Cover page for:

Memorandum of Surface Use Agreement w/B&N Coal, Inc.

Applies to Tracts:

26-33, 43, 44, 47-50, 52-58 and 60-65

For October 30, 2019 auction to be conducted by:

Schrader Real Estate and Auction Company, Inc.

On behalf of:

CNX Land, LLC

MEMORANDUM OF SURFACE USE AGREEMENT

THIS MEMORANDUM OF SURFACE USE AGREEMENT ("Memorandum"), is made this 13th day of August, 2015 (the "Effective Date") by and between CNX RCPC LLC, a Delaware limited liability company ("RCPC") and CONSOL MINING COMPANY LLC, a Delaware limited liability company ("CMC"), both with an address of 1000 CONSOL Energy Drive, Canonsburg, Pennsylvania 15317 (RCPC and CMC are collectively referred to as "Grantor"), and B&N COAL, INC., an Ohio corporation whose address is P.O. Box 100, Dexter City, Ohio 45727 ("Grantee"). (Grantor and Grantee are each sometimes referred to as a "Party" and collectively referred to as the "Parties").

RECITALS:

WHEREAS, RCPC and CMC each own certain surface lands located in Center, Marion, Seneca and Stock Townships, Noble County, Ohio as described on <u>Exhibit A-1</u> and depicted on <u>Exhibit A-2</u> (each a "<u>Surface Property</u>" and collectively the "<u>Surface Properties</u>"); and

WHEREAS, in connection with that certain Acquisition Agreement dated March 2, 2015 between Grantee, Carl L. Baker, Jr. and Susan A. Baker, CNX Gas Company LLC and RCPC ("Acquisition Agreement"), RCPC and CNX Marine Terminals Inc. released, remised and quitclaimed to Grantee, pursuant to that certain Quitclaim Deed dated on or about the date hereof ("Deed"), the Number Nine (#9) vein or seam of coal including the Number Nine Rider Seam (#9 R), the combination of such coal also being referred to as the Sewickley or the Meigs Creek coal ("#9 Coal") underlying certain real property located in Noble County, Ohio, as more particularly described in the Deed (the "Owned Coal Tracts"); and

WHEREAS, pursuant to the Acquisition Agreement, RCPC released that certain lease (where Grantee was the current lessor) pursuant to the Surrender and Release of Lease dated February 26, 2015, and recorded in Noble County, Ohio on March 12, 2015, at Instrument Number 201500068584 for the #9 Coal underlying certain real property, as more particularly described in the Surrender and Release of Lease ("Leased Coal Tract"; the Owned Coal Tracts and the Leased Coal Tract are collectively, the "Coal Tracts" and all Coal Tracts are shown on Exhibit B); and

WHEREAS, in connection with the Acquisition Agreement, the Parties entered into that certain Surface Use Agreement (the "Agreement"), dated on or about the date hereof, whereby Grantor granted to Grantee the non-exclusive right to use the Surface Properties in connection with Grantee's surface mining operations of the #9 Coal from the Coal Tracts, which includes any pre-mining, during mining and post-mining environmental testing required by Applicable Laws (as defined below) in connection with surface mining operations of the #9

(B1950242,7)

Coal ("Grantee's Surface Mining Operations"), on the terms and subject to the conditions set forth in the Agreement; and

WHEREAS, Grantor is currently or may in the future use (or may currently be permitting others or may in the future permit others including Grantor-Related Parties, as defined in Section 3 herein, to use) the Surface Properties for any purpose including, without limitation, in connection with drilling, developing, exploring and producing oil and gas underlying the Surface Properties or other properties within the vicinity of the Surface Properties and/or to drill, develop, explore, mine and/or produce any minerals (other than the #9 Coal) underlying the Surface Properties or other properties in the vicinity of the Surface Properties (collectively, the "Grantor-Related Operations"); and

WHEREAS, in addition to granting Grantee the non-exclusive right to use the Surface Properties, subject to the terms provided in the Agreement, the Agreement also governs the operational relationship between the Grantor-Related Operations and Grantee's Surface Mining Operations; and

WHEREAS, for the purpose of placing the public on notice of the Agreement, Grantor and Grantee have executed, acknowledged and delivered this Memorandum to the Office of the Recorder.

NOW, THEREFORE, Grantor and Grantee, intending to be legally bound, hereby publish and give notice of the rights created and granted by, and obligations under, the Agreement, as follows:

- 1. Grant. Upon and subject to the agreements, covenants, and conditions set forth in the Agreement, Grantor granted to Grantee, from and after the Effective Date, the non-exclusive right to use the Surface Properties solely for the purpose of conducting Grantee's Surface Mining Operations and for no other purposes; provided, however, notwithstanding the foregoing:
 - (a) All Grantee's Surface Mining Operations shall be performed in such a manner as not to unreasonably interfere with or impede any Grantor-Related Party's mining, drilling or other operations now or hereafter conducted in, on or under the Surface Properties, including but not limited to the Grantor-Related Operations. Whenever any Grantor-Related Party and Grantee are performing any operations within, on or under the Surface Properties at the same time, the Grantor-Related Party and Grantee shall cooperate with each other so that such parallel activities can be accommodated, provided however, if such activities cannot be accommodated or such activities interfere with or impede any Grantor-Related Party's mining, drilling or other operations now or hereafter conducted within, on or under the Surface Properties as determined by Grantor, then such Grantor-Related Party shall have priority in use and

enjoyment of the Surface Properties for any and all of the Grantor-Related Party's mining, drilling or other operations now or hereafter conducted within, on or under the Surface Properties; and

- (b) Grantee shall not conduct any of Grantee's Surface Mining Operations on any Approved Well Pad (as defined in the Agreement) or perform any surface operations on the Surface Properties within three hundred (300) feet of the perimeter of any Approved Well Pad; and
- (c) Grantor shall continue to have the right to use the Surface Properties for any purposes and shall continue to have the right at any time to grant rights-of-way, easements, license, leases or other similar surface rights to any Grantor-Related Party or third party over all or any portion of the Surface Properties, subject to the terms and conditions in the Agreement; and
- (d) Grantee shall not have the right to use any roads, access ways, improvements or other areas of any Surface Property where any Grantor-Related Party is using such surface or constructed such improvements without the prior written consent of Grantor which consent shall be in Grantor's sole and absolute discretion.

The Agreement governs over any common law right Grantee has to use the Surface Properties in connection with the Coal Tracts or Grantee's Surface Mining Operations.

Term. The initial term of the Agreement commenced on the Effective Date and continues for a period of twenty-five (25) years after the Effective Date ("Initial Term"), unless otherwise terminated as provided in the Agreement. So long as Grantee is not in material breach of the Agreement, Grantee has the right to extend the Initial Term of the Agreement with respect to Surface Properties that are not Released Surface Properties (as defined in Section 3 below) for one (1) additional period of twenty-five (25) years ("Extension Term") by providing written notice to Grantor no later than twelve (12) months prior to the end of the Initial Term and no earlier than eighteen (18) months prior to the end of the Initial Term. The Initial Term and the Extension Term, if any, shall collectively be the "Term." The Agreement and all rights granted in the Agreement shall terminate automatically (except those provisions that survive expiration or termination) upon the earliest of: (a) the last day of the Term or (b) upon notice from Grantor, if Grantee has breached a material obligation under the Agreement, and such breach remains uncured after the applicable cure period; provided, that, at Grantor's option, in its sole discretion, Grantor may extend the Term of the Agreement for all or some of the Surface Properties (as determined by Grantor) until all bonds posted in connection with Grantee's Surface Mining Operations have been released and Grantee has satisfied all requirements of all Applicable Laws related to Grantee's Surface Mining Operations. Grantee shall have the right, after termination of this Agreement for any reason, to enter the Surface Properties for the purpose of reclaiming areas disturbed by its operations and

otherwise complying with the requirements of any Applicable Law, provided that, in such instance, Grantee shall comply with all the obligations on this Agreement, including the insurance requirements.

- 3. Released Surface Properties. On that date that (i) Grantee has completed Grantee's Surface Mining Operations on any Surface Property(ies), including any and all reclamation of such Surface Property(ies) as required in the Agreement and by Applicable Laws and any and all requirements of Applicable Laws including regulatory agencies have been satisfied with respect to such Surface Property(ies), and (ii) Grantee's bond for such Surface Property(ies) has been released (such Surface Property(ies) for which (i) and (ii) have occurred shall be a "Released Surface Property(ies)"), the following shall automatically occur:
 - (a) Grantee shall have no further rights to use such Released Surface Property(ies);
 - (b) The Agreement and Grantee's rights under the Agreement expire and terminate with respect to such Released Surface Property(ies) (except for provisions that expressly survive the expiration or termination of the Agreement); and
 - (c) the defined term "Surface Property" and "Surface Properties" shall exclude such Released Surface Property(ies) (except, however, with respect to the use of such defined terms in provisions that expressly survive expiration or termination of the Agreement).

For avoidance of doubt, Grantee's option to extend the Initial Term for the Extension Term shall only apply to Surface Properties that are not Released Surface Properties.

- 4. <u>Compliance with Laws</u>. Grantee shall (and shall require Grantee Parties to) comply with all federal, state, local, and municipal laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, advisories, circulars, orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders, standards, directives, and other requirements of any governmental entity, whether now or hereafter enacted, created or promulgated, of any kind or nature, including, without limitation, all zoning, land use, building, health, security and environmental laws ("<u>Applicable Laws</u>") which at any time now or in the future may apply to the rights granted hereunder, the Surface Properties or Grantee's Surface Mining Operations.
- 5. <u>Counterparts</u>: Capitalized Terms. This Memorandum may be executed in any number of counterparts, each of which, when executed, shall be deemed an original. Any capitalized terms not defined herein shall have those meanings as set forth in the Agreement. "<u>Grantor-Related Parties</u>" shall mean Grantor, its affiliates and any joint venture partner of

Grantor or its affiliates. Each of the Grantor-Related Parties may sometimes be referred to as a "Grantor-Related Party").

THIS MEMORANDUM OF SURFACE USE AGREEMENT IS NOT A COMPLETE SUMMARY OF THE SURFACE USE AGREEMENT. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THIS MEMORANDUM OF SURFACE USE AGREEMENT AND THE SURFACE USE AGREEMENT, THE TERMS AND PROVISIONS OF THE SURFACE USE AGREEMENT SHALL CONTROL.

[Signature and Notary Pages Follow]

Volume Pase

IN WITNESS WHEREOF, the undersigned parties, intending to be legally bound, have executed this Memorandum as of the day and year first above written.

RECEIPT #55491

GRANTOR:

CNX RCPC LLC

Stephen W. Johnson, Vice President

201500070872
Filed for Record in
NOBLE COUNTY, OHIO
JUANITA MATHENEY, RECORDER
12-07-2015 At 08:18 am.
AGREE LEASE 168.00
OR Volume 275 Pase 220 -

201500070872 B & N COAL INC PICKUP

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF WASHINGTON

_, 2015, before me, the undersigned officer, On the 13H day of August, 2015, before me, the undersigned officer, personally appeared Stephen W. Johnson, who acknowledged himself to be the Vice President of CNX RCPC LLC, a Delaware limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument on behalf of the company, in my said State.

In witness hereof, I hereunto set my hand and official seal.

(Notarial Seal)

My commission expires 5/13/2016

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal Notaria Seal
Eve A. Flaherty, Notary Public
Cecil Twp., Washington County
My Commission Expires May 13, 2016
EMBER, PENINSYLVANIA ABSOCIATION OF NOTARIES

[Memorandum of Surface Use Agreement]

GRANTOR:

CONSOL MINING COMPANY LLC

Stephen W. Johnson, Vice President

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF WASHINGTON

On the 13th lay of August, 2015, before me, the undersigned officer, personally appeared Stephen W. Johnson, who acknowledged himself to be the Vice President of CONSOL MINING COMPANY LLC, a Delaware limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument on behalf of the company, in my said State.

In witness hereof, I hereunto set my hand and official seal.

(Notarial Seal)

My commission expires 5/13/2016

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Eve A. Flaherty, Notary Public
Cecil Twp., Washington County
My Commission Expires May 13, 2016
MBER, PENNSYLVANIA ASSOCIATION OF NOTARI

[Memorandum of Surface Use Agreement]

GRANTEE:

B&N COAL

Carl L. Baker, Jr., President

STATE OF OHIO

COUNTY OF VOLE

On the Hay of _______, 2015, before me, the undersigned officer, personally appeared Carl L. Bakes, Jr., who acknowledged himself to be the President of B&N COAL, INC., an Ohio corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument on behalf of the corporation, in my said State.

In witness hereof, I hereunto set my hand and official seal.

(Notarial Seal)

GWYNNE A. CUNNINGHAM, Notary Public

In and For The State of Ohio

My Commission Expires November 11, 2018

My commission expires

Prepared by/Return to: CNX RCPC LLC, CNX Center, 1000 CONSOL Energy Drive, Canonsburg, PA 15317-6506.

[Memorandum of Surface Use Agreement]

Exhibit A-1

DESCRIPTION OF SURFACE PROPERTIES

All of the following described parcels are subject to all outsales of record.

Parcel owned by CONSOL Mining Company LLC:

CONSOL Agreement Number	Parcel ID	Township	Vesting Deed Book and Page
305354	23-21400.000	Marion	Instrument # 201400063591

Parcels owned by CNX RCPC LLC:

Parcel ID	Township	Vesting Deed Book and Page
07-21094.000	Center	Vol. 165, Pg. 466
23-51006.000	Marion	Vol. 165, Pg. 466
31-21088.000	Seneca	Vol. 165, Pg. 466
31-21087.000	Seneca	Vol. 165, Pg. 466
31-21001.000	Seneca	Vol. 165, Pg. 466
31-21008.000	Seneca	Vol. 165, Pg. 466
31-21010.000	Seneca	Vol. 165, Pg. 466
31-21009.000	Seneca	Vol. 165, Pg. 466
31-21002.000	Seneca	Vol. 165, Pg. 466
31-21003.000	Seneca	Vol. 165, Pg. 466
31-21004.000	Seneca	Vol. 165, Pg. 466
31-21048.000	Seneca	Vol. 165, Pg. 466
31-21046.000	Seneca	Vol. 165, Pg. 466
	07-21094.000 23-51006.000 31-21088.000 31-21087.000 31-21001.000 31-21008.000 31-21010.000 31-21002.000 31-21003.000 31-21004.000 31-21048.000	07-21094.000 Center 23-51006.000 Marion 31-21088.000 Seneca 31-21087.000 Seneca 31-21001.000 Seneca 31-21008.000 Seneca 31-21010.000 Seneca 31-21009.000 Seneca 31-21002.000 Seneca 31-21003.000 Seneca 31-21048.000 Seneca 31-21048.000 Seneca

CONSOL Agreement Number	Parcel ID	Township	Vesting Deed Book and Page
305389 (305056)	31-21049.000	Seneca	Vol. 165, Pg. 466
305389 (305123)	31-21074-000	Seneca	Vol. 165, Pg. 466
305389 (305056)	31-21050.000	Seneca	Vol. 165, Pg. 466
305389 (305208)	31-21081.000	Seneca	Vol. 165, Pg. 466
305389 (305257)	31-21082.000	Seneca	Vol. 165, Pg. 466
305389 (305078)	31-21078.000	Seneca	Vol. 165, Pg. 466
305389 (305078)	31-21083.000	Seneca	Vol. 165, Pg. 466
305389 (305078)	23-21041.000	Marion	Vol. 165, Pg. 466
305389 (305078)	23-21042.000	Marion	Vol. 165, Pg. 466
305389 (305257)	23-21036.000	Marion	Vol. 165, Pg. 466
305389 (305129)	07-21004.000	Center	Vol. 165, Pg. 466
305389 (305266)	07-21001.000	Center	Vol. 165, Pg. 466
305389 (305241)	23-21050.000 & 23.21050.001	Marion	Vol. 165, Pg. 466
305389 (305052)	23-21051.000	Marion	Vol. 165, Pg. 466
305389 (305088)	23-21058.000	Marion	Vol. 165, Pg. 466
305389 (305314)	07-21056.000	Center	Vol. 165, Pg. 466
305389 (305227)	07-21057.000	Center	Vol. 165, Pg. 466
305389 (305333)	07-21058.000	Center	Vol. 165, Pg. 466
305389 (305314)	07-21054.000	Center	Vol. 165, Pg. 466
305389 (305086)	23-21077.000	Marion	Vol. 165, Pg. 466
305389 (305088)	23-21064.000	Marion	Vol. 165, Pg. 466
305389 (305086)	23-21046.000	Marion	Vol. 165, Pg. 466

CONSOL Agreement Number	Parcel ID	Township	Vesting Deed Book and Page
305389 (305086)	23-21062.000	Marion	Vol. 165, Pg. 466
305389 (305054)	31-21052.000	Seneca	Vol. 165, Pg. 466
305389 (305113)	31-21012.000	Seneca	Vol. 165, Pg. 466
305389 (305148)	31-21021.000	Seneca	Vol. 165, Pg. 466
305389 (305266)	31-21005.000	Seneca	Vol. 165, Pg. 466
305389 (305270)	31-21044.000	Seneca	Vol. 165, Pg. 466
305389 (305357)	31-21061.000	Seneca	Vol. 165, Pg. 466
305389 (305123)	31-21047.000	Seneca	Vol. 165, Pg. 466
305389 (305091)	31-21062.000	Seneca	Vol. 165, Pg. 466
305389 (305083)	31-21096.000	Seneca	Vol. 165, Pg. 466
305389 (305083)	31-21097.000	Seneca	Vol. 165, Pg. 466
305389 (305071)	31-21100.000	Seneca	Vol. 165, Pg. 466
305389 (305071)	31-21099.000	Seneca	Vol. 165, Pg. 466
305389 (305066)	31-21098.000	Seneca	Vol. 165, Pg. 466
305389 (305166)	31-21112.000	Seneca	Vol. 165, Pg. 466
305389 (305045)	31-21079.000	Seneca	Vol. 165, Pg. 466
305389 (305045)	31-21077.000	Seneca	Vol. 165, Pg. 466
305389 (305099)	34-21193.000	Stock	Vol. 165, Pg. 466
305389 (305004)	34-21188.000	Stock	Vol. 165, Pg. 466
305389 (305004)	34-21190.000	Stock	Vol. 165, Pg. 466
305389 (305017)	34-21191.000	Stock	Vol. 165, Pg. 466
305389 (305355)	34-40069.000	Stock	Vol. 165, Pg. 466

CONSOL Agreement Number	Parcel ID	Township	Vesting Deed Book and Page
305389 (305110)	34-21498.000	Stock	Vol. 165, Pg. 466
305389 (305031)	34-21500.000	Stock	Vol. 165, Pg. 466
305389 (305099)	34-21499.000	Stock	Vol. 165, Pg. 466
305389 (305031)	34-21375.000	Stock	Vol. 165, Pg. 466
305389 (305221)	34-21481.000	Stock	Vol. 165, Pg. 466
305389 (305217)	34-21483.000	Stock	Vol. 165, Pg. 466
305389 (305200)	34-21356.000	Stock	Vol. 165, Pg. 466
305389 (305200)	34-21355.000	Stock	Vol. 165, Pg. 466
305389 (305217)	34-21484.000	Stock	Vol. 165, Pg. 466
305389 (305112)	34-21360.000	Stock	Vol. 165, Pg. 466
305389 (305200)	34-21354.000	Stock	Vol. 165, Pg. 466
305410	34-21485.000	Stock	Instrument #: 200700040018
305389 (305318)	34-21486.000	Stock	Vol. 165, Pg. 466
305389 (305198)	34-21340.000	Stock	Vol. 165, Pg. 466
305389 (305197)	34-21353.000	Stock	Vol. 165, Pg. 466
305389 (305197)	34-21341.000	Stock	Vol. 165, Pg. 466
305389 (305198)	34-21338.000	Stock	Vol. 165, Pg. 466
305389 (305197)	34-21337.000	Stock	Vol. 165, Pg. 466
305389 (305338)	34-21333.000	Stock	Vol. 165, Pg. 466
305389 (305161)	34-21343.000	Stock	Vol. 165, Pg. 466
305389 (305126)	34-21347.000	Stock	Vol. 165, Pg. 466
305389 (305150)	34-21345.000	Stock	Vol. 165, Pg. 466

CONSOL Agreement Number	Parcel ID	Township	Vesting Deed Book and Page
305389 (305150)	34-21344.000	Stock	Vol. 165, Pg. 466
305389 (305150)	34-21348.000	Stock	Vol. 165, Pg. 466
305389 (305141)	34-21350.000	Stock	Vol. 165, Pg. 466
305389 (305141)	34-21349.000	Stock	Vol. 165, Pg. 466
305389 (305126)	34-21370.000	Stock	Vol. 165, Pg. 466
305389 (305126)	34-21369.000	Stock	Vol. 165, Pg. 466
305389 (305112)	34-21368.000	Stock	Vol. 165, Pg. 466
305389 (305112)	34-21367.000	Stock	Vol. 165, Pg. 466
305389 (305037)	34-21373.000	Stock	Vol. 165, Pg. 466
305389 (305297)	34-21342.000	Stock	Vol. 165, Pg. 466
305389 (305081)	23-21399.000	Marion	Vol. 165, Pg. 466
305389 (305081)	23-21003.000	Marion	Vol. 165, Pg. 466
305389 (305081)	23-21398.000	Marion	Vol. 165, Pg. 466
305389 (305327)	23-21408.000	Marion	Vol. 165, Pg. 466
305389 (305327)	23-21407.000	Marion	Vol. 165, Pg. 466
305389 (305367)	07-21028.000	Center	Vol. 165, Pg. 466
305389 (305054)	31-21051.000	Seneca	Vol. 165, Pg. 466
305389 (305294)	34-21346.000	Stock	Vol. 165, Pg. 466
305389 (305244)	34-21365.000	Stock	Vol. 165, Pg. 466

EXHIBIT A-2

MAP OF SURFACE PROPERTIES

[See attached map]

<u>EXHIBIT B</u>

MAP OF COAL TRACTS

[See attached map]

