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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION**

<p>GLEN E. SMITH, JR, RECEIVER FOR WEBB FINANCIAL GROUP, INC.; FRANKLIN ASSET EXCHANGE, LLC AND DISCIPLES LIMITED, LLC</p> <p>Plaintiffs,</p> <p>v.</p> <p>BULL MOUNTAIN COAL PROPERTIES, INC., AIRLIE OPPORTUNITY FUND CAYMAN, LTD., AIRLIE OPPORTUNITY MASTER FUND, LTD., AIRLIE OPPORTUNITY FUND, L.P., AIRLIE OPPORTUNITY CAPITAL MANAGEMENT, L.P., and AIRLIE OPPORTUNITY CAPITAL MANAGEMENT, LLC.</p> <p>Defendants.</p>	<p>Cause No. CV-06-169-BLG-RFC-RWA</p> <p><u>FIRST AMENDED COMPLAINT</u></p>
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Plaintiff, Glen E. Smith, Jr., of Southern Star Consulting Corp., Receiver appointed on behalf of Webb Financial Group, Inc., Franklin Asset Exchange, LLC and Disciples Limited, LLC (collectively referred to as "Plaintiff" or "Receiver"), by and through his attorneys, hereby

files the following First Amended Complaint against the above-named defendants (collectively referred to as “Defendants”):

JURISDICTION AND VENUE

1. Subject matter jurisdiction lies in this Court pursuant to 28 USC §1332, based upon the fact that: (i) the matter in controversy exceeds \$75,000, exclusive of interest and costs; and (ii) there is complete diversity of citizenship between the Plaintiff and all of the Defendants.

2. Venue of this action lies in this Federal district pursuant to 28 USC §1391(a), based upon the fact that this is the judicial district in which the Defendants own and operate a large coal mining operation referred to through out this First Amended Complaint as the “Bull Mountain Mine.” In addition, the Plaintiff’s collateral and security interests in the collateral that secures repayment of certain obligations of the Defendants, is located within Yellowstone and Musselshell counties, which are also located within this Federal district.

3. The Settlement Agreement, Secured Note, Mortgage and InterCreditor Agreement attached to this First Amended Complaint as exhibits, and upon which give rise to this action, include provisions wherein the Plaintiff and Defendants consented to the jurisdiction and venue of this Court.

PARTIES

4. Plaintiff is the court appointed Receiver for Webb Financial Group, Inc., Franklin Asset Exchange, LLC and Disciples Limited, LLC (“Webb Parties”), having been appointed in a civil action pending in the General Court of Justice, Superior Court Division, Forsyth County, North Carolina, entitled Webb Financial Group, Inc., et al v. BMP Capital Resources, Inc., et al, 05-CV-406 (“Webb North Carolina Action”). Attached to this First Amended Complaint as Exhibit “A” is a certified copy of the Receiver’s order of appointment dated April 19, 2006.

5. The Receiver is an officer and a shareholder of Southern Star Consulting Corp., a financial consultant and services firm incorporated in the State of Florida. Plaintiff resides at 1608 Nanette Court, Lake Worth, Florida and is a citizen of the State of Florida.

6. The Webb Financial Group, Inc. (“Webb”) is a North Carolina corporation with its principal place of business being located at 1969 South Alfaya Trail, #414, Orlando, Florida. For purposes of citizenship, Webb is a citizen of the State of Florida and North Carolina.

7. Disciples Limited, LLC (“Disciples Limited”) is a Nevada limited liability company and it has its principle business location at 1229 Chickering Road, Nashville, Tennessee 37215. For purposes of citizenship, Disciples Limited is a citizen of the State of Tennessee.

8. Franklin Asset Exchange, LLC (“Franklin”) is a North Carolina limited liability corporation with its principal place of business being located at 1969 South Alfaya Trail, #414, Orlando, Florida. For purposes of citizenship, Franklin is a citizen of the State of Florida and North.

9. Defendant, Bull Mountain Coal Properties, Inc. (“BMCP”) is a corporation formed under the laws of the State of Delaware and has its principle business location at 115 East Putnam Avenue, Greenwich, Connecticut 06830. Upon information and belief, the president of BMCP is Andrew T. Dwyer. Upon information and belief, BMCP is owned and controlled by the remaining Defendants named in this action and was formed by the “Airlie Parties”, as defined in the Settlement Agreement referenced herein, as a special purpose acquisition vehicle designed to acquire and manage the assets of the Bull Mountain Mine. BMCP is the debtor on the Secured Note described herein. Bull Mountain Development Company, No. 1, LLC, is a limited liability company formed under the laws of Delaware (“BMDC”) that holds certain of the

assets and the “Air Quality Permit” issued by the Montana Department of Environmental Quality, for the benefit of the Bull Mountain Mine. Upon information and belief, BMCP holds warrants entitling BMCP the right to acquire 83.35% of the membership units of BMDC. Upon further information and belief, Dort A. Cameron, III is the president of BMDC as well as the principal executive officer of the Airlie Parties.

10. Defendant, Airlie Opportunity Fund Cayman, Ltd. (Airlie Fund”), is a limited liability company incorporated under the laws of the Cayman Islands. The registered office of this Defendant is c/o Citco Fund Services (Bermuda) Limited, Washington Mall West, 2nd Floor, 7 Reid Street, Hamilton HM11, Bermuda. Airlie Fund may claim some lien or interest in the Mortgaged Property and Personal Property Collateral described herein by virtue of the following instruments:

a) Assignment of Royalty Interest recorded May 26, 2005, under Document No. 3334326, in the records of the Clerk and Recorder of Yellowstone County, Montana, and recorded May 31, 2005, in Book/Roll 391, under Document No. 261795, in the records of the Clerk and Recorder of Musselshell County, Montana (the “Assignment of Royalty Interest”);

b) Mortgage, Assignment of Rents, Security an Fixture Filing dated May 25, 2005, recorded June 3, 2005, under Document No. 3335289, in the records of the Clerk and Recorder of Yellowstone County, Montana, and recorded June 6, 2005, in Book/Roll 395, Page 716, under Document No. 261822, in the records of the Clerk and Recorder of Musselshell County, Montana (the “First Airlie Mortgage”);

c) Mortgage, Assignment of Rents, Security an Fixture Filing dated September 9, 2005, recorded September 16, 2005, under Document No. 3348460, in the

records of the Clerk and Recorder of Yellowstone County, Montana, and recorded September 16, 2005, under Document No. 262350, in the records of the Clerk and Recorder of Musselshell County, Montana (the “Second Airlie Mortgage”);

d) Security Agreement and Financing Statements filed October 7, 2005, under Initial Filing No. 5310794, in the records of the Delaware Department of State, U.C.C. Filing Section (the “First Airlie Security Agreement”); and

e) Security Agreement and Financing Statements filed July 20, 2006, under Initial Filing No. 62518116, in the records of the Delaware Department of State, U.C.C. Filing Section (the “Second Airlie Security Agreement”);

The foregoing instruments and documents may be referred to hereafter collectively as the “Airlie Mortgages”.

11. Defendant, Airlie Opportunity Master Fund, Ltd., is a limited liability company incorporated under the laws of the Cayman Islands (“Master Fund”). The Airlie Fund invests substantially all of its assets through the Master Fund and has its principle business location at 115 East Putnam Avenue, Greenwich, Connecticut 06830. The Master Fund is the primary organization among the named Defendants in this action that the Receiver and counsel had dealings with leading up to the execution of the Settlement Agreement (as defined below). Andrew T. Dwyer, believed to be one of the principles of the Airlie Fund and the Master Fund, was, upon information and belief, the “point person” for all of the Airlie Parties’ dealings with respect to the facts alleged in this First Amended Complaint. Master Fund may claim some lien or interest in the Mortgaged Property and Personal Property Collateral described herein by virtue of the Airlie Mortgages.

12. Defendant, Airlie Opportunity Fund, L.P., is a Delaware limited liability partnership that serves as the “feeder fund” (“Airlie Partnership”) for the Master Fund. The Airlie Partnership has its principle business location at 115 East Putnam Avenue, Greenwich, Connecticut 06830. Airlie Partnership may claim some lien or interest in the Mortgaged Property and Personal Property Collateral described herein by virtue of the Airlie Mortgages.

13. Defendant, Airlie Opportunity Capital Management, L.P., is a U. S.-based limited partnership that serves as the investment manager to the Fund (“Airlie Investment Manager”). The Airlie Investment Manager also serves as an investment manager to the Master Fund; has sole responsibility for all investment decisions; and has its principle business location at 115 East Putnam Avenue, Greenwich, Connecticut 06830. Airlie Investment Manager may claim some lien or interest in the Mortgaged Property and Personal Property Collateral described herein by virtue of the Airlie Mortgages.

14. Defendant, Airlie Opportunity Capital Management, LLC, (“Airlie General Partner”) is a Delaware limited liability company and serves as the general partner of the Airlie Investment Manager. The managing directors of the Airlie General Partner include Dort A. Cameron III, Jeremy J.E. Bloomer and Adam H. Goodfriend. Messrs. Cameron, Bloomer and Goodfriend are primarily responsible for the management of the Fund’s portfolio of investments, including its investment in BMCP and the Bull Mountain Mine. The Airlie General Partner has its principle business location at 115 East Putnam Avenue, Greenwich, Connecticut 06830. Airlie General Partner may claim some lien or interest in the Mortgaged Property and Personal Property Collateral described herein by virtue the Airlie Mortgages.

15. The corporate entities referred to in paragraphs 7 through 14, inclusive, at all times relevant to this First Amended Complaint (hereinafter referred to as the “Airlie Parties”), were and are under common control and are affiliated with each other.

16. In addition to the Settlement Agreement and Secured Promissory Note, which are the subject of this First Amended Complaint, the Master Fund entered into an InterCreditor Agreement dated May 23, 2006 (“InterCreditor Agreement”), which defines the rights *inter se* the parties thereto. Attached hereto as Exhibit “B” to this First Amended Complaint is a copy of the InterCreditor Agreement.

COMMON ALLEGATIONS

17. Between 2003 and 2005, Webb, Franklin and Disciples, through their respective officers, directors and limited liability members, raised in excess of \$20,000,000 from over 450 individual unsecured creditors (“Unsecured Creditors”) located mainly in North Carolina, but also located in various other states as well. The Unsecured Creditors were promised rates of return by the promoters of the Webb Parties on their loans made to the Webb Parties of between 12% to 15% per annum. Most, if not the large majority of the capital received by the Webb Parties from the Unsecured Creditors, was in turn, funded on an unsecured basis to the owners and operators of the Bull Mountain Mine prior to its acquisition by the Defendants in this case.

18. The Bull Mountain Mine, which at the time was owned and operated by the corporate predecessors to BMCP, failed to repay any of the sums due back to the Webb Parties as agreed in the Webb Loans. As a result, most if not a large percentage of the Unsecured Creditors have never received the repayment of their capital loaned to the Webb Parties. Most of the Unsecured Creditors are middle class, hard working, unaccredited investors that have not received their money back from the Webb Parties, nor have they received their promised returns

of between 12% to 15% per annum. In reality, the Defendants have been using the Unsecured Creditors' money without even paying interest thereon.

19. The Airlie Parties consist of a consortium of large, professionally managed private equity funds and sub-funds based in Greenwich, Connecticut and London, England. Upon information and belief, the Airlie Parties have capital under management of between \$1.0 and \$2.0 billion dollars.

20. BMCP is controlled by the Airlie Parties, and is the owner and operator of the Bull Mountain Mine, consisting of approximately 25,000 acres, including minerals and the coal estate associated therewith, including rights to well over 350 million tons of high "btu" compliance coal, all of which is located in Yellowstone and Musselshell counties, Montana. In addition, BMCP and the Airlie Parties control BMDC through common ownership and common control.

21. In addition, BMCP is the owner of rights of way necessary to construct a rail line, a mining permit for 150 tones of coal and a permit to build a coal-fired power plant. The Bull Mountain Mine is located 35 miles north of Billings, Montana.

22. With the public support of Montana Governor, Brian Schweitzer, the Airlie Parties publicly announced in October, 2006, that a preliminary agreement was reached providing for the financing and construction of a major coal-to-liquids plant facility ("CTL Plant") at the Bull Mountain Mine, costing approximately \$1.3 billion. It was announced that the CTL Plant will be supplied by coal mined from the Bull Mountain Mine.

23. Prior to May 23, 2006, a dispute existed between the Webb Parties, acting through the Receiver, and the Airlie Parties, which dispute originated as a result of the non-payment of the Webb Loans of approximately \$19,314,064.17 made to the Defendants' corporate

predecessors (“Webb Loans”) between 2003 and 2005. The Webb Loans were evidenced by a series of unsecured promissory notes issued to the various Webb Parties by the Defendants’ corporate predecessors. All of said unsecured notes were in default and were unpaid at the time that the Webb Parties, acting through the Receiver, reached a settlement agreement with BMCP and the Airlie Parties (“Settlement Agreement”). A copy of the Settlement Agreement is attached to this First Amended Complaint as Exhibit “C.”

24. Prior to entering into the Settlement Agreement, the Airlie Parties reached agreement with the then owners of the Bull Mountain Mine which contemplated that the Airlie Parties would provide substantial amounts of financing needed to develop the Bull Mountain Mine for full scale commercial production. At the time of this financing agreement, the Airlie Parties had actual knowledge of the existence of the Webb Loans, but made no provision for the payment of the Webb Loans in the financing agreement. Upon information and belief, Plaintiff alleges that the Airlie Parties were hoping to obtain ownership and management of the Bull Mountain Mine without making sure that existing creditors were paid in full, including the Webb Parties.

25. The Airlie Parties, acting through one or more of their managing partners, including but not limited to Andrew T. Dwyer and Dort A. Cameron, III, actively worked on BMCP’s behalf during all negotiations with Plaintiffs relating to the Settlement Agreement. The board of directors of BMCP unanimously approved the execution of the Settlement Agreement by resolution dated May 23, 2006 signed by all five directors, including Messrs. Dwyer, Cameron and John Baugues, Jr., and ultimately authorized the execution of the same by BMCP and its affiliates and related entities. The Airlie Parties were privy to confidential settlement discussions that lead to the Settlement Agreement, and their approval of the same was necessary

to finalize the transaction. Several of the negotiating meetings conducted by the Plaintiff and his counsel transpired in the Atlanta, Georgia Law Office of Gregory Bartko. During one such negotiating session, Andrew T. Dwyer made several specific representations concerning the plans the Airlie Parties had to develop and begin commercial production of the Bull Mountain Mine and how and why BMCP needed a six-month period of time to repay the Secured Note. The Settlement Agreement was entered into by the parties thereto, on or about May 23, 2006.

26. Pursuant to the terms of the Settlement Agreement, BMCP, as the owner and operator of the assets of the Bull Mountain Mine, agreed to pay to the Webb Parties and/or the Receiver the sum of \$19,314,064.17, under the terms and conditions set forth in the Settlement Agreement and the Secured Note, which was issued and delivered to the Webb Parties and/or the Receiver as required by the Settlement Agreement. Attached to this First Amended Complaint as Exhibit "D" is a genuine copy of the Secured Note.

27. The Settlement Agreement also required the payment by BMCP of \$1,532,511.98 to the Receiver at the date of execution of the Settlement Agreement, which was in fact paid and delivered to the Receiver and has been duly credited to the amount due from BMCP under the Settlement Agreement.

28. The balance of the settlement amount that BMCP agreed to pay to Plaintiff pursuant to the Settlement Agreement, in the amount of \$17,781,552.19, is the face amount of the Secured Note. Payment of the Secured Note is collateralized and secured by all of BMCP assets and interests described on Schedule "A" to the Secured Note (the "Personal Property Collateral").

29. Plaintiff perfected its security interests under the Secured Note by duly recording UCC-1 financing statements in the jurisdictions required by the Montana Uniform Commercial Code (the "UCC").

30. To secure payment of the Secured Note, BMCP made, executed and delivered to Plaintiff, as mortgagee, a Mortgage dated June 21, 2006 (the "Mortgage") on real property located in Yellowstone County and Musselshell County, Montana, which real property constitutes any and all coal located on, in or under the real property identified on Exhibit "E" attached hereto (the "Mortgage Property"). The Mortgage was duly recorded as follows:

- a) The Mortgage was recorded on June 27, 2006, under Document No. 3382933, records of Yellowstone County, Montana; and
- b) The Mortgage was recorded on June 27, 2006, in Book 401 of Mortgages, at page 820, under Document No. 263980, records of Musselshell County, Montana.

A true and correct copy of the Mortgage (as recorded in each county) is attached hereto as Exhibit "F" and by this reference made a part hereof.

31. The Plaintiff has performed all obligations required under the Settlement Agreement and all conditions to the enforceability of the Settlement Agreement have occurred.

32. The balance of the Secured Note was due and payable to the Receiver by BMCP on or before November 15, 2006. BMCP defaulted on the payment terms of the Settlement Agreement and the Secured Note and as of November 17, 2006, the Receiver, through counsel, made a written demand for full payment in the amount of \$18,922,616.32, which includes a principle balance due of \$17,781,552.19 and accrued interest of \$1,201,350.90 as of November 15, 2006.

33. Since the Defendants received notice of default under the Settlement Agreement and the Secured Note, through counsel, offers have been made by the Airlie Parties to extend the maturity date of the Secured Note. Such offers have been made on various occasions between the date of default and the filing of this First Amended Complaint, but the Defendants have now refused to enter into any offers of extension they initiated to Receiver's counsel and have refused to communicate to Receiver's counsel in connection with Defendants' own offers to extend the maturity date of the Secured Note.

34. The Receiver, as a secured party under the Montana UCC, has rights to enforce its security interest and collect all sums due to the Receiver under the Secured Note, by judicial and non-judicial action. In addition, the Receiver is entitled to the recovery of reasonable and actual attorneys' fees incurred by the Receiver, as a secured party, against the debtor, BMCP, in accordance with MCA §30-9A-607.

**COUNT I
BREACH OF THE SETTLEMENT AGREEMENT AND
NON-PAYMENT OF THE SECURED NOTE**

35. Paragraphs 1 through 34 are restated and incorporated herein by reference the same as if they were repeated in full.

36. That attached hereto and made a part hereof as Exhibit "G" is a spreadsheet calculation prepared by the Plaintiff reflecting the total amount of principle and interest due to the Receiver under the Settlement Agreement and the Secured Note. Exhibit "G" is incorporated by reference into this First Amended Complaint.

37. Demand has been made of the maker of the Secured Note for the repayment of all principle and interest due there under, but as of the filing of this First Amended Complaint, the Defendants have failed and continue to refuse to pay the Secured Note, which remains in default.

38. Plaintiff demands payment on the Secured Note, plus all accrued interest at the rate of 12% per annum, the stated contract rate of interest upon default of the Secured Note.

39. The Settlement Agreement has been breached by BMCP, as well as the Airlie Parties that are signatories thereto. Such breaches include, but are not limited to the following failures to perform certain covenants by BMCP and the Airlie Parties contained in the Settlement Agreement, as follows:

(i) BMCP, in its own behalf and on behalf of the Airlie Parties, has failed to pay the sums owed to the Receiver acting on behalf of the Webb Parties, as provided in §1(b) and (e) of the Settlement Agreement;

(ii) BMCP, in its own behalf and on behalf of the Airlie Parties, has failed to use its best efforts to identify a buyer for its assets for the purpose of selling those assets to generate sufficient proceeds to satisfy the amounts due under the Secured Note, as provided in §9 of the Settlement Agreement. Notwithstanding three written requests that BMCP and the Airlie Parties comply with this contract provision, the Defendants have simply failed and refuse to provide any information as to their efforts to identify a buyer for the assets;

(iii) BMCP, in its own behalf and on behalf of the Airlie Parties, has failed to agree to the entry of a form of confession of judgment in the Webb Action in favor of Disciples, as provided in §10 of the Settlement Agreement. In fact, the Receiver, through counsel, has prepared several versions of a proposed confession of judgment for review and approval by the Defendants and has made various calculations of the accrued interest and principle amount due in the confession of judgment required by §10 of the Settlement Agreement, but BMCP in its own behalf and on behalf of the Airlie Parties has spent well over 30 days delaying, obstructing, negotiating and disagreeing with the standard and customary form of confession of judgment that the Receiver proposed shortly after the date of default of the Secured Note.

**COUNT II
FORECLOSURE OF SECURITY
INTEREST AND MORTGAGES**

40. Paragraphs 1 through 39 are restated and incorporated herein by reference the same as if they were repeated in full.

41. BMPC was as at the date of execution of the Secured Note and Mortgage, and is currently, the record owner of the property described in the Secured Note and Mortgage.

42. The Mortgage and Secured Note are junior to the prior liens of the Airlie Mortgages claimed by the Airlie Parties; however, as alleged herein, the Airlie Mortgages liens held by the Airlie Parties are subject to equitable subordination such that the Mortgage and Secured Note take priority over that of the Airlie Mortgages Defendants.

43. The Plaintiff is the holder of the Secured Note and Mortgage.

44. BMCP has defaulted in its payment obligations under the Secured Note by failing to make its payment when due and in the proper amount due. BMCP is thereby in default under the Mortgage and the security agreement granted by the Secured Note. Plaintiffs, therefore, have declared, and due hereby declare, the full amount payable under the Secured Note to be immediately due and payable. As of November 15, 2006, there is due, owing and unpaid by BMCP the sum of \$18,922,616.32, together with interest at the rate prescribed in the Settlement Agreement of 12% per annum from and after November 15, 2006, until all sums due and owing are paid in full and together with attorney fees, costs of foreclosure, and any advances made under the Mortgage, with interest thereon at the maximum rate allowed by law.

45. The mortgaged property has at all times heretofore been used together as one lot or parcel, and every part thereof is necessary for the best use and enjoyment of the mortgaged property, and the same cannot be sold in separate parcels without material injury to the parties.

46. Plaintiff has no other plain, speedy, or adequate remedy at law, and no other action has been commenced or is pending to foreclose the Mortgage of the security interests granted in the Secured Note.

COUNT III EQUITABLE SUBORDINATION

47. Paragraphs 1 through 46 are hereby restated and incorporated by reference the same as if they were repeated in full.

48. Upon information and belief, one or more of the Airlie Parties is an equity owner of a majority of BMCP's and real and personal property encumbered by the Mortgage and Secured Note, which is the subject of this action.

49. At the time that the Plaintiff and counsel were attempting to recover all sums due to the Plaintiff from BMCP and its predecessors that owned and operated the Bull Mountain Mine, Plaintiff had commenced legal actions (the "Actions") to recover such sums. In fact, the Webb Parties had previously filed suit in the General Court of Justice, Superior Court Division, Forsyth County, North Carolina, File No.: 05-CV-406 ("North Carolina State Action") against several of the Bull Mountain Mine entities, including BMP Investments, Inc., BMDC and others. A confession of judgment and a default judgment in the amount of \$16,921,227.61 was entered in the North Carolina State Action on April 21, 2005. In addition, Disciples Limited, LLC initiated an action on February 6, 2006 in the United States District Court--Middle District of North Carolina, File No.: 1:06-CV-00124 seeking recovery in the amount of \$2,793,778.76 as of the date of suit. Plaintiff's counsel has also initiated Actions in the states of Tennessee and Montana to domesticate the judgment entered in the North Carolina State Action for post-judgment proceedings.

50. But for the Settlement Agreement, as negotiated by the Airlie Parties, Plaintiff would have already obtained orders months ago in Tennessee and Montana domesticating the North Carolina Action in such states, principally in the State of Montana, where enforceable judgments would have entered in the Actions, thereby attaching a judgment lien to all real property owned by BMCP and all other Bull Mountain defendants in the Actions. Instead, based upon the representations, miscalculations, and ill advised assurances of the Airlie Parties, Plaintiff entered into the Settlement Agreement, which provided for Plaintiff to receive a

mortgage on the coal estate only. Such interests are less than Plaintiff would have received pursuant to a judgment lien.

51. Based upon the Settlement Agreement, as negotiated by the Airlie Parties, Plaintiff ceased its collection actions against BMCP and related Bull Mountain entities in the State of Montana. Upon information and belief, the act of domesticating judgments entered in the Actions in Montana, and the subsequent execution thereon, is a violation of the mining permit issued in connection with the mining project, subjecting BMCP and/or its affiliates to the potential loss of the reclamation bond, termination of the mining permit, and other administrative action in connection therewith. It was, therefore, in the Airlie Parties' best interest to induce Plaintiff into entering the Settlement Agreement so that the Airlie Parties could continue to realize upon the proceeds from the sale of BMCP coal. Likewise, when payment became due under the Settlement Agreement, the Airlie Parties made a strategic and conscious decision to default on the repayment. Even prior to the default on the Secured Note, Airlie's counsel admitted in writing by letter dated September 26, 2006, that:

“every available dollar raised by Airlie is being used to finance the project as Bull Mountain has no ‘borrowed money’ at this point. The funds which are available to Airlie are dedicated entirely to developing the property and cannot be used for the repayment of debt. To pay your clients—while expedient—would jeopardize the project.” (emphasis added).

The Airlie Parties, as equity owners in the Mortgaged Property and Personal Property Collateral, actively induced Plaintiffs to enter into the Settlement Agreement, and stand to directly profit from its improper actions. Accordingly, the Airlie Parties will be unjustifiably enriched if its priority lien positions currently enjoyed by the Airlie Mortgages are not equitably subordinated to that of Plaintiff's Mortgage and Secured Note.

52. Plaintiff has no other plain, speedy, or adequate remedy at law.

**COUNT IV
MARSHALING OF ASSETS**

53. Paragraphs 1 through 52 are hereby restated and incorporated by reference the same as if they were repeated in full.

54. Alternatively to Count III, upon information and belief, the Airlie Mortgages encumber real and personal property separate and distinct from the Mortgaged Property and the Personal Property Collateral. The Airlie Parties have an obligation to preserve BMCP's assets to the greatest extent possible for the benefit of BMCP's creditors, including Plaintiff. The Airlie Parties must satisfy their debt obligations from those assets not encumbered by the Mortgage and Secured Note, and marshaling of assets is necessary to the satisfaction of the claims of Plaintiff, and such marshaling will not endanger the rights of the Airlie Parties.

55. Plaintiff has no other plain, speedy, or adequate remedy at law.

**COUNT V
ORDER CONCERNING RENTS AND PROFITS**

56. Paragraphs 1 through 55 are hereby restated and incorporated by reference the same as if they were repeated in full.

57. The Mortgage grants Plaintiff an assignment of the rents, issues, and profits of the Mortgaged Property as security for the repayment of the debt obligation. Pursuant to applicable Montana law, Plaintiff must take affirmative steps to enforce the foregoing assignment after default by BMCP. Plaintiff hereby seeks and order of this court directing and authorizing all account debtors of BMCP to pay all rents, issues and profits derived from the Mortgaged Property (the "Rents") directly to Plaintiff.

58. The Airlie Parties may claim some right, title or interest in and to the Rents; however, upon information and believe, the Airlie Mortgages are not currently in default and the

Airlie Parties have taken no affirmative action to realize upon the Rents as required by applicable Montana law. Accordingly, the Airlie Parties' interest in the Rents is inferior and subordinate to that of Plaintiff.

**COUNT VI
BREACH OF COVENANT OF GOOD FAITH
AND FAIR DEALING**

59. Paragraphs 1 through 58 are hereby restated and incorporated by reference the same as if they were repeated in full.

60. The Defendants' conduct, actions and non-actions giving rise to the default on their obligations under the Settlement Agreement and the Secured Note are in bad faith, with a motive and intent to mislead, deceive, obstruct and frustrate the Receiver's rightful collection of the sums due as now represented by the Settlement Agreement and Secured Note.

61. The relative bargaining positions among the more than 450 individual Unsecured Creditors that have relied on the Receiver's actions in recovering the amounts due under the Webb Loans, contrasted with the financial position, sophistication and expertise of the Defendants is such that the Defendants have openly admitted that they elected to default under the Settlement Agreement and the Secured Note because, as they have indicated through counsel, "the Receiver cannot do much to collect on the Secured Note until we [the Airlie Parties] are ready and willing to pay."

62. The transactions described in the Settlement Agreement and the Secured Note are commercial transactions governed by the Montana UCC, being MCA §30-1-101, *et seq.* Pursuant to MCA §30-1-203, the Montana UCC requires that parties to transactions subject thereto be guided by an obligation of good faith. Further, "that every contract or duty within this code imposes an obligation of good faith in its performance or enforcement."

63. By reason of the foregoing, the Defendants have expressly violated MCA §30-1-203, by the following described actions, which is representative of the Defendants' conduct, but by no means an exclusive listing thereof:

(i) Defendants entered into the Settlement Agreement and caused the Secured Note to issue to the Plaintiff, knowing that the cash assets or financial resources needed to pay the Secured Note when due, would in fact not become available until full scale coal production commences at the Bull Mountain Mine, which, upon information and belief, is now estimated to be no earlier than the fourth quarter of 2007;

(ii) Defendants have used the fact that they are obligated to pay the Secured Note under the Settlement Agreement to the Receiver, as litigation strategy adopted in other lawsuits filed against the Defendants by third-party creditors, thus implying that Defendants intended to pay the Secured Note when due and implying that Defendants did not have sufficient resources to pay to the third-party creditors at time of settlement of such lawsuits;

(iii) Defendants have purposely diverted their financial resources from payment of the amounts to under the Secured Note, by making payments to third-party creditors, at least one of whom is deemed to be a former co-owner or affiliate of the Defendants' corporate predecessors. As such, Defendants have made preferred payments to other creditors rather than pay the balance due under the Secured Note to the Receiver;

(iv) Defendants have openly and cavalierly indicated to the Receiver, through its counsel, that the financial resources available to the Defendants are, by necessity, being diverted for the construction of the short rail line now under construction at the Bull Mountain Mine, "because it is more important that the rail line be completed than [the Secured Note] be timely paid;

(v) Defendants have expressly taken a "so sue me" approach to not only the offers of extension on the maturity date of the Secured Note discussed between the parties prior to the filing of this First Amended Complaint, but in terms of the Defendants' openly stated strategy that "Plaintiff can't do anything to collect on our Secured Note until the extension needed already transpires."

(vi) Defendants have on several occasions since the default date, through their counsel, expressly indicated that decisions have been made by BMCP and the Airlie Parties not to repay the Secured Note, but rather to use their available financial resources for operations and expansion of the Bull Mountain Mine.

(vii) Due to the relative hardships between the Unsecured Creditors and the Airlie Parties, that defaulting on the Secured Note has caused, the actions and non-actions of the Airlie Parties constitutes bad faith and unfair dealings throughout the entire transaction described in this First Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendants as follows:

A. That the Plaintiff, as Receiver for the Webb Parties, have and recover judgment against Defendant Bull Mountain Coal Properties, Inc., for the sum of \$18,922,616.32, together with interest at the rate of 12% per annum from and after November 15, 2006, until paid in full, and together with Plaintiff's reasonable attorney fees and costs, and for any sums Plaintiff is reasonably required for the preservation of the Mortgaged Property, together with interest on all of the forgoing at the maximum amount allowed by law.

B. That the Court declare and adjudge the amount due Plaintiff on the Secured Note for principle, interest, attorney fees, costs and disbursements, together with all charges or expenses which may be paid by Plaintiff in connection with the Mortgaged Property in this action, to be a first and prior lien, superior to all other liens, encumbrances, claims or interests of any of the Defendants to the property described in the Mortgage and Secured Note.

C. That Plaintiff's Mortgage and Secured Note be foreclosed and the usual decree made for the sale of the Mortgaged Property and Personal Property Collateral, according to law and the practice of the Court, such sale to be for cash, except that Plaintiff shall be allowed an offsetting credit for all sums owed to it pursuant to the foreclosure decree; that the proceeds of foreclosure sale be applied to the payment of the amounts due Plaintiff, with any excess remaining after satisfaction of the sums due Plaintiff to be deposited with the Court for distribution pursuant to further order of the Court; and that Plaintiff have judgment and execution against Defendant Bull Mountain Coal Properties, Inc., for any deficiency which may remain after applying all of the proceeds of foreclosure sale to the amounts due Plaintiff.

D. That the Defendants and all persons claiming by, through, or under any of them, subsequent to the execution of the Mortgage and Secured Note (and as further requested hereinbelow) herein foreclosed, as purchaser, encumbrancer, or otherwise, and all persons claiming to have acquired any right, title or interest in the Mortgaged Property subsequent to the filing of the notice of lis pendens of this action with the Clerk and Recorder of Yellowstone County and Musselshell County, Montana, be forever barred and foreclosed of and from any right, claim, lien, or equity of redemption in the Mortgaged Property, and that the purchaser at the foreclosure sale be entitled to immediate possession of the Mortgaged Property as allowed by law subject only to any prior liens that may exist and the statutory right of redemption as any of the Defendants may have by law.

E. That the Plaintiff may become a purchaser at said sale; that the U.S. Marshal, Sheriff of Yellowstone County, Montana, and/or the Sheriff of Musselshell County, Montana execute deeds, assignments, and all other documents necessary to transfer title to the Mortgaged Property to the purchaser or purchasers at foreclosure sale; that upon such sale the purchaser or purchasers be let into possession of said property; that in the event possession of said property is not surrendered to the purchaser or purchasers, a writ of assistance be issued directing the U.S. Marshal, Sheriff of Yellowstone County, Montana, and/or the Sheriff of Musselshell County, Montana, to deliver possession of the Mortgaged Property to the purchaser or purchasers; and that the purchaser or purchasers receive all rents and profits from the Mortgaged Property after the date of foreclosure.

F. That the Court subordinate the position of Defendants Airlie Opportunity Fund Cayman, Ltd., Airlie Opportunity Master Fund, Ltd., Airlie Opportunity Fund, L.P., Airlie Opportunity Capital Management, L.P., and Airlie Opportunity Capital Management, LLC. in

the Airlie Mortgages to a position below and inferior to that of the Mortgages and Secured Note in the Mortgaged Property and Personal Property Collateral.

G. That the Court Order Defendants Airlie Opportunity Fund Cayman, Ltd., Airlie Opportunity Master Fund, Ltd., Airlie Opportunity Fund, L.P., Airlie Opportunity Capital Management, L.P., and Airlie Opportunity Capital Management, LLC. to satisfy any and all debt obligations owing each of them from Bull Mountain Coal Properties, Inc. secured by the Airlie Mortgages from all available sources and assets exclusive of the Mortgaged Property and Personal Property Collateral and until such assets have been fully liquidated and the proceeds therefrom applied to the satisfaction of the Airlie Mortgages.

H. That the Court enter its Order directing and authorizing all account debtors of Defendant Bull Mountain Coal Properties, Inc. to pay all rents, issues and profits derived from the Mortgaged Property directly to Plaintiff.

I. That Plaintiff have and recover against Defendants, and each of them, jointly and severally, for all damages sustained by Plaintiff stemming from the breach of the covenant of good faith and fair dealing, in an amount to be proven at the trial in this matter.

J. Granting such other and further relief as this Court deems to be just and proper.

Dated this 29th day of December, 2006.

Respectfully Submitted,

/c/ Alan C. Bryan, Esq.

Alan C. Bryan, Esq.*

Filed With Permission and Consent

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