

# SECURITIES AND EXCHANGE COMMISSION

## FORM SC 13D

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities

Filing Date: **2005-01-18**  
SEC Accession No. **0001047469-05-000982**

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### SUBJECT COMPANY

#### Foundation Coal Holdings, Inc.

CIK: **1301063** | IRS No.: **421638663** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **SC 13D** | Act: **34** | File No.: **005-80276** | Film No.: **05531852**  
SIC: **1221** Bituminous coal & lignite surface mining

Mailing Address  
999 CORPORATE  
BOULEVARD, SUITE 300  
LINTHICUM MD 21090-2227

Business Address  
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BOULEVARD, SUITE 300  
LINTHICUM MD 21090-2227  
410-689-7600

### FILED BY

#### AMCI Acquisition LLC

CIK: **1305762** | IRS No.: **134284949**  
Type: **SC 13D**

Mailing Address  
ONE ENERGY PLACE  
LATROBE PA 15650

Business Address  
ONE ENERGY PLACE  
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724 532 4303

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 13D**

**Under the Securities Exchange Act of 1934**

**(Amendment No.        )\***

FOUNDATION COAL HOLDINGS, INC.

---

(Name of Issuer)

Common Stock, \$0.01 par value

---

(Title of Class of Securities)

35039W100

---

(CUSIP Number)

Leslie A. Grandis  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219

---

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

January 7, 2005

---

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.   

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

\*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)

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Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only)

1. AMCI Acquisition, LLC  
IRS No. 13-4284949

2. Check the Appropriate Box if a Member of a Group (See Instructions) (a)   
(b)

3. SEC Use Only

Source of Funds (See Instructions)

4. OO

5. Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)

6. Citizenship or Place of Organization  
Delaware

Number of  
Shares  
Beneficially  
Owned by  
Each  
Reporting  
Person  
With

7. Sole Voting Power  
0

8. Shared Voting Power  
3,005,210

9. Sole Dispositive Power  
0

10. Shared Dispositive Power  
3,005,210

11. Aggregate Amount Beneficially Owned by Each Reporting Person  
3,005,210

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

13. Percent of Class Represented by Amount in Row (11)  
6.7%

14. Type of Reporting Person (See Instructions)  
OO

Names of Reporting Persons.

1. I.R.S. Identification Nos. of above persons (entities only)

Hans J. Mende

2. Check the Appropriate Box if a Member of a Group (See Instructions) (a)   
 (b)

3. SEC Use Only

Source of Funds (See Instructions)

4. OO

5. Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)

6. Citizenship or Place of Organization

Number of  
Shares  
Beneficially  
Owned by  
Each  
Reporting  
Person  
With

7. Sole Voting Power  
0

8. Shared Voting Power  
3,005,210

9. Sole Dispositive Power  
0

10. Shared Dispositive Power  
3,005,210

11. Aggregate Amount Beneficially Owned by Each Reporting Person  
3,005,210

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

13. Percent of Class Represented by Amount in Row (11)  
6.7%

14. Type of Reporting Person (See Instructions)  
IN

## **Item 1. Security and Issuer**

This statement on Schedule 13D (the "Schedule 13D") relates to the shares of common stock, par value \$0.01 per share (the "Common Stock"), of Foundation Coal Holdings, Inc., a Delaware corporation (the "Issuer"). The Issuer has its principal executive offices at 999 Corporate Boulevard, Suite 300, Linthicum Heights, MD 21090.

## **Item 2. Identity and Background**

This Schedule 13D is being filed by AMCI Acquisition, LLC, ("AMCI") and Hans J. Mende ("Mende" and collectively with AMCI, the "Reporting Persons"). AMCI directly owns the shares of Common Stock reported in Item 5. Mende, is the President of AMCI and holds a 40% beneficial interest in AMCI. The Kirmar Limited Partnership (of which Mende owns a .6% general partnership interest, a .4% general partnership is held jointly with Fritz R. Kundrun (with rights of survivorship) and Mende's son and daughter each own a 49.5% limited partnership interest) owns a 10% beneficial interest in AMCI. By virtue of such relationship, Mende may be deemed to beneficially own the shares of Common Stock directly owned by AMCI.

AMCI is a Delaware limited liability company with a limited term of existence, the principal purpose of which is to hold equity securities. Mende is the President of AMCI.

The principal business and office address of the Reporting Persons is One Energy Place, Suite 1000, Latrobe, Pennsylvania 15650.

Information with respect to executive officers and directors of AMCI, including name, business address, present principal occupation or employment and the organization in which such employment is conducted, and citizenship is listed on the attached Schedule I, which is incorporated in this Schedule 13D by reference.

During the last five years, none of the Reporting Persons nor any executive officer or director of AMCI has (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) been a party to a civil proceeding or a judicial or administrative body of competent jurisdiction and, as a result of such proceeding, was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

## **Item 3. Source and Amount of Funds or Other Consideration**

On February 9, 2004, First Reserve Fund IX, L.P. ("Fund IX") and Blackstone Capital Partners IV L.P. ("Blackstone IV") formed RAG American Coal Acquisition Company, LLC, a Delaware limited liability company (later known as Foundation Coal Holdings, LLC ("Foundation LLC")). As the original members of Foundation LLC each of Fund IX and Blackstone IV was granted 50 units in exchange for consideration in the form of management and capital formation advisory services. Foundation LLC was formed to acquire the North American coal mining operations of RAG Coal International AG ("RAG"). On April 23, 2004, Foundation LLC formed Foundation Coal Corporation ("FCC") as a wholly owned subsidiary. On May 24, 2004, FCC entered into a Stock Purchase Agreement with RAG (the "Stock Purchase Agreement") whereby FCC agreed to acquire all of the direct and indirect subsidiaries engaged in coal mining in North America then owned by RAG (the "Acquisition"). The Issuer was formed on July 19, 2004 to facilitate the Acquisition.

On July 30, 2004, Foundation LLC granted units of membership interests to the following members in exchange for an aggregate of \$196,000,000 in cash contributions:

<b>Member</b>	<b>Cash Contribution</b>	<b>Number and Class of Units</b>
Blackstone FCH Capital Partners IV L.P	\$ 78,214,450	7,821,445 Class A
Blackstone Family Investment Partnership IV	4,116,550	411,655 Class A
First Reserve Fund IX, L.P	82,331,000	8,233,100 Class A
AMCI Acquisition, LLC	29,058,000	2,905,800 Class A
Senior managers of the Issuer	2,280,000	228,000 Class D

The AMCI cash contribution of \$29,058,000 was funded by capital contributions from its limited partners. On July 30, 2004, Foundation LLC and FCC used the proceeds of these cash contributions, along with borrowings under a new senior secured credit facility and proceeds from an offering of senior notes, to finance the Acquisition and provide for ongoing working capital to FCC.

On August 17, 2004, Foundation LLC was merged with and into the Issuer (the "Merger"). As a result of the Merger, the members of Foundation LLC received one share of the Issuer's Common Stock for each unit of membership interest in Foundation LLC and the Issuer became the successor in interest to Foundation LLC. AMCI received 2,905,800 shares of the Issuer's Common Stock pursuant to the Merger.

On December 8, 2004, the Issuer effected a 0.879639 for one reverse stock split with respect to its Common Stock. As a result of the reverse stock split, prior to the Issuer's initial public offering (the "IPO"), AMCI held 2,556,056 shares of Common Stock.

In connection with the IPO, which closed on December 14, 2004, the Issuer sold an aggregate of 23,610,000 shares of Common Stock to a syndicate of underwriters for aggregate net proceeds of approximately \$487 million. The Issuer used approximately \$434 million of the net proceeds of the IPO to pay two cash dividends to certain of Issuer's stockholders as of December 8, 2004, including AMCI.

In connection with the IPO, the Issuer declared a stock dividend payable to the holders of record of the Issuer's Common Stock issued and outstanding on December 8, 2004, in an amount equal to such portion of the 3,541,500 shares of Common Stock subject to the underwriter's over-allotment option in the IPO that were not acquired by the underwriters. As a result, payment of such stock dividend was contingent upon whether the underwriters exercised such over-allotment option. On January 7, 2005, the over-allotment option expired and as of that date the underwriters had purchased 511,900 shares of Common Stock subject to the over-allotment option. The remaining 3,029,600 shares of Common Stock were issued ratably to the Issuer's holders as of December 8, 2004. AMCI received a stock dividend of 449,154 shares of Common Stock as of the date of the expiration of the over-allotment option. After giving effect to the stock dividend, AMCI is the record holder of 3,005,210 shares of Common Stock.

#### **Item 4. Purpose of Transaction**

The Reporting Persons acquired the Common Stock directly beneficially owned by AMCI in order to acquire an equity interest in the Issuer.

AMCI also intends to participate in and influence the affairs of the Issuer through the exercise of its voting rights, with respect to the shares of Common Stock owned by AMCI, and its rights to designate directors to the board of directors of the Issuer pursuant to the Letter Agreement (as defined below), which is more fully described in Item 6. In addition, pursuant to the Amended and Restated Stockholders Agreement dated October 4, 2004 (the "Stockholders Agreement") among the Issuer, AMCI, Fund IX, Blackstone FCH Capital Partners IV L.P. ("Blackstone FCH"), Blackstone Family Investment Partnership IV-A L.P. (collectively with Blackstone FCH, "Blackstone"), and the

management stockholders parties thereto (the "Management Stockholders"), the parties thereto have agreed to increase the size of the board of directors of the Issuer as necessary in order to include such additional independent directors as may be required by the rules of any exchange on which the shares are traded, with such independent directors to be selected by the Issuer's board of directors and to be reasonably acceptable to Fund IX and Blackstone.

The information set forth under Item 3 and 6 is hereby incorporated by this reference.

AMCI intends to review its investment in the Issuer on a continuing basis and, depending upon the price of and other market conditions relating to the Common Stock, subsequent developments affecting the Issuer, the Issuer's business and prospects, other investment and business opportunities available to the Reporting Persons, general stock market and economic conditions, tax considerations and other factors deemed relevant, may decide to increase or decrease the size of its investment in the Issuer.

Except as otherwise described in this Schedule 13D, none of the Reporting Persons nor, to the best knowledge of each Reporting Person, any of the persons named in Schedule I, has formulated any plans or proposals which relate to or would result in: (a) the acquisition by any person of additional securities of the Issuer, or the disposition of securities of the Issuer; (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Issuer or any of its subsidiaries; (c) a sale or transfer of a material amount of assets of the Issuer or any of its subsidiaries; (d) any change in the present Board of Directors or management of the Issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the Board; (e) any material change in the present capitalization or dividend policy of the Issuer; (f) any other material change in the Issuer's business or corporate structure; (g) any changes in the Issuer's charter or by-laws or other actions which may impede the acquisition or control of the Issuer by any person; (h) causing a class of securities of the Issuer to be delisted from a national securities exchange or cease to be authorized to be quoted in an interdealer quotation system of a registered national securities association; (i) causing a class of equity securities of the Issuer to become eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934; or (j) any action similar to those enumerated above.

#### **Item 5. Interest in Securities of the Issuer**

(a) As of January 7, 2005, AMCI directly beneficially owned an aggregate of 3,005,210 shares of Common Stock, constituting approximately 6.7% of the 44,624,047 shares of Common Stock outstanding as of January 7, 2005 (based on information obtained from the Issuer), and Mende may be deemed to indirectly beneficially own such shares by virtue of the relationships reported in Item 2.

(b) AMCI shares the power to vote or to direct the vote and the power to dispose or direct the disposition of all shares of Common Stock held by it with its President, Mende.

(c) Other than the transaction described in Item 4, the Reporting Persons have not effected any transactions during the past 60 days in the Shares.

(d) No person other than the Reporting Persons has the right to receive, or the power to direct the receipt of dividends from, or the power to direct the receipt of proceeds of the sale of, the shares of Common Stock owned by the Reporting Persons.

(e) Not applicable.

## Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

### JOINT FILING AGREEMENT

A Joint Filing Agreement dated January 14, 2005 by and between AMCI and Mende has been executed by the Reporting Persons, and a copy of the Joint Filing Agreement has been filed as Exhibit 1 to this Schedule 13D.

### STOCKHOLDERS AGREEMENT

Pursuant to the Stockholders Agreement, each of Blackstone and Fund IX will designate three nominees for election on the Issuer's eight member board of directors (the "Board"). Blackstone and Fund IX will also designate one joint nominee. The Board will designate the other nominee who must be "independent" as such term is defined by the New York Stock Exchange rules, but the nominee must be reasonably acceptable to both Blackstone and Fund IX. In addition, the parties have agreed to increase the size of the board of directors as necessary in order to include such additional independent directors as may be required by the rules of any exchange on which the shares are traded, with such independent directors to be selected by the Issuer's Board and to be reasonably acceptable to Fund IX and Blackstone. If at any time, either Blackstone and its affiliates or Fund IX and its affiliates beneficially own less than 66<sup>2</sup>/<sub>3</sub>% of the aggregate number of shares owned by the other, then such entity will only be entitled to designate two directors, and if at any time either Blackstone and its affiliates or Fund IX and its affiliates own less than 33<sup>1</sup>/<sub>3</sub>% of the aggregate number of shares owned by the other, then such entity will only be entitled to designate one director. If either Fund IX or Blackstone ceases to hold shares of Common Stock, such entity will no longer be entitled to designate any directors to serve on the Board and will cause its designated directors to resign.

So long as (i) Fund IX is entitled to designate at least two nominees for election to the Board, (ii) at least one of such designees is serving as a director and (iii) Fund IX, Blackstone and their affiliates collectively own at least 20% of the outstanding shares of Common Stock (a "Qualifying Sponsor Group"), then Fund IX will have the power to appoint the chairman of the Issuer's Audit Committee and other committees of the Board, except for the Compensation Committee. So long as Blackstone is a Qualifying Sponsor Group, it will have the right to appoint the chairman of the Compensation Committee. For so long as such party constitutes a Qualifying Sponsor Group, Fund IX and Blackstone have a right to proportionate representation on each committee based on the representation of each party on the Board.

All significant decisions require the approval of the Issuer's Board, acting by a simple majority vote. For certain significant actions of the Board ("Significant Actions"), this majority vote must include the approval of at least one director solely designated by Fund IX, so long as Fund IX is a Qualifying Sponsor Group, and the approval of at least one director solely designated by Blackstone, so long as Blackstone is a Qualifying Sponsor Group. These Significant Actions include, among others things, the appointment, removal or termination of the Issuer's Chief Executive Officer or other senior officers; the creation, authorization or issuance of any of the Issuer's stock or other securities; any declaration or payment of dividends; any purchase, sale, lease, encumbrance, transfer or other acquisition or disposition of any of the Issuer's assets having an aggregate value in excess of \$20 million; any merger, consolidation, conversion, business combination or joint venture involving the Issuer or its subsidiaries; any transaction involving the Issuer on the one hand, and the certain stockholders of the Issuer (including AMCI) or their affiliates on the other hand; any incurrence of indebtedness in excess of \$20 million; the approval of the Issuer's operating budget, capital budget and/or business plan; and the incurrence of any unbudgeted capital expenditures in excess of \$10 million.



So long as Fund IX or Blackstone constitutes a Qualifying Sponsor Group, each will vote all of its Common Stock in favor of any person designated pursuant to the Stockholders Agreement to serve on the Board of the Issuer. For so long as a designee of Fund IX serves on the Board and AMCI owns at least 5% of the Common Stock, the Issuer is separately obligated to provide AMCI with information regarding the Issuer that is made available to the directors. During this period, the Stockholders Agreement provides that AMCI will vote all of its Common Stock in favor of any person designated pursuant to the Stockholders Agreement to serve on the Board of the Issuer.

In addition, pursuant to the Stockholders Agreement, the Management Stockholders' ability to sell, transfer, pledge or dispose of Common Stock or options to purchase Common Stock is restricted. However, Management Stockholders are permitted to transfer Common Stock and options in a limited number of circumstances, including transfers to the Company, Blackstone or Fund IX.

The foregoing summary of the Stockholders Agreement is qualified in its entirety by reference to the text of Exhibit 2, which is incorporated by this reference.

## **REGISTRATION RIGHTS AGREEMENT**

Pursuant to a Registration Rights Agreement dated as of August 17, 2004, by and between the Issuer, Fund IX, Blackstone, AMCI and the Management Stockholders, each of Fund IX, Blackstone and AMCI will, in certain circumstances, have the ability to require the Issuer to register its shares of Common Stock. In addition, in connection with other registered offerings by the Issuer, parties to the Registration Rights Agreement will have the ability to exercise certain piggyback registration rights with respect to such offerings.

The foregoing summary of the Registration Rights Agreement is qualified in its entirety by reference to the text of Exhibit 3, which is incorporated by this reference.

## **LETTER AGREEMENT**

Pursuant to a letter agreement, dated August 17, 2004, between First Reserve Corporation, an affiliate of Fund IX, and AMCI (the "Letter Agreement"), for so long as Fund IX is entitled to appoint three directors to the Issuer's board, it will appoint one person designated by AMCI who is reasonably satisfactory to Fund IX. Should Fund IX not be entitled to appoint three directors to our board, it will have no obligation to appoint a person designated by AMCI.

The foregoing summary of the Letter Agreement is qualified in its entirety by reference to the text of Exhibit 4, which is incorporated by this reference.

## **LOCK-UP LETTER**

In connection with the consummation of the IPO, AMCI signed a lock-up letter (the "Lock-Up Agreement") with the underwriters whereby AMCI agreed, subject to certain exceptions, not to dispose of or hedge any of its shares of Common Stock or securities convertible into or exchangeable for shares of

Common Stock during the period that is 180 days from December 8, 2004, except with the prior written consent of Morgan Stanley & Co. Incorporated ("Morgan Stanley") and Citigroup Global Markets Inc. ("CGMI"), with certain exceptions. In addition, AMCI agreed that, without the prior written consent of Morgan Stanley and CGMI, it will not, during such period make any demand for or exercise any right with respect to, the registration of any shares of Common Stock, provided that a stockholder entitled make a demand registration pursuant to the Registration Rights Agreement may do so as long as no registration statement is filed during such period.

The foregoing summary of the Lock-Up Letter is qualified in its entirety by reference to the text of Exhibit 5, which is incorporated by this reference.

**Item 7. Material to be Filed as Exhibits**

Exhibit 1 Joint Filing Agreement of Schedule 13D.

Exhibit 2 Amended and Restated Stockholders Agreement, dated as October 4, 2004, by and among the Issuer, Blackstone, Fund IX, AMCI and the management stockholders parties thereto (incorporated herein by reference to Exhibit 4.2 to Amendment No. 2 to the Registration Statement on Form S-1 filed with the Securities and Exchange Commission by the Issuer on October 22, 2004 (File No. 333-118427).

Exhibit 3 Registration Rights Agreement, dated as August 17, 2004 by and among the Issuer, Blackstone, Fund IX, AMCI and the management stockholders parties thereto.

Exhibit 4 Letter Agreement dated August 17, 2004 between First Reserve Corporation and AMCI.

Exhibit 5 Form of Lock-Up Letter signed by certain stockholders of the Issuer (incorporated herein by reference to Exhibit A to Exhibit 1.1 to Amendment No. 2 to the Registration Statement on Form S-1 filed with the Securities and Exchange Commission by the Issuer on October 22, 2004 (File No. 333-118427).

**Signature**

After reasonable inquiry and to the best of each of the undersigned's knowledge and belief, each of the undersigned certifies that the information set forth in this statement with respect to such person is true, complete and correct.

Date: January 14, 2005

**AMCI ACQUISITION, LLC**

By: /s/ HANS J. MENDE

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Name: Hans J. Mende

Title: President

/s/ HANS J. MENDE

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Hans J. Mende

**Schedule I**

The name, business address, citizenship, position with AMCI Acquisition, LLC and present principal occupation or employment of each of the executive officers and directors of AMCI Acquisition, LLC are set forth below:

<u>Name</u>	<u>Business Address</u>	<u>Citizenship</u>	<u>Position with AMCI Acquisition, LLC</u>	<u>Principal Occupation or Employment</u>
Hans J. Mende	(1)	Germany	President and Manager	President and Chief Executive Officer of American Metals & Coal International, Inc.
Michael J. Walker	(1)	United States	Executive Vice President and Treasurer	Executive Vice President and Treasurer of Laurel Mountain Management, Inc.
Angela Robin Grace	(1)	United States	Secretary	Secretary of Laurel Mountain Management, Inc.

(1) One Energy Place, Suite 1000, Latrobe, Pennsylvania 15650

## QuickLinks

[Signature](#)

[Schedule I](#)

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## EXHIBIT 1

### JOINT FILING AGREEMENT

We, the signatories of the statement on Schedule 13D filed with respect to the shares of Common Stock of Foundation Coal Holdings, Inc., to which this Agreement is attached, hereby agree this 14<sup>th</sup> day of January, 2005, that such statement is, and any amendments thereto filed by any of us will be, filed on behalf of each of us pursuant to and in accordance with the provisions of Rule 13d-1(k) of the Securities Exchange Act of 1934.

**AMCI ACQUISITION, LLC**

By: /s/ HANS J. MENDE

Name: Hans J. Mende

Title: President

/s/ HANS J. MENDE

Hans J. Mende

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[EXHIBIT 1](#)  
[JOINT FILING AGREEMENT](#)

**REGISTRATION RIGHTS AGREEMENT**

**Concerning**

**FOUNDATION COAL HOLDINGS, INC.**

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**Dated as of August 17, 2004**

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**REGISTRATION RIGHTS AGREEMENT** (the "*Agreement*") dated as of August 17, 2004, by and between Foundation Coal Holdings, Inc., a Delaware corporation (the "*Company*"), the Sponsor Stockholders (as hereinafter defined), the Investor Stockholders (as hereinafter defined) and the Management Stockholders (as hereinafter defined) and any other Person that shall from and after the date hereof acquire or otherwise be the transferee of any Registrable Securities and who shall be a Permitted Transferee (as hereinafter defined) of any Stockholder (herein referred to collectively as the "*Holders*" and individually as a "*Holder*").

**WHEREAS**, Foundation Coal Holdings, LLC (the "*LLC*") and the Stockholders are parties to the amended and restated limited liability company operating agreement describing the rights and privileges of the interests in the LLC (the "*LLC Agreement*").

**WHEREAS**, the LLC and the Company, a wholly-owned subsidiary of the LLC, are parties to an Agreement and Plan of Merger dated as of August 16, 2004, pursuant to which the LLC will merge with and into the Company, with the Company as the sole surviving corporation (the "*Merger*").

**WHEREAS**, as a result of the Merger each interest in the LLC held by the Stockholders shall be exchanged for shares of Common Stock (as hereinafter defined), resulting in the Stockholders becoming holders of shares in the Company.

**WHEREAS**, the Stockholders and the Company are parties to a Stockholders Agreement dated as of August 17, 2004 which sets forth certain rights and obligations of the Stockholders relating to the ownership by the Stockholders of the Common Stock (the "*Stockholders Agreement*").

**WHEREAS**, the Company has agreed to provide registration rights on the terms and subject to the conditions provided herein.

**NOW, THEREFORE**, in consideration of the premises and the representations, warranties and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

#### **Section 1. *Definitions.***

As used in this Agreement, the following terms shall have the following meanings:

"*Affiliate*" has the meaning set forth in the Stockholders Agreement.

"*AMCI Investor Group*" has the meaning set forth in the Stockholders Agreement.

"*Blackstone Investor Group*" has the meaning set forth in the Stockholders Agreement.

"*Board*" has the meaning set forth in the Stockholders Agreement.

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"*Common Stock*" means the common stock, par value \$.01 per share, of the Company and securities issued in respect thereof, or in substitution therefor, in connection with any split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

"*Company*" has the meaning set forth in the preamble and also includes the Company's successors.

"*Dispute*" has the meaning set forth in Section 6(1).

"*Effective Date*" has the meaning set forth in the Stockholders Agreement.

"*Exchange Act*" has the meaning set forth in the Stockholders Agreement.

"*Fair Market Value*" has the meaning set forth in Stockholders Agreement.

"*FRC Investor Group*" has the meaning set forth in the Stockholders Agreement.

"*Holder*" has the meaning set forth in the preamble.

"*Incidental Registration*" means a registration required to be effected by the Company pursuant to Section 2(b).

"*Incidental Registration Statement*" means a registration statement of the Company, as provided in Section 2(b), which covers any of the Registrable Securities on an appropriate form in accordance with the Securities Act and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"*Investor Group*" has the meaning set forth in the Stockholders Agreement.

"*Investor Stockholder*" has the meaning set forth in the Stockholders Agreement.

"*Initial Public Offering*" means the closing of the first public offering of and sale of equity securities of the Company or, if earlier, the first public offering and sale of equity securities of the Company by any other Person in a secondary offering pursuant to an effective registration statement filed by the Company under the Securities Act.

"*IRR*", with respect to any Person, means the discount rate at which the net present value of distributions from the Company in connection with, and proceeds in respect of a sale or redemption of, Securities held by such Person, less the aggregate purchase price for such Securities (or purchase price for ownership interests in any predecessor to the Company), equals zero. Each such discount rate calculation shall be determined as of the date such purchase price was paid and with respect to each distribution or receipt of proceeds from the date such distribution or proceeds are received.

"*Majority Holders*" means Holders of Common Stock representing in the aggregate a majority of the aggregate number of outstanding Common Stock beneficially owned by Holders.

"*Management Stockholder*" has the meaning set forth in the Stockholders Agreement.

"*NASD*" means the National Association of Securities Dealers, Inc.

"*Permitted Transferee*" has the meaning set forth in the Stockholders Agreement.

"*Person*" has the meaning set forth in the Stockholders Agreement.

"*Prospectus*" means the prospectus included in a Registration Statement, including any preliminary Prospectus, and any such Prospectus as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities and by all other amendments and supplements to such Prospectus, including post-effective amendments, and in each case including all material incorporated by reference therein.

"*Qualified IPO*" has the meaning set forth in the Stockholders Agreement.

"*Reclassified Securities*" has the meaning set forth in the Stockholders Agreement.

"*Registrable Securities*" means (i) any shares of Common Stock issued to the Stockholders in connection with the Merger, (ii) any Securities of the Company subsequently acquired by the Stockholders or any of their Affiliates including upon exercise of any Securities referred to in clause (iii), (iii) any Securities of the Company held by any Holder which is convertible, exchangeable or exercisable into Common Stock and (iv) any Securities of the Company issued or issuable directly or indirectly with respect to or in exchange, or substitution for, or conversion of the securities referred to in clauses (i), (ii) or (iii) above by way of dividend or distribution, recapitalization, merger, consolidation, exchange or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when they have been distributed to the public pursuant to an offering registered under the Securities Act or sold to the public through a broker, dealer or market maker in compliance with Rule 144 under the Securities Act (or any similar rule then in force).

"*Registration Expenses*" means (i) all registration, listing, qualification and filing fees (including NASD filing fees), (ii) fees and disbursements of counsel for the Company, (iii) accounting fees incident to any such registration, (iv) blue sky fees and expenses (including counsel fees in connection with the preparation of a Blue Sky Memorandum and legal investment survey), (v) all reasonable expenses of any Persons incurred on behalf of the Investor Stockholders or the Company in preparing or assisting in preparing, printing, distributing, mailing and delivering any Registration Statement, any Prospectus, any underwriting agreements, transmittal letters, securities sales agreements, securities certificates and other documents relating to the performance of and compliance with this Agreement, (vi) the expenses incurred in connection with making road show presentations and holding meetings with potential

investors to facilitate the distribution and sale of Registrable Securities which are customarily borne by the issuer, (vii) all internal expenses of the Company (including all salaries and expenses of officers and employees performing legal or accounting duties) and (viii) the reasonable fees and expenses of the Investor Stockholders incurred in connection with the sale of Registrable Securities (including reasonable fees and expenses of counsel for the Sponsor Stockholders); *provided, however*, Registration Expenses shall not include any Selling Expenses.

"*Registration Statement*" means any registration statement of the Company which covers any Registrable Securities and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"*Required Registration*" means a registration required to be effected pursuant to Section 2(a)(i).

"*Required Registration Statement*" means a Registration Statement which covers the Registrable Securities requested to be included therein pursuant to the provisions of Section 2(a)(i) on an appropriate form pursuant to the Securities Act (other than pursuant to Rule 415 or any similar rule then in force), and which form shall be available for the sale of the Registrable Securities in accordance with the intended method or methods of distribution thereof, and all amendments and supplements to such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"*Required Shelf Registration Statement*" means a Registration Statement which covers the Registrable Securities requested to be included therein pursuant to the provisions of Section 2(a)(i) on an appropriate form or any similar successor or replacement form (in accordance with Section 4(a) hereof) pursuant to Rule 415 of the Securities Act (or any similar rule then in force), and which form shall be available for the sale of the Registrable Securities in accordance with the intended method or methods of distribution thereof, and all amendments and supplements to such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"*SEC*" means the United States Securities and Exchange Commission.

"*Securities*" has the meaning set forth in the Stockholders Agreement.

"*Securities Act*" has the meaning set forth in the Stockholders Agreement.

"*Selling Expenses*" means underwriting discounts, selling commissions and stock transfer taxes applicable to the shares registered by the Holders, fees and disbursements of counsel for the Holders (other than the Investor Stockholders) retained by them (other than with respect to the fees and disbursements made in connection with the preparation of a Blue Sky Memorandum and legal investment survey).

"*Sponsor Stockholder*" has the meaning set forth in the Stockholders Agreement.

"Underwriter" has the meaning set forth in Section 5(a).

"Underwritten Offering" means a sale of securities of the Company to an Underwriter or Underwriters for reoffering to the public.

## Section 2. *Registration Under the Securities Act.*

### (a) *Required Registration.*

(i) *Right to Require Registration.* (A) At any time from and after the second anniversary of the Effective Date, any Sponsor Stockholder shall have the right to deliver a request in writing to the Company (a "Request") (which Request shall specify the Registrable Securities intended to be disposed, the identity of the Sponsor Stockholder intending to dispose of such Registrable Securities, and the intended method of distribution thereof) that the Company register the Registrable Securities held by the specified Sponsor Stockholder by filing with the SEC a Required Registration Statement (a "Demand Registration") or, after the Initial Public Offering of the Company, a Required Shelf Registration Statement (a "Shelf Registration"); *provided, however*, that if such Request is made with respect to the Initial Public Offering of the Company and prior to the fourth anniversary of the date of this Agreement, no Sponsor Stockholder shall be permitted to exercise its rights under this Section 2(a)(i)(A) unless the transaction contemplated by the Request would, in the reasonable opinion of the Sponsor Stockholder delivering such Request, result in an IRR to such Sponsor Stockholder in respect of its Registrable Securities subject to such Request of at least 25%. At any time from and after the consummation of a Qualified IPO, any Investor Stockholder shall have the right to deliver a Request to the Company (which Request shall specify the Registrable Securities intended to be disposed, the identity of the Investor Stockholder intending to dispose of such Registrable Securities, and the intended method of distribution thereof) for a Demand Registration or, in the case of an Investor Stockholder that is also a Sponsor Stockholder, a Shelf Registration.

(B) Upon the receipt of any Request, the Company will, by the tenth calendar day thereafter, give written notice of such requested registration to all Holders of Registrable Securities, and each such Holder shall be entitled to notify the Company within ten days of receipt of notice of such Request of such Holder's election to include all or a portion of its Registrable Securities in such registration. Not later than the 60th calendar day after the receipt of such a Request by the Company, the Company will, subject to the other provisions of this Section 2(a), cause to be filed with the SEC a Required Registration Statement or Required Shelf Registration Statement, as the case may be, covering the Registrable Securities which the Company has been so requested to register in such Request and all other Registrable Securities which the Company has been requested to register by Holders thereof other than the Holder(s) who are members of the Investor Group initiating such Request, by written request given to the Company within 15 days after the giving of such written notice by the

Company, providing for the registration under the Securities Act of the Registrable Securities which the Company has been so requested to register by all such Holders, to the extent necessary to permit the disposition of such Registrable Securities so to be registered in accordance with the intended methods of distribution thereof specified in such Request or further requests, and shall use all reasonable efforts to have such Required Registration Statement or Required Shelf Registration Statement, as the case may be, declared effective by the SEC as soon as practicable thereafter and to keep such Required Registration Statement continuously effective for a period of at least (xx) 60 days, in the case of a Demand Registration (or, in the case of an Underwritten Offering, such period as the Underwriters shall reasonably require) following the date on which such Required Registration Statement is declared effective (or such shorter period which will terminate when all of the Registrable Securities covered by such Required Registration Statement have been sold pursuant thereto) or (yy) 180 days, in the case of a Shelf Registration, following the date on which such Required Shelf Registration Statement is declared effective (or such shorter period which will terminate when all of the Registrable Securities covered by such Required Shelf Registration Statement have been sold pursuant thereto), including, in either case, if necessary, by filing with the SEC a post-effective amendment or a supplement to the Required Registration Statement or Required Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or by filing any other required document or otherwise supplementing or amending the Required Registration Statement or Required Shelf Registration Statement, if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Required Registration Statement or Required Shelf Registration Statement or by the Securities Act, the Exchange Act, any state securities or blue sky laws, or any rules and regulations thereunder.

(C) The Company shall not be required to effect, pursuant to this Section 2(a)(i), (w) more than one Shelf Registration or Demand Registration within any continuous six month period, (x) any Underwritten Offering covering Registrable Securities with gross proceeds reasonably expected by the Holders to be less than \$25 million, (y) more than (i) three (3) Demand Registrations requested by each of the Blackstone Investor Group and the FRC Investor Group and (ii) one (1) Demand Registration requested by the AMCI Investor Group (provided that the members of the AMCI Investor Group shall have no right to, and shall not, make a Request in respect of such Demand Registration until such time as an offering in respect of a (I) Demand Registration on account of a Request made by either the Blackstone Investor Group or the FRC Investor Group or (II) a Qualified IPO that is a secondary offering has been consummated) and (z) more than one (1) Shelf Registration requested by each of the Blackstone Investor Group and the FRC Investor Group (which Shelf Registration, for the avoidance of doubt, shall not be deemed to be a Demand Registration under the immediately preceding clause (y)). The members of the AMCI Investor Group shall have no right to, and shall not, make a Request in respect of a Shelf Registration at any time.

(D) A Request may be withdrawn prior to the filing of the Required Registration Statement or Required Shelf Registration Statement by the Investor Group which made such Request (a "*Withdrawn Request*") and a Required Registration Statement or Required Shelf Registration Statement may be withdrawn prior to the effectiveness thereof by the Holders of a majority of the Registrable Securities included therein (a "*Withdrawn Required Registration*"), and, in either such event, such withdrawal shall not be treated as a Required Registration for purposes of clauses (y) and (z) of the immediately preceding paragraph.

(E) Notwithstanding the foregoing, the Company may delay the filing of a registration statement required pursuant to this Section 2(a)(i) if the Board determines that such action is in the best interests of the Company or its Stockholders and only for a period not to exceed 90 days (a "*Blackout Period*"); provided that after any initial Blackout Period the Company may not invoke a subsequent Blackout Period until 12 months elapse from the end of any previous Blackout Period.

(F) The registration rights granted pursuant to the provisions of this Section 2(a)(i) shall be in addition to the registration rights granted pursuant to the other provisions of this Section 2.

(ii) *Priority in Required Registrations.* If a Required Registration pursuant to this Section 2(a) involves an Underwritten Offering, and the sole Underwriter or the lead managing Underwriter, as the case may be, of such Underwritten Offering shall advise the Company in writing (with a copy to each Holder requesting registration) on or before the date five days prior to the date of pricing of such offering that, in its opinion, the amount of Registrable Securities requested to be included in such Required Registration exceeds the amount which can be sold in such offering without adversely affecting the distribution of the Registrable Securities being offered, the Company will include in such Required Registration only the amount of Registrable Securities that the Company is so advised can be sold in such offering; *provided, however,* that the Company shall be required to include in such Required Registration *first,* all Registrable Securities requested to be included in the Required Registration by the Investor Stockholders and, to the extent not all such Registrable Securities can be included in such Required Registration, the number of Registrable Securities to be included shall be allocated *pro rata* on the basis of the number of Registrable Securities requested to be included in such Required Registration by all Investor Stockholders requesting to participate in such Required Registration or on such other basis as shall be agreed among such Investor Stockholders; *second,* all Registrable Securities requested to be included in such Required Registration by the other Holders and, to the extent not all such Registrable Securities can be included in such Required Registration, the number of Registrable Securities to be included shall be allocated *pro rata* on the basis of the number of Registrable Securities requested to be included in such Required Registration by all such Holders and *third,* all other securities requesting, in accordance with any registration rights which are granted in compliance with Section 6(a), to be included in such Required Registration which are of the same class as the Registrable Securities and,



to the extent not all such securities can be included in such Required Registration, the number of securities to be included shall be allocated *pro rata* among the remaining holders thereof requesting inclusion in such Required Registration on the basis of the number of securities requested to be included by all such holders.

(b) *Incidental Registration.*

(i) *Right to Include Registrable Securities.* If at any time from and after consummation of a Qualified IPO, the Company proposes to register any of its Common Stock under the Securities Act (other than (A) any registration of public sales or distributions solely by and for the account of the Company of securities issued (x) pursuant to any employee benefit or similar plan or any dividend reinvestment plan or (y) in any acquisition by the Company, (B) pursuant to any debt financing of the acquisition of the Acquired Businesses or (C) pursuant to Section 2(a) hereof) in connection with a primary offering for cash for the account of the Company, the Company will, each time it intends to effect such a registration, give written notice to all Holders of Registrable Securities at least ten but no more than 45 days prior to the expected initial filing of a Registration Statement with the SEC pertaining thereto, informing such Holders of its intent to file such Registration Statement, the expected filing date, and of the Holders' rights to request the registration of the Registrable Securities held by the Holders under this Section 2(b) (the "*Company Notice*"). Upon the written request of any Holder made within ten days after any such Company Notice is given (which request shall specify the Registrable Securities intended to be disposed of by such Holder and such Holder's Permitted Transferees and the intended method of distribution thereof), the Company will use all reasonable efforts to effect the registration under the Securities Act of all Registrable Securities which the Company has been so requested to register by such Holders to the extent required to permit the disposition (in accordance with the intended methods of distribution thereof) of the Registrable Securities so requested to be registered, including, if necessary, by filing with the SEC a post-effective amendment or a supplement to the Incidental Registration Statement or the related Prospectus or any document incorporated therein by reference or by filing any other required document or otherwise supplementing or amending the Incidental Registration Statement, if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Incidental Registration Statement or by the Securities Act, any state securities or blue sky laws, or any rules and regulations thereunder; *provided, however*, that if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the Incidental Registration Statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to each Holder of Registrable Securities and, thereupon, (A) in the case of a determination not to register, the Company shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from its obligation to pay the Registration Expenses incurred in connection therewith), and (B) in the case of a determination to delay such registration, the Company shall be permitted to delay registration of any Registrable Securities requested to be included in such Incidental Registration Statement for the same period as the delay in registering such other securities.

The registration rights granted pursuant to the provisions of this Section 2(b)(i) shall be in addition to the registration rights granted pursuant to the other provisions of this Section.

(ii) *Priority in Incidental Registrations.* If a registration pursuant to this Section 2(b) involves an Underwritten Offering of the securities so being registered, whether or not for sale for the account of the Company, and the sole Underwriter or the lead managing Underwriter, as the case may be, of such Underwritten Offering shall advise the Company in writing (with a copy to each Holder of Registrable Securities requesting registration) on or before the date five days prior to the date of pricing of for such offering that, in its opinion, the amount of securities (including Registrable Securities) requested to be included in such registration exceeds the amount which can be sold in (or during the time of) such offering without adversely affecting the distribution of the securities being offered, then the Company will be required to include in such registration, *first*, all the securities entitled to be sold pursuant to such Registration Statement by the Company; *second* all Registrable Securities requested to be included in the Underwritten Offering by the Investor Stockholders and, to the extent not all such Registrable Securities can be included in such Underwritten Offering, the number of Registrable Securities to be included shall be allocated *pro rata* on the basis of the number of Registrable Securities requested to be included by all the Investor Stockholders requesting to participate in the Underwritten Offering or on such other basis as shall be agreed among such Investor Stockholders; *third*, all Registrable Securities requested to be included in such Underwritten Offering by the other Holders and, to the extent not all such Registrable Securities can be included in such Underwritten Offering, the number of Registrable Securities to be included shall be allocated *pro rata* on the basis of the number of Registrable Securities requested to be included in such Underwritten Offering by all such Holders and *fourth*, all other securities requested, in accordance with any registration rights which are granted in compliance with Section 6(a), to be included in such Underwritten Offering which are of the same class as the Registrable Securities and, to the extent not all such securities can be included in such Underwritten Offering, the number of securities to be included shall be allocated *pro rata* among the remaining holders thereof requesting inclusion in such Underwritten Offering on the basis of the number of securities requested to be included in such Underwritten Offering by all such holders; *provided, however*, that in the event the Company will not, by virtue of this paragraph, include in any such registration all of the Registrable Securities of any Holder requested to be included in such registration, such Holder may, upon written notice to the Company given within three days of the time such Holder first is notified of such matter, reduce the amount of Registrable Securities it desires to have included in such registration, whereupon only the Registrable Securities, if any, it desires to have included will be so included and the Holders not so reducing shall be entitled to a corresponding increase in the amount of Registrable Securities to be included in such registration.

(c) *Expenses.* The Company agrees to (i) pay all Registration Expenses in connection with each of the registrations requested pursuant to Section 2(a) and (ii) pay all Registration Expenses in connection with each registration as to which Holders request inclusion of Registrable Securities pursuant to Section 2(b). All Selling Expenses relating to securities

registered on behalf of Holders shall be borne by the Holders of securities included in such registration *pro rata* on the basis of the number of shares of securities so registered.

(d) *Effective Registration Statement; Suspension.* Subject to Section 2(a)(i)(D), a Registration Statement pursuant to Section 2(a) will not be deemed to have become effective (and the related registration will not be deemed to have been effected) unless it has been declared effective by the SEC or in the case of a Required Shelf Registration Statement unless Registrable Securities have been disposed of pursuant thereto, prior to a request by the Holders of a majority of the Registrable Securities included in such registration that such Registration Statement be withdrawn; *provided, however*, that if, after it has been declared effective, the offering of any Registrable Securities pursuant to such Registration Statement is interfered with by any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court, such Registration Statement will be deemed not to have become effective and the related registration will not be deemed to have been effected.

(e) *Selection of Underwriters.* At any time or from time to time, the Holders of a majority of the Registrable Securities covered by a Required Registration Statement may elect to have such Registrable Securities sold in an Underwritten Offering and may select the investment banker or investment bankers and manager or managers that will serve as lead and co-managing Underwriters with respect to the offering of such Registrable Securities, subject to the consent of the Company which shall not be unreasonably withheld. No Holder may participate in any Underwritten Offering hereunder unless such Holder (a) agrees to sell such Holder's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, custody agreements, indemnities, underwriting agreements and other documents required under the terms of such Underwritten Offering.

### **Section 3. *Restrictions on Public Sale.***

(a) If requested by the sole Underwriter or lead managing Underwriter(s) in an Underwritten Offering, the Company agrees not to effect any public sale or distribution (other than, in the case of the Company, public sales or distributions solely by and for the account of the Company of securities issued pursuant to any employee benefit or similar plan or any dividend reinvestment plan) of any equity or equity-linked securities during the period commencing on the date the Company receives a Request from any Holder and continuing until 180 days after the commencement of any Initial Public Offering, Qualified IPO or other Underwritten Offering (or for such shorter period as the sole or lead managing Underwriter shall request) unless earlier terminated by the sole Underwriter or lead managing Underwriter(s) in such Underwritten Offering.

(b) If requested by the sole Underwriter or lead managing Underwriter(s) in an Underwritten Offering, the Holders shall not sell or otherwise transfer or dispose of any shares of Common Stock (or other securities) of the Company held by the Holders (other than those included in the registration) during the fourteen (14) day period prior to and the one hundred eighty (180) day period following the effective date (including such effective date), of an Initial Public Offering, Qualified IPO (including such effective date) or any other offering, or in the case of a registration pursuant to Rule 415 of the Securities Act (or any similar rule then in

force), the 180 day period following the date of any underwritten take-down, or in either case such shorter period as the sole Underwriter or lead managing Underwriter(s) may request, of a registration statement of the Company filed under the Securities Act, provided that the obligations described in this Section 3(b) shall not apply to a registration relating solely to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or Rule 145 (or any similar rule then in force) or similar transaction. The Company may impose stop-transfer instructions with respect to the Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred eighty (180) day period. Any agreement entered into after the date of this Agreement pursuant to which the Company issues or agrees to issue any privately placed Common Stock or other securities shall contain a provision under which holders of such securities agree not to effect any sale or distribution of any such securities during the period referred to in the first sentence of this Section 3(b), including any sale pursuant to Rule 144 under the Securities Act (or any similar rule then in force) (except as part of such registration, if permitted).

#### **Section 4. *Registration Procedures.***

In connection with the obligations of the Company pursuant to Section 2, the Company shall use all reasonable efforts to effect or cause to be effected the registration of the Registrable Securities under the Securities Act to permit the sale of such Registrable Securities by the Holders in accordance with their intended method or methods of distribution, and the Company shall:

(a) (i) prepare and file a Registration Statement with the SEC which (x) shall be on Form S-1 (if in connection with an Initial Public Offering) and otherwise on Form S-3 (or any successor to such form), if available, (y) shall be available for the sale or exchange of the Registrable Securities in accordance with the intended method or methods of distribution by the selling Holders thereof, and (z) shall comply as to form with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith and all other information reasonably requested by the lead managing Underwriter or sole Underwriter, if applicable, to be included therein, (ii) use all reasonable efforts to cause such Registration Statement to become effective and remain effective in accordance with Section 2, (iii) use all reasonable efforts to not take any action that would cause a Registration Statement to contain a material misstatement or omission or to be not effective and usable for resale of Registrable Securities during the period that such Registration Statement is required to be effective and usable, and (iv) cause each Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of such Registration Statement, amendment or supplement (x) to comply in all material respects with any requirements of the Securities Act and the rules and regulations of the SEC and (y) not to contain any 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;

(b) subject to paragraph (j) of this Section 4, prepare and file with the SEC such amendments and post-effective amendments to each such Registration Statement, as may be necessary to keep such Registration Statement effective for the applicable period; cause each such Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act (or any similar rule then

in force); and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by each Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof, as set forth in such registration statement;

(c) furnish to each Holder of Registrable Securities and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder or Underwriter may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities; the Company hereby consents to the use of the Prospectus, including each preliminary Prospectus, by each Holder of Registrable Securities and each Underwriter of an Underwritten Offering of Registrable Securities, if any, in connection with the offering and sale of the Registrable Securities covered by the Prospectus or the preliminary Prospectus;

(d) (i) use all reasonable efforts to register or qualify the Registrable Securities, no later than the time the applicable Registration Statement is declared effective by the SEC, under all applicable state securities or "blue sky" laws of such jurisdictions as each Underwriter, if any, or any Holder of Registrable Securities covered by a Registration Statement, shall reasonably request; (ii) use all reasonable efforts to keep each such registration or qualification effective during the period such Registration Statement is required to be kept effective; and (iii) do any and all other acts and things which may be reasonably necessary or advisable to enable each such Underwriter, if any, and Holder to consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; *provided, however*, that the Company shall not be obligated to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to consent to be subject to general service of process (other than service of process in connection with such registration or qualification or any sale of Registrable Securities in connection therewith) in any such jurisdiction;

(e) notify each Holder of Registrable Securities promptly, and, if requested by such Holder, confirm such advice in writing, (i) when a Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective, (ii) of the issuance by the SEC or any state securities authority of any stop order, injunction or other order or requirement suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (iii) if, between the effective date of a Registration Statement and the closing of any sale of securities covered thereby pursuant to any agreement to which the Company is a party, the representations and warranties of the Company contained in such agreement cease to be true and correct in all material respects or if the Company receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, and (iv) of the happening of any event during the period a Registration Statement is effective as a result of which such Registration Statement or the related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading;

(f) furnish counsel for each such Underwriter, if any, and for the Holders of Registrable Securities copies of any request by the SEC or any state securities authority for amendments or supplements to a Registration Statement and Prospectus or for additional information;

(g) use all reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement at the earliest possible time;

(h) upon request, furnish to the sole Underwriter or lead managing Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, at least one signed copy of each Registration Statement and any post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits; and furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without documents incorporated therein by reference or exhibits thereto, unless requested);

(i) cooperate with the selling Holders of Registrable Securities and the sole Underwriter or lead managing Underwriter of an Underwritten Offering of Registrable Securities, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations (consistent with the provisions of the governing documents thereof) and registered in such names as the selling Holders or the sole Underwriter or lead managing Underwriter of an Underwritten Offering of Registrable Securities, if any, may reasonably request at least five days prior to any sale of Registrable Securities;

(j) upon the occurrence of any event contemplated by paragraph (e)(iv) of this Section, use all reasonable efforts to prepare a supplement or post-effective amendment to a Registration Statement or the related Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus will not contain any 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, in the light of the circumstances under which they were made, not misleading;

(k) enter into customary agreements (including, in the case of an Underwritten Offering, underwriting agreements in customary form, and including provisions with respect to indemnification and contribution in customary form and consistent with the provisions relating to indemnification and contribution contained herein) and take all other customary and appropriate actions in order to expedite or facilitate the disposition of such Registrable Securities and in connection therewith:

(1) make such representations and warranties to the Holders of such Registrable Securities and the Underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in similar underwritten offerings;

(2) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the lead managing Underwriter, if any, and the Majority Holders of the Registrable Securities being sold) addressed to each selling Holder and the Underwriters, if any, covering the matters customarily covered in opinions requested in sales of securities or underwritten offerings and such other matters as may be reasonably requested by such Holders and Underwriters;

(3) obtain "cold comfort" letters and updates thereof from the Company's independent certified public accountants addressed to the selling Holders of Registrable Securities, if permissible, and the Underwriters, if any, which letters shall be customary in form and shall cover matters of the type customarily covered in "cold comfort" letters to underwriters in connection with primary underwritten offerings;

(4) to the extent requested and customary for the relevant transaction, enter into a securities sales agreement with the Holders providing for, among other things, the appointment of such representative as agent for the selling Holders for the purpose of soliciting purchases of Registrable Securities, which agreement shall be customary in form, substance and scope and shall contain customary representations, warranties and covenants; and

(5) deliver such customary documents and certificates as may be reasonably requested by the Majority Holders of the Registrable Securities being sold or by the managing Underwriters, if any.

The above shall be done (i) at the effectiveness of such Registration Statement (and each post-effective amendment thereto) in connection with any registration, and (ii) at each closing under any underwriting or similar agreement as and to the extent required thereunder;

(l) make available for inspection by representatives of the Holders of the Registrable Securities and any Underwriters participating in any disposition pursuant to a Registration Statement and any counsel or accountant retained by such Holders or Underwriters, all relevant financial and other records, pertinent corporate documents and properties of the Company and cause the respective officers, managers and employees of the Company to supply all information reasonably requested by any such representative, Underwriter, counsel or accountant in connection with a Registration Statement;

(m) (i) within a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to a Registration Statement or amendment or supplement to a Prospectus, provide copies of such document to the Holders of Registrable Securities and to counsel to such Holders and to the Underwriter or Underwriters of an Underwritten Offering of Registrable Securities, if any; fairly consider such reasonable changes in any such document prior to or after the filing thereof as the counsel to the Holders or the Underwriter or the Underwriters may request and not file any such document in a form to which the Majority Holders of Registrable Securities being registered or any Underwriter shall reasonably object; and make such of the representatives of the Company as shall be reasonably

requested by the Holders of Registrable Securities being registered or any Underwriter available for discussion of such document;

(ii) within a reasonable time prior to the filing of any document which is to be incorporated by reference into a Registration Statement or a Prospectus, provide copies of such document to counsel for the Holders; fairly consider such reasonable changes in such document prior to or after the filing thereof as counsel for such Holders or such Underwriter shall request; and make such of the representatives of the Company as shall be reasonably requested by such counsel available for discussion of such document;

(n) cause all Registrable Securities to be qualified for inclusion in or listed on The New York Stock Exchange or any securities exchange or the NASDAQ National Market on which securities of the same class issued by the Company are then so qualified or listed if so requested by the Majority Holders of Registrable Securities covered by a Registration Statement, or if so requested by the Underwriter or Underwriters of an Underwritten Offering of Registrable Securities, if any;

(o) otherwise use all reasonable efforts to comply with all applicable rules and regulations of the SEC, including making available to its security holders an earnings statement covering at least 12 months which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar provision then in force);

(p) cooperate and assist in any filings required to be made with the NASD and in the performance of any due diligence investigation by any Underwriter in an Underwritten Offering; and

(q) use all reasonable efforts to facilitate the distribution and sale of any Registrable Securities to be offered pursuant to this Agreement, including without limitation by making road show presentations, holding meetings with potential investors and taking such other actions as shall be requested by the Majority Holders of Registrable Securities covered by a Registration Statement or the lead managing Underwriter of an Underwritten Offering; provided that the Company shall not be required to make road show presentations in connection with any Underwritten Offering of Registrable Securities that would not reasonably be expected to have gross proceeds of at least \$50 million.

Each selling Holder of Registrable Securities as to which any registration is being effected pursuant to this Agreement agrees, as a condition to the registration obligations with respect to such Holder provided herein, to furnish to the Company such information regarding such Holder required to be included in the Registration Statement, the ownership of Registrable Securities by such Holder and the proposed distribution by such Holder of such Registrable Securities as the Company may from time to time reasonably request in writing.

Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in paragraph (e)(iv) of this Section, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the affected Registration Statement until such Holder's receipt of the copies of the supplemented or amended



Prospectus, contemplated by paragraph (j) of this Section, and, if so directed by the Company, such Holder will deliver to the Company (at the expense of the Company), all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities which was current at the time of receipt of such notice.

### **Section 5. *Indemnification; Contribution.***

(a) *Indemnification by the Company.* The Company agrees to indemnify and hold harmless each Person who participates as an underwriter (any such Person being an "Underwriter"), each Investor Group, Holder and their respective partners, managers, officers and employees and each Person, if any, who controls any Investor Group, Holder or Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all losses, liabilities, claims, damages, judgments and reasonable expenses whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement pursuant to which Registrable Securities were registered under the Securities Act, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all losses, liabilities, claims, damages, judgments and reasonable expenses whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, or of any other claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and

(iii) against any and all reasonable expense whatsoever (including fees and disbursements of counsel), as incurred in investigating, preparing or defending against any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not such Person is a party, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above;

*provided, however,* that this indemnity agreement does not apply to any Investor Group, Holder or Underwriter with respect to any loss, liability, claim, damage, judgment or expense to the extent arising out of any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, or the omission or alleged omission therefrom of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in any such case made in reliance upon and in conformity with written information

furnished to the Company by such Investor Group, Holder or Underwriter expressly for use in a Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto); *provided, further*, that the Company shall not be liable to any Holder with respect to any preliminary prospectus to the extent that any such loss, liability, claim, damage, cost or expense results from the fact that such Holder sold Registrable Securities to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the final prospectus if the Company has previously and timely furnished copies thereof to such Holder and if such final prospectus would have corrected such untrue statement or omission. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any Holder Indemnified Party and shall survive the Transfer of such securities by any Holder.

(b) *Indemnification by Holders.* Each selling Holder severally agrees to indemnify and hold harmless the Company, each Underwriter and the other selling Holders and Investor Groups, and each of their respective partners, managers, officers and employees (including each officer of the Company who signed the Registration Statement), and each Person, if any, who controls the Company, any Underwriter or any other selling Holder or Investor Group within the meaning of Section 15 of the Securities Act, against any and all losses, liabilities, claims, damages, judgments and expenses described in the indemnity contained in paragraph (a) of this Section (provided that any settlement of the type described therein is effected with the written consent of such selling Holder), as incurred, but only with respect to untrue statements or alleged untrue statements of a material fact contained in any Prospectus or the omissions, or alleged omissions therefrom of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in any such case made in reliance upon and in conformity with written information furnished to the Company by such selling Holder expressly for use in such Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto).

(c) *Conduct of Indemnification Proceedings.* Each indemnified party or parties shall give reasonably prompt notice to each indemnifying party or parties of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party or parties shall not relieve it or them from any liability which it or they may have under this indemnity agreement, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice. If the indemnifying party or parties so elects within a reasonable time after receipt of such notice, the indemnifying party or parties may assume the defense of such action or proceeding at such indemnifying party's or parties' expense with counsel chosen by the indemnifying party or parties and approved by the indemnified party defendant in such action or proceeding, which approval shall not be unreasonably withheld; *provided, however*, that, if such indemnified party or parties determine in good faith that a conflict of interest exists and that therefore it is advisable for such indemnified party or parties to be represented by separate counsel or that, upon advice of counsel, there may be legal defenses available to it or them which are different from or in addition to those available to the indemnifying party, then the indemnifying party or parties shall not be entitled to assume such defense and the indemnified party or parties shall be entitled to separate counsel (limited in each jurisdiction to one counsel for all Underwriters and another counsel for all other indemnified parties under this Agreement) at the indemnifying party's or parties' expense. If an indemnifying party or parties is or are not so entitled to assume the

defense of such action or does or do not assume such defense, after having received the notice referred to in the first sentence of this paragraph, the indemnifying party or parties will pay the reasonable fees and expenses of counsel for the indemnified party or parties (limited in each jurisdiction to one counsel for all Underwriters and another counsel for all other indemnified parties under this Agreement). No indemnifying party or parties will be liable for any settlement effected without the written consent of such indemnifying party or parties, which consent shall not be unreasonably withheld. If an indemnifying party is entitled to assume, and assumes, the defense of such action or proceeding in accordance with this paragraph, such indemnifying party or parties shall not be liable for any fees and expenses of counsel for the indemnified parties incurred thereafter in connection with such action or proceeding.

(d) *Contribution.* (i) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section is for any reason held to be unenforceable by the indemnified parties although applicable in accordance with its terms in respect of any losses, liabilities, claims, damages, judgments and expenses suffered by an indemnified party referred to therein, each applicable 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 losses, liabilities, claims, damages, judgments and expenses in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and of the liable selling Holders (including, in each case, that of their respective officers, managers, employees and agents) on the other in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages, judgments or expenses, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and of the liable selling Holders (including, in each case, that of their respective officers, managers, employees and agents) on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or by or on behalf of the selling Holders, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, liabilities, claims, damages, judgments and expenses referred to above shall be deemed to include, subject to the limitations set forth in paragraph (c) of this Section, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim.

(ii) The Company and each Holder of Registrable Securities agree that it would not be just and equitable if contribution pursuant to this paragraph (d) were determined by *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in sub-paragraph (i) above. Notwithstanding the provisions of this paragraph (d), in the case of distributions to the public, an indemnifying Holder shall not be required to contribute any amount in excess of the amount by which (A) the total price at which the Registrable Securities sold by such indemnifying Holder and its affiliated indemnifying Holders and distributed to the public were offered to the public exceeds (B) the amount of any damages which such indemnifying Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. 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.

(iii) For purposes of this Section, each Person, if any, who controls a Holder, Investor Group or an Underwriter within the meaning of Section 15 of the Securities Act (and their respective partners, managers, officers and employees) shall have the same rights to contribution as such Holder, Investor Group or Underwriter; and each manager of the Company, each officer of the Company who signed the Registration Statement, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, shall have the same rights to contribution as the Company.

#### **Section 6. *Miscellaneous.***

(a) *No Inconsistent Agreements.* The Company will not on or after the date of this Agreement enter into any agreement which conflicts with the provisions of this Agreement or which grants registration or similar rights without the prior written consent of the Sponsor Stockholders, nor has the Company entered into any such agreement. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company's other issued and outstanding securities under any such agreements.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Company has obtained the prior written consent of the Sponsor Stockholders, by the Holders of a majority of the Registrable Securities, and, if any such amendment, modification, supplement, waiver or consent would materially adversely affect the rights of any Holder hereunder in a different manner or degree than would affect the rights of all Holders, the written consent of each such adversely affected Holder shall be obtained; *provided, however*, that nothing herein shall prohibit any amendment, modification, supplement, waiver or consent the effect of which is limited only to those Holders who have agreed to such amendment, modification, supplement, waiver or consent.

(c) *Investor Action.* Any action which requires the approval of an Investor Group shall only be effective if approved by Investors beneficially holding a majority of the Registrable Securities held by all members of such Investor Group.

(d) *Notices.* Any notice, demand, request, waiver, or other communication under this Agreement shall be personally served in writing, shall be deemed to have been given on the date of service, and shall be addressed as follows:

**To the Company:**  
Foundation Coal Holdings, LLC  
999 Corporate Boulevard  
Linthicum Heights, Maryland 21090  
Attention:  
Fax:

**With copies to:**  
The Blackstone Group  
345 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10154  
Attention: David Foley  
Fax: (212) 583-5712

First Reserve Corporation  
One Lafayette Place  
Greenwich, CT 06830  
Attention: Alex Krueger  
Fax: (203) 661-6729

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
Attention: David Lieberman  
Fax: (212) 455-2502

Bartlit Beck Herman Palenchar & Scott LLP  
1899 Wynkoop Street, Suite 800  
Denver, CO 80202  
Attention: James L. Palenchar  
Fax: (303) 592-3140

**To Blackstone Investor Group:**  
The Blackstone Group  
345 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10154  
Attention: David Foley  
Fax: (212) 583-5712

**With a copy to:**  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
Attention: David Lieberman  
Fax: (212) 455-2502

**To FRC Investor Group:**  
First Reserve Corporation  
One Lafayette Place

Greenwich, CT 06830  
Attention: Alex Krueger  
Fax: (203) 661-6729

Bartlit Beck Herman Palenchar & Scott LLP  
1899 Wynkoop Street, Suite 800  
Denver, CO 80202  
Attention: James L. Palenchar  
Fax: (303) 592-3140

With a copy to:

**To AMCI Investor Group:**

AMCI Acquisition, LLC  
475 Steamboat Road  
Greenwich, CT 06830  
Attention: Hans Mende  
Fax: (203) 625-9231

With a copy to:

McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219  
Attention: Leslie A. Grandis  
Fax: (804) 698-2069

**To any other Stockholder**

At the address set forth on Schedule I.

(e) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without the need for an express assignment, subsequent Holders. If any successor, assignee or transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement. For purposes of this Agreement, "successor" for any entity other than a natural person shall mean a successor to such entity as a result of such entity's merger, consolidation, liquidation, dissolution, sale of substantially all of its assets, or similar transaction.

(f) *Recapitalizations, Exchanges, etc., Affecting Registrable Securities.* The provisions of this Agreement shall apply, to the full extent set forth herein with respect to the Registrable Securities, to any and all securities or capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution of such Registrable Securities, by reason of any dividend, split, issuance, reverse split, combination, recapitalization, reclassification, merger, consolidation or otherwise.

(g) *Counterparts*. This Agreement may be executed in two or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all of which counterparts, taken together, shall constitute one and the same instrument.

(h) *Descriptive Headings, Etc.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning of terms contained herein. Unless the context of this Agreement otherwise requires: (1) words of any gender shall be deemed to include each other gender; (2) words using the singular or plural number shall also include the plural or singular number, respectively; (3) the words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section and paragraph references are to the Articles, Sections and paragraphs to this Agreement unless otherwise specified; (4) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless otherwise specified; (5) "or" is not exclusive; and (6) provisions apply to successive events and transactions.

(i) *Severability*. In the event that any one or more of the provisions, paragraphs, words, clauses, phrases or sentences contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision, paragraph, word, clause, phrase or sentence in every other respect and of the other remaining provisions, paragraphs, words, clauses, phrases or sentences hereof shall not be in any way impaired, it being intended that all rights, powers and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

(j) *Governing Law*. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES WHICH WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

(k) *Specific Performance*. The parties hereto acknowledge that there would be no adequate remedy at law if any party fails to perform in any material respect any of its obligations hereunder, and accordingly agree that each party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of any other party under this Agreement in accordance with the terms and conditions of this Agreement.

(i) *Arbitration.* Any dispute, controversy or claim arising out of or relating to this Agreement or the Registration Rights Agreement (a "Dispute"), shall be settled by binding arbitration in accordance with the commercial arbitration rules of the Center for Public Resources. Any such Dispute shall be consolidated, to the extent practicable, in any arbitration with any dispute, claim or controversy of any other Stockholder unless the arbitrator decides that such consolidation cannot occur. The arbitration shall be conducted in New York City, New York, and any court having jurisdiction thereof may be immediately issue judgment on the arbitration award. The Stockholders agree that the arbitration provided for in this Section 6(l) shall be the exclusive means to resolve all Disputes.

(m) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the Company, on the one hand, and the other parties to this Agreement, on the other, with respect to such subject matter.

(n) *Other Registration Rights Agreement.* Each of the Stockholders and the Company (as surviving corporation in the Merger) agrees that the Registration Rights Agreement dated as of July 30, 2004 to which it is party is hereby terminated and of no further force and effect.

\* \* \*



**FOUNDATION COAL HOLDINGS, INC.**

/s/ GREG WALKER

By: Name: Greg Walker  
Title: Senior V.P.–General Counsel and Secretary

**FIRST RESERVE FUND IX, L.P.**

By: First Reserve GP IX, L.P., its General Partner

By: First Reserve GP IX, Inc., its General Partner

/s/ ALEX T. KRUEGER

By: Name: Alex T. Krueger  
Title: Director

**BLACKSTONE FCH CAPITAL PARTNERS IV L.P.**

By: Blackstone Management Associates IV L.L.C., its General  
Partner

/s/ DAVID I. FOLEY

By: Name: David I. Foley  
Title: Authorized Signatory

**BLACKSTONE FAMILY INVESTMENT  
PARTNERSHIP IV-A L.P.**

By: Blackstone Management Associates IV L.L.C., its General  
Partner

/s/ DAVID I. FOLEY

By: Name: David I. Foley  
Title: Authorized Signatory

AMCI ACQUISITION, LLC

/s/ HANS J. MENDE

By: Name: Hans J. Mende  
Title: President

**Management Stockholders:**

/s/ DR. KLAUS DIETER-BECK

---

Dr. Klaus Dieter-Beck

/s/ JAMES J. BRYJA

---

James J. Bryja

/s/ JAMES A. OLSEN

---

James A. Olsen

/s/ MICHAEL R. PEELISH

---

Michael R. Peelish

/s/ JAMES F. ROBERTS

---

James F. Roberts

/s/ JOHN R. TELLMANN

---

John R. Tellmann

/s/ GREG A. WALKER

---

Greg A. Walker

/s/ FRANK J. WOOD

---

Frank J. Wood

## Addresses for Other Stockholders

**Stockholder:**

Dr. Klaus Dieter-Beck

**Address:** 790 Harness Creek View Drive  
Annapolis, MD 21403

James J. Bryja

**Address:** 4446 Cross Country Drive  
Ellicott City, MD 21042

James A. Olsen

**Address:** 1906 Aquinas Drive  
Gambrills, MD 21054

Michael R. Peelish

**Address:** 2707 Cranbourne Court  
Davidsonville, MD 21035

James F. Roberts

**Address:** 226 Rock Ridge Road  
Millersville, MD 21108

John R. Tellmann

**Address:** 455 Sackett Court  
Severna Park, MD 21146

Greg A. Walker

**Address:** 24 Harness Creek View Court  
Annapolis, MD 21403

Frank J. Wood

**Address:** 610 Brownstone Drive  
Severna Park, MD 21146

[Signature Page to Registration Rights Agreement]

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First Reserve Corporation  
One Lafayette Place  
Greenwich, CT 06830  
(203) 661-6601  
Fax (203) 661-6729

August 17, 2004

Mr. Hans J. Mende  
President  
AMCI Acquisition, LLC  
c/o American Metals & Coal International, Inc.  
475 Steamboat Road, 2<sup>nd</sup> Floor  
Greenwich, CT 06830

**Re: Foundation Coal Holdings, Inc.**

Dear Hans:

We refer you to that certain Stockholders Agreement (the "Stockholders Agreement") related to the shares of common stock of Foundation Coal Holdings, Inc., a Delaware corporation (f/k/a FC 1 Corp.) (the "Company") dated as of August 17, 2004, among the Stockholders named therein. Capitalized terms not otherwise defined in this letter agreement have the meanings given them in the Stockholders Agreement.

This letter agreement will confirm our arrangements with respect to certain governance matters between FRC Investor Group and the AMCI Investor Group (each a "party" and together the "parties") as follows:

1. For so long as the FRC Investor Group is entitled to appoint three Directors to the Board of the Company, it will appoint one person designated by the AMCI Investor Group who is reasonably satisfactory to the FRC Investor Group. Initially, this person will be Hans J. Mende. Should the FRC Investor Group not be entitled to appoint three Directors to the Board of the Company, it will have no obligation to appoint a person designated by the AMCI Investor Group.
2. Until such time as the Company has completed a Qualified IPO, the AMCI Investor Group shall have access to all information regarding the Company and its subsidiaries to which the FRC Investor Group has access. Upon completion of a Qualified IPO, the AMCI Investor Group shall have access only to such information as the Company may provide to it.
3. Neither party shall assign all or any part of this letter agreement without the prior written consent of the other. This letter agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties pursuant to this paragraph.
4. Any notice, demand, request, waiver, or other communication under this letter agreement shall be personally served in writing, shall be deemed to have been given on the date of service, and shall be addressed as provided in Section 9.6 of the Stockholders Agreement.

5. This letter agreement shall be construed in accordance with, and governed by, the laws of the State of Delaware without regard to conflicts of laws principles which would result in the application of the laws of another jurisdiction.
6. Any dispute, controversy or claim arising out of or relating to this letter agreement (a "*Dispute*") shall be settled by binding arbitration in accordance with the commercial arbitration rules of the Center for Public Resources. Any such Dispute shall be consolidated, to the extent practicable, in any arbitration with any dispute, claim or controversy of any other Stockholder unless the arbitrator decides that such consolidation cannot occur. The arbitration shall be conducted in New York City, New York, and any court having jurisdiction thereof may be immediately issue judgment on the arbitration award. The parties agree that the arbitration provided for in this section 6 shall be the exclusive means to resolve all Disputes.
7. This letter agreement and the Stockholders Agreement set forth the entire understanding and agreement of the parties hereto and supersede any and all other understandings, term sheets, negotiations or agreements between the parties relating to the subject matter of this letter agreement.
8. This letter agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.
9. In the event that any one or more of the provisions contained in this letter agreement shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any other provision of this letter agreement, but this letter agreement shall be construed in a manner which, as nearly as possible, reflects the original intent of the parties.
10. This letter agreement may only be modified or amended by a writing referring to this letter agreement signed by the parties.
11. The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this letter agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this letter agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they may be entitled at law or in equity.
12. The AMCI Investor Group acknowledges that any information to which it has access pursuant to this letter agreement will be treated in confidence by it to the full extent contemplated by Section 9.18 of the Stockholders Agreement and that the FRC Investor Group is an intended beneficiary of the covenants of the AMCI Investor Group made by reason of such Section.

**[Signature Page Follows]**

If the foregoing reflects our agreement, we ask that you sign, date and return a copy of this letter to the undersigned.

Sincerely,

**First Reserve Corporation**

/s/ ALEX T. KRUEGER

By: Name: Alex T. Krueger  
Title: Director

**ACKNOWLEDGED AND AGREED:**

**AMCI Acquisition, LLC**

/s/ HANS J. MENDE

By: Name: Hans J. Mende  
Title: President

Date: August 17, 2004



