Million Dollars ($11,000,000)"* as the purchase price to be paid at Closing as further provided in Section 3.3(a) of the Purchase Agreement.

4. Amendment of Certain Schedules.

(a) The Parties agree that the Purchase Agreement and *Amended and Restated Schedule 2.1(c)* of the Purchase Agreement is hereby further amended to include as an Additional Leased Property being transferred and assigned to Buyer, that certain Lease Agreement dated as of November 3, 2011 by and between Buyer as lessor and K&S Energy Holdings, LLC, a Delaware limited liability company as lessee, as set forth in the *Second Amended and Restated Schedule 2.1(c)* attached as *Exhibit A* hereto.

(b) The Parties agree that the Purchase Agreement and *Amended and Restated Schedule 3.4* with respect to the Parties agreement on the allocation of the Purchase Price is further amended and restated as set forth in the *Second Amended and Restated Schedule 3.4* attached as *Exhibit B* hereto.

5. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall remain in full force and effect.

6. Entire Agreement. The Purchase Agreement, as amended by this Amendment, constitutes the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

7. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

8. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Second Amendment to Asset Purchase Agreement as of the date first above written.

WILLIAMS INDUSTRIES, LLC

By: ___________________

Name: Lloyd Williams

Title: President

CYPRESS CAMON ENERGY, LLC – FIVE MILE SERIES

By: ___________________

Name: Dallas Groth

Title: CEO

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ASSET PURCHASE AGREEMENT

This is an Asset Purchase Agreement (this "*Agreement*"), dated as of May 10, 2012, (the "*Effective Date*") between (i) Williams Industries, LLC, a Delaware limited liability company ("*Buyer*"), and (ii) Kentucky Fuel Corporation, a Delaware corporation ("*Seller*").

RECITALS

A. Seller is engaged in the business of mining coal and activities directly or indirectly relating thereto.

B. Buyer desires to purchase the Assets (defined below) and to assume the Assumed Liabilities (defined below) from Seller, and Seller desires to sell, convey, assign and transfer to the Assets and the Assumed Liabilities to Buyer, all in the manner and subject to the terms and conditions set forth in this Agreement.

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

ARTICLE I DEFINITIONS

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

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

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

"Assignment of Leases" means an Assignment of Leases substantially in the form attached hereto as *Exhibit B*.

"Assumption of Liabilities" means an Assumption of Liabilities substantially in the form attached hereto as *Exhibit C*.

"Benefit Plan" means each "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA), each "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA), and each other employee benefit plan, fund, program, agreement or arrangement in each case, that is sponsored, maintained or contributed to or required to be contributed by Seller or any of its subsidiaries or by any trade or business, whether or not incorporated (an "*ERISA Affiliate*"), that together with Seller or any subsidiaries would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA, or to which Seller, individually or collectively, or any of their subsidiaries or any ERISA Affiliate is a party, for the benefit of any employee or former employee of the Business.

"Bill of Sale" means the Bill of Sale between Buyer and Seller, substantially in the form attached hereto as *Exhibit D*.

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"*Business*" means (a) the coal mining and related operations, facilities and activities of Seller related to the Seller Permits, the Strong Brothers Permit and the Andy Tipple, and the related developed and undeveloped coal reserves owned or leased by Seller in Breathitt County, Kentucky, and (b) the Fivemile Permit and related developed and undeveloped coal reserves leased by Fivemile in Breathitt County, Kentucky.

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

"*Buyer's Knowledge*" means the actual knowledge of Lloyd Williams.

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

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Deed(s)*" means the Deed(s) substantially in the form attached hereto as Exhibit E conveying general or special warranty titles to the Owned Real Property consistent with the conveyance in to Seller.

"*Employee Benefit Plan*" means any bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation, fringe benefit, cafeteria, employment, consulting, severance or termination pay, hospitalization or other medical, life or other insurance, supplemental unemployment benefits, profit-sharing, pension or retirement plan, program, agreement or arrangement, any other "employee benefit pension plan," "employee welfare benefit plan," or a "multi-employer plan" (within the meaning of Sections 3(2), 3(1) and 3(37), respectively, of ERISA), or any other employee benefit plan, program, agreement or arrangement whatsoever, whether written or unwritten, for the benefit of any former employee or representative of a Person.

"*Employees*" means any and all employees of Seller and its Affiliates.

"*Environmental Law*" means any applicable federal, state or local Law, statute, rule, regulation or ordinance relating to the regulation, pollution, preservation or protection of human health, safety, the environment, or natural resources or to emissions, discharges, Releases or threatened Releases of pollutants, contaminants, Hazardous Materials or wastes into the environment (including ambient air, soil surface water, ground water, wetlands, land or subsurface strata), including, but not limited to, common law claims such as nuisance, negligence and trespass.

"*Environmental Permit*" means any permit, approval, certificate, registration, license or other authorization required under any Environmental Law.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*GAAP*" means generally accepted accounting principles, consistently applied.

"*Governmental Authority*" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision.

"*Hazardous Materials*" means (a) petroleum or petroleum products, fractions, derivatives or additives, natural or synthetic gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and radon gas; (b) any substances defined as or included in the definition of "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "extremely hazardous substances,"

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"restricted hazardous wastes," "toxic substances," toxic chemicals or "toxic pollutants," "contaminants" or "pollutants" or words of similar import under any Environmental Law; (c) radioactive materials, substances and waste, and radiation; and (d) any other substance exposure to which is regulated under any Environmental Law.

"Indebtedness" of any Person means any obligations of such Person, whether or not contingent, (a) for borrowed money, (b) evidenced by notes, bonds, indentures or similar instruments, (c) for the deferred purchase price of goods and services, other than trade payables incurred in the ordinary course of business, (d) under capital leases, and (e) in the nature of guarantees of the obligations described in clauses (a) through (d) above of any other Person.

"Intellectual Property" means all domestic patents and patent rights, trademarks and trademark rights, service marks and service mark rights, service name and service name rights, brand names, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, designs, computer programs, business telephones, facsimile and e-mail addresses, websites and technology, and software (including all source codes) and related documentation, drawings, know-how, methods, processes, technology, engineering specifications, procedures, bills of material, trade secrets, all pending applications for and registrations of patents, trademarks, service marks and copyrights and any other intangible property used in or associated with the conduct of the Business and the ownership of the Assets (as defined below), including all of Seller's rights to any such property which is owned by and licensed from others and any goodwill associated with any of the above.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority and includes, without limitation, all Environmental Laws.

"Liabilities" means all Indebtedness, obligations, claims and other liabilities of a Person, whether absolute, accrued, contingent, fixed or otherwise or whether due or to become due.

"Liens" means any mortgage, pledge, assessment, security interest, lease, judgment lien, tax lien, mechanic's lien, material man's lien, other lien, adverse Claim, levy, charge, option, right of first refusal, charge, debenture, indenture, deed of trust, right-of-way, restriction, encroachment, license, lease, security agreement, or other encumbrance of any kind, and other restrictions or limitations on the use or ownership of real or personal property or irregularities in title thereto or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

"Material Adverse Effect" means (a) an adverse effect on the validity or enforceability of this Agreement or any of the Related Agreements in any material respect, (b) an adverse effect on the condition (financial or other), business, assets, results of operations, ability to conduct business or properties of Seller or Buyer (as applicable), or the Assets, taken as a whole, in any material respect, or (c) an impairment of the ability of Seller or Buyer (as applicable) to fulfill its obligations under this Agreement or any of the Related Agreements in any material respect.

"Order" means any writ, judgment, decree, injunction, or similar order of any Governmental Authority, in each such case whether preliminary or final.

"Permits" means the Five Mile Permit, the Strong Brothers Permit, and the Sellers Permits as set forth in Section 2.1(f).

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"Permitted Lien" means any Lien (a) which is assumed or consented to by the Buyer herein (including, without limitation, Liens included in the Assumed Liabilities); (b) created by the Buyer; (c) constituting easements, rights-of-way, restrictions or minor defects or irregularities in title incurred in the ordinary course of the coal mining business and encumbrances consisting of zoning restrictions, easements, licenses or restrictions on the use of the Real Property (as defined below) or minor imperfections in title thereto; (d) imposed by any Governmental Authority for Taxes, assessments, or charges not yet due or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the Seller in accordance with GAAP; (e) that would not be charged to Seller based on the warranty given by Seller in a transfer by special warranty deed; and (f) constituting any extension, renewal or replacement of the foregoing.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, entity, trust, union, association or Governmental Authority.

"Proceeding" means any action, suit, proceeding, arbitration, investigation or audit, formal or informal, whether or not by any Governmental Authority.

"Related Agreements" means the (a) the Assignment of Contracts, (b) the Assignment of Leases, (c) the Assumption of Liabilities, (d) the Bill of Sale, (e) the Deeds, and (f) any other agreement, certificate or similar document to be executed by any party hereto in connection with this Agreement.

"Release" means any release, issuance, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment or into or out of any property, including the movement of Hazardous Materials through the air, soil, surface water, ground water or property other than as specifically authorized by and in compliance with all Environmental Laws and Environmental Permits.

"Seller's Knowledge" refers to the facts and circumstances known to Mark Merritt or Elmer Bentley with a duty of inquiry and after a reasonable investigation.

"SMCRA" shall mean the Surface Mining Control and Reclamation Act, as amended.

"Taxes" means any and all taxes, fees, levies, duties, tariffs, import and other charges, imposed by any taxing authority, together with any related interest, penalties or other additions to tax, or additional amounts imposed by any taxing authority, and without limiting the generality of the foregoing, shall include net income alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, franchise, profits, license, transfer, recording, escheat, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profit, environmental, custom duty, or other tax, governmental fee or other like assessment or charge of any kind whatsoever.

"Tax Returns" means all federal, state, local, provincial and foreign returns, declarations, claims for refunds, forms, statements, reports, schedules, and information returns or statements, and any amendments thereof (including, without limitation, any related or supporting information or Schedule attached thereto) required to be filed with any Taxing authority in connection with any Tax or Taxes.

"WARN" means the Worker Training Adjustment and Renotification Act.

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1.2 Other Defined Terms. In addition, the following terms shall have the meanings ascribed to them in the corresponding section of this Agreement:

Definition	Section
Agreement	Preamble
Andy Tipple Leased Real Property	2.1(a)
Assets	2.1
Assumed Liabilities	2.3(a)
Buyer	Preamble
Buyer Indemnitees	10.2
Claiming Party	10.4(a)
Closing	3.1
Closing Date	3.1
Commitment Letter	5.6
Contracts	2.1(j)
Damages	10.2
Effective Date	Preamble
Excluded Assets	2.2
Excluded Liabilities	2.7
Fivemile	2.1(h)
Fivemile Leased Real Property	2.1(c)
Fivemile Permit	2.1(h)
Indemnifying Party	10.4(a)
Indemnitee Claim	10.4(a)
Leased Real Property	2.1(c)
OSM	8.1(a)
Owned Equipment	2.1(d)(i)
Owned Real Property	2.1(a)
Permits	2.1(h)
Purchase Price	3.3(a)
Real Property	2.1(c)
Related Person	6.1(a)
Seller	Preamble
Seller Indemnitees	11.3
Seller Permits	2.1(f)
Strong Brothers Leased Real Property	2.1(b)
Strong Brothers Permit	2.1(g)
Third Party Claim	10.4(b)

1.3 Rules of Interpretation.

(a) The singular includes the plural and the plural includes the singular.

(b) The word "or" is not exclusive.

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(c) A reference to a Person includes its permitted successors and permitted assigns.

(d) The words "include," "includes" and "including" are not limiting.

(e) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.

(f) References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

(g) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(h) References to "days" shall mean calendar days, unless the term "*Business Days*" shall be used.

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

ARTICLE 2 – PURCHASE AND SALE OF THE ASSETS

2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions contained in this Agreement, Seller shall, or shall cause its Affiliate to, sell, assign, transfer and convey to Buyer, and Buyer shall purchase, acquire and accept from Seller or its Affiliate, all of Seller's or its Affiliate's right, title, and interest in and to the following assets (the "*Assets*"):

(a) the owned real property related to the Andy Tipple and identified on *Schedule 2.1(a)(i)* and all improvements located thereon and all other rights, privileges, easements and other appurtenances relating thereto (the "*Owned Real Property*") and the leased real property related to the Andy Tipple and identified on *Schedule 2.1(a)(ii)* and all improvements owned by Seller located thereon and all other rights, privileges, easements and other appurtenance relating thereto (the "*Andy Tipple Leased Real Property*");

(b) the leased real property related to the Strong Brothers Permit and identified on *Schedule 2.1(b)* and all improvements owned by Seller or its Affiliate located thereon and all other rights, privileges, easements and other appurtenance relating thereto (the "*Strong Brothers Leased Real Property*");

(c) the leased real property related to the Fivemile Permit and identified on *Schedule 2.1(c)*, subject to Section 11.14 of this Agreement, and all rights, privileges, easements and other appurtenance relating thereto (the "*Fivemile Leased Real Property*," and together with the Andy Tipple Leased Real Property and the Strong Brothers Leased Real Property, the "*Leased Real Property*") (in turn, the Leased Real Property and Owned Real Property are sometimes collectively referred to as the "*Real Property*");

(d) (i) all of Seller's or its Affiliate's owned equipment referenced on *Schedule 2.1(d)(i)*.

(ii) all of Seller's or its Affiliate's permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with or issued by any Governmental Authority, which have been issued or granted to or are owned, used or held by Seller (and all pending applications therefor) in connection with the Business (the "*Seller Permits*"), to the extent transfer is permitted by Law, and which are listed on *Schedule 2.1(d)(ii)*;

(e) the permit owned by Terrance Strong d/b/a Strong Brothers Mining and listed on *Schedule 2.1(e)* (the "*Strong Brothers Permit*"), to the extent transfer is permitted by Law;

(f) the permit owned by Fivemile Energy, LLC and/or Fivemile Energy, Inc. (collectively, "*Fivemile*") and listed on *Schedule 2.1(f)* (the "*Fivemile Permit*," and together with the Seller Permits and the Strong Brothers Permit, the "*Permits*"), to the extent transfer is permitted by Law;

(g) all Intellectual Property owned or licensed by Seller or titled in any Affiliate of Seller for use in the conduct of the Business;

(h) all rights and interests of Seller or its Affiliate in, to and under the contracts listed on *Schedule 2.1(h)* hereto (the "*Contracts*");

(i) all stockpiled coal inventory and pit inventory, wherever located, as of the Five Mile Closing;

(j) all parts and supplies inventory;

(k) all prepaid royalties that relate to the Leased Real Property and all prepaid amounts that relate to the Contracts; and

(l) all maps, reserve studies, engineering reports, and other records relating to the Assets.

The Assets will be delivered free and clear of all Liens other than Permitted Liens. The Assets will otherwise be transferred on an AS IS, WHERE IS basis and with all faults, subject to the representations and warranties made in Section 4 hereof.

2.2 Excluded Assets. Notwithstanding any provision of Section 2.1, Seller shall retain all of its right, title and interest in the following assets (collectively, the "*Excluded Assets*") and the definition of Assets shall not include any of the following:

(a) Any and all personal property and fixtures, including but not limited to all machinery and equipment, furniture, tools, computer hardware and systems, trucks and other motorized vehicles, parts, supplies and all other tangible personal property;

(b) all performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayments made with respect thereto, or certificates of deposit or other sums or amounts or assets posted by Seller to secure any of the foregoing for reclamation or otherwise;

(c) all assets, if any, in Seller's executive or incentive compensation, bonus, deferred compensation, pension, profit sharing, savings, retirement, stock option, stock purchase, group life, health or accident insurance or other employee benefit plans, and all contracts and other agreements and documents relating to all such plans;

(d) all coal inventory where title has transferred to a third party;

(e) all cash and cash equivalents of Seller as of the Closing Date;

(f) any and all rights, Claims, credits, allowances, rebates, refunds, causes of action, or rights of set-off of the Seller or any Affiliate of the Seller, known or unknown, pending or threatened;

(g) any and all prepaid items, deposits, and retainers, excepting prepaid royalties;

(h) all insurance policies and any rights or Claims arising from such policies;

(i) all Tax refunds, rebates, overpayments and other rights (including, without limitation, rights to indemnification) and Claims of the Seller in respect of or relating to Tax or other liabilities not assumed by the Buyer or in respect of or relating to any other Excluded Assets;

(j) all books, records, files or other documentation and written materials relating to any Excluded Assets;

(k) the capital stock, corporate books and records of Seller; and

(l) all permits listed on *Schedule 2.2(l)*.

2.3 Assumed Liabilities.

(a) At the Closing, Buyer will assume only the following specifically listed Liabilities and obligations of Seller and no other Liabilities (the "*Assumed Liabilities*"):

(i) all Liabilities for and obligations of Seller relating to the Assets arising after the Closing Date as applicable for such Assets, including all Liabilities and obligations

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arising in connection with the Contracts, other than Liabilities and obligations arising from breaches thereof or otherwise prior to the Closing Date; provided that Buyer will be allocated real property and personal property taxes for the period of its ownership of the Assets in 2012;

(ii) all Liabilities related to the Permits for reclamation prescribed by Law, contract or otherwise; provided, however, that the Seller and its Affiliates shall retain the Liability for any fines and penalties related to the Permits arising out of notices of violation, notices of non-compliance or orders, in each case for actions occurring prior to the Closing Date or arising within thirty (30) days after Closing for conditions existing prior to the Closing Date.

(b) Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation. All such other liabilities and obligations shall be retained by and remain liabilities and obligations of Seller and Seller agrees to perform and discharge such liabilities according with their respective terms.

2.4 Non-Assignment of Assets. This Agreement shall not constitute an agreement to assign or transfer any assets of Seller, if an attempted transfer or assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (or with respect thereto), would constitute a breach thereof or in any way negatively affect the rights of Seller or Buyer, as the assignee or transferee of such asset, as the case may be, thereunder. If the Closing cannot occur without such authorization, consent, approval, license or permit for the transfer or assignment of any Purchased Asset of Seller at or before the Closing, and such consent is not obtained, at Buyer's election the consent may be obtained after Closing and Seller will cooperate with Buyer without further consideration (other than as provided in clause (b) of this Section 2.4) in any arrangement reasonably acceptable to Buyer and Seller, designed to both (a) provide Buyer with the benefits of any such asset, and (b) cause Buyer to bear all costs and obligations of or under any such asset arising after Closing. Any transfer or assignment to Buyer of any asset that shall require the consent, approval, authorization of, or granting of any license or permit by any third party for such assignment or transfer as aforesaid shall be made subject to such consent, approval, authorization, license or permit being obtained.

2.5 Amounts Held in Trust. Any amounts received by Buyer after the Closing with respect to any Excluded Asset shall be held by Buyer in trust for Seller until promptly paid to Seller. Likewise, any amounts received by Seller after the Closing with respect to any Purchased Asset shall be held by Seller in trust for Buyer until promptly paid to Buyer.

2.6 Transfer Taxes. Buyer shall be liable for all sales, use and other transfer Taxes, for all filing and recording fees, arising from or relating to the consummation of the transactions contemplated by this Agreement.

2.7 Excluded Liabilities. Buyer shall not assume or become liable for, and the Assumed Liabilities shall not include, any Liabilities of Seller or any Affiliate of Seller, except for those specifically assumed pursuant to Section 2.3 (the Liabilities of Seller and its Affiliates not assumed by Buyer or its Affiliates are referred to as "*Excluded Liabilities*"). Without limiting the generality of the preceding sentence, the Excluded Liabilities include:

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(a) any Liability related to any accounts payable or any indebtedness of Seller or any Affiliate of Seller;

(b) any Liability with respect to any goods sold or any service provided by Seller or any Affiliate of Seller prior to the Closing Date, including any such Liability (i) pursuant to any express or implied representation, warranty, agreement, coal specification, undertaking or guarantee made by Seller or any Affiliate of Seller or alleged to have been made by Seller or any Affiliate of Seller, (ii) imposed or asserted to be imposed by operation of law or (iii) pursuant to any doctrine of product liability;

(c) any Liability or obligation with respect to any litigation arising from the operation of the Business prior to the Closing Date;

(d) any Liability that relates to any Employee or former Employee or to any employee or former employee of any of Seller's Affiliates (or any individual who applied for employment with Seller or any Affiliate of Seller);

(e) any Liability arising under or relating to any Employee Benefit Plan of Seller;

(f) any Liabilities of Seller, its Affiliates or its predecessors in interest, whether known or unknown, as a result of participation in any collective bargaining agreement, obligations under the Coal Industry Retiree Health Benefit Act of 1992, and any and all other prior labor, employment, Employee Benefit Plans and related Liabilities of Seller;

(g) any Liability of Seller or any Affiliates of Seller for Taxes, other than real property and personal property Taxes to be paid by Buyer pursuant to Section 2.3(a)(i) and the transfer taxes to be paid by Buyer pursuant to Section 2.6; and

(h) any Liability of Seller or any Affiliates of Seller for the unpaid Taxes of any Person under Treas. Reg. § 1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise.

(i) any Liability for reclamation of any areas not covered by the Permits, and any fines and penalties (whether or not covered by the Permits) arising out of notices of violation, notices of non-compliance or orders, in each case for actions occurring prior to the Closing Date or arising after Closing for conditions existing prior to the Closing Date.

ARTICLE 3 – PURCHASE PRICE; CLOSING AND DELIVERIES

3.1 Closing. The parties shall hold a closing for the purchase and sale of the Assets as soon as reasonably possible after satisfaction of the conditions to closing in Article 7, but in no event later than thirty (30) days following the Effective Date. The date on which the Closing occurs is referred to in this Agreement as the "*Closing Date.*"

3.2 Seller's Deliveries. The sale, transfer, assignment and delivery by Seller of the Strong Brothers Assets, Strong Brothers Permits, Andy Terminal Assets, Andy Terminal Permits, Five Mile Permits and all other Assets purchased hereunder to Buyer, as herein provided, shall be

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effected on the Closing Date by Seller's execution and delivery of the Related Agreements to which it is a party, and other instruments of transfer and conveyance reasonably satisfactory in form and substance to counsel for Buyer and Seller, which shall include, without limitation, and in each case subject to Buyer's compliance with Section 8.2(c) of this Agreement, all documents of title and instruments of conveyance necessary to transfer record and/or beneficial ownership to Buyer of Five Mile Permits, and any other property constituting the Five Mile Permits owned by Seller or its Affiliates which requires execution, endorsement and/or delivery of a document in order to vest record or beneficial ownership thereof in Buyer.

3.3 Buyer's Deliveries. At the Closing:

(a) Buyer shall pay to Seller at the Closing, by wire transfer to an account designated by Seller, an amount equal to Eight Million Five Hundred Thousand Dollars ($8,500,000.00) (the "*Purchase Price*"), reduced by usual, reasonable and ordinary expense pro-rations; and

(b) Buyer shall execute and deliver to Seller the Related Agreements to which it is a party and such other agreements as are reasonably satisfactory in form and substance to counsel for Buyer and Seller.

3.4 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets as set forth in *Schedule 3.4* hereto subject to Section 11.14 of this Agreement. The parties hereto shall report the transactions contemplated herein for all tax purposes in accordance with such allocation and, in any proceeding related to the determination of any Tax, neither party hereto shall contend or represent that such allocation is not a correct allocation.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller, subject to Section 11.14 of this Agreement, makes the representations and warranties set forth below which are true, correct and complete on the date hereof and shall be true, correct and complete in all material respects to the best of Seller's Knowledge as of the Closing:

4.1 Organization. Seller is duly organized and validly existing under the Laws of its state of organization, and is authorized to do business in every jurisdiction in which the failure to be so qualified could result in a Material Adverse Effect. Seller has all requisite corporate or limited liability company power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

4.2 Authorization and Validity. Seller has all requisite corporate or limited liability company power and authority to enter into this Agreement and the Related Agreements to which it is a party, subject to the receipt of the consents, waivers, authorizations and approvals set forth on *Schedule 4.2*. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by all necessary corporate or limited liability company action by Seller. This Agreement and the Related Agreements to which Seller is a party have been, or will be, duly executed by Seller and constitute its valid and binding obligation, enforceable against it in accordance with their terms.

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4.3 No Conflict or Violation. Subject to the receipt of the consents, waivers, authorizations and approvals set forth on *Schedule 4.3*, the execution, delivery and performance by Seller of this Agreement and the Related Agreements to which it is a party (a) do not and will not violate or conflict with any provision of the organizational or governing documents, or bylaws of Seller, (b) do not and will not violate any provision of any Law or any Order applicable to Seller, (c) do not and will not violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Seller is a party or by which it is bound or to which any of Seller's properties or assets are subject, except for any such violation, conflict, breach or default which would not have a Material Adverse Effect, (d) contravene, conflict with, or violate (with or without notice or lapse of time, or both), any terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permits, or (e) result in the imposition or creation of any Lien upon or with respect to any of the Assets.

4.4 Consents and Approvals. *Schedule 4.4* sets forth a true and complete list of each material consent, waiver, authorization or approval of any Governmental Authority or of any other Person that is required in connection with the execution, delivery and performance of this Agreement.

4.5 Compliance with Law. Except as set forth on *Schedule 4.5*, Seller is in compliance with all Laws and has not received written notice of any violation of any Law, nor is Seller in default with respect to any Order, applicable to the Assets, other than violations or defaults the consequences of which would not have a Material Adverse Effect. No event has occurred, nor does any circumstance exist, that (with or without notice or lapse of time) (a) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Law or Order, or (b) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

4.6 Litigation. Except as set forth on *Schedule 4.6*, there are no Claims, actions, suits, Proceedings or investigations related to the Assets pending or, to Seller's Knowledge, threatened, before any federal or state court or Governmental Authority brought by or against Seller that could reasonably be expected to have a Material Adverse Effect.

4.7 Title and Ownership. At the Closing, Seller will have the right to transfer the Assets to Buyer free and clear of all Liens, other than Permitted Liens.

4.8 Contracts. Other than as set forth on *Schedule 4.8*, neither Seller nor, to Seller's Knowledge, any other party to any of the Contracts has threatened or commenced any action against any of the parties to any of the Contracts or given or received any written notice of any material default or violation under any Contract that was not withdrawn or dismissed. Each of the Contracts is, or will be at the Closing, valid, binding and in full force and effect, except as otherwise set forth on *Schedule 4.8*.

4.9 Permits. *Schedule 2.1(d)(ii)*, *Schedule 2.1(e)* and *Schedule 2.1(f)* sets forth a complete and correct list of all operational permits for the Assets, whether for coal mining, reclamation, or other operational purposes, currently held by Seller in connection with the Business.

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The Permits collectively constitute all of the permits legally capable of being transferred and are necessary to allow Seller to lawfully conduct and operate, own and use the Assets as currently used in the Business. There will not be a Material Adverse Effect on or with respect to such Permits as a result of the consummation of any of the transactions contemplated in this Agreement or in the Related Agreements. Each Permit is valid and in full force and effect. Except as set forth in *Schedule 4.9*:

(a) Seller is, and at all times has been, in material compliance with all of the terms and requirements of each Permit;

(b) No event has occurred, nor does any circumstance exist, that may (with or without notice or lapse of time) (i) constitute or could result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Permit or (ii) could result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Permit;

(c) No Seller has received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding (i) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Permit, or (ii) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any such Permits; and

(d) All applications required to have been filed for the renewal of the Permits have been duly filed on a timely basis with the appropriate Governmental Authority, and all other filings required to have been made with respect to such Permits have been duly made on a timely basis with the appropriate Governmental Authority.

4.10 Labor Matters. Except as may be set forth on *Schedule 4.10*, Seller represents and warrants that:

(a) No Employee is currently represented by a labor union or other collective labor organization or association;

(b) There are no collective bargaining agreements or memoranda of understanding by which Seller is bound or applicable to any Employees;

(c) To the Knowledge of Seller, there is no union or independent organizational activity among any Employees underway;

(d) No liability under Title IV of ERISA has been or is reasonably expected to be incurred by Seller or Affiliate. The Pension Benefit Guaranty Corporation has not notified Seller or Affiliate regarding the institution of proceedings to terminate any Employee Benefit Plan that is subject to Title IV of ERISA, nor, to the Knowledge of Seller, could any such notification reasonably be expected. All contributions required to be made with respect to any Employee Benefit Plan pursuant to Section 412 of the Code and Section 302 of ERISA or any collective bargaining agreement have been made on or before their due dates (including any extensions thereof). No Employee Benefit Plan has any accumulated or waived funding deficiencies within the meaning of Section 412 of the Code or 302 of ERISA, nor have any extensions of any amortization period been applied for with respect thereto. No Employee Benefit Plan is a "multiemployer plan" as such term is defined in Section 3(37) of ERISA;

(e) There is no pending litigation relating to the employment, termination of employment, compensation or employee benefits of any Employee, nor, to the Knowledge of Seller, is any such litigation threatened;

(f) The execution and delivery of, and performance of the transactions contemplated in, this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Employee Benefit Plan, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee; and

(g) (i) Seller is in compliance in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, occupational safety and health and wages and hours; (ii) there is no unfair labor practice complaint or charge relating to the Business pending or, to the Knowledge of Seller, threatened before the National Labor Relations Board; and (iii) there is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Seller, threatened against or affecting the Business, and there has been no such job action during the past three years. The Business is in compliance with WARN and no Seller has any liability under WARN.

4.11 Financial Advisors. Neither Seller nor any authorized Person on Seller's behalf has agreed to pay any brokerage fee, finder's fee or commission which could reasonably be expected to become the obligation of Buyer with respect to the transactions contemplated by this Agreement.

4.12 Real Property.

(a) *Schedule 2.1(a)(i)*, *Schedule 2.1(a)(ii)*, *Schedule 2.1(b)* and *Schedule 2.1(c)*, subject to Section 11.14, as of Closing shall accurately and completely depict the Real Property in all material respects.

(b) Seller has good and marketable fee simple title to each surface parcel of the Owned Real Property, free and clear of any Liens, except for Permitted Liens. Seller is in possession of the Real Property through a valid and effective deed or lease. Seller has rights of ingress and egress with respect to the Real Property and the improvements conveyed by such Seller that are adequate for the use and operation of such Real Property and improvements in a manner that is consistent with the current use and operation of such Real Property. To the Knowledge of Seller, none of the Real Property or the improvements conveyed to Buyer, or the use thereof, contravenes or violates any building, zoning, administrative, occupational safety and health or other applicable Law in any material respect.

(c) Seller has obtained all material easements and rights of way required to use and operate the Real Property as a coal mining operation and all such easements and rights of way are included in the Assets.

(d) Except as set forth on *Schedule 4.12(d)*, Seller has not received notice of, and has no actual Knowledge of, any material Proceedings pending or, to the Knowledge of Seller, threatened regarding the ownership, use or possession of the Real Property, including subsidence claims, condemnation, expropriation or similar Claims.

(e) Except as set forth on *Schedule 4.12(e)*, Seller is not a party to any lease, assignment or similar arrangement under which Seller is a lessor or assignor with respect to any of the Real Property, or under which any portion of the Real Property is made available for use by any third party.

(f) Seller has made available to Buyer, or will make available to Buyer prior to the Closing, true and complete copies of all deeds, leases, mortgages, deeds of trust, certificates of occupancy, title insurance policies, title reports, surveys and similar documents, and all amendments thereof, with respect to the Real Property, in Seller's possession. All leases for mineral rights to the Real Property as are identified on *Schedules 2.1(b) and 2.1(c)* are or as of Closing shall be enforceable in accordance with the terms of each such lease. To the knowledge of Seller, all other contracts, agreements and writings referring or relating to the Real Property are enforceable in accordance with the terms of each applicable instrument.

(g) All facilities owned, leased or subleased are supplied with utilities and other services necessary for the operation of said facilities.

4.13 Environmental Matters. Except as set forth on *Schedule 4.13*:

(a) Seller is in compliance in all material respects with all Environmental Laws;

(b) During the prior five (5) years, Seller has not received, nor does it expect, any communications, whether from a Governmental Authority, citizens group, Employee or otherwise, that allege that the Business or its properties are not in compliance with any Environmental Law, or any actual or threatened obligation to bear the cost of any environmental, health or safety Liabilities, except for such communications that have been resolved in all material respects.

(c) To the Knowledge of Seller, no material Release has occurred on or beneath the Real Property, except for inventories of Hazardous Materials to be used, and wastes generated therefrom, in the ordinary course of Business of Seller (which inventories and wastes, if any, were and are stored or disposed of in accordance with applicable Environmental Laws) and except for any such Release which would not result in a Material Adverse Effect.

(d) There are no pending or, to the Knowledge of Seller, threatened claims, Liens, or other restrictions of any nature, resulting from any environmental, health, and safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Assets.

(e) There are no Hazardous Materials present on or in the environment at any of the Assets, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of such Assets. Neither Seller, nor any other Person for whose conduct Seller is or may be held responsible, or to any other Person, has permitted or conducted, or is aware of, any hazardous activity conducted with respect to any of the Assets involving Hazardous Materials or the Release thereof, except such activities as are and were in full compliance with all applicable Environmental Laws.

(f) Seller has delivered to Buyer, or will deliver to Buyer prior to the Closing, true and complete copies and results of all reports, studies, analyses, tests or monitoring possessed or initiated by or on behalf of Seller pertaining to Hazardous Materials or Hazardous Activities in, or under, any Asset, or concerning compliance by Seller, or any other Person for whose conduct Seller is or may be held responsible, with Environmental Laws.

4.14 Assets. The buildings, plants, facilities, structures and equipment included in the Assets are suitable for the purposes for which they presently are used, and are sufficient for the continued conduct of each Seller's business after the Closing in substantially the same manner as conducted prior to the Closing.

4.15 Taxes. Except as may be set forth on *Schedule 4.15*:

(a) None of the Assets are subject to any Liens for the failure to file or pay any Taxes. There are no Proceedings, investigations or claims now pending or, to the knowledge of Seller, proposed against Seller, nor are there any matters under discussion with the IRS or any other Governmental Authority, relating to any Taxes or assessments, or any claims or deficiencies with respect thereto.

(b) No Seller is a United States real property holding corporation within the meaning of section 897(c)(2) of the IRC during the applicable period specified in section 897(c)(1)(A)(ii) of the Code, and Buyer is not required to withhold tax on the purchase of the Assets by reason of section 1445 of the IRC or any other Law. No Seller is a "foreign person" within the meaning of section 1445 of the Code.

4.16 Disclaimer of Other Representations and Warranties. Except as expressly set forth in this Article 4, Seller makes no representation or warranty, express or implied, at law or in equity, in respect of any of its assets (including, without limitation, the Assets), liabilities or operations, including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in this Article 4, Buyer is purchasing the Assets on an "as-is, where-is" basis. Without limited the generality of the foregoing, Seller makes no representation or warranty regarding any assets other than the Assets and none shall be implied at law or in equity.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF BUYER

In order to induce Seller to enter into this Agreement, Buyer makes the representations and warranties set forth below, which are true, correct and complete in all material respects on the date hereof and shall be true, correct and complete in all material respects as of the Closing:

5.1 Organization. Buyer is duly organized and validly existing under the Laws of the state of Delaware, and is authorized to do business in every jurisdiction in which the failure to be so

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qualified could result in a Material Adverse Effect. Buyer has all requisite limited liability company power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

5.2 Authorization and Validity. Buyer has all requisite limited liability company power and authority to enter into this Agreement and the Related Agreements to which it is a party. The execution and delivery of this Agreement and the Related Agreements to which it is a party and the performance of the obligations hereunder and thereunder have been duly authorized by all necessary limited liability company action by Buyer. This Agreement and the Related Agreements to which Buyer is a party have been, or will be, duly executed by Buyer and constitute its valid and binding obligation, enforceable against it in accordance with their terms.

5.3 Consents and Approvals. Except as disclosed on *Schedule 5.3*, no consent, approval or action of, filing with or notice to, any Governmental Authority or any other Person, on the part of Buyer is required in connection with the execution, delivery and performance of this Agreement or any of the Related Agreements to which Buyer is a party or the consummation of the transactions contemplated hereby or thereby.

5.4 No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and the Related Agreements to which it is a party (a) do not and will not violate or conflict with any provision of the certificate of formation, or limited liability company agreement of Buyer, (b) to Buyer's Knowledge after due inquiry, do not and will not violate any provision of any Law or any Order applicable to Buyer, and (c) do not and will not violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Buyer is a party or by which it is bound or to which any of Buyer's properties or assets are subject, except for any such violation, conflict, breach or default which would not reasonably be expected to have a Material Adverse Effect.

5.5 Financial Advisors. Neither Buyer nor any authorized Person on Buyer's behalf has agreed to pay any brokerage fee, finder's fee or commission which could reasonably be expected to become the obligation of Seller with respect to the transactions contemplated by this Agreement.

5.6 Permitting. Buyer has not been subject to any bond forfeiture, permit suspension or revocation or similar effort or Proceeding instituted by any Governmental Authority.

ARTICLE 6 – REPRESENTATIONS AND WARRANTIES

6.1 Warranties Exclusive.

(a) Buyer acknowledges that the representations and warranties contained in Article 4 are the only representations or warranties given by Seller and that all other express or implied (including but not limited to merchantability or fitness) warranties are disclaimed. Buyer acknowledges that Seller and Seller's Affiliates and their respective Related Persons have made no representation or warranty concerning any future revenues, costs, expenditures, cash flow, results of operations, financial condition or prospects that may result from the ownership, use or sale of the

Assets or the assumption of the Assumed Liabilities. In addition, Buyer acknowledges that the Real Property has been held for mining or mining related purposes. Neither Seller nor any Related Person warrants or represents subjacent or lateral support of the surface or subsurface of the Real Property, nor does Seller or any Related Person warrant or represent that the Real Property is safe, habitable, or otherwise suitable for mining or for any other purpose. "*Related Person*" means, with respect to a specific Person, any officer, director, employee, agent, shareholder, representative, successor or assign of such Person.

6.2 Survival of Representations and Warranties. Except for the representations and warranties in Sections 4.7 and 4.12, which shall survive without limit, and Section 4.15, Taxes, which shall survive for a period equal to the applicable statute of limitations, the representations and warranties of Seller set forth in this Agreement or any Related Agreement shall survive the Closing for a period of eighteen (18) months, and shall thereafter (together with any obligation of indemnification related thereto) be of no further force or effect whatsoever. Any proceeding by Buyer against Seller related to any such representations or warranties must be instituted within the foregoing unlimited, statutory or eighteen (18) month periods, as applicable or shall be thereafter waived and barred.

ARTICLE 7 – CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

7.1 Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Seller in its sole discretion:

(a) Representations, Warranties and Obligations of Buyer. All representations and warranties made by Buyer in Article 5 taken as a whole, shall be true and correct in all material respects on the date of this Agreement and on and as of the Closing Date (except to the extent that any such representation and warranty is made as of a specified date, in which case such representation and warranty shall continue to be made as of such specified date), and the covenants and agreements of Buyer to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Seller shall have received a certificate, dated the Closing Date and signed by an officer of Buyer, to that effect. Neither the representations and warranties of Buyer, nor the indemnification obligations of Buyer, shall be affected, qualified, modified or deemed waived by reason of the fact that Seller should have known that any representation or warranty is or might be inaccurate in any respect.

7.2 Conditions Precedent to Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations, Warranties and Obligations of Seller. All representations and warranties made by Seller in Article 4 shall be true and correct in all material respects on the date of this Agreement and on and as of the Closing Date (except to the extent that any such representation and warranty is made as of a specified date, in which case such representation and warranty shall continue to be made as of such specified date), and the covenants and agreements of Seller to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Buyer shall have received a certificate, dated the Closing Date and signed by an officer of Seller, to that effect. Neither the representations and warranties of Seller, nor the indemnification obligations of Seller, shall be affected, qualified, modified or deemed waived by reason of the fact that Buyer should have known that any representation or warranty is or might be inaccurate in any respect.

(b) No Changes. Between the date hereof and the Closing Date, there shall have been (i) no Material Adverse Effect in the Assets; and (ii) no material damage or loss to any of the Assets by fire, flood, casualty, Act of God, act of Governmental Authority, act of public enemy or other cause, regardless of insurance coverage for such damage or loss.

(c) Business. All the property rights, Deeds, leases, consents and Permits necessary for Buyer to acquire the Assets and operate them immediately after the Closing (i) shall have been obtained or be assignable to Buyer at the Closing without consent (except as provided above) and without material change and (ii) be in full force and effect.

(d) Payments. Seller shall have provided to Buyer evidence satisfactory to Buyer that all outstanding civil penalties or federal reclamation Taxes associated with the Assets, including all interest and penalties relating thereto, have been paid or that arrangements satisfactory to Buyer have been made for their payment.

7.3 Conditions to each Party's Obligations. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver on or before the Closing of the following conditions:

(a) Injunctions. There shall not be outstanding any Order prohibiting the consummation of the transactions contemplated by this Agreement and no action shall have been commenced which could reasonably be expected to prohibit the consummation of the transactions contemplated hereby in Buyer's discretion.

(b) No Change in Law. There shall not have been any action taken or any statute enacted by any Governmental Authority which in any material respect would render the parties unable to consummate the transactions contemplated hereby or make the transactions contemplated hereby illegal or prohibit the consummation of the transactions contemplated hereby.

(c) Financing. Buyer shall have received financing from a lender of Buyer's choosing in an amount sufficient to fund the Purchase Price; provided, however, if the Closing has not occurred on or before thirty (30) day after the Effective Date, Seller may terminate this Agreement without any liability to Purchaser.

(d) Schedules and Exhibits. The schedules and exhibits referenced in this Agreement shall have been completed to the satisfaction of Buyer and Seller in their sole and absolute discretion.

ARTICLE 8 – COVENANTS

8.1 Covenants of Seller. Seller covenants as follows:

(a) Permit Blocking. In the event that, prior to the Closing, Seller or any Affiliates of Seller, or any Person "owned or controlled" by any Seller or any Affiliates, or to the Knowledge of Seller any other Person retained by Seller, or any of them, as a contract miner or the like, is notified by the Federal Office of Surface Mining ("*OSM*") or the agency of any state administering the SMCRA (or any comparable state Law) that it is ineligible to receive additional surface mining permits, i.e., "permit blocked," Seller shall use its commercially reasonable efforts to eliminate such designation. As used in this Section 8.1(a), "owned or controlled" shall be defined as set forth in 30 C.F.R. Section 773.5 (1991).

(b) Access to Properties and Records; Confidentiality. Seller shall afford to Buyer, and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours throughout the period before the Closing (or the earlier termination of this Agreement pursuant to Article 10) to all Owned Real Property, and books and records of Seller relating to the Assets and the Assumed Liabilities. Seller shall also furnish Buyer and its representatives with copies of all Permits to be assumed by Buyer hereunder, and other existing documents and data to the extent such items are in its possession and relate to the Assets, all as Buyer may reasonably request. Upon reasonable prior notice, Seller shall also afford Buyer reasonable access, taking into account Seller's resources and other commitments, during normal business hours, to all Assets throughout the period before the Closing. Seller shall assist Buyer in obtaining all necessary land owner consents to permit Buyer and its representatives to conduct such drilling and testing of coal reserves located on the Owned Property, as Buyer deems reasonably necessary. In conducting any review or inspection of the Assets, Buyer shall conduct itself in a manner to minimize damage to the Assets and such properties. All information provided to Buyer or its agents or representatives by or on behalf of Seller or its agents or representatives (whether pursuant to this Section or otherwise) will be governed and protected by Section 8.2(f).

(c) No Negotiation. Until such time, if any, as this Agreement is terminated pursuant to Article 9, the Seller shall not, nor shall Seller permit any of its respective Affiliates or representatives to, (a) directly or indirectly entertain, solicit, initiate, accept or encourage any inquiries, offers or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyer and its Affiliates) relating to any transaction involving the sale or lease of any of the Assets.

(d) Conduct of Operations.

(i) From the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller will not take any action or knowingly permit to be done anything that would be or represent a misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement on the part of Seller under this Agreement, and Seller shall cause the deliveries for which it is responsible at the Closing to be duly and timely made.

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(ii) Seller covenants and agrees that from the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller shall:

(a) operate the Business in the ordinary course of business and take no action that would impair the going concern value of Seller's businesses;

(b) not modify, terminate or waive any right under any leases for the Leased Real Property or any material contracts that are part of the Assets or enter into any contract that cannot be terminated upon ninety days written notice by Buyer without payment or penalty;

(c) not allow any of the Assets to be subject to any Lien other than Permitted Liens, or sell, trade or otherwise dispose of any Assets; and

(d) maintain and use the Assets in material compliance with all Laws, Permits and Orders applicable to Seller;

(e) maintain its corporate existence and good standing; and

(f) not enter into any contract to do anything inconsistent with the foregoing obligations.

(iii) From the date hereof through the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Seller agrees to promptly notify Buyer in writing if it becomes aware of any fact or condition that causes or constitutes a material breach by Seller of any of its representations or warranties as of the date of this Agreement, or if Seller becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute such a breach by Seller had its representations and warranties been made as of the time of the occurrence or discovery of such fact or condition. Should any such fact or condition require any change in the Schedules if the Schedules were dated the date of the occurrence or discovery of any such fact or condition, Seller will promptly deliver to Buyer a supplement to the Schedules specifying such change. During the same period, Seller agrees to promptly notify Buyer of the occurrence of any breach of any covenant of Seller in this Agreement or of the occurrence of any event that may make the satisfaction of the conditions in Section 7.2 impossible or unlikely. No disclosure by Seller pursuant to this Section 8.1(d)(iii), nor any supplement of the Schedules by Seller as contemplated above, however, shall be deemed to amend or supplement the Schedules for purposes of the conditions to Closing provided in Section 7.2, to prevent or cure any misrepresentation or breach of a warranty or covenant, or to otherwise amend or supplement any of the conditions to Closing provided in Section 7.2.

8.2 Covenants of Buyer. Buyer covenants as follows:

(a) Access to Books and Records. Buyer agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information that are part of the Assets according to its normal document retention policies. In addition, from and after the Closing, Buyer agrees that it will, at Seller's sole cost, provide reasonable access to Seller and its attorneys,

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accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Assets or the Assumed Liabilities necessary to properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, Tax audit, Tax protest, suit, proceeding or answer, provided such access does not compromise the confidential nature of Buyer's business records. Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Assets or the Assumed Liabilities.

(b) Notification by Buyer of Certain Matters. Buyer agrees to notify Seller in writing within a reasonable time after Buyer's or its authorized representatives' discovery of any information prior to the Closing Date relating to Seller or the operations by Seller (including the financial condition, assets and properties) of the Business which constitutes (or would constitute) or indicates (or would indicate) a breach of any representation, warranty or covenant of Seller contained herein.

(c) Permit Matters. Buyer shall prepare, and provide to Seller no later than three (3) Business Days prior to the Closing Date, proposed final drafts of all such documents and information as are or will be necessary to obtain, and thereafter shall diligently pursue (i) to the extent transfer is permitted under applicable Law, the transfer to Buyer of any Permits that were not transferred to Buyer on or prior to the Closing and (ii) the obtaining of any necessary replacements of any Permits (as used in this subsection (c), such documents and information are referred to collectively as the "*Permit Transfer Documents and Information*"). At the Closing, Buyer shall file the Permit Transfer Documents and Information. Seller shall cooperate with Buyer in all commercially reasonable ways to file and prosecute such applications, at the sole cost and expense of Buyer. To the extent allowed by and in accordance with applicable Law, Seller hereby grants to Buyer the right, after the Closing, to conduct operations under any of the Permits until such time as the transfer or replacement, if applicable, of the Permits to Buyer is complete, but in no event for longer than One Hundred Eighty (180) days after the Closing, subject to extension with the consent of Seller, such extension not to be unreasonably withheld. Buyer shall (A) comply with all conditions and requirements of, or pertaining to, any such Permits that Buyer operates under after the Closing, and (B) indemnify Seller from and against any and all losses incurred or suffered by Seller as a result or consequence of this arrangement regarding the use of such Permits by Buyer, other than and to the extent that any such losses are incurred or suffered by Seller as a direct result of Seller's conduct or inaction prior to the Closing.

(d) Transfer of Permits to Buyer. At the Closing, Buyer shall provide Seller with evidence satisfactory to Seller, in Seller's sole discretion, that Buyer has (i) posted substitute bonds for the Permits in the amount set forth on *Schedule 8.2(e)* hereto, and (ii) filed or is prepared to file within five (5) Business Days applications with all applicable Governmental Authorities for the transfer of the Permits. Buyer shall cause the existing bonds (and all security with respect thereto referenced on *Schedule 8.2(d)*) obtained by Seller or its Affiliates with respect to the Permits to be terminated, released, and returned to Seller no later than Sixty (60) days after the Closing Date, and shall take all such actions and execute all such documents as may be necessary to effect such termination, release, and return, provided that Buyer shall not be responsible for delays by Governmental Authorities outside its control.

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(e) Replacement of Guarantees. Buyer shall replace and cause Seller and its Affiliates and Related Persons to be discharged from, effective as of the Closing Date, all corporate and/or personal guarantees and indemnities related to the Assets issued by Seller or by any of Seller's Affiliates or Related Persons on behalf of Seller set forth in *Schedule 8.2(e)*. Without limitation of the preceding sentence, Buyer shall indemnify and hold harmless Seller, its Affiliates, and Seller's and its Affiliates' Related Persons from and against any and all Liabilities and Claims related to any draw made by any beneficiary of any such guaranty or indemnity and any Proceeding related to or arising out of any such guaranty or indemnity.

(f) Confidentiality. Buyer shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents (collectively, "*Representatives*") to hold, in confidence any and all information, whether written or oral, concerning the Business, the Assets and the transactions contemplated hereby, except to the extent that Buyer can show that such information (a) is generally available to and known by the public through no fault of Buyer, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Buyer, any of its Affiliates or their respective Representatives prior to the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Buyer or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Buyer shall promptly notify Seller in writing and shall disclose only that portion of such information which Buyer is advised by its counsel in writing is legally required to be disclosed, provided that Buyer shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Effective upon, and only upon, the Closing, the obligations set forth in this Section 8.2(f) shall terminate with respect to information relating solely to the Assets.

(g) Non-Solicitation of Employees. Buyer recognizes and agrees that Seller and its Affiliates have invested substantial time and effort in attracting and retaining their Employees, including but not limited to Mark Merritt and Elmer Bentley. Accordingly, for a period of eighteen (18) months from the Effective Date ("*Non-Solicitation Period*"), neither Buyer nor any of its Affiliates shall directly or indirectly induce or solicit Mr. Merritt or Mr. Bentley to leave his employment with Seller or any of its Affiliates nor will Buyer employ or offer employment to Mr. Merritt or Mr. Bentley during the Non-Solicitation Period.

8.3 Covenants of the Parties.

(a) Consents. The parties shall promptly apply for and diligently prosecute all applications for, and shall use commercially reasonable efforts promptly to obtain, such consents, authorizations and approvals from such Governmental Authorities and third parties as shall be necessary or appropriate to permit the consummation of the transactions contemplated by this Agreement, and shall use commercially reasonable efforts to bring about the satisfaction as soon as practicable of all the conditions necessary to effect the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the parties hereto agree that as a condition to obtaining the consent of any third party to any coal supply contract or any other Contract to permit the consummation of the transactions contemplated hereby, no party hereto shall have any obligation to, unless such obligation is contained in the underlying

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agreement, (i) pay any remuneration to third parties in exchange for such party's consent or approval; (ii) file any lawsuit or take other legal action as against such third party with respect to any thereof; or (iii) make any amendment thereof or waive any rights thereunder if as a result of such amendment or waiver such coal supply contract or any other Contract would contain terms and conditions that are less favorable in any material respect than the terms and conditions of such coal supply contract or other Contract as in existence on the Closing Date. Notwithstanding the foregoing, if any consent is not or cannot be obtained, or if an attempted assignment or consent for which such consent is required would be ineffective or would affect Buyer's rights so that it would not receive all of the benefits for which consent is required, each party to this Agreement will use its respective commercially reasonable efforts to provide Buyer with the benefits and relieve Seller of the burdens of the contract for which consent is required.

(b) Further Assurances. Each of the parties shall, at all times, and from time to time, either before or after the Closing Date, upon the request of the appropriate party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be required to complete the transactions contemplated in this Agreement or in the Related Agreements. After the Closing Date each party shall, and shall use its reasonable best efforts to assure that any necessary third party shall, execute such documents and do such other acts and things as any other party may reasonably require for the purpose of giving to that other party the full benefit of all the provisions of this Agreement and the Related Agreements to which it is a party or an intended beneficiary, and as may be reasonably required to complete the transactions contemplated in this Agreement or in the Related Agreements.

8.4 Transition. Seller shall cooperate with Buyer and shall provide commercially reasonable assistance in effecting transfers of vendor accounts and services at the time of the Closing so as to avoid interruption or temporary cessation of operations as a result of change of ownership.

ARTICLE 9 – TERMINATION

9.1 Termination. This Agreement may be terminated:

(a) By Seller if the Closing has not occurred on or before thirty (30) days after the Effective Date;

(b) By mutual consent of Buyer and Seller prior to Closing;

(c) By either Seller or Buyer anytime after the 90th day from the date of this Agreement, or such later date to which the Closing has been extended pursuant to the terms hereof, if the Closing has not occurred by such date; provided, however, that as of such date the party terminating this Agreement is not in material default under this Agreement; or

(d) Provided the terminating party is not otherwise in material default or breach of this Agreement, and has not failed or refused to close without justification hereunder, by either Buyer or Seller, without prejudice to other rights and remedies which the terminating party may have, if the other party shall (i) have materially failed to perform its covenants or agreements contained herein required to be performed on or prior to the Closing Date, or (ii) have materially breached any of its representations or warranties contained herein; provided, however, that in the case of clause (i) or (ii), the defaulting party shall have a period of ten (10) days following written notice from the non-defaulting party to cure any breach of this Agreement, if such breach is curable.

9.2 Effect of Termination; Remedies. In the event of termination pursuant to Section 9.1, this Agreement shall become null and void and have no effect (other than Articles 9 and 10, which shall survive termination), with no Liability on the part of Seller or Buyer, or their respective Affiliates or Related Persons, with respect to this Agreement, except for (i) the Liability of a party for its own expenses pursuant to Section 10.1; and (ii) any Liability provided for in this Section, provided, however that any such termination shall be without prejudice to the rights of any party hereto arising out of the material breach by any other party of any covenant or agreement contained in this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.1 Survival; Right to Indemnification.

(a) All representations, warranties, covenants and obligations set forth in this Agreement, the certificates delivered pursuant to Sections 7.1(a) and 7.2(a), and any other certificate or document delivered pursuant to this Agreement will survive the Closing and continue in full force and effect for the periods provided in Section 6.2. The right to indemnification, payment of damages or other remedies based on such representations, warranties, covenants and obligations will not be affected by the Closing, by any earlier termination of this Agreement, or by any investigation conducted by any Person with respect to, or any knowledge acquired by any Person at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to, the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Damages (hereafter defined) or other remedy based on such representations, warranties, covenants and obligations.

(b) Notwithstanding any other provision of this Agreement to the contrary, any and all indemnification and hold-harmless and related obligations of Seller shall be subject to a Basket and Cap as such terms are defined in this Section 10.1(b). Seller shall have no obligation to indemnify any Buyer Indemnitees as defined below or hold any such Buyer Indemnitees harmless as to any claim unless and until the dollar amount of Damages (as defined below) in respect of such claim(s) exceed, in the aggregate, Seventy-Five Thousand Dollars ($75,000.00) (the "*Basket*"). In addition, Seller shall have no obligation to indemnify any Buyer Indemnitees as defined below or hold any such Buyer Indemnitees harmless as to any claim whatsoever once the aggregate dollar amount of Damages (as defined below) in respect of the claims as to which any Buyer Indemnitees as defined below have asserted against Seller has reached One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "*Cap*").

10.2 Indemnification and Payment of Damages by Seller. Subject to the Basket and Cap, Seller agrees to defend, indemnify and hold Buyer and its respective directors, officers, employees, shareholders, members, managers, Affiliates, successors and assigns (collectively, "*Buyer Indemnitees*") harmless from and against, and to pay to Buyer Indemnitees the amount of, any and

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all losses, claims, damages (including without limitation, direct, indirect, special incidental and consequential damages), Liabilities, deficiencies, Proceedings, demands, assessments, Orders, costs and other expenses (including without limitation, costs of investigation and defense and reasonable attorneys' and accountants' fees), of any nature and of any kind whatsoever (collectively, "*Damages*"), that may be suffered or incurred by them (or any of them) resulting from, arising, directly or indirectly, out of or in connection with:

(a) any misrepresentation or breach of warranty made by Seller in this Agreement;

(b) any breach by Seller of any covenant, agreement or obligation of Seller in this Agreement;

(c) all Liabilities, claims, demands or Proceedings of or against Seller made or brought against Buyer by reason of the transactions contemplated in this Agreement, except for the Assumed Liabilities;

(d) the ownership or use of the Assets prior to the Closing, or any Taxes or other Liabilities relating to the ownership or use of the Assets, prior to the Closing, including unpaid civil penalties or federal reclamation Taxes due Kentucky Department for Natural Resources or OSM, as appropriate; and

(e) any loss, cost or damage under a corporate guaranty replaced pursuant to <u>Section 8.2(e)</u> hereof occurring prior to the Closing Date or arising after Closing for conditions existing prior to the Closing Date.

The remedies provided in this <u>Section 10</u> shall not be exclusive of or limit any other remedies that may be available to any Buyer Indemnitee, whether at law, in equity, by contract or otherwise.

10.3 <u>Indemnification By Buyer</u>. Buyer shall defend, indemnify and hold Seller and its respective directors, officers, employees, shareholders, members, managers, Affiliates, successors, heirs and assigns (collectively, "*Seller Indemnitees*") harmless from and against, and will pay to Seller Indemnitees the amount of, all Damages that may be suffered or incurred by them (or any of them) resulting from, arising, directly or indirectly, out of or in connection with:

(a) any misrepresentation or breach of warranty made by Buyer in this Agreement; and

(b) any breach by Buyer of any covenant, agreement or obligation of Buyer in this Agreement.

(c) all Liabilities, claims, demands or Proceedings of or against Buyer made or brought against Seller by reason of the transactions contemplated in this Agreement.

(d) the ownership or use of the Assets after the Closing, or any Taxes or other Liabilities relating to the ownership or use of the Assets, after the Closing including unpaid civil penalties or federal reclamation Taxes due Kentucky Department for Natural Resources or OSM, as appropriate.

The remedies provided in this Section 10 shall not be exclusive of or limit any other remedies that may be available to any Seller Indemnitee, whether at law, in equity, by contract or otherwise.

10.4 Procedure for Indemnification.

(a) Promptly after receipt by a party (the "*Claiming Party*") of notice of the commencement or assertion of any Claim, Proceeding or Order (each an "*Indemnitee Claim*") against it or any other Buyer Indemnitee (in the case of Buyer) or Seller Indemnitee (in the case of Seller), and if a claim is to be made by the Claiming Party against any other party (the "*Indemnifying Party*") for indemnification with respect to that Indemnitee Claim, the Claiming Party shall promptly give notice to the Indemnifying Party of the commencement or assertion of such Indemnitee Claim; provided, that the failure to so notify the Indemnifying Party of the commencement or assertion of such Indemnitee Claim will not relieve the Indemnifying Party of any liability that it may have to any Buyer Indemnitee or Seller Indemnitee (as applicable) hereunder, except to the extent that such Indemnifying Party demonstrates that the defense of such action was materially prejudiced by the Claiming Party's failure to give such notice. The notice contemplated herein shall describe the Indemnitee Claim and the specific facts and circumstances in reasonable detail, shall include a copy of any related notices or written claims from third-parties, and shall indicate the amount, if known, or an estimate, if possible, of the Damages that have been or may be suffered or incurred.

(b) The Indemnifying Party shall defend or compromise any Indemnitee Claim by a third party ("*Third Party Claim*"), at its own expense and by its own counsel, who shall be reasonably acceptable to the Claiming Party. The Claiming Party may participate, at its own expense, in the defense of any Indemnitee Claim assumed by the Indemnifying Party. The Indemnifying Party shall not, without the approval of the Claiming Party (which approval shall not be unreasonably withheld or delayed), compromise a Third Party Claim defended by the Indemnifying Party which would require the Claiming Party to perform or take any action, to refrain from performing or taking any action, or to pay any additional Persons in the future.

(c) If a Claiming Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary Damages for which it would be entitled to indemnification under this Agreement, the Claiming Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its Consent (which may not be unreasonably withheld or delayed).

(d) If, within ten (10) Business Days of the Indemnifying Party's receipt of notice involving a Third Party Claim, the Indemnifying Party has not notified the Claiming Party that the Indemnifying Party will assume the defense, the Claiming Party may assume control of the defense or compromise of such Indemnitee Claim, and the costs and expenses of such defense, including costs of investigation and reasonable attorneys' fees, shall be added to the Indemnitee

Claim. The Claiming Party shall have the right to compromise such Indemnitee Claim without the Consent of the Indemnifying Party.

(e) The party assuming the defense of any Indemnitee Claim shall keep the other party(s) reasonably informed at all times of the progress and development of the party's defense of and compromise efforts with respect to such Indemnitee Claim, and shall furnish the other party(s) with copies of all relevant pleadings, correspondence and other papers. In addition, the parties to this Agreement shall cooperate with each other, and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Indemnitee Claim.

(f) For the avoidance of doubt, any and all obligations of Seller to provide indemnification under this Agreement, and any and all procedures and provisions relating to any such indemnification claims asserted against Seller, shall be subject to the Basket and Cap notwithstanding any other provision, express or implied, to the contrary.

ARTICLE 11 – MISCELLANEOUS

11.1 Expenses. Whether or not the transactions contemplated hereby are consummated, Seller and Buyer shall bear their own expenses, including, without limitation, fees, disbursements and other costs of any brokers, finders, investment bankers, attorneys, accountants and other advisors, in connection with this Agreement and the transactions contemplated hereby.

11.2 Specific Performance. The parties hereto acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement or the Related Agreements are not performed in accordance with their specific terms or otherwise are breached. Accordingly, the parties hereto agree that Seller and Buyer shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement or the Related Agreements and to enforce specifically this Agreement or the Related Agreements and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over Buyer and Seller and the matter, in addition to any other remedy to which it may be entitled, at law or in equity.

11.3 Notices. All notices under this Agreement shall be given to the parties at the following addresses (i) by personal delivery; (ii) by facsimile transmission; (iii) by registered or certified mail, postage prepaid, return receipt requested; or (iv) by nationally recognized overnight or other express courier services:

(a) If to Buyer:

Williams Industries, LLC
1121 Boyce Road, Suite 2200
Pittsburgh, PA 15241
Attention: Lloyd Williams, President
Telephone: (724) 941-6850
Facsimile: (724) 941-6953

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(b) If to Seller:

Kentucky Fuel Corporation
106 Lockheed Drive
P.O. Box 2178
Beaver, WV 25813
Attention: Roger D. Hunter, General Counsel
Telephone: (304) 252-1074
Facsimile: (304) 255-3853

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, on the date of delivery if delivered during normal business hours of the recipient, and if not delivered during such normal business hours, on the next Business Day following delivery; (ii) if by facsimile transmission, on the next Business Day following dispatch of such facsimile; (iii) if by courier service, on the third (3rd) Business Day after dispatch thereof; and (iv) if by mail, on the fifth (5th) Business Day after dispatch thereof. Any party hereto may change its address by notice to all parties hereto delivered in accordance with this Section 11.3.

11.4 Amendments. No supplement, modification or waiver of this Agreement shall be binding unless in writing and executed by each party hereto.

11.5 Waiver. At any time prior to the Closing, Buyer or Seller may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the obligations of the other party or any of the conditions to its own obligations contained herein to the extent permitted by Law. Any agreement on the part of Buyer, on the one hand, and Seller, on the other hand, to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of Buyer and Seller. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other similar or dissimilar provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

11.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Seller or Buyer (whether by operation of law or otherwise) without the prior written consent of the other party, except that Buyer shall have the right to assign its rights hereunder, in whole or in part, to an Affiliate, provided however, that Buyer shall remain liable for all of Buyer's obligations hereunder notwithstanding any such assignment. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

11.8 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns, and nothing in this

Agreement, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature under or by reason of this Agreement.

11.9 Counterparts. This Agreement may be executed in one or more counterparts (including via facsimile or e-mail signatures), each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties hereto.

11.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable. In such case, the parties hereto shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable so as to preserve as nearly as possible the contemplated economic effects of the transactions contemplated hereby.

11.11 Entire Agreement. This Agreement and the Exhibits and Schedules hereto and the Related Agreements constitute the entire agreement among the parties hereto and supersede all prior agreements and understandings oral or written, among the parties hereto with respect to the subject matter hereof and thereof. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as set forth specifically herein or contemplated hereby.

11.12 Governing Law. This Agreement shall be governed by and construed according to the Laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

11.13 RESERVED

11.14 ~~11.13~~ Schedules and Exhibits. BUYER AND SELLER ACKNOWLEDGE THAT THE SCHEDULES AND EXHIBITS REFERENCED IN THIS AGREEMENT HAVE NOT BEEN ENTIRELY COMPLETED AND ARE BEING INCLUDED IN THEIR APRIL 30, 2012 DRAFT FORM SUBJECT TO COMPLETION AND UPDATING. THE PARTIES AGREE TO COOPERATE AND TO USE THEIR COMMERCIALLY REASONABLE EFFORTS TO COMPLETE AND SUPPLEMENT THE SCHEDULES AND EXHIBITS WITHIN ONE WEEK FROM THE DATE OF THIS AGREEMENT. IF NOT SO COMPLETED WITHIN SUCH TIME, EITHER PARTY SHALL HAVE THE RIGHT TO EXTEND SUCH TIME FOR COMPLETION (AND CLOSING) BY AN ADDITIONAL THREE BUSINESS DAYS (OR FOR SUCH LONGER PERIOD AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES IN THEIR DISCRETION).

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{31611640 6}

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

BUYER:

WILLIAMS INDUSTRIES, LLC

By:
Name: Lloyd Williams
Title: President

SELLER:

KENTUCKY FUEL CORPORATION

By:
Name: J.C. Justice II
Title: EVP

{J1611640.6}

THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT (this "***Amendment***") is made and entered into effective as of November 6, 2012, though executed on a different date, by and among Williams Industries, LLC, a Delaware limited liability company (the "***Buyer***"), Kentucky Fuel Corporation, a Delaware corporation (the "***Seller***") and James C. Justice Companies, Inc., a Delaware corporation and the ultimate parent entity of the Seller (the "***Seller Parent***").

RECITALS:

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated as of May 10, 2012 (the "***Purchase Agreement***"), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the "***Sale***"), the Assets (as defined in the Purchase Agreement) of Seller in accordance with the terms of the Purchase Agreement; and

WHEREAS, Buyer and Seller amended the Purchase Agreement to extend the Closing Date by executing and delivering that certain Amendment Extending Closing Deadline effective as of June 9, 2012 (the "***Extension Amendment***"); and

WHEREAS, subsequent to the consummation of the transactions contemplated under this Agreement, the Buyer will sell the Assets to Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company ("***Cypress***"), pursuant to the terms and conditions of that certain Asset Purchase Agreement dated as of May 10, 2012 by and between Buyer and Cypress, as amended by that certain Amendment to Asset Purchase Agreement dated as of October 15, 2012 and that certain Second Amendment to Asset Purchase Agreement dated as of an even date herewith; and

WHEREAS, the Seller and the Seller Parent where named in a lawsuit filed against them on May 8, 2012 by New London Tobacco Market, Inc., a Kentucky corporation in the United States Court for the Eastern District of Kentucky, London Division as Case No. 6:12-CV-0091-GFVT (such lawsuit referred to herein as the "***NLTM Litigation***"); and

WHEREAS, Seller and Buyer further amended the Purchase Agreement to, among other things, (i) extend the Closing Date, (ii) provide for the express special indemnification by Seller with respect to the NLTM Litigation (as hereinafter more specifically defined, the "***Special NLTM Litigation Indemnification***"), and (iii) the guarantee by Seller Parent of the Seller's indemnification obligations under the Specific NLTM Litigation Indemnification, all pursuant to the terms and conditions of that certain Second Amendment to Asset Purchase Agreement dated as of October 15, 2012; and

WHEREAS, Seller and Buyer desire and agree to further amend the Purchase Agreement to, among other things, (i) provide for the payment of the Purchase Price by delivery of a $7,500,000 Promissory Note by Newlead Holdings, LTD., a company organized in Bermuda (and an affiliate of New Coal Holding, LLC), (hereinafter referred to as "***Newlead Holdings***"), payable January 29, 2013, which Promissory Note will be collateralized by (a) a Mortgage, Assignment Of Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral Filing to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the Assets being sold as well as a mortgage lien on the Owned Real Property, (b) a Leasehold Mortgage, Assignment Of

Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (c) a Guaranty by Williams Industries, LLC and (ii) extend the Closing Date to December 31, 2012, all in accordance with the terms set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Extension of Closing Date and delivery of Promissory Note. Section 3.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

> "3.1 **Closing; Promissory Note**. The Seller and Buyer shall hold a closing for the purchase and sale of the Assets as soon as reasonably possible after satisfaction of the conditions to closing in Article 7, but in no event later than 3:00 p.m. Eastern Time on December 31, 2012, or as otherwise mutually agreed to in writing by the Parties; provided, further, that Seller shall accept a $7,500,000 Promissory Note, payable January 29, 2013, from Newlead Holdings, LTD., a company organized in Bermuda (and an affiliate of New Coal Holding, LLC), ("***Newlead Holdings***") as payment of the Purchase Price, which Promissory Note shall be collateralized by (i) a Mortgage, Assignment Of Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral Filing to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the Assets as well as a mortgage lien on the Owned Real Property, (ii) a Leasehold Mortgage, Assignment Of Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (iii) a Guaranty by William Industries LLC, all in a form reasonably acceptable to Seller. The date on which the Closing occurs is referred to in this Agreement as the ***"Closing Date."***

The Seller and Buyer also agree that the Purchase Agreement is further amended to adjust the deadline(s) for pre-Closing tasks as necessary to allow a Closing to occur on or before such Closing Date.

3. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall remain in full force and effect.

4. Entire Agreement; Acknowledgment by Newlead Holdings. The Purchase Agreement, as amended by this Amendment, together with the Agreement date November 21, 2012, a copy of which is attached hereto, and the acknowledgment hereof and agreement hereto by Newlead Holdings below evidencing its approval of its obligations hereunder, constitute the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

5. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Third Amendment to Asset Purchase Agreement as of the date first above written and Newlead Holdings has acknowledged and agreed to this Third Amendment and its obligations hereunder.

WILLIAMS INDUSTRIES, LLC

By: ______________________

Name: Lloyd Williams

Title: President

KENTUCKY FUEL CORPORATION

By: ______________________

Name: Stephen W. Ball

Title: VP Operations & Secretary

JAMES C. JUSTICE COMPANIES, INC.

By: ______________________

Name: Stephen W. Ball

Title: VP Operations & Secretary

ACKNOWLEDGED AND AGREED:

NEW LEAD HOLDINGS, LTD.

By: ______________________

Name: ______________________

Title: ______________________

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Third Amendment to Asset Purchase Agreement as of the date first above written and Newlead Holdings has acknowledged and agreed to this Third Amendment and its obligations hereunder.

WILLIAMS INDUSTRIES, LLC

By: ______________________________

Name: ____________________________

Title: _____________________________

KENTUCKY FUEL CORPORATION

By: ______________________________

Name: ____________________________

Title: _____________________________

JAMES C. JUSTICE COMPANIES, INC.

By: ______________________________

Name: ____________________________

Title: _____________________________

ACKNOWLEDGED AND AGREED:

NEW LEAD HOLDINGS, LTD.

By: ______________________________

Name: Jim M. Berkowitz

Title: ____________________________

FOURTH AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FOURTH AMENDMENT TO ASSET PURCHASE AGREEMENT (this "***Amendment***") is made and entered into effective as of February 12, 2013, though it may be executed on a different date, by and among Williams Industries, LLC, a Delaware limited liability company (the "***Buyer***"), Kentucky Fuel Corporation, a Delaware corporation (the "***Seller***") and James C. Justice Companies, Inc., a Delaware corporation and the ultimate parent entity of the Seller (the "***Seller Parent***"), with acknowledgment and acceptance by Newlead Holdings, LTD. as referenced and provided below.

RECITALS:

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated as of May 10, 2012 (the "***Purchase Agreement***"), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the "***Sale***"), the Assets (as defined in the Purchase Agreement) of Seller in accordance with the terms of the Purchase Agreement; and

WHEREAS, Buyer and Seller amended the Purchase Agreement to extend the Closing Date by executing and delivering that certain Amendment Extending Closing Deadline effective as of June 9, 2012 (the ***Extension Amendment***"); and

WHEREAS, pursuant to the terms and conditions of that certain Second Amendment to Asset Purchase Agreement dated as of October 15, 2012, Seller and Buyer had further amended the Purchase Agreement to, among other things, (i) extend the Closing Date, (ii) provide for the express special indemnification by Seller with respect to the NLTM Litigation (as hereinafter more specifically defended, the "***Special NLTM Litigation Indemnification***"), and (iii) the guarantee by Seller Parent of the Seller's indemnification obligations under the Specific NLTM Litigation Indemnification; and

WHEREAS, Buyer and Seller further amended the Purchase Agreement to extend the Closing Date by executing and delivering that certain Third Amendment to Asset Purchase Agreement (the "***Third Amendment***") effective as of November 21, 2012 though executed on a different date(s); and

WHEREAS, pursuant to said Third Amendment, Seller and Buyer desired and agreed to further amend the Purchase Agreement to, among other things, (i) provide for the payment of the Purchase Price by delivery of a $7,500,000 Promissory Note by Newlead Holdings, LTD., as maker, a company organized in Bermuda (and an affiliate of New Coal Holding, LLC) (hereinafter referred to as "***Newlead Holdings***"), that was payable January 29, 2013, which Promissory Note (the "***$7.5M Note***") was to be collateralized by (a) a Mortgage, Assignment of Rents and Leases Security Agreement, Fixture Filing And As-Extracted Collateral Filing which were to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the Assets being sold as well as a mortgage lien on the Owned Real Property, (b) a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (c) a Guaranty by Williams Industries, LLC and (ii) extend the Closing Date to December 31, 2012, all in accordance with the terms set forth in that Third Amendment; and

WHEREAS, subsequent to the consummation of the transactions contemplated under this Agreement, the Buyer will sell the Assets to Newlead Holdings, as the assignee of Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company ("***Cypress***"), pursuant to the terms and conditions of that certain Asset Purchase Agreement dated as of May 10, 2012 by and between Buyer and Cypress, as amended by that certain Amendment to Asset Purchase Agreement dated as of October 15, 2012, and that certain Second Amendment to Asset Purchase Agreement dated November 21, 2012, and, a closing date of no later than January 29, 2013 was set for such sale of the Assets by Buyer to Newlead Holdings and for final payment of the $7.5M Note and Seller's release of its above collateral upon receipt of such payment in full of the $7.5M Note (such closing is hereinafter referred to as the "***Second Closing***"); and

WHEREAS, the closing of the sale of the Assets by Seller to Buyer occurred on or before December 31, 2012, including the delivery to KFC of the $7.5M Note and collateral package referenced in the Third Amendment, but Newlead Holdings (as maker of the $7.5M Note and ultimate purchaser of the Assets at the Second Closing) and Buyer (as unconditional guarantor of the $7.5M Note and as seller to Newlead Holdings of the Assets at the Second Closing) have requested two extensions of the original January 29, 2013 deadline for the Second Closing and payment of the $7.5M Note; and

WHEREAS, under the first such request for extension, Newlead and Buyer desired and Seller agreed to extend the Second Closing to no later than February 15, 2013, in consideration of a modification of such parties' December 28, 2012 Irrevocable Letter of Instructions to Chicago Title Insurance Company, as Escrow Agent for the Second Closing ("***Chicago Title***"): whereby (i) Newlead Holdings on February 5, 2013 deposited $100,000.00 as a non-refundable deposit (the "***Deposit***") with Chicago Title, (ii) Chicago Title was to hold the Deposit in escrow from the Parties until the earlier of the following: (a) the Second Closing, or (b) February 18, 2013, **provided, however**, that, (A) if the Second Closing occurred on or before February 15, 2013, then the Deposit was to be included as part of the payment from Newlead Holdings to retire the $7.5M Note, but (B) if the Second Closing did not occur on or before February 15, 2013, then the Deposit was to be released on February 18, 2013 to KFC as partial payment on Newlead Holdings' $7.5M Note (payable to KFC); and

WHEREAS, under the second such request for extension, Newlead and Buyer now desire, and Seller is willing to agree to further extend the Second Closing to no later than 5:00 p.m. Eastern Time on Wednesday, March 6, 2013 upon the terms set forth herein, including (A) the immediate release of the Deposit to Seller (**not** as a credit against the $7.5M Note but as additional consideration for the extension) and (B) the immediate delivery by Newlead Holdings to Seller of $175,000 of its unrestricted and immediately resalable stock, all as additional consideration for the extension as herein provided and not as a credit against the $7.5M Note.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement

2. Extension of Second Closing Date and Final Payment of the $7.5M Note. Section 3.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

   "3.1 **Closing; Promissory Note; Second Closing and Payment and Discharge of the Promissory Note**. The Seller and Buyer completed their closing for the purchase and sale of the Assets as of December 31, 2012, and in connection therewith, Seller accepted the $7,500,000 Promissory Note, payable January 29, 2013, from Newlead Holdings, LTD., a company organized in Bermuda (and an affiliate of New Coal Holdings, LLC), ("***Newlead Holdings***") as payment of the Purchase Price (the "***Promissory Note***"), which Promissory Note was collateralized by (i) a Mortgage, Assignment of Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral Filing to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the Assets as well as a mortgage lien on the Owned Real Property, (ii) a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (iii) a Guaranty by Williams Industries LLC, (collectively, such package of liens, security interests and collateral is hereinafter referred to as the "***Seller's Collateral Security Package***"), and, further, the Seller, Buyer and Newlead Holdings agreed to a second closing on or before January 29, 2013 (the due date of the Promissory Note) at which closing (the "***Second Closing***"), among other things, Newlead Holdings would pay and discharge the $7.5M Note in full. Seller, upon receipt of such payment in full of the $7.5M Note would release the Seller's Collateral Security Package, and Buyer would complete a further sale of the Assets to Newlead Holdings.

Newlead Holdings and Buyer acknowledge that they obtained Seller's agreement to extend the Second Closing to no later than February 15, 2013, in consideration of a first modification by such parties of their December 28, 2012 Irrevocable Letter of Instructions to Chicago Title Insurance Company, as Escrow Agent for the Second Closing ("***Chicago Title***") whereby (i) Newlead Holdings on February 5, 2013 deposited $100,000.00 as a non-refundable deposit (the "***Deposit***") with Chicago Title, (ii) Chicago Title was to hold the Deposit in escrow from the Parties until the earlier of the following: (a) the Second Closing, or (b) February 18, 2013, **provided, however**, that, (A) if the Second Closing occurred on or before February 15, 2013, then the Deposit was to be included as part of the payment from Newlead Holdings to retire the $7.5M Note, but (B) if the Second Closing did not occur on or before February 15, 2013, then the Deposit was to be released February 18, 2013 to KFC as partial payment on Newlead Holdings' $7.5M Note (payable to KFC).

Newlead and Buyer now desire to further extend the Second Closing to no later than 5:00 p.m. Eastern Time on Wednesday, March 6, 2013, and Seller is willing to agree to such further extension upon the following terms: First, such parties shall further modify their irrevocable instructions to Chicago Title to require the immediate release by Chicago Title of the $100,000 Deposit to Seller (**not** as a credit against the $7.5M Note but as additional consideration for the extension) upon their execution of counterparts of a modification letter to Chicago Title. Second, Newlead Holdings shall deliver to Seller, on or before February 15, 2013, $175,000 of unrestricted, registered and immediately resalable common stock of Newlead Holdings (the "***Stock***"). Such delivery shall be outside of the Second Closing. For the avoidance of doubt, the payment of such $100,000 to Seller and delivery of the Stock to Seller are as consideration for the extension of the Second Closing to no later than 5:00 p.m. Eastern Time on Wednesday, March 6, 2013 and are **not** a credit against the $7.5M Note. The deadline for the Second Closing and the final payment of the Promissory Note are so extended.

3. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall remain in full force and effect.

4. Entire Agreement; Acknowledgment by Newlead Holdings. The Purchase Agreement, as amended by this Amendment, together with (a) the above-referenced previous amendments thereto (including the Extension Amendment, and the First, Second and Third Amendments, respectively), (b) the above-referenced modifications to the parties' irrevocable instructions to Chicago Title, and (c) the acknowledgment hereof and agreement hereto by Newlead Holdings below evidencing its approval of its obligations hereunder, constitute the entire agreement among the parties with

respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

5. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

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[SIGNATURE PAGE FOR FOURTH AMENDMENT

TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Fourth Amendment to Asset Purchase Agreement as of the date first above written and Newlead Holdings has acknowledged and agreed to this Fourth Amendment and its obligations hereunder.

WILLIAMS INDUSTRIES, LLC

By:

Name: Lloyd Williams

Title: President

KENTUCKY FUEL CORPORATION

By:

Name: Stephen W. Ball

Title: VP Operations

JAMES C. JUSTICE COMPANIES, INC.

By:

Name: Stephen W. Ball

Title: VP Operations

ACKNOWLEDGED AND AGREED:

NEWLEAD HOLDINGS, LTD.

By:

Name: Jan M. Berkowitz

Title: for CEO

FIFTH AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIFTH AMENDMENT TO ASSET PURCHASE AGREEMENT (this "***Amendment***") is made and entered into effective as of March 18, 2013, though it may be executed on a different date, by and among Williams Industries, LLC, a Delaware limited liability company (the "***Buyer***"), Kentucky Fuel Corporation, a Delaware corporation (the "***Seller***") and James C. Justice Companies, Inc., a Delaware corporation and the ultimate parent entity of the Seller (the "***Seller Parent***"), with acknowledgment and acceptance by Newlead Holdings, LTD. as referenced and provided below.

RECITALS:

WHEREAS, Buyer and Seller entered into that certain Asset Purchase Agreement dated as of May 10, 2012 (the "***Purchase Agreement***"), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the "***Sale***"), the Assets (as defined in the Purchase Agreement) of Seller in accordance with the terms of the Purchase Agreement; and

WHEREAS, Buyer and Seller amended the Purchase Agreement to extend the Closing Date by executing and delivering that certain Amendment Extending Closing Deadline effective as of June 9, 2012 (the ***Extension Amendment***"); and

WHEREAS, pursuant to the terms and conditions of that certain Second Amendment to Asset Purchase Agreement dated as of October 15, 2012, Seller and Buyer had further amended the Purchase Agreement to, among other things, (i) extend the Closing Date, (ii) provide for the express special indemnification by Seller with respect to the NLTM Litigation (as hereinafter more specifically defended, the "***Special NLTM Litigation Indemnification***"), and (iii) the guarantee by Seller Parent of the Seller's indemnification obligations under the Specific NLTM Litigation Indemnification; and

WHEREAS, Buyer and Seller further amended the Purchase Agreement to extend the Closing Date by executing and delivering that certain Third Amendment to Asset Purchase Agreement (the "***Third Amendment***") effective as of November 21, 2012 though executed on a different date(s); and

WHEREAS, pursuant to said Third Amendment, Seller and Buyer desired and agreed to further amend the Purchase Agreement to, among other things, (i) provide for the payment of the Purchase Price by delivery of a $7,500,000 Promissory Note by Newlead Holdings, LTD., as maker, a company organized in Bermuda (and an affiliate of New Coal Holding, LLC) (hereinafter referred to as "***Newlead Holdings***"), that was payable January 29, 2013, which Promissory Note (the "***$7.5M Note***") was to be collateralized by (a) a Mortgage, Assignment of Rents and Leases Security Agreement, Fixture Filing And As-Extracted Collateral Filing which were to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the Assets being sold as well as a mortgage lien on the Owned Real Property, (b) a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (c) a Guaranty by Williams Industries, LLC and (ii) extend the Closing Date to December 31, 2012, all in accordance with the terms set forth in that Third Amendment; and

WHEREAS, subsequent to the consummation of the transactions contemplated under this Agreement, the Buyer will sell the Assets to Newlead Holdings, as the assignee of Cypress Camon Energy, LLC – Five Mile Series, a Delaware series limited liability company ("*Cypress*"), pursuant to the terms and conditions of that certain Asset Purchase Agreement dated as of May 10, 2012 by and between Buyer and Cypress, as amended by that certain Amendment to Asset Purchase Agreement dated as of October 15, 2012, and that certain Second Amendment to Asset Purchase Agreement dated November 21, 2012, and, a closing date of no later than January 29, 2013 was set for such sale of the Assets by Buyer to Newlead Holdings and for final payment of the $7.5M Note and Seller's release of its above collateral upon receipt of such payment in full of the $7.5M Note (such closing is hereinafter referred to as the "***Second Closing***"); and

WHEREAS, the closing of the sale of the Assets by Seller to Buyer occurred on or before December 31, 2012, including the delivery to KFC of the $7.5M Note and collateral package referenced in the Third Amendment, but Newlead Holdings (as maker of the $7.5M Note and ultimate purchaser of the Assets at the Second Closing) and Buyer (as unconditional guarantor of the $7.5M Note and as seller to Newlead Holdings of the Assets at the Second Closing) have requested two extensions of the original January 29, 2013 deadline for the Second Closing and payment of the $7.5M Note; and

WHEREAS, under the first such request for extension, Newlead and Buyer desired and Seller agreed to extend the Second Closing to no later than February 15, 2013, in consideration of a modification of such parties' December 28, 2012 Irrevocable Letter of Instructions to Chicago Title Insurance Company, as Escrow Agent for the Second Closing ("***Chicago Title***"): whereby (i) Newlead Holdings on February 5, 2013 deposited $100,000.00 as a non-refundable deposit (the "***Deposit***") with Chicago Title, (ii) Chicago Title was to hold the Deposit in escrow from the Parties until the earlier of the following: (a) the Second Closing, or (b) February 18, 2013, **provided, however**, that, (A) if the Second Closing occurred on or before February 15, 2013, then the Deposit was to be included as part of the payment from Newlead Holdings to retire the $7.5M Note, but (B) if the Second Closing did not occur on or before February 15, 2013, then the Deposit was to be released on February 18, 2013 to KFC as partial payment on Newlead Holdings' $7.5M Note (payable to KFC); and

WHEREAS, under the second such request for extension, Newlead and Buyer desired, and Seller was willing to agree to further extend the Second Closing to no later than 5:00 p.m. Eastern Time on Wednesday, March 6, 2013 upon the terms set forth herein, including (A) the immediate release of the Deposit to Seller (**not** as a credit against the $7.5M Note but as additional consideration for the extension) and (B) the immediate delivery by Newlead Holdings to Seller of $175,000 of its unrestricted and immediately resalable stock, all as additional consideration for the extension as herein provided and not as a credit against the $7.5M Note (which delivery was not made and in lieu thereof Newlead has offered to wire transfer to Seller $175,000.00, **not** as a credit against the $7.5M Note but as the other consideration for said extension to Wednesday, March 6, 2013, as herein provided); and

WHEREAS, the Buyer now desires and the Seller is willing to agree to allow the Buyer to enter the Asset with an agreement that Newlead shall make and pay for certain improvements to the Asset (minimum of $300,000 of improvements as referenced below) and further could extract any and all coal from the Asset and will receive all payments for such extracted coal for not more than one year from the date of this Fifth Amendment, provided that regular payments are made as described below (such payments being credited to the amounts Buyer owes on the Notes owed to Sellers), and that Buyer is committed to promptly pay off the rest of the notes and hold the Second Closing promptly upon final commitment and funding of loans from Deutsche Bank or other funding source to finance the then remaining payments due to Seller in the Second Closing.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement

2. Extension of Second Closing Date, Forbearance and Forbearance Payments, and Final Payment of the $7.5M Note. Section 3.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

   "3.1 **Closing; Promissory Note; Extraction Lease; Second Closing and Payment and Discharge of the Promissory Note**. The Seller and Buyer completed their closing for the purchase and sale of the Assets as of December 31, 2012, and in connection therewith, Seller accepted the $7,500,000 Promissory Note, payable January 29, 2013, from Newlead Holdings, LTD., a company organized in Bermuda (and an affiliate of New Coal Holdings, LLC), ("***Newlead Holdings***") as payment of the Purchase Price (the "***Promissory Note***"), which Promissory Note was collateralized by (i) a Mortgage, Assignment of Rents And Leases, Security Agreement, Fixture Filing And As-Extracted Collateral Filing to be executed and delivered by Newlead Holdings and Guarantor creating a security interest in the

Assets as well as a mortgage lien on the Owned Real Property, (ii) a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement, Fixture Filing And As-Extracted Collateral to be executed and delivered by Newlead Holdings and Guarantor creating a mortgage lien on the leases being assigned to Buyer, and (iii) a Guaranty by Williams Industries LLC, (collectively, such package of liens, security interests and collateral is hereinafter referred to as the "***Seller's Collateral Security Package***"), and, further, the Seller, Buyer and Newlead Holdings agreed to a second closing, which, through a series of mutual agreements has been extended and shall now be held on or before March 18, 2014, but in no case later than promptly following final commitment and closing of loans from Deutsche Bank or other funding source to finance the then remaining payments due to Seller, at which closing (the "***Second Closing***"), among other things, Newlead Holdings would pay and discharge the $7.5M Note in full. Seller, upon receipt of such payment in full of the $7.5M Note would release the Seller's Collateral Security Package, and Buyer would complete a further sale of the Assets to Newlead Holdings.

Newlead Holdings and Buyer acknowledge that they obtained Seller's agreement to extend the Second Closing to no later than March 18, 2014, and Seller's execution of a conditional forbearance agreement whereby Seller (and Buyer) will accept forbearance payments to Seller on the Note (and to Buyer as set forth below) after the original due date of the Note and to forbear pursuing remedies or foreclosure under the Note and Seller's Collateral Security Package, all in consideration of forbearance payments described below and a second modification by such parties of their December 28, 2012 Irrevocable Letter of Instructions to Chicago Title Insurance Company, as Escrow Agent for the Second Closing ("***Chicago Title***") whereby (i) Newlead Holdings on 18, 2013 will deposit $400,000.00 as a non-refundable deposit (the "***Deposit***") with Chicago Title, (ii) immediately upon receipt of such Deposit Chicago Title will pay $350,000 to Seller and $50,000 to Williams as further provided below. An additional $175,000 will be paid directly to Seller by Newlead on that date (in lieu of the shares that were to be delivered as part of the consideration for the prior extension of the Second Closing to March 6, 2013, and **not** as a credit against the Note), and Newlead further will send an additional $175,000 in Newlead shares to Seller immediately upon receipt of the needed executed stock purchase agreement from Seller in final form mutually and reasonably agreeable to both parties. Seller will allow Newlead to enter upon the Asset under the terms of this paragraph and to allow the forbearance payments required below to be applied dollar for dollar to reduce the amount of the Notes, from the amounts due at Closing as follows. Buyer shall be entitled to remove and sell any and all coal, and Newlead shall pay the following payments:

To Seller: $350,000 by March 18, 2013; $350,000 by April 18, 2013; $350,000 by May 18, 2013; $1,105,555.56 by June 18, 2013; $1,105,555.56 by July 18, 2013; $1,105,555.56 by August 18, 2013; $1,105,555.56 by September 18, 2013; $1,105,555.56 by October 18, 2013; $1,105,555.56 by November 18, 2013, $1,105,555.56 by December 18, 2013; $1,105,555.56 by January 18, 2014; $1,105,555.56 by February 18, 2014. In regard to these payments, interest would bear on all amounts due the Seller ,until such time as all principal has been paid, at the rate of Ten Percent (10%) per annum, **provided however** that Newlead shall be entitled to a credit against such interest equal to 60% of total accrued interest if all unpaid principal of such Note is paid off on or before July 18, 2013, and **provided further** that accumulated interest would not be payable until the earlier of (1) the date of an early payoff of principal (for example, due to the Deutsche Bank or other financing being closed) or (2) the due date of the February 18, 2014 payment.

To Williams: $50,000 by March 18, 2013; $50,000 by April 18, 2013; $50,000 by May 18, 2013; $205,555.55 by June 18, 2013; $205,555.55 by July 18, 2013; $205,555.55 by August 18, 2013; $205,555.55 by September 18, 2013; $205,555.55 by October 18, 2013; $205,555.55 by November 18, 2013, $205,555.55 by December 18, 2013; $205,555.55 by January 18, 2014; $205,555.55 by February 18, 2014.

The parties agree that Buyer will take all reasonable steps to secure financing to close on the Asset as soon as possible and will set the Closing Date as soon as practicable following secure commitment of financing. The parties also agree that Newlead will invest not less than $300,000 worth of improvements upon the Asset with Seller's approval of improvement projects.

Newlead and Buyer now desire to further extend the Second Closing to no later than 5:00 p.m. Eastern Time on March 18, 2014, and Seller is willing to agree to such further extension upon the following terms: First, such parties shall further modify their irrevocable instructions to Chicago Title to require the immediate release by Chicago Title of the $400,000 Deposit, $350,000 released to Seller as a credit against the $7.5M Note, and $50,000 released to Williams as a credit against its Note with Newlead Holdings. Second, Newlead Holdings shall deliver to Seller, on or before March 18, 2013, $175,000 in cash (in lieu of the shares that were to be delivered as part of the consideration for the prior extension of the Second Closing to March 6, 2013, and **not** as a credit against the Note),. Third, Newlead Holdings meets its payment obligations to Seller under this Agreement by making fully and timely each and every one of the payments described in the paragraph immediately above. Fourth, Newlead Holdings shall deliver to Seller, on or before March 21, 2013, $175,000 of unrestricted, registered and immediately resalable common stock of

Newlead Holdings, or, if (the "***Stock***"). Such delivery shall be outside of the Second Closing and neither the $175,000 in cash or the $175,000 in stock shall affect the amounts due on any Note. For the avoidance of doubt, the payment of such $175,000 to Seller and delivery of the Stock to Seller are as consideration for the extension of the Second Closing and are **not** a credit against the $7.5M Note. Seller's forbearance is expressly conditioned on Newlead Holdings' full, timely and faithful performance of each and every one of its obligations hereunder and in the written forbearance agreement being executed separately by Seller and Newlead Holdings (the "Seller Forbearance Agreement"). Subject to such full, timely and faithful performance by Newlead Holdings, the deadline for the Second Closing and the final payment of the Promissory Note are so extended.

3. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall remain in full force and effect.

4. Entire Agreement; Acknowledgment by Newlead Holdings. The Purchase Agreement, as amended by this Amendment, together with (a) the above-referenced previous amendments thereto (including the Extension Amendment, and the First, Second, Third and Fourth Amendments, respectively), (b) the above-referenced modifications to the parties' irrevocable instructions to Chicago Title, (c) the Seller Forbearance Agreement, and (d) the acknowledgment hereof and agreement hereto by Newlead Holdings below evidencing its approval of its obligations hereunder and under said forbearance agreement, constitute the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof; **provided, however**, that, for the avoidance of doubt, Seller's forbearance as referenced herein and in the Seller Forbearance Agreement is strictly conditioned upon Newlead Holdings' full, timely and faithful performance of each and every one of its obligations hereunder and under the Seller Forbearance Agreement and any other agreements it has with Seller.

5. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without regard to or application of its conflict of laws rules.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[INTENTIONALLY LEFT BLANK – NEXT PAGE IS SIGNATURE PAGE]

[SIGNATURE PAGE FOR FIFTH AMENDMENT

TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Fourth Amendment to Asset Purchase Agreement as of the date first above written and Newlead Holdings has acknowledged and agreed to this Fourth Amendment and its obligations hereunder.

WILLIAMS INDUSTRIES, LLC

By: [signature]

Name: Lloyd Williams

Title: President

KENTUCKY FUEL CORPORATION

By: [signature]

Name: Stephen W. Ball

Title: VP Operations

JAMES C. JUSTICE COMPANIES, INC.

By: [signature]

Name: Stephen W. Ball

Title: VP Operations

ACKNOWLEDGED AND AGREED:

NEWLEAD HOLDINGS, LTD.

By:____________________

Name:____________________

Title:____________________

[SIGNATURE PAGE FOR FIFTH AMENDMENT

TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Fourth Amendment to Asset Purchase Agreement as of the date first above written and Newlead Holdings has acknowledged and agreed to this Fourth Amendment and its obligations hereunder.

WILLIAMS INDUSTRIES, LLC

By:________________________

Name:________________________

Title:________________________

KENTUCKY FUEL CORPORATION

By:________________________

Name: Stephen W. Ball

Title: VP Operations

JAMES C. JUSTICE COMPANIES, INC.

By:________________________

Name: Stephen W. Ball

Title: VP Operations

ACKNOWLEDGED AND AGREED:

NEWLEAD HOLDINGS, LTD.

By:________________________

Name: Michail S. Zolotas

Title: Chairman & CEO

Exhibit 4.82

FORBEARANCE AGREEMENT

THIS AMENDED AND RESTATED FORBEARANCE AGREEMENT (this "Agreement") is made effective as of March 18, 2013, by and between **NEWLEAD HOLDINGS, LTD.** ("Borrower"); and **KENTUCKY FUEL CORPORATION** ("Lender").

RECITALS:

A. The parties entered into a Promissory Note (the "Note") on December 28, 2012 by which Borrower agreed to pay $7,500,000.00 to Lender as part of a real estate transaction where Borrower was to purchase property from Lender, and based on an Amended purchase agreement (the "Purchase Agreement"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Purchase Agreement. The Note had a payment date of January 29, 2013, but the which was later extended by the parties to March 6, 2013. The parties thus had intended to close on the Note and the real estate purchase before now and had understood Borrower would have received funding from a lender to facilitate such closing, but such closing has not happened and Borrower has requested that Lender forbear from pursuing remedies available to it under the Note and the Seller's Collateral Security Package so long as Borrower fully, timely and faithfully performs each and every one of its obligations hereunder and under the Fifth Amendment to the Purchase Agreement.

B. Borrower has requested that Lender forbear, and Lender have consented, under the limited conditions set forth herein, to forbear from exercising its rights and remedies under the Note and the Seller's Collateral Security Package with respect to the Existing Events of Default, all as more particularly set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the covenants and agreements contained herein, and (iii) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Existing Events of Default.** Borrower and Guarantor acknowledge the existence of certain Events of Default, all of which remain uncured after any applicable notice and opportunity to cure under the Loan Documents (the " Existing Events of Default"), which include failure to payoff the Loan at its original Maturity Date.

2. **Forbearance**.

(a) Subject to the conditions set forth herein, Lender shall forbear from exercising its rights and remedies with respect to the Existing Events of Default from the date hereof until the earliest to occur of the following (the " Forbearance Termination Events"): (a) the time at which Borrower fails to comply in any respect with all of its obligations under this Agreement, (b) the occurrence or discovery of any Event of Default under the Purchase Agreement (other than the Existing Events of Default) (the period beginning on the date hereof and terminating on the earliest of such dates being hereafter referred to as the "Forbearance Period") or (c) 5:00 pm, March 18, 2014. During the Forbearance Period, Borrower shall continue (i) to pay all amounts that, absent the maturity of the Note and/or the occurrence of an Event of Default and the acceleration of the Note, Borrower would be obligated, pursuant to the terms of the Purchase Agreement, to pay during the Forbearance Period plus (ii) to pay fully, timely and faithfully each and every one of the forbearance payments required under Section 3 hereof, below.

(b) Except with respect to the Lender's specific agreements set forth herein to forbear with respect to the Existing Events of Default in accordance with the terms of this Agreement, nothing set forth herein shall constitute a forbearance or waiver of Lender's rights at any time, including during the term of the Forbearance Period, to enforce any and all rights and remedies such lender has under the Purchase Agreement, the Note, the Seller's Collateral Security Package, or any other Loan Document between the parties, in equity, at law, by agreement or otherwise, for failure to fully, timely and faithfully perform all obligations under this Agreement, for any default under the Fifth Amendment to the Purchase Agreement, and for any other default under any other obligation or agreement between Borrower and Lender that is not an Existing Event of Default, including, without limitation, to immediately recover the full amount of the Obligations and foreclose on collateral thereunder. In addition, at the end of the Forbearance Period, unless Lender has agreed in writing to continue to forbear, upon terms and conditions satisfactory to Lender and in Lender's sole and absolute discretion, Lender shall have the right to enforce any and all rights Lender has under the Note, the Seller's Collateral Security Package, or any other of the Loan Documents, in equity, at law, by agreement or otherwise, including, without limitation, to immediately recover the full amount of the Obligations and foreclose on collateral thereunder.

(c) The agreement of Lender to the forbearance described herein (i) in no way shall be deemed an agreement by Lender to waive Borrower's compliance with this Agreement and with all other terms of the Note or the Purchase Agreement or the Seller's Collateral Security Package or other Loan Documents or agreements, and (ii) shall not limit or impair Lender's right to demand strict performance of all other terms and covenants as of any date. The forbearance granted by Lender to Borrower herein is strictly limited to a forbearance in accordance with the terms set forth herein.

3. **Forbearance Payment Schedule**. Borrower hereby agrees to make the following forbearance payments to Lender, which payments shall be applied to the principal amount owing under the Note; provided further that all such payments shall be made by wire transfer of immediate funds to Chicago Title Insurance Company for immediate (same-day) further delivery to Lender or its designee in accordance with the terms of an Irrevocable Instruction letter between Borrower, Lender, Williams Industries, LLC and Chicago Title Insurance Company:

(i) $350,000 on or before March 18, 2013;

(ii) $350,000 on or before April 18, 2013;

(iii) $350,000 on or before May 18, 2013;

(iv) $1,105,555.56 on or before June 18, 2013;

(v) $1,105,555.56 on or before July 18, 2013;

(vi) $1,105,555.56 on or before August 18, 2013;

(vii) $1,105,555.56 on or before September 18, 2013;

(viii) $1,105,555.56 on or before October 18, 2013;

(ix) $1,105,555.56 on or before November 18, 2013;

(x) $1,105,555.56 on or before December 18, 2013;

(xi) $1,105,555.56 on or before January 18, 2014;

(xii) $1,105,555.56 on or before February 18, 2014.

In regard to these payments, interest would bear on all amounts due the Lender, until such time as all principal on the Note has been paid, at the rate of Ten Percent (10%) per annum, **provided however** that Borrower shall be entitled to a credit against such interest equal to 60% of total accrued interest if all unpaid principal of such Note is paid off on or before July 18, 2013, and **provided further** that accumulated interest would not be payable until the earlier of (1) the date of an early payoff of principal (for example, due to the Deutsche Bank financing or other financing being closed) or (2) the due date of the February 18, 2014 forbearance payment.

Notwithstanding the foregoing, all amounts then owing under the Note shall accelerate and be due and owing in full upon the closing of the Borrower's credit facility with Deutshe Bank or another lender, which closing is anticipated to occur within six (6) months from the date of this Agreement.

4. **Miscellaneous**.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky.

(b) Each of Borrower, Guarantor and Lender acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Purchase Agreement, including its Exhibits, and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(c) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(d) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(e) Time is of the essence of Borrower's obligations under this Agreement.

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

KENTUCKY FUEL CORPORATION

By: /s/ Stephen W. Ball
Title: VP of Operations

NEWLEAD HOLDINGS, LTD

By: /s/ Michail S. Zolotas
Title: CEO

Exhibit 4.83

FORBEARANCE AGREEMENT

THIS AMENDED AND RESTATED FORBEARANCE AGREEMENT (this "Agreement") is made effective as of March 18, 2013, by and between **NEWLEAD HOLDINGS, LTD.** ("Borrower"); and **WILLIAMS INDUSTRIES, LLC** ("Lender").

RECITALS:

A. The parties entered into a Promissory Note (the "Note") on December 28, 2012 by which Borrower agreed to pay $2,000,000.00 to Lender as part of an asset purchase transaction where Borrower agreed to purchase real and personal property from Lender, pursuant to that certain Asset Purchase Agreement dated June 13, 2013, as amended October 15, 2012, November 7, 2012, November 21, 2012 and March ___, 2013 (the "Purchase Agreement"). The Note had a payment date of January 29, 2013, which was later extended by the parties to March 6, 2013. The parties intend to close on the Note and close the asset purchase transaction as soon as Borrower receives a lending commitment for the principal amount on the Note.

B. Borrower has requested that Lender forbear, and Lender has consented, under the limited conditions set forth herein, to forbear from exercising its rights and remedies under the Note with respect to the Existing Events of Default, as more particularly set forth herein. Capitalized terms not defined herein have the meaning set forth in the Note.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the covenants and agreements contained herein, and (iii) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Existing Events of Default.** Borrower acknowledges the existence of certain Events of Default, all of which remain uncured after any applicable notice and opportunity to cure under the Loan Documents (the " Existing Events of Default"), which include failure to payoff the Note at its Maturity Date.

2. **Forbearance**.

(a) Subject to the conditions set forth herein, Lender shall forbear from exercising its rights and remedies with respect to the Existing Events of Default from the date hereof until the earliest to occur of the following (the " Forbearance Termination Events"): (a) the time at which Borrower fails to comply in any respect with its obligations under this Agreement, (b) the occurrence or discovery of any Event of Default under the Purchase Agreement, (other than the Existing Events of Default) (the period beginning on the date hereof and terminating on the earliest of such dates being hereafter referred to as the "Forbearance Period") or (c) 5:00 pm, March 18, 2014. During the Forbearance Period, Borrower shall continue to pay all amounts that, absent the maturity of the Note and/or the occurrence of an Event of Default and the acceleration of the Note, Borrower would be obligated, pursuant to the terms of this Forbearance Agreement, to pay during the Forbearance Period.

(b) Except with respect to the Lender's specific agreements set forth herein to forbear with respect to the Existing Events of Default in accordance with the terms of this Agreement, nothing set forth herein shall constitute a forbearance or waiver of Lender's rights at any time, including during the term of the Forbearance Period, to enforce any and all rights such lender has under the Purchase Agreement or any Lease Agreement between the parties, in equity, at law, by agreement or otherwise, including, without limitation, to immediately recover the full amount of the Obligations. In addition, at the end of the Forbearance Period, unless Lender has agreed in writing to continue to forbear, upon terms and conditions satisfactory to Lender and in Lender's sole and absolute discretion, Lender shall have the right to enforce any and all rights Lender has under the Loan Documents, in equity, at law, by agreement or otherwise, including, without limitation, to immediately recover the full amount of the Obligations.

(c) The agreement of Lender to the forbearance described herein (i) in no way shall be deemed an agreement by Lender to waive Borrower's compliance with all other terms of the Note or the Purchase Agreement, and (ii) shall not limit or impair Lender's right to demand strict performance of all other terms and covenants as of any date. The forbearance granted by Lender to Borrower herein is strictly limited to a forbearance in accordance with the terms set forth herein.

3. **Payment Schedule**. Borrower hereby agrees to make the following payments to Lender, which payments shall be applied to the principal amount owing under the Note; provided further that all such payments shall be made by wire transfer of immediate funds to Chicago Title Insurance Company for delivery to Lender or its designee in accordance with the terms of an Irrevocable Instruction letter between Borrower, Lender and Chicago Title Insurance Company:

(i) $50,000 on or before March 18, 2013;

(ii) $50,000 on or before April 18, 2013;

(iii) $50,000 on or before May 18, 2013;

(iv) $205,555.55 on or before June 18, 2013;

(v) $205,555.55 on or before July 18, 2013;

(vi) $205,555.55 on or before August 18, 2013;

(vii) $205,555.55 on or before September 18, 2013;

(viii) $205,555.55 on or before October 18, 2013;

(ix) $205,555.55 on or before November 18, 2013;

(x) $205,555.55 on or before December 18, 2013;

(xi) $205,555.55 on or before January 18, 2014;

(xii) $205,555.55 on or before February 18, 2014.

Notwithstanding the foregoing, all amounts owing under the Note shall accelerate and be due and owing upon the closing of the Borrower's credit facility with Deutshe Bank or another lender, which closing is anticipated to occur within six (6) months from the date of this Agreement.

4. **Miscellaneous**.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

(b) Each of Borrower, Guarantor and Lender acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Purchase Agreement, including its Exhibits, and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the loan documents are and remain unmodified and in full force and effect.

(c) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(d) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(e) Time is of the essence of Borrower's obligations under this Agreement.

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

WILLIAMS INDUSTRIES, LLC

By: /s/ Lloyd Williams
Title: President

NEWLEAD HOLDINGS, LTD

By: /s/ Michail S. Zolotas
Title: CEO

ASSIGNMENT AGREEMENT: FIVE MILE

THIS ASSIGNMENT AGREEMENT (this "Agreement") made and entered into this 21st day of December, 2012, by and between Cypress Camon Energy, LLC, ("Cypress"), and Newlead Holdings Ltd, ("Newlead").

1. Assignment. Assignor does hereby grant, convey, assign and distribute to Assignee, and Assignee hereby accepts: (a) all of Assignor's rights, title, interests and benefits in the right to purchase any interest in the real property described in Exhibit A, including any and all rights in and to the Purchase Agreement attached as Exhibit B.

2. Further Acts. Assignor hereby covenants and agrees with Assignee to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered to Assignee, its successors and assigns, all such further acts, assignments, transfers, notices, conveyances and assurances that may be reasonably requested by Assignee for the assignment, transfer and conveyance of the assets and rights conveyed in Section 1 hereof.

3. Controlling Law. This Agreement shall be governed by and construed and interpreted under the laws of the State of Delaware, without regard to the choice of law provisions thereof.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

5. Amendments. Any amendment to this Agreement shall not be binding on the parties hereto unless such agreement is in writing duly executed by all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date set forth above.

Newlead Holdings Ltd.

By: ______________________

Name: Michael Zolotas

Title: CEO

Cypress Camon Energy, LLC

By: ______________________

Name: DALLAS GROTH

Title: CEO

signed

ASSET PURCHASE

AND

SALE AGREEMENT

CYPRESS CAMON ENERGY, LLC ("Buyer")

-- and --

KETCHEN LAND COMPANY, INC.; KETCHEN DEVELOPMENT COMPANY, INC.; WESTBOURNE LANE ASSOCIATES, LLC; DAVIS CREEK ENERGY, LLC; PINE MOUNTAIN LAND COMPANY, INC.; and KETCHEN RESOURCES, LLC ("Seller")

Table of Contents

Exhibits

PREAMBLE

This Asset Purchase and Sale Agreement is entered into effective April 27, 2012 (the "**Effective Date**"), between CYPRESS CAMON ENERGY, LLC, as Buyer, and KETCHEN LAND COMPANY, INC.; KETCHEN DEVELOPMENT COMPANY, INC.; WESTBOURNE LANE ASSOCIATES, LLC; DAVIS CREEK ENERGY, LLC; PINE MOUNTAIN LAND COMPANY, INC.; and KETCHEN RESOURCES, LLC, collectively Seller. Buyer and Seller may each be referred to as a "**Party**" or collectively as the "**Parties.**"

RECITALS

A. Seller owns certain real property, leases, permits, personal property, and other interests defined and described hereafter as the Assets; and

B. Buyer desires to purchase the Assets and to assume the Assumed Liabilities (defined and described hereafter) from Seller, and Seller desires to sell the Assets and the Assumed Liabilities to Buyer.

NOW THEREFORE, in consideration of the foregoing Recitals and the following Covenants, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer, as evidenced by their signatures below, agree as follows.

COVENANTS

SECTION I - DEFINITIONS

1.1 Definitions. As used herein, the following terms have the designated meanings.

"Affiliate" means a Person that is Controlled, directly or indirectly, by a Party.

"Agreement" means this Asset Purchase and Sale Agreement with the Effective Date set forth above including the Related Documents.

"Assignment" means a writing executed and acknowledged by Seller that legally transfers to Buyer all Seller's right, title, and interest in the property identified in the writing.

"Bill of Sale" means a document executed and acknowledged by Seller that legally transfers to Buyer all Seller's right, title, and interest in the property identified in the writing.

"Buyer" means, when used in the context of an obligation or duty imposed by this Agreement, express or implied, only refers to Cypress Camon Energy, LLC, a Delaware Limited Liability Company ("CCE"). Where a specific obligation or duty to be performed imposed by this Agreement upon "Buyer" may only be performed by an Affiliate of CCE, as the real party in interest, then such obligation or duty imposed on "Buyer" by this Agreement shall mean that CCE shall cause its Affiliates to perform the required obligation or duty.

Seller's Initials ~~TD~~ Buyer's Initials ~~JR~~

"Claim" means any filed or threatened Proceeding, demand that one pay money to another, or demand that one take or refrain from taking some specified action.

"Control" or "Controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract, or otherwise.

"Environmental Law" means any applicable federal, state, county, or local Law, statute, rule, regulation, or ordinance relating to the protection of human health and safety, the environment, or natural resources in regards to emissions, discharges, releases or threatened releases of Hazardous Materials into the environment including, but not limited to, common law claims of third Persons such as nuisance, negligence, strict liability, and trespass.

"***Estoppel Letter***" shall mean a letter from one party to an agreement whereby that party affirms certain features of the agreement, as may be requested, including such matters as the status of the agreement, certain material terms, the existence of any amendments, and the existence of any defaults.

"***General Warranty Deed***" means a written conveyance of all Seller's right, title, and interest in and to the real property described coupled with a general warranty of title;

PROVIDED, the foregoing general warranty is subject to the following conditions:

(1) Buyer shall refrain from taking any legal action or claims against the Escrow Account with respect to adverse third party claims of title to the real property and/or Natural Resources prior to providing Seller notice and a reasonable opportunity to cure such title defect or claim. This would include potential claims by any third party as to which the third party is not actively prosecuting the claim; and

(2) Buyer shall not initiate legal action with respect to a title defect, nor pay consideration to settle a title matter, without Seller's prior written consent, which consent shall not be unreasonably withheld.

"Governmental Authority" means any federal, state, county, city, or other political subdivision agency, commission, tribunal, bureau, or other instrumentality.

"Hazardous Materials" means (a) any substances defined as or included in the definition of "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "extremely hazardous substances," "restricted hazardous wastes," "toxic substances," toxic chemicals or "toxic pollutants," "contaminants" or "pollutants" or words of similar import under any Environmental Law; and (b) any other substance exposure to which is regulated under any Environmental Law.

"Laws" means all statutes, rules, regulations, ordinances, common law, and other pronouncements having the effect of federal, state, county, city, or other political subdivision law.

"Liabilities" means all existing or threatened indebtedness, payables, obligations, taxes, Claims, and Proceedings against a Person whether fixed, accrued, contingent, or otherwise.

"Liens" means any restriction on the unencumbered alienability of property including, by way of example and not limitation, such interests as a mortgage, deed of trust, pledge, assessment, security interest, lease, judgment lien, tax lien, mechanic's or materialman's lien, tenancy, claim of adverse possession, levy, option to purchase, right of first refusal, right-of-way, restriction, encroachment, easement, or lease.

"***Memorandum of Assignment***" means a writing executed and acknowledged by Seller that is suitable for recording and that summarizes the material terms of a transaction, excluding the details of the financial terms where possible.

"***Minerals***" shall refer to items of value, existing or growing, harvested above or below real property including by way of example and not limitation coal, natural gas, oil, stone, precious metals, and timber.

"Mineral Rights" means a right or lease granted to harvest Minerals.

"Natural Resources" means Minerals, water, flora, and fauna attendant to real property.

"Order" means any preliminary or final writ, judgment, decree, injunction, or similar order of any federal, state, or local tribunal; arbitrator; or other Governmental Authority.

"***OSM***" means the Federal Office of Surface Mining.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, entity, trust, union, association, or Governmental Authority.

"Proceeding" means any lawsuit filed; arbitration demanded; action requested before any Governmental Authority, or investigation, audit, or indictment by any Governmental Authority.

"Related Documents" means the exhibits to this Asset Purchase and Sale Agreement; the Permits, Transfer Documents, and Consents for Transfer referred to in this Agreement, any other writing, agreement, certificate, or document provided by Seller prior to, at, or after Closing required by this Agreement.

"***Related Parties***" means a Party's owners, directors, officers, managers, employees, agents, and Affiliates as well as the owners, directors, officers, managers, employees, and agents of said Affiliates.

"Seller" means, when used in the context of an obligation or duty imposed by this Agreement, express or implied, only refers to Ketchen Land Company, Inc.; Ketchen

Development Company, Inc.; Westbourne Lane Associates, LLC; Davis Creek Energy, LLC; Pine Mountain Land Company, Inc.; and Ketchen Resources, LLC. Where a specific obligation or duty to be performed imposed by this Agreement upon "Seller" may only be performed by an Affiliate of one of the foregoing entities, as the real party in interest, then such obligation or duty imposed on "Seller" by this Agreement shall mean said entity shall cause its Affiliates to perform the required obligation or duty.

"SMCRA" shall mean the Surface Mining Control and Reclamation Act, as amended.

1.2 Defined Terms. The following terms shall have the meanings ascribed to them in the corresponding section of this Agreement:

Definition	Section
Accepted Other Liens	5.2
Accepted Real Property Liens	5.3
Allocation of Purchase Price	7.3
Assets	2.1
Asset Documents	2.1(j)
Assumed Liabilities	2.4
Buyer's Closing Costs	8.5(a)
Buyer's Gross Settlement Amount	8.5(a)
Claiming Party	15.3
Closing	10.1
Closing Date	10.1
Closing Agent	10.2
Closing Statement	8.5(a)
Commitment Letter	6.5
Consents for Transfer	2.3
Days	1.3(d)
Due Diligence Information	5.8
Effective Date	Preamble
Escrow Account	12.1
Escrow Agent	12.1
Escrow Agreement	12.2
Escrow Funds	12.4
Excluded Assets	3.1
Excepted Items	5.8
Indemnifying Party	15.3(a)
Indemnitee Claim	15.3(a)
Initial Payment	7.4(b)
Mineral Leases	2.1(d)
Option Fee	7.2
Owned Equipment	2.1(c)
Owned Real Property	2.1(a)
Party (Parties)	Preamble

Seller's Initials ______ Buyer's Initials ______

Permits	2.1(e)
Personal Guarantees	13.4(a)
Prepaid Items	2.19(f)
Purchase Price	7.1
Reclamation Agreements	2.5(a)
Recorded Transfer Document	10.3(a)
Escrow Amount	
Real Property Leases	2.1(b)
Retained Liabilities	3.2
Retained Equipment	3.1(a)
Seller's Bonds	3.1(c)
Seller's Claims	2.1(g)
Seller's Closing Costs	8.5(a)
Seller's Net Settlement Amount	8.5(a)
Stockpiled Minerals	2.1(h)
T-Bills	12.5
Third Party Claim	15.3(b)
Transfer Documents	2.2

1.3 Rules of Language Interpretation. The following rules of interpretation shall apply to this Agreement:

(a) the singular includes the plural, and the plural includes the singular;

(b) a reference to a Person includes its permitted successors and assigns;

(c) references to any document, instrument or agreement shall include all exhibits, schedules, and other attachments thereto; and

(d) references to "**days**" in this Agreement or as applicable to any notice given as required by this Agreement shall mean calendar days.

SECTION 2 – ASSETS and LIABILITIES TRANSFERRED

2.1 Assets to be Transferred. Subject to the terms and conditions of this Agreement, at Closing Seller shall sell, transfer, and assign to Buyer, and Buyer shall purchase, acquire, and accept from Seller, all of Seller's right, title, and interest in and to the following property (the "**Assets**").

(a) All Seller's real property located in Campbell County, Tennessee, and Scott County Tennessee, and all improvements rights, privileges, easements, and appurtenances thereto (the "**Owned Real Property**"), including but not limited to the real property identified on **Exhibit A** hereto;

(b) All Seller's rights and interests in any leases to real property located in Campbell County, Tennessee, and Scott County Tennessee which real property Sellers are leasing from others or by which Sellers have leased interests in the Owned Real Property to others (the "**Real Property Leases**"), including but not limited to the leased real property identified on **Exhibit B** hereto;

(c) The personal property identified on **Exhibit C** hereto (the "**Owned Equipment**") including all parts and supplies for said equipment;

(d) All Seller's rights and interests of Seller under those contracts whereby Seller (i) has leased to others, or (ii) is leasing from others Mineral Rights, or rights to mine Minerals, pertaining in any way to real property located in Campbell County, Tennessee, and Scott County Tennessee (the "**Mineral Leases**"), including but not limited to those contracts listed on **Exhibit D** hereto;

(e) All of Seller's issued (or pending via application previously submitted) permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions, or registrations with or issued by any Governmental Authority in connection with the Owned Real Property, the Real Property Leases, or the Mineral Leases (the "**Permits**"), including but not limited to those documents identified on **Exhibit E** hereto;

(f) All unearned prepaid rents, royalties, or other compensation that relate to the Owned Real property, Real Property Leases, Mineral Leases, and Permits (the "**Prepaid Items**") including but not limited to those amounts identified on **Exhibit F** hereto;

(g) All of Seller's causes of actions, Claims, and rights of offset pertaining to the Owned Real Property, Real Property Leases, Mineral Leases, and Permits, and Owned Equipment (the "**Seller's Claims**") including but not limited to the items set forth on **Exhibit G**;

(h) All Seller's stockpiled Minerals wherever located as of Closing (the "**Stockpiled Minerals**") including but not limited to the stockpiled Minerals identified on **Exhibit H**; and

(j) all maps, reserve studies, engineering reports, mining records, and other records relating to the Owned Real Property, Real Property Leases, Mineral Leases, and Permits (the "**Asset Documents**") including but not limited to the documents identified on **Exhibit I**

2.2 Transfer of Title. Transfer of Seller's title to the Assets shall be affected by Seller's execution and delivery to Buyer at Closing the following documentation, in a form satisfactory to Buyer (the "**Transfer Documents**").

(a) A General Warranty Deed or Deeds, as Buyer may designate, suitable for recording, for the Owned Real Property. Provided, Buyer shall have the right to refuse delivery of any deed to real property from Sellers as to real property not specifically identified on **Exhibit A** and further provided only Pine Mountain Land Company, Inc. shall give a general warranty deed as to the real property owned by it and Pine Mountain Land Company, Inc. shall not give any warranty as to real property not owned by it;

(b) An Assignment and Memorandum of Assignment, suitable for recording, for the

Real Property Leases and Mineral Leases. Provided, Buyer shall have the right to refuse delivery of any leases from Sellers not specifically identified on **Exhibit B** and **Exhibit D** respectively;

(c) An Assignment of the Permits. Provided, Buyer shall have the right to refuse delivery of any Permit not specifically identified on **Exhibit E**;

(d) A Bill of Sale and endorsed certificates of title, where applicable, for the Owned Equipment identified on **Exhibit C**; and

(e) An Assignment or Bill of Sale for any other Asset to be transferred to Buyer by this Agreement.

2.3 Transfer of Possession. Sellers shall transfer possession of the Assets to Buyer by undertaking the following actions at Closing.

(a) Delivery of all keys and lock combinations to any fencing securing the Owned Real Property or the Leased Real Property;

(b) Delivery of the original Real Property Leases, Mineral Leases, Permits and other documents included in the Assets;

(c) Delivery of all keys and lock combinations to the Owned Equipment; and

2.4 Consents for Transfer. Seller shall utilize its best efforts to obtain, prior to Closing, all necessary consents from third parties, should any such consent be required as a precondition for the transfer and assignment of any of the Assets to Buyer (the "**Consents for Transfer**").

2.5 Assumed Liabilities. At Closing Buyer will assume only the following Liabilities of Seller (the "**Assumed Liabilities**"):

(a) The agreements or contracts whereby Seller has expressly agreed, in writing, to be responsible for post-mining land reclamation specifically set forth at **Exhibit J** hereto (the "**Reclamation Agreements**"); and

(b) Any responsibility imposed by Law that Seller may have had as an owner of the Owned Real Property or occupier of land for the Real Property Leases for post-mining land reclamation; and

(c) All obligations under Real Property Leases, Mineral Leases and Permits assigned to Buyer by this Agreement.

SECTION 3 – PROPERTY and LIABILITIES RETAINED

3.1 Excluded Property. Seller retains all of its right, title, and interest in the following property (collectively the "**Excluded Assets**") which the definition of Assets shall not include.

(a) The **Retained Equipment** identified on **Exhibit K;**

(b) All stockpiled Minerals where title has transferred to a third party prior to Closing;

(c) All performance bonds, accounts, certificates of deposit, pre-payments, escrow accounts, or other property pledged as security for reclamation or otherwise (the "**Seller Bonds**"). However, the Seller Bonds shall remain in place until released by the holder or beneficiary of the Seller Bonds pursuant to Section 13.4; and

(d) all Seller's property not transferred to Buyer by this Agreement.

3.2 Excluded Liabilities. Buyer is not assuming any Liability or obligation of Seller other than the Assumed Liabilities. All such other Liabilities and obligations of Seller, however described and under any theory (the "**Retained Liabilities**") shall be retained by and remain Liabilities and obligations of Seller which Seller agrees to perform and discharge. The Retained Liabilities include, by way of example, and not limitation:

(a) all Seller's Liabilities for taxes on the Assets, including taxes imposed upon Seller based on the value of property owned by Seller (i.e. state franchise taxes) assessed or accrued prior to the Closing Date (all taxes applicable to the Assets for 2012 shall be pro-rated at Closing); and

(b) all other Liabilities related to the Assets, Sellers, and any business of Seller for events occurring prior to the Closing Date other than designated as an Assumed Liability.

SECTION 4 – PRE-CLOSING COVENANTS

4.1 Covenants of Seller. Between the Effective Date and Closing, Seller shall:

(a) provide and facilitate Buyer and its representatives reasonable access to the Assets for purposes of inspection and testing (including drilling) and in such event Buyer shall minimize damage to the Assets;

(b) provide Buyer and its representatives with copies of all Seller's records and information pertaining to the Assets and Assumed Liabilities in Seller's possession as Buyer may reasonably request including but not limited to all deeds, leases, mortgages, deeds of trust, memorandums of lease, business records, permits, maps, surveys, and similar documents;

(c) facilitate Buyer's introduction to third Persons having involvement or interest in the Assets, such as other contract parties, as Buyer may request, and to obtain from those third Parties Estoppel Letters, as Buyer may request, in the form satisfactory to Buyer;

(d) diligently pursue obtaining the consents, documents, and information required of

Seller as a precondition to Closing;

(e) cooperate with Buyer in Buyer's efforts to obtain title insurance to the Assets; and

(f) keep the financial terms of this Agreement confidential except as needed to complete this Agreement, complete tax returns, or as required by Law.

4.2 Covenants of Buyer. Between the Effective Date and the Closing, Buyer shall:

(a) use its commercially reasonable efforts to obtain the financing needed for Closing;

(b) keep confidential the financial terms of this Agreement and all information provided by Seller except as needed to complete Buyer's due diligence, consummate this Agreement, obtain financing, complete tax returns, or as required by Law; and

(c) keep Seller currently advised as to the status of Buyer's financing and notify Seller promptly in the event that such financing will not be forthcoming.

SECTION 5 – REPRESENTATIONS and WARRANTIES OF SELLER

5.1 Generally. In order to induce Buyer to enter into this Agreement, Seller makes the representations and warranties set forth below. Said representations and warranties are true, correct, and complete on the Effective Date. Said representations and warranties shall remain true, correct, and complete as of the Closing Date unless Seller shall have otherwise notified Buyer in writing prior to Closing. Accordingly, Seller represents and warrants the following:

5.2 Title to Real Property. Seller owns the Owned Real Property free and clear of all Liens and encumbrances except:

(a) those defects in title identified in the informational letter of attorney Joe Coker dated May 8, 2011 and supplemented February 29, 2012 referred to in **Exhibit L** and any defect in title set forth in any report of Tennessee Valley Title provided to Buyer prior to Closing as set forth in **Exhibit M**;

(b) the Liens and encumbrances set forth on **Exhibit N** which have been made known to Buyer and shall be discharged in full at Closing from Seller's funds (the "**Accepted Real Property Liens**"). Other than the Accepted Real Property Liens, Seller has good title as to be warranted in the General Warranty Deed. Subject to the Accepted Real Property Liens, Seller may freely convey the Owned Real Property to Buyer; and

(c) Only Pine Mountain Land Company, Inc. shall give a general warranty as to the real property owned by it and Pine Mountain Land Company, Inc. shall not give any warranty as to the real property not owned by it.

5.3 Title to Other Assets. Seller owns all non-real property to be conveyed to Buyer as part of the Assets, free and clear of all Liens and encumbrances except the Liens and encumbrances set forth on **Exhibit O** which have been made known to Buyer and shall be discharged in full at Closing from Seller's funds (the "**Accepted Other Liens**"). Other than the Accepted Other Liens, Seller has good and marketable title to all said non-real property. Subject to the Accepted Other Liens and any required consent or approval, Seller may freely convey said non-real property Assets to Buyer.

5.4 No Prior Transfers. Since the time Seller became an owner of any Asset, Seller has not conveyed any right, title, or interest in any Asset to others except as may be shown as an Accepted Real Property Lien, Accepted Other Lien, or as otherwise shown by this Agreement of the Informational Letter referred to in Exhibit L. Other than the Accepted Real property Liens and Accepted Other Liens, Sellers have no knowledge of any unrecorded or threatened Liens or Claims on the Assets.

5.5 No Unpaid Vendors. As to any Asset, there are no unpaid vendors, contractors, suppliers, or other Persons who have performed work, or made improvement, on or pertaining to any Asset. There are no agreements for Seller to pay any real estate agent, brokerage fee, finder's fee, or commission as a result of the sale of the Assets to Buyer.

5.6 Descriptions. The descriptions of the Assets in this Agreement are accurate in all material respects.

5.7 Possession. Except for the Assets which Seller has leased to others as expressed in this Agreement, Seller is in exclusive possession of the Assets.

5.8 Information Provided. To Seller's knowledge, all information provided by Seller to Buyer pertaining to the Assets as part of Buyer's due diligence as specifically described at **Exhibit P** (the "**Due Diligence Information**") and the **Exhibit I** Asset Documents, except items 108 (Ketchen Land Company Coal Quick Sheet 03-09-2011), 110 (Draft Pine Mountain Tracts Potential Mineable Reserve Property Overview Map), 111 (Westbourne Property Reserve Map of Property Overview), 166 (Ketchen Reserves Booklet – Tennessee Reserves)), 170 (Information Summary of Ketchen Land Company), 181 (IRTEC Coal Resources Estimate of Elk Valley Properties), and 182 (IRTEC Reserve Estimate 2008) of **Exhibit P** (the "**Excepted Items**"), is true and accurate. Seller represents that the Excepted Items were prepared by others, Seller's have not altered the content of said documents as prepared by others, Sellers have not been notified by the preparer of the Excepted Items that said documents are false, and Sellers are not aware they are false.

5.9 Related Documents. For each Related Document to which it is a party, Seller has not received any notice of any uncured default as to any Related Document. To the best of Seller's knowledge, Seller is not in default as to any Related Document.

5.10 Organization, Authorization, and Validity. Each Seller is organized and validly existing under the laws of its state of organization. Each Seller has all requisite corporate or limited liability company power, authority, consents, and approval to enter into this Agreement and consummate the conveyances, transfers, and assignments contemplated by this Agreement.

Seller's Initials W Buyer's Initials JW

This Agreement constitutes Seller's valid and binding obligation. The corporate and company resolutions of each Seller approving and authorizing this Agreement and the transactions contemplated therein shall be delivered at Closing.

5.11 No Violation of Orders or Permits. Subject to the receipt of any consents, waivers, authorizations, and approvals required by this Agreement, the execution, delivery and performance by Seller of this Agreement (i) does not, and will not, violate any Order applicable to Seller or the Assets, and (ii) to Seller's knowledge, does not and will not give any Governmental Authority the right to revoke, suspend, terminate, or modify, any Permits or pending applications for Permits.

5.12 Litigation and Investigations. Except for the U. S. District Court, Eastern District of Tennessee lawsuits against National Coal filed November 2011, docket nos. 3:11-cv-515, 3:11-cv-516, and 3:11-cv-527, the Assets are not the subject of any pending or threatened lawsuit or Proceeding. To Seller's knowledge, Seller is not the subject of any pending or threatened investigation by any Governmental Authority.

5.13 Environmental Matters. As it pertains to Seller's use and ownership of the Assets:

(a) Seller has received no unresolved notice or Claim from any Person, citizens Group, or Governmental Authority that Seller is not in compliance with any Environmental Law;

(b) there are presently no Hazardous Materials, other than Hazardous Materials which are permitted in connection with normal mining of coal, oil, and natural gas, located on or under any real property associated with the Assets which were placed by Seller; and

(c) to Seller's knowledge,

(i) Seller is in compliance in all material respects with all Environmental Laws; and

(ii) there have never been Hazardous Materials located on or under any real property associated with the Assets.

5.14 Compliance with Other Laws. Seller has received no notice from any Governmental Authority that it is in violation of any other Law. To Seller's knowledge, Seller is in material compliance with all Laws as it pertains to the ownership and use of the Assets.

5.15 Taxes. All taxes assessed and payable on the Assets as of Closing have been paid including state taxes imposed on Seller based on the value of property owned (i.e. state franchise taxes). None of the Assets are subject to any pending or potential Claims, Liens, or Proceedings for the failure to file or pay any assessments or taxes.

5.16 Permits Blocked. Seller has not been notified by the OSM or the agency of any state administering the SMCRA (or any comparable state Law) that Seller is ineligible to receive additional mining permits, i.e., that Seller has been "permit blocked."

Seller's Initials ______ Buyer's Initials ______

5.17 Disclaimer of Other Representations and Warranties. Except as expressly set forth in this Agreement, Seller makes no other representation or warranty, express or implied, at law or in equity, in respect of any of its assets (including, without limitation, the Assets), Liabilities or operations, including, without limitation, the merchantability or fitness for any particular purpose. Any such other representations or warranties are hereby expressly disclaimed. Except to the extent specifically set forth in this Agreement, Buyer is purchasing the Assets on an "as-is, where-is" basis. Seller does not warrant or represent the condition of subjacent or lateral support of the surface or subsurface of any such real property, nor does Seller warrant or represent that the real property is safe, habitable, or otherwise suitable for mining or for any other purpose.

5.18 Seller's Affidavit. Seller shall execute and deliver at closing a standard Seller's affidavit in the form attached hereto as **Exhibit Q**.

SECTION 6 – REPRESENTATIONS and WARRANTIES OF BUYER

6.1 Generally. In order to induce Seller to enter into this Agreement, Buyer makes the representations and warranties set forth below. Said representations and warranties are true, correct, and complete on the Effective Date. Said representations and warranties shall remain true, correct, and complete as of the Closing Date unless Buyer shall have otherwise notified Seller in writing prior to Closing. Accordingly, Buyer represents and warrants the following:

6.2 Organization, Authorization and Validity. Buyer is organized and validly existing under the laws of its state of organization. Buyer has all requisite corporate or limited liability company power, authority, consents, and approval to enter into this Agreement and consummate the conveyances, transfers, and assignments contemplated by this Agreement. This Agreement constitutes Buyer's valid and binding obligation. Buyer's company resolution approving and authorizing this Agreement and the transactions contemplated therein shall be delivered at Closing.

6.3 No Violation of any Order. Subject to the receipt of any consents, waivers, authorizations and approvals required by this Agreement, the execution, delivery and performance by Buyer of this Agreement does not, and will not, violate any Order applicable to Buyer.

6.4 Brokers and Agents. There are no agreements for Buyer to pay any real estate agent's fee, brokerage fee, finder's fee, or commission as a result of the sale of the Assets to Buyer.

SECTION 7 - PURCHASE PRICE and PAYMENT

7.1 Purchase Price. The total amount to be paid by Buyer to Seller for the Assets and Assumed Liabilities shall be Sixty-Five Million Dollars ($65,000,000.00) less a credit for the Prepaid Items set forth at Exhibit F (recalculated as of the Closing Date) and less the Option Fee referred to below (the "**Purchase Price**"). After application of these two (2) deductions, the

Purchase Price at January 31, 2012 was calculated to be Sixty-Three Million Nine Thousand Two Hundred Sixty Three ($63,009,263.00).

7.2 Option Fee. Buyer has previously given Seller Five Hundred Thousand Dollars ($500,000.00) as a nonrefundable **Option Fee**, which option has expired. Should Buyer proceed to Closing, the expired Option Fee shall be applied as a deduction of the Purchase Price.

7.3 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets by the Buyer for Buyer's tax purposes (the "**Allocation of Purchase Price**") as set forth at **Exhibit R**.

7.4 Payment of Purchase Price. On or before Closing, Buyer shall tender to Closing Agent the Purchase Price by wire transfer or other immediately available funds.

(a) Ten Million ($10,000,000) Dollars of the Purchase Price (the "**Escrow Amount**) shall be paid into Escrow as provided by this Agreement. The Escrow Amount shall be distributed to Seller in the three (3) installments as set forth in Section 12 – Funds Held in Escrow; and

(b) At the Closing, Seller shall receive the remainder of the Purchase Price (the "**Initial Payment**"), which at January 31, 2012 was calculated to be $53,009,263.00.

7.5 Deductions and Offsets. The Purchase Price may be reduced further as follows:

(a) The Initial Payment shall also be reduced by

(i) amounts necessary to pay the Accepted Real Property Liens, Accepted Other Liens, Seller's prior year(s) and current pro-rated taxes of any kind pertaining to the Assets, if any, and any other obligation of Seller pertaining to the Assets to enable Seller to convey to Buyer title required by this Agreement; and

(ii) Seller's Closing Costs.

(b) The Escrow Amount shall be reduced by damages which Buyer may sustain as a result of Seller's breach of the Agreement, a misrepresentation contained in this Agreement, or failure to honor any warranty contained in this Agreement.

7.6 Amounts Held in Trust. Any amounts inadvertently received by Buyer after Closing with respect to any Excluded Asset shall be held by Buyer in trust for Seller until promptly paid to Seller. Likewise, any amounts inadvertently received by Seller after the Closing with respect to any purchased Asset shall be held by Seller in trust for Buyer until promptly paid to Buyer.

7.7 Transfer Taxes. Buyer shall be liable for all sales, use, and other transfer taxes arising from or relating to the consummation and recording of the transactions contemplated by this Agreement.

SECTION 8 - CLOSING

8.1 Closing. The Parties shall hold a closing (the "**Closing**") at 9:30 a.m. on May 25, 2012. The date of Closing is the "**Closing Date**."

8.2 Place of Closing. Closing shall be conducted by Tennessee Valley Title (the "**Closing Agent**") at their offices located at 1500 First Tennessee Plaza, Knoxville, Tennessee.

8.3 Seller's Closing Costs. At Closing, Seller shall pay Closing Agent's reasonable fees and expenses ("**Seller's Closing Costs**") for:

(a) preparing the General Warranty Deeds;

(b) preparing and recording any release of the Accepted Real Property Liens, Accepted Other Liens, or any other release required for Seller to convey the title required by this Agreement; and

(c) one-half of Closing Agent's fees for preparing for and conducting the Closing.

8.4 Buyer's Closing Costs. At Closing, Buyer shall pay Closing Agent's reasonable fees and expenses ("**Buyer's Closing Costs**") for:

(a) preparing and recording all other documents to be recorded required by this Agreement not charged to Seller;

(b) preparing all documents requested by Buyer or required by any secured party of Buyer;

(c) the cost of any title insurance requested by Buyer and/or secured party of Buyer;

(d) one-half of Closing Agent's fees for preparing for and conducting the Closing; and

(e) any other fee, expense, or cost necessary for Closing not charged to Seller.

8.5 Closing Documents. At Closing, Buyer and Seller shall approve and execute:

(a) A HUD-1 **Closing Statement** prepared by Closing Agent, consistent with this Agreement, itemizing the total amount due from Buyer to fund the Purchase Price and all charges due from Buyer ("**Buyer's Gross Settlement Amount**") and the amounts to be paid Seller from Closing after application of all agreed deductions ("**Seller's Net Settlement Proceeds**");

(b) any other document which Closing Agent is required by Law to have Buyer and/or Seller execute to complete the Closing required by this Agreement; and

Seller's Initials ______ Buyer's Initials ______

(c) any other document reasonable and necessary to facilitate Closing.

8.6 Closing Agent Agreement. The Closing Agent shall provide Buyer and Seller with a signed agreement acknowledging its duties under this Agreement and agreeing to perform those duties strictly in compliance with the terms thereof.

SECTION 9 – DELIVERIES AT CLOSING

9.1 Buyer's Deliveries. At Closing, Buyer shall deliver to Closing Agent the following executed documents and items in a form and substance satisfactory to Seller:

(a) Buyer's Gross Settlement Amount, including the Purchase Price;

(b) The Escrow Agreement;

(b) All other documents and items required by this Agreement; and

(d) Any other document or item reasonably necessary to affect the sale, transfer, and assignment of the Assets by Seller to Buyer.

9.2 Seller's Deliveries. At Closing, Seller shall deliver to Closing Agent the following executed documents and items in a form and substance satisfactory to Buyer:

(a) The General Warranty Deeds conveying Owned Real Property;

(b) The Assignments conveying Seller's interests in the Real Property Leases;

(c) The Memorandum of Assignment for the Real Property Leases;

(d) The Bill of Sale for the Owned Equipment;

(e) The endorsed certificates of title for the Owned Equipment;

(d) The Assignments conveying Seller's interests in the Mineral Leases;

(e) The Memorandum of Assignment for the Mineral Leases;

(f) The Assignments conveying Seller's interests in the Permits;

(g) Seller's corporate and company resolutions;

(h) The Seller's Affidavit; and

(i) The Escrow Agreement.

(j) All keys or lock combinations for any fencing securing the Owned Real Property or the Leased Real Property;

(k) The keys for the Owned Equipment; and

(l) The original Real Property Leases;

(m) The original Mineral Leases;

(n) The Asset Documents;

(o) The Consents for Transfer;

(p) The Estoppel Letters;

(q) All other documents and items required by this Agreement;

(r) Any other document or item reasonably necessary to affect the sale, transfer, and assignment of the Assets by Seller to Buyer and for Buyer to acquire title insurance.

SECTION 10 - CONDITIONS FOR CLOSING/ DISTRIBUTIONS AT CLOSING

10.1 Seller's Conditions for Closing. The obligation of Seller to consummate the transactions contemplated by this Agreement at Closing is subject to fulfillment, at or before Closing, of the following conditions.

(a) All material representations and warranties made by Buyer in this Agreement shall have been true as of the Effective Date and remain true as of the Closing Date;

(b) The covenants of Buyer to be performed at or before Closing shall have been performed in all material respects; and.

(c) Buyer shall have made the deliveries of the payments and all other documents and acts required of Buyer by this Agreement at or before Closing.

10.2 Buyer's Conditions for Closing. The obligation of Buyer to consummate the transactions contemplated by this Agreement at Closing is subject to the fulfillment, at or before Closing, of the following conditions.

(a) All material representations and warranties made by Seller in this Agreement shall have been true as of the Effective Date and remain true as of the Closing Date;

(b) The covenants of Seller to be performed at or before Closing shall have been performed in all material respects;

(c) Seller shall have made the deliveries of the documents and items required of

Seller by this Agreement at or before Closing.

(c) Buyer shall be satisfied, in its sole and absolute discretion, with

(i) the results of any title examination, opinion, report, or investigation upon the Assets;

(ii) the form and substance of any delivery from Seller where this Agreement affords Buyer the right to approve and be satisfied with the form and substance of said delivery; and

(iii) the results of any environmental impact study upon the Assets;

(d) Between the Effective Date and Closing, there shall have been no material adverse changes to the Assets regardless of the cause or reason for the change;

(f) There shall have been no Law enacted or proposed by any Governmental Authority, between the Effective Date and the Closing Date, which would create additional restrictions to Buyer's use of the Assets after Closing; and

(g) Buyer shall have received the financing necessary to fund Buyer's Gross Settlement Amount, including the Purchase Price, and complete and consummate this Agreement.

10.3 Distributions and Exchanges at Closing. Provided the conditions for Closing are met, Closing Agent shall conduct the Closing and hold in trust for the Parties the Gross Settlement Amount, including the Purchase Price, and all executed deliveries and items from the Parties at Closing.

(a) Promptly after Closing, on the same day of Closing, Closing Agent shall inspect title at the register of deeds for Campbell and Scott Counties. Provided there are no changes in Seller's record title to the Assets after the dates of the reports referenced in **Exhibit M** impacting Seller's ability to convey to Buyer title to the Assets required by this Agreement, Closing Agent shall be authorized to immediately record the General Warranty Deeds for the Owned Real Property, the Memorandums of Assignment for the Leased Real Property, and the Memorandums of Assignment for the Mineral Leases (the "**Recorded Transfer Documents**") with the register of deeds for the appropriate county. Immediately after recording the Recorded Transfer Documents, on the same day of Closing, Closing Agent shall:

(i) pay to Seller as directed, Seller's Net Settlement Proceeds from the Initial Payment required by this Agreement pursuant to the Closing Statement;

(ii) pay the Accepted Real Property Liens, Other Accepted Liens, Seller's Closing Costs, and any other obligation or expense of Seller set forth on the Closing Statement which Closing Agent is required to pay;

Seller's Initials ______ Buyer's Initials ______

(iii) pay the Buyer's Closing Costs and any other obligation or expense of Buyer set forth on the Closing Statement which Closing Agent is required to pay;

(iv) deliver to Escrow Agent the Escrowed Funds and the Escrow Agreement;

(v) distribute to Buyer all Seller's deliveries and items to which Buyer is entitled;

(vi) distribute to Seller all Buyer's deliveries and items to which Seller is entitled; and

(vii) distribute to Buyer and Seller their respective originals and copies of all Closing Documents.

10.4 Failure to Convey Title. In the event that at the Closing Date, Closing Agent's inspection of the title to the Assets in Campbell or Scott Counties reveals that there has been a change in title to the Assets such that a recording of the Recorded Transfer Documents would not vest Buyer with the record title in the Assets required by this Agreement, then Closing Agent shall not record the Recorded Transfer Documents and instead notify the Parties. In the event that the Closing Agent does not record the Recorded Transfer Documents on the Closing Date, unless by five o'clock PM EST on May 25, 2012, the Parties mutually direct Closing Agent by executed writing otherwise, this Agreement shall be deemed terminated, and Closing Agent shall:

(a) return to Buyer the Buyer's Gross Settlement Amount less an amount equal to the Seller's Closing Costs and the Buyer's Closing Costs (less the cost of the title insurance);

(b) return to Buyer and Seller the documents and items delivered by them at Closing; and

(c) prepare and record such documents that may be required to cancel or rescind the effect of the recording of the Recorded Transfer Documents, which the Parties will execute on request.

SECTION 11 – TERMINATION and REMEDIES PRIOR TO CLOSING

11.1 Termination. This Agreement may be terminated prior to or at Closing:

(a) by mutual consent of the Parties;

(b) by Buyer upon

(i) Buyer's exercise of any right of discretion or approval, as a condition for Closing, as provided by this Agreement;

(ii) Buyer's inability to obtain financing; or

(iii) the failure of any other Buyer's Conditions for closing provided by this

Agreement;

(c) by Seller upon the failure of any of Seller's Conditions for closing provided by this Agreement provided Seller is not in material default of this Agreement; and

(d) this Agreement shall terminate and be of no further force and effect if for any reason the Closing does not occur on or before May 25, 2012 and in such event the Parties shall owe each other no obligation.

11.2 Remedies on Termination. In the event of a termination of this Agreement prior to or at Closing as herein provided, this Agreement shall be of no further force and effect, and Seller shall retain the Option Fee and in such event the Parties shall owe each other no obligation.

SECTION 12 – FUNDS HELD IN ESCROW

12.1 Appointment of Escrow Agent. The Parties appoint Bank of America Merrill Lynch, located at Chicago, Illinois as **Escrow Agent** for the **Escrow Account** established by this Agreement.

12.2 Acceptance by Escrow Agent. The Escrow Agent shall accept the assignment as Escrow Agent hereunder by executing the **Escrow Agreement**, which the Parties shall also execute, attached hereto as **Exhibit S**.

12.3 Fees of Escrow Agent. Escrow Agent shall be compensated by the compensation set forth in the Escrow Agreement.

12.4 Deliveries to Escrow. Promptly after Closing, Closing Agent shall deliver to Escrow Agent the Escrow Amount by wire transfer, which funds shall be held in trust by Escrow Agent for the Parties pursuant to this Agreement (the "**Escrow Funds**").

12.5 Purpose of Escrow. The Escrow Funds shall serve as a fund from which Buyer may be paid reimbursement, compensation, or damages to which Buyer may be entitled as a result of Seller's breach of this Agreement or any warranty or representation as provided herein. Otherwise, the Escrow Funds are to be released to Seller as hereafter provided.

12.6 Funds Escrowed. Escrow Agent shall cause the Escrow Funds to be placed in a non-interest bearing account with unlimited FDIC coverage, to the extent such unlimited coverage may be obtained. Provide the conditions for disbursement have been met in accordance with the Escrow Agreement; Escrow Agent shall disburse to Sellers money from Escrow in accordance with the following schedule:

(a) Three Million Dollars ($3,000,000.00) from the Escrowed Funds four (4) months after the date of Closing;

(b) Three Million Dollars ($3,000,000.00) from the Escrowed Funds eight (8) months

Seller's Initials ______ Buyer's Initials ______

after the date of Closing;

(c) The remaining funds from the Escrowed Funds twelve (12) months after the date of Closing.

(d) In the event that any interest is earned on the Escrow Funds, such interest shall be distributed to Seller as principal payments are made.

12.7 Disbursements from Escrow. Escrow Agent shall disburse Escrow Funds to a Party or other Person only by written instruction signed and acknowledged by the Parties or by court order.

(a) Ten (10) days prior to the time periods set for the planned disbursements from Escrow set forth hereinabove, the Parties shall deliver to Escrow Agent a signed and acknowledged writing instructing Escrow Agent to disburse or retain such proceeds as directed by the Parties.

(b) In the event Escrow Agent receives no joint instructions from the Parties as provided by this Agreement, or Court Order binding on the Parties, Escrow Agent shall continue to retain the Escrow Funds until otherwise instructed by the Parties or by binding Court Order.

12.8 Duties of Buyer. For the instructions required by this Agreement to be given Escrow Agent Buyer shall agree in said instructions that all proceeds shall be disbursed to Seller unless Buyer shall have previously given written notice to Seller and Escrow Agent that Buyer seeks an offset of the Purchase Price due to Seller's breach of this Agreement or any warranty or representation herein.

12.9 Escrow Account Dispute Resolution. As to any claim of Purchase Price offset by Buyer and recoupment from Escrow for damages caused by Seller for Breach of this Agreement or any warranty or representation contained therein, after good faith discussion, in person or by correspondence, the Parties shall either agree or disagree as to subsequent instructions to the Escrow Agent. In the event of a disagreement, either Party may file suit in a court of competent jurisdiction for declaratory judgment or other relief and/or damages. Venue for all actions involving interests in real property shall be filed in the county where the real property is located.

BOTH BUYER AND SELLER WAIVE THE RIGHT TO TRIAL BY JURY AS TO ANY DISPUTE INVOLVING DISTRIBUTIONS FROM ESCROW. BY THEIR INITIALS IN THIS SECTION, THE PARTIES AGREE THE FOREGOING WAIVER APPEARS IN A CONSPICUOUS PLACE IN THIS AGREEMENT.

Waiver by Seller ______ Waiver by Buyer ______

To the extent Buyer shall prevail on any matter of offset, Buyer shall receive from Escrow the amounts so awarded and the court shall fashion an order instructing the Escrow Agent to make such disposition with the remaining applicable Escrow Funds to go to Seller.

12.10 Seller's Damages. So as to encourage Buyer to make cautious use of objecting to any distribution from Escrow to Seller, should the court find Seller to be the substantially prevailing party, as Seller's exclusive remedy for lost use of money, Buyer shall pay Seller's reasonable attorney's fees and

(a) 3.25% discretionary prejudgment interest, or
(b) 10% discretionary pre-judgment interest upon a finding that Buyer's objection was not made in good faith.

12.11 Buyer's Damages. So as to encourage Seller to agree to any offsets from Escrow justifiably due Buyer, should the court find Buyer to be the substantially prevailing party, as Buyer's exclusive remedy for lost use of money, Seller shall pay Buyer's reasonable attorney's fees and

(a) 3.25% discretionary prejudgment interest, or
(b) 10% discretionary pre-judgment interest upon a finding that Seller's objection was not made in good faith.

SECTION 13 – POST CLOSING ACKNOWLEDGMENTS and COVENANTS

13.1 Future Events. Buyer acknowledges that Seller has made no representation or warranty concerning any future revenues, costs, expenditures, cash flow, results of operations, financial condition, or prospects that may result from the ownership, use, or sale of the Assets or the assumption of the Assumed Liabilities. In addition, Buyer acknowledges that any real property to which an interest is being transferred to Buyer has been previously held for mining or mining related purposes.

13.2 Survival . All representations, warranties, covenants, and obligations set forth in this Agreement will survive Closing and continue in full force and effect in perpetuity unless expressly limited by this Agreement. The Transfer Documents and any other item or document to be delivered by a Party at Closing is deemed performance of this Agreement and not a novation of any representation, warranty, or covenant in this Agreement. As to any conflict between the terms of the Transfer Documents and any item or document delivered at Closing and this Agreement, the terms of this Agreement shall control.

13.3 Covenants of Seller. Following Closing, Seller shall:

(a) diligently and in good faith attempt to obtain, and otherwise cooperate with Buyer to attempt to obtain any needed document or thing required by Seller to have been delivered at Closing, should Buyer elect to proceed with Closing without Seller having provided said document or thing as required;

(b) facilitate Buyer's further acquisition of title insurance by supplying information to Buyer on request about the Assets and executing any affidavits or other documents consistent

Seller's Initials ______ Buyer's Initials ______

with the representations and warranties of Seller set forth in this Agreement or as may be reasonably required;

(c) to the extent allowed by and in accordance with applicable Law, grant Buyer the right, to conduct operations under any Real Property Lease, Mineral Lease, or Permit until such time as the transfer or replacement, if applicable, of such item to Buyer is complete. In that event, Buyer shall, (i) comply with all conditions and requirements of, or pertaining to, any such agreement that Buyer operates under after the Closing, and (ii) indemnify Seller from and against any and all losses incurred or suffered by Seller as a result or consequence Buyer's conduct under this arrangement;

(d) cooperate with Buyer and provide commercially reasonable assistance in effecting transfers of vendor accounts and services so as to avoid interruption or temporary cessation of operations; and

(e) keep the financial terms of this Agreement confidential except as needed to complete this Agreement, complete tax returns, or as required by Law.

13.4 Covenants of Buyer. Following Closing, Buyer shall

(a) use its best efforts to obtain release of the **Personal Guarantees** of Seller's principals set forth on **Exhibit T** within ninety (90) days after the Closing Date; and

(b) keep the financial terms of this Agreement confidential except as needed to complete this Agreement, complete tax returns, or as required by Law.

13.5 Covenants of Buyer and Seller. Buyer and Seller shall:

(a) upon the request of the appropriate Party, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be required to complete the transactions contemplated in this Agreement; and

(b) use its reasonable best efforts to assure that any necessary third party shall, execute such documents and do such other acts and things as any other party may reasonably require for the purpose of giving to that other party the full benefit of all the provisions of this Agreement as may be reasonably required to complete the transactions contemplated in this Agreement.

SECTION 14 – LIMITATION ON BUYER'S REMEDIES AFTER CLOSING

14.1 Limitation of Actions. Buyer's claims against Seller for breach of this Agreement, or any warranty or representation contained herein, except proceedings involving title to real property and those claims made pursuant to Section 15 - Indemnification, must be brought by Buyer against Seller within three (3) years of the Closing Date. Buyer's Claims against Sellers on matters pertaining to title to real property remain enforceable as allowed by

Law.

SECTION 15 – INDEMNIFICATION

15.1 Indemnification by Seller. Seller agrees to defend, indemnify, and hold Buyer, its Affiliates, and Related Parties harmless from and against any and all demands, Claims, Proceedings, losses, damages, Liabilities, assessments, Orders, costs, expenses, and professional fees (including reasonable attorneys' fees), of any nature and of any kind whatsoever that may be suffered or incurred arising, directly or indirectly, out of or in connection with:

(a) any false representation or warranty made by Seller set forth in this Agreement;

(b) any breach of this Agreement by Seller;

(c) any Liability of Seller not part of the Assumed Liabilities; and

(d) Seller's use or ownership of the Assets prior to Closing

15.2 Indemnification by Buyer. Buyer agrees to defend, indemnify, and hold Seller, its Affiliates, and Related Parties harmless from and against any and all demands, Claims, Proceedings, losses, damages, Liabilities, assessments, Orders, costs, expenses, and professional fees (including reasonable attorneys' fees), of any nature and of any kind whatsoever that may be suffered or incurred arising, directly or indirectly, out of or in connection with:

(a) any false representation or warranty made by Buyer set forth in this Agreement;

(b) any breach of this Agreement by Buyer; and

(d) Seller's use or ownership of the Assets after Closing.

15.3 Procedure for Indemnification.

(a) Promptly after receipt by a Party (the "**Claiming Party**") of notice of an event giving rise to a right of indemnity provided by this Agreement (an "**Indemnitee Claim**"), and if a claim is to be made by the Claiming Party against any other Party (the "**Indemnifying Party**") for indemnification with respect to that Indemnitee Claim under this Agreement, the Claiming Party shall promptly give notice to the Indemnifying Party of the existence of the Indemnitee Claim; provided, that the failure to so notify the Indemnifying Party of the commencement or assertion of such Indemnitee Claim will not relieve the Indemnifying Party of any liability to provide indemnity except to the extent that such Indemnifying Party demonstrates that the defense of such action was materially prejudiced by the Claiming Party's failure to give such timely notice.

(b) The Indemnifying Party shall defend or compromise any Indemnitee Claim by a third party ("**Third Party Claim**"), at its own expense and by its own counsel, who shall be reasonably acceptable to the Claiming Party. The Claiming Party shall cooperate in the defense of the Third Party Claim and may participate, at its own expense, in the defense of any Indemnitee Claim/Third Party Claim assumed by the Indemnifying Party. The Indemnifying Party shall not, without the approval of the Claiming Party (which approval shall not be unreasonably withheld or delayed), compromise a Third Party Claim defended by the Indemnifying Party which compromise agreement would require the Claiming Party to perform any action or to refrain from performing any action.

(c) If, within 10 days of the Indemnifying Party's receipt of notice involving a Third Party Claim, the Indemnifying Party has not notified the Claiming Party that the Indemnifying Party will assume the defense, the Claiming Party may assume control of the defense or compromise of such Indemnitee Claim/Third Party Claim, and the costs and expenses of such defense, including costs of investigation and reasonable attorneys' fees, shall be added to the Indemnitee Claim. The Claiming Party shall have the right to compromise such Indemnitee Claim without the Consent of the Indemnifying Party.

(d) The party assuming the defense of any Indemnitee Claim shall keep the other Party(s) reasonably informed at all times of the progress and development of the Party's defense of and compromise efforts with respect to such Indemnitee Claim.

15.4 Right of Indemnity Limited. The rights, obligations, and procedures set forth in this Section 15 shall not apply to the rights and offsets to the proceeds held in Escrow provided by this Agreement.

SECTION 16 - NOTICES

16.1 Generally. All formal notices under this Agreement shall be given to the Parties at the following addresses (i) by registered or certified mail, (ii) by facsimile transmission; (iii) or by nationally recognized overnight delivery services.

16.2 Notice to Buyer. Notice to Buyer is to be sent to the attention of Dallas Groth at Cypress Camon Energy, LLC; P. O. Box 12688; Dallas, TX 75225; Fax No. (214) 299-8001 with a copy to Justin Huntley, General Counsel, at Cypress Camon Energy, LLC; P. O. Box 12 688; Dallas TX 75225; Fax No. (214) 299-8001; and a copy to Brian C. Quist, Attorney, 2121 First Tennessee Plaza, Knoxville, TN 37929; Fax No. (865) 524-1873.

16.3 Notice to Seller. Notice to Seller is to be sent to the attention of Nat Cloer; 207 East North 1st Street; Seneca, SC 29678 with a copy to Seller's attorney Cary H. Hall, Jr.; Wyche, P.A.; 44 E. Camperdown Way; Greenville, SC 29601; Fax No. 864-235-8900.

SECTION 17 – MISCELLANEOUS

17.1 Amendments. No supplement, modification, or waiver of this Agreement shall be binding unless set forth in writing and executed by the Parties.

17.2 Assignment. The obligations and duties imposed by this Agreement on a Party may not be transferred or assigned (whether by agreement, operation of law, or otherwise), in whole or in part, without the written consent of the other Party. A Party's right to receive payment under this Agreement may be assigned to another provide the other Party shall receive advance notice. The foregoing notwithstanding, Buyer shall have the right to

(a) pledge all of its right, title, and interest in this Agreement as security for the financing of the Purchase Price; and

(b) assign its rights and obligations under this Agreement, in whole or in part, to one or more Affiliates, provided however, that Buyer shall remain liable for all of Buyer's obligations hereunder notwithstanding any such assignment.

17.3 Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns allowed by this Agreement.

17.4 Counterparts. This Agreement may be executed in one or more counterparts (including signatures delivered via facsimile or e-mail), each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument.

17.5 Expenses. The Parties shall bear their own expenses and other costs in connection with this Agreement and the transactions contemplated hereby.

17.6 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersede all prior agreements and understandings, oral or written, among the Parties hereto with respect to the subject matters contained in this Agreement.

17.7 Drafting. This Agreement is the result of negotiations between the Parties; all Parties are deemed to be the drafter of this Agreement; and no ambiguity shall be construed in favor of or against any Party based on the drafting of this Agreement.

17.8 Governing Law and Venue. This Agreement was entered into in Tennessee, concerns Assets located in Tennessee, and is to be substantially performed in Tennessee. Accordingly, this Agreement shall be governed by the Laws of the State of Tennessee without regard, or application, of its conflict of laws rules. Subject to dispute resolution procedures otherwise set forth herein, the Venue for any litigation between the Parties shall be courts located in Tennessee having subject matter and personal jurisdiction. Venue for all actions involving interests in real property shall be filed in the county where the real property is located.

17.9 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning of this Agreement.

17.10 Third Party Beneficiaries. Except where expressly provided in this Agreement, such as by the definitions of Buyer and Seller herein, there shall be no third party beneficiaries to this Agreement.

17.11 Severability. If any term, provision, covenant, or restriction of this Agreement is held by a court to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and restrictions of this Agreement shall remain in full force and effect.

Seller's Initials ______ Buyer's Initials ______

17.12 Waiver. The failure of a Party to promptly exercise any right conferred by this Agreement shall not be deemed a waiver of the right. Where a Party does waive a right in one instance, such waiver shall not constitute a continuing waiver of the same or similar right for future instances.

17.13 Time of the Essence. Time is of the essence in all respects regarding this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Seller's Initials ________ Buyer's Initials ________

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of Buyer and Seller.

BUYER:

Cypress Camon Energy, LLC
By Cypress Camon Investment Management, LLC
Its Managing Member
By: Dallas Groth, Chief Manager

SELLER:

Ketchen Land Company, Inc.
By:

Ketchen Development Company, Inc.
By:

Westbourne Lane Associates, LLC
By:

Davis Creek Energy, LLC
By:

Pine Mountain Land Company, Inc.
By:

Ketchen Resources, LLC
By:

STATE OF TEXAS)
)
COUNTY OF DALLAS)

ACKNOWLEDGMENT

I, RUBANN CALDER, a Notary Public for the State of TEXAS, do hereby certify that Dallas Groth, as Chief Manager of Cypress Camon Investment Management, LLC, the Managing Member of Cypress Camon Energy, LLC, personally appeared before me this 26 day of April, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By [signature]
Notary Public
My commission expires: 12 · 22 · 2014

[SEAL]

RUBANN CALDER
Notary Public, State of Texas
My Commission Expires
December 22, 2014

STATE OF ______)
)
COUNTY OF ______)

ACKNOWLEDGMENT

I, Ronald Osborne, a Notary Public for the State of SOUTH CAROLINA, do hereby certify that NAT CLOER, as MANAGING MEMBER of Ketchen Land Company, LLC, personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By Ronald Osborne
Notary Public
My commission expires: 8-15-2021

[SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ACKNOWLEDGMENT

I, RONALD OSBORNE a Notary Public for the State of SOUTH CAROLINA, do hereby certify that NAT CLOER, as PRESIDENT of Ketchen Development Company, Inc., personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By Ronald Osborne
Notary Public
My commission expires: 8-15-2021

[SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ACKNOWLEDGMENT

I, RONALD OSBORNE, a Notary Public for the State of SOUTH CAROLINA, do hereby certify that NAT CLOER, as MANAGING MEMBER of Westbourne Lane Associates, LLC, personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By Ronald Osborne
Notary Public
My commission expires: 8-15-2021

[SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ACKNOWLEDGMENT

I, RONALD OSBORNE, a Notary Public for the State of SOUTH CAROLINA, do hereby certify that NAT CLOER, as MANAGING MEMBER of Davis Creek Energy, LLC, personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By Ronald Osborne
Notary Public
My commission expires: 8-15-2021

[SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ACKNOWLEDGMENT

I, RONALD OSBORNE, a Notary Public for the State of SOUTH CAROLINA, do hereby certify that RYAN FAULKENBERRY, as SECRETARY of Pine Mountain Land Company, Inc. personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

Ronald Osborne
Notary Public
My commission expires: 8-15-2021

[SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ACKNOWLEDGMENT

I, RONALD OSBORNE, a Notary Public for the State of SOUTH CAROLINA, do hereby certify that NAT CLOER, as MANAGING MEMBER of Ketchen Resources, LLC, personally appeared before me this 30 day of APRIL, 2012 and acknowledged the due execution of the foregoing Asset Purchase and Sale Agreement.

By Ronald Osborne

Notary Public

My commission expires: 8-15-2021

[SEAL]

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REINSTATEMENT AND AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT

THIS REINSTATEMENT AND AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT (this **"Amendment"**) is made and entered into as of November 27, 2012 by and between CYPRESS CAMON ENERGY, LLC, as Buyer, and KETCHEN LAND COMPANY, INC.; KETCHEN DEVELOPMENT COMPANY, INC.; WESTBOURNE LANE ASSOCIATES, LLC; DAVIS CREEK ENERGY, LLC; PINE MOUNTAIN LAND COMPANY, INC.; and KETCHEN RESOURCES, LLC, collectively Seller. Buyer and Seller may each be referred to as a "**Party**" or collectively as the "**Parties**".

RECITALS:

WHEREAS, Buyer and Seller entered into that certain Asset Purchase and Sale Agreement dated as of April 27, 2012 (the "**Purchase Agreement**"), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer (the "**Sale**"), the Assets (as defined in the Purchase Agreement) of Seller in accordance with the terms of the Purchase Agreement; and

WHEREAS, the Purchase Agreement expired, was terminated and was of no further force and effect by reason of the failure to have a Closing on or before May 25, 2012;

WHEREAS, Seller and Buyer desire and agree to reinstate and amend the Purchase Agreement to, among other things, modify the Purchase Price and the Payment of Purchase Price and establish a new Closing Date, all in accordance with the terms set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Modification of Purchase Price. Section 7.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

> 7.1 Purchase Price. The total amount to be paid by Buyer to Seller for the Assets and Assumed Liabilities shall be Fifty-Five Million Dollars ($55,000,000.00) less a credit for the Prepaid Items set forth at Exhibit F (recalculated as of the Closing Date) and less the Option Fee referred to below (the "**Purchase Price**"). After application of these two (2) deductions, the Purchase Price at January 31, 2012 was calculated to be Fifty-Three Million Nine Thousand Two Hundred Sixty Three ($53,009,263.00).

3. Modification of Payment of Purchase Price. Section 7.4 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

7.4 Payment of Purchase Price. On or before Closing, Buyer shall tender to Closing Agent the Purchase Price by wire transfer or other immediately available funds.

(a) At Closing, Seller shall receive Thirty Million Dollars ($30,000,000.00) (the "**Initial Payment**") and a Promissory Note (the "**Note**") for the remainder of the Purchase Price (the "**Remainder**").

(b) On the First Anniversary of the Closing, Seller shall receive the Remainder of the Purchase Price which at January 31, 2012 was calculated to be $23,009,263.00

4. Modification of Closing. Section 8.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

8.1 Closing. The Parties shall hold a closing (the "**Closing**") on February 15, 2013. The date of Closing is the "**Closing Date**".

The Seller and Buyer also agree that the Purchase Agreement is further amended to adjust the deadline(s) for pre-Closing tasks as necessary to allow a Closing to occur on or before such Closing Date. The Closing Date under this Reinstatement and Amendment is substituted for "May 25, 2012" in Section 10.4.

5. Deletion of Escrow. Section 12 of the Purchase Agreement is hereby deleted in its entirety and all other references to Escrow, Funds Held in Escrow, Escrowed Funds or an Escrow Agreement throughout the Purchase Agreement are hereby deleted.

6. Modification of Termination. Section 11.1(d) of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

(d) this Agreement shall terminate and be of no further force and effect if for any reason the Closing does not occur on or before February 15, 2013 and in such event the Parties shall owe each other no obligation.

7. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall be reinstated in full force and effect. Provided, however, Buyer acknowledges and agrees that various changes in the status of Seller's business, such as changes in the status of mining permits, have occurred since April 17, 2012.

8. Entire Agreement. The Purchase Agreement, as amended by this Amendment, constitutes the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

9. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the State of Tennessee without regard to or application of its conflict of laws rules.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[INTENTIONALLY LEFT BLANK – NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Reinstatement and Amendment to Asset Purchase Agreement as of the date first above written.

BUYER:

Dallas Groth

Cypress Camon Energy, LLC
By Cypress Camon Investment Management, LLC
Its Managing Member
By: Dallas Groth, Chief Manager

SELLER:

Ketchen Land Company, Inc.
By:

Ketchen Development Company, Inc.
By:

Westbourne Lane Associates, LLC
By:

Davis Creek Energy, LLC
By:

, V.P.

Pine Mountain Land Company, Inc.
By: V. PRESIDENT

Ketchen Resources, LLC
By:

00581196.DOCX

SECOND REINSTATEMENT AND AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT

THIS SECOND REINSTATEMENT AND AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT (this "**Amendment**") is made and entered into as of March 14, 2013 by and between NEWLEAD HOLDINGS, LTD, as Assignee "**Buyer**", and KETCHEN LAND COMPANY, INC.; KETCHEN DEVELOPMENT COMPANY, INC.; WESTBOURNE LANE ASSOCIATES, LLC; DAVIS CREEK ENERGY, LLC; PINE MOUNTAIN LAND COMPANY, INC.; and KETCHEN RESOURCES, LLC, collectively "**Seller**". Buyer and Seller may each be referred to as a "**Party**" or collectively as the "**Parties**".

RECITALS:

WHEREAS, Predecessor Buyer, Cypress Camon Energy, LLC and Seller entered into that certain Asset Purchase and Sale Agreement dated as of April 27, 2012 (the "**Purchase Agreement**"), pursuant to which Buyer agreed to acquire from Seller, and Seller agreed to sell to Buyer **(the "Sale")**, the Assets (as defined in the Purchase Agreement) of Seller in accordance with the terms of the Purchase Agreement; and

WHEREAS, the Purchase Agreement expired, was terminated and was of no further force and effect by reason of the failure to have a Closing on or before May 25, 2012;

WHEREAS, Seller and Buyer desire and agree to reinstate and amend the Purchase Agreement to, among other things, modify the Purchase Price and the Payment of Purchase Price and establish a new Closing Date, all in accordance with the terms set forth in this Amendment;

WHEREAS, Cypress Camon Energy, LLC assigned its rights and obligations under the Purchase Agreement to Buyer, with approval of Seller; and

WHEREAS, Buyer and Seller wish to amend the Purchase Agreement to include a provision whereby the Buyer and its assignee, Elk Valley Investment, LLC ("EVI") can make a limited number lease payments to Seller, begin working on the Assets for the value of those lease payments and to have the lease payments count as partial payment toward full payment and closing on sale of the Assets;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Modification of Purchase Price. (a) Section 7.1 of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

7.1 Purchase Price. The total amount to be paid by Buyer to Seller for the Assets and Assumed Liabilities shall be Fifty-Five Million Dollars ($55,000,000.00) less a credit for the Prepaid Items set forth at Exhibit F (recalculated as of the Closing Date), less any lease payments made from Buyer to Seller as described below in this paragraph, and less the Option

Fee referred to below (the **"Purchase Price")**. After application of these two (2) deductions, the Purchase Price at January 31, 2012 was calculated to be Fifty-Three Million Nine Thousand Two Hundred Sixty Three ($53,009,263.00). Seller will allow Buyer to lease the Asset under the terms of this paragraph and a lease agreement containing customary provisions for a coal/natural gas lease agreement including those set forth on the attached Exhibit A and to allow those lease payments to be applied dollar for dollar to reduce the amount of the Purchase Price, from the amounts due at Closing. Buyer shall be entitled under its lease to remove and sell any and all coal and natural gas, and Buyer shall pay the following lease payment: $450,000 by March 15, 2013; $450,000 by April 15, 2013; $450,000 by May 15, 2013; $3,183,333.33 by June 15, 2013; $3,183,333.33 by July 15, 2013; $3,183,333.33 by August 15, 2013; $3,183,333.33 by September 15, 2013; $3,183,333.33 by October 15, 2013; $3,183,333.33 by November 15, 2013, $3,183,333.33 by December 15, 2013; $3,183,333.33 by January 15, 2014; $3,183,333.33 by February 15, 2014. The parties agree that Buyer will take all reasonable steps to secure financing to close on the Asset as soon as possible and will set the Closing Date as soon as practicable following secure commitment of financing. If the Closing has not occurred by July 15, 2013, then the remaining Lease payments shall bear interest at the rate of 6% per annum, payable on the 15th day of each month, until the Closing occurs.

(b) Note. The obligation of NewLead and EVI to pay the deferred Purchase Price under Section 7.4(b) of the Reinstatement and Purchase Agreement shall be evidenced by Promissory Note to Ketchen Land Company, Inc.in the form of that attached hereto as Exhibit B, executed by NewLead and EVI as CoMakers.

(c) Payments. All payments of Purchase Price and Lease payments shall be made to Ketchen Land Company, Inc. as agent for the Sellers. Ketchen shall be responsible for allocation of the Purchase Price among the Sellers and neither NewLead nor EVI shall have any responsibility with respect to allocation of the Purchase Price among the Sellers.

3. Modification of Closing. Section 8.1 of the Purchase Agreement is **hereby deleted in** its entirety and is amended and restated as follows:

8.1 Closing. The Parties shall hold a closing (the **"Closing")** as soon as possible, but in any case before the end of the first year following the first lease payment described above. The date of Closing is the **"Closing Date"**.

4. Deletion of Escrow. Section 12 of the Purchase Agreement is hereby deleted in its entirety and all other references to Escrow, Funds Held in Escrow, Escrowed Funds or an Escrow Agreement throughout the Purchase Agreement are hereby deleted.

5. Modification of Termination. Section 11.1(d) of the Purchase Agreement is hereby deleted in its entirety and is amended and restated as follows:

(d) this Agreement shall terminate and be of no further force and effect if for any reason the Closing does not occur on or before March 15, 2014 and in such event the Parties shall owe each other no obligation.

6. No Other Amendment. All other provisions of the Purchase Agreement not specifically referenced in this Amendment shall be reinstated in full force and effect. Provided, however. Buyer

acknowledges and agrees that various changes in the status of Seller's business, such as changes in the status of mining permits, have occurred since April 17, 2012.

7. Entire Agreement. The Purchase Agreement, as amended by this Amendment, constitutes the entire agreement among the parties with respect to the subject matter thereof and together supersede all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter thereof.

8. Governing Law. This Amendment shall be governed and construed in accordance with the laws of the State of Tennessee without regard to or application of its conflict of laws rules.

9. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[INTENTIONALLY LEFT BLANK — NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Reinstatement and Amendment to Asset Purchase Agreement as of the date first above written.

BUYER:

Newlead Holdings, Inc.
By: 03.14.2013

SELLER:

Ketchum Land Company, Inc.

Ketchum Development Company, Inc.

Westbourne Lane Associates, LLC

Davis Creek Energy, LLC

Pine Mountain Land Company, Inc.

EXHIBIT A

LEASE TERMS

- The Lease Term will end no later than February 15, 2014; no extensions or holding over shall be permitted.
- Lessee shall vacate the property immediately upon demand by Seller if any of the payments described in Section 7.1 (Section 2 of this Reinstatement) are not made on the date specified.
- Lease will not be recorded.
- Lease will be guaranteed by NewLead Holdings, Ltd.
- Tenant under the Lease and NewLead Holdings, Ltd. will agree to exclusive venue in Campbell & Scott Counties, TN for any dispute or other matters arising under the Lease and will agree to personal jurisdiction there.
- Upon default under the Lease, Lessee will assign to Seller all of its rights under Permits, Mining contracts and other mining assets on the Leased Property.
- Lease will be nonassignable.
- Membership Interests in Lessee will be pledged to Seller to secure obligations under the Lease.
- Bankruptcy remote provisions will be added to the Articles of Lessee.
- Seller will be informed on a weekly or more frequent basis of all mining plans and other developments on the Property.
- Seller will have the right to approve all permit applications, mining plans and reclamation plans, which approval shall not be unreasonably withheld.

EXHIBIT B

PROMISSORY NOTE

March 5, 2012 **[$25,000,000]**

FOR VALUE RECEIVED, NEWLEAD HOLDINGS, LTD. And ELK VALLEY INVESTMENT, LLC ("Payors") hereby promise to pay KETCHEN LAND COMPANY, INC., or order, ("Holder"), the principal amount of Twenty Three Million Nine Hundred Thousand, Two Hundred Sixty Three Dollars ($23,900,263).

1. *Payments*. The entire principal balance shall be paid in full on ________ , 2014 (the "Maturity Date"), without interest, provided, however, that in the event any amount of the principal is not paid on the Maturity Date interest shall be payable as set forth below.

Delinquent Payment/Cost. Any amount due hereunder not paid when due shall bear interest at a rate of 6% per annum, which shall commence to accrue on the Maturity Date and shall continue to accrue until paid in full. Payors shall reimburse Holder against all reasonable cost of collection, including reasonable attorney's fees in case of suit or collection by counsel, or litigation involving this debt reasonably requiring employment of counsel to protect or enforce any right or remedy of Holder, which amounts shall be added to the principal amount of this Note.

2. *Payment of Note*. All payments and prepayments of principal and interest on this Note shall be made to Holder or its order, in lawful money of the United States of America at Holder's offices or such other place as designated in writing by the Holder. The principal balance of this Note may be prepaid without penalty.

3. *Governing Law*. This Promissory Note is given pursuant to Asset Purchase and Sale Agreement entered into in Tennessee concerning Assets located in Tennessee, and is to be substantially performed in Tennessee. Accordingly, this Agreement shall be governed by the Laws of the State of Tennessee without regard, or application, of its conflict of laws rules. The venue for any litigation between the parties hereto shall be courts located in Campbell or Scott County, Tennessee and the parties hereto submit to the personal jurisdiction of such courts.

4. *Default and Waivers*. Failure by Holder to exercise any right hereunder shall not constitute a waiver of the right. Payors hereby waive presentment, demand, protest and notice of dishonor.

IN WITNESS WHEREOF, Payors have executed and delivered this Promissory Note under seal on March 5, 2013.

ELK VALLEY INVESTMENT LLC

By:________________________________

NEWLEAD HOLDINGS, LTD.

ASSIGNMENT AGREEMENT: ELK VALLEY

THIS ASSIGNMENT AGREEMENT (this "Agreement") made and entered into this 21st day of December, 2012, by and between Cypress Camon Energy, LLC, ("Cypress"), and Newlead Holdings Ltd, ("Newlead").

1. Assignment. Assignor does hereby grant, convey, assign and distribute to Assignee, and Assignee hereby accepts: (a) all of Assignor's rights, title, interests and benefits in the right to purchase any interest in the real property described in Exhibit A, including any and all rights in and to the Purchase Agreement attached as Exhibit B.

2. Further Acts. Assignor hereby covenants and agrees with Assignee to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered to Assignee, its successors and assigns, all such further acts, assignments, transfers, notices, conveyances and assurances that may be reasonably requested by Assignee for the assignment, transfer and conveyance of the assets and rights conveyed in Section 1 hereof.

3. Controlling Law. This Agreement shall be governed by and construed and interpreted under the laws of the State of Delaware, without regard to the choice of law provisions thereof.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

5. Amendments. Any amendment to this Agreement shall not be binding on the parties hereto unless such agreement is in writing duly executed by all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date set forth above.

Newlead Holdings Ltd.

By: ______________________

Name: MICHAEL ZOLOTAS

Title: CEO

Cypress Camon Energy, LLC

By: Dallas Groth

Name: DALLAS GROTH

Title: CEO

EXHIBIT 8.1

The following is a list of subsidiaries of NewLead Holdings, Ltd. as of December 31, 2012.

COMPANY	SHAREHOLDER
NEWLEAD HOLDINGS LTD, Bermuda (formerly known as Aries Maritime Transport Limited)	
DIRECT SUBSIDIARIES	
NEWLEADJMEG INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD MOJAVE HOLDINGS LLC, Delaware	NEWLEAD HOLDINGS LTD.
LEADING MARINE CONSTULTANTS (LMC) INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
Shipmanagement Companies	
AMT MANAGEMENT LTD., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD SHIPPING S.A., Panama	NEWLEAD HOLDINGS LTD.
Sub-Holding Companies	
NEWLEAD BULKER HOLDINGS INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD TANKER HOLDINGS INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
Ship-Owning Companies	
NEWLEAD VICTORIA LTD., Liberia	NEWLEAD HOLDINGS LTD.

COMPANY	SHAREHOLDER
Companies With No Assets*	
ALTIUS MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
AUSTRALIA HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.
BRAZIL HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.
BORA LIMITED, BVI	NEWLEAD HOLDINGS LTD.
CHALLENGER ENTERPRISES LTD., Liberia	NEWLEAD HOLDINGS LTD.
CRUSADER ENTERPRISES LTD., Liberia	NEWLEAD HOLDINGS LTD.
CHINA HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.
COMPASS OVERSEAS LTD., Bermuda	NEWLEAD HOLDINGS LTD.
COMPASSION OVERSEAS LTD., Bermuda	NEWLEAD HOLDINGS LTD.
CHINOOK WAVES CORPORATION, MarshallIslands	NEWLEAD HOLDINGS LTD.
ERMINA MARINE LIMITED, Marshall Islands	NEWLEAD HOLDINGS LTD.
FORTIUS MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
GRAND OCEANOS INC., Liberia	NEWLEAD HOLDINGS LTD.
GRAND RODOSI INC., Liberia	NEWLEAD HOLDINGS LTD.
GRAND VICTORIA PTE. LTD., Singapore	NEWLEAD HOLDINGS LTD.
OCEAN HOPE SHIPPING LIMITED, Malta	NEWLEAD HOLDINGS LTD.

COMPANY	SHAREHOLDER
INDIRECT (WHOLLY OWNED) SUBSIDIARIES	
NEWLEAD HOLDINGS (US) CORP., Delaware (formerly known as NewLead Holdings (US) LLC)	NEWLEAD MOJAVE HOLDINGS LLC.
NEW LEAD JMEG LLC., Delaware	NEWLEAD HOLDINGS (US) CORP.
NEWLEAD TRADING INC., Liberia	NEWLEAD PROGRESS INC.
Shipmanagement Companies	
NEWLEAD BULKERS S.A., Liberia	NEWLEAD SHIPPING S.A.
Ship-Owning Companies	
GRAND MARKELA INC., Liberia	NL BULKER HOLDINGS INC.

COMPANY	SHAREHOLDER
Companies with no assets *	
GRAND ESMERALDA INC., Liberia	NL BULKER HOLDINGS INC.
GRAND SPARTOUNTA INC., Marshall Islands	NL BULKER HOLDINGS INC.
GRAND VENETICO INC., Marshall Islands	NL BULKER HOLDINGS INC.
GRAND AFFECTION S.A. Marshall Islands	NL BULKER HOLDINGS INC.
GRAND AFFINITY S.A., Marshall Islands	NL BULKER HOLDINGS INC.
NEWLEAD PROSPERITY INC., Marshall Islands	NL BULKER HOLDINGS INC.
NEWLEAD PROGRESS INC., Marshall Islands	NL TANKER HOLDINGS INC.
TRANS CONTININENT NAVIGATION LTD.,Malta	OCEAN HOPE SHIPPING LIMITED.
TRANS STATE NAVIGATION LTD., Malta	OCEAN HOPE SHIPPING LIMITED.

EXHIBIT 12.1

CERTIFICATION

I, Michail Zolotas, certify that:

1. I have reviewed this annual report on Form 20-F of NewLead Holdings Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: August 30, 2013

/s/ Michail Zolotas

Michail Zolotas
Chief Executive Officer

EXHIBIT 12.2

CERTIFICATION

I, Antonis Bertsos, certify that:

1. I have reviewed this annual report on Form 20-F of NewLead Holdings Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: August 30, 2013

/s/ Antonis Bertsos
Antonis Bertsos
Chief Financial Officer

EXHIBIT 13.1

CHIEF EXECUTIVE OFFICER CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350

In connection with this Annual Report of NewLead Holdings Ltd. (the "Company") on Form 20-F for the year ended December 31, 2012 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Michail Zolotas, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: August 30, 2013

/s/ Michail Zolotas
Michail Zolotas
Chief Executive Officer

* This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of NewLead Holdings Ltd. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Periodic Report), irrespective of any general incorporation language contained in such filing.

EXHIBIT 13.2

CHIEF FINANCIAL OFFICER CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350

In connection with this Annual Report of NewLead Holdings Ltd. (the "Company") on Form 20-F for the year ended December 31, 2012 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Antonis Bertsos, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: August 30, 2013

/s/ Antonis Bertsos
Antonis Bertsos
Chief Financial Officer

* This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of NewLead Holdings Ltd. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Periodic Report), irrespective of any general incorporation language contained in such filing.