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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	Case No. 15-33896-KRH
ALPHA NATURAL RESOURCES, *et al.*,	Chapter 11
Debtors.	Jointly Administered

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' OMNIBUS MOTION FOR ENTRY OF (I) AN ORDER ESTABLISHING BIDDING AND SALE PROCEDURES FOR THE POTENTIAL SALE OF CERTAIN MINING PROPERTIES; (II) ONE OR MORE ORDERS APPROVING THE SALE OF SUCH ASSETS; (III) AN ORDER APPROVING SETTLEMENTS RELATED TO UNENCUMBERED ASSETS AND THE PRE-PETITION LENDERS' DIMINUTION CLAIM; AND (IV) AN ORDER APPROVING AMENDMENTS TO CERTAIN CASE MILESTONES IN CONNECTION WITH THE DIP CREDIT AGREEMENT

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned jointly administered chapter 11 cases (the "Cases"), through its undersigned counsel, hereby submits this objection (the "Objection") to the relief requested by *Debtors' Omnibus Motion for Entry of (I) an Order Establishing Bidding and Sale Procedures for the Potential Sale of Certain Mining Properties; (II) One or More Orders Approving the Sale of Such Assets; (III) an Order Approving Settlements Related to Unencumbered Assets and the Pre-*

Petition Lenders' Diminution Claims; and (IV) an Order Approving Amendments to Certain Case Milestones in Connection with the DIP Credit Agreement [Docket No. 1464] (the "Motion").[1] By this Objection, the Committee objects to those aspects of the Motion scheduled to be heard on March 3, 2016.[2] In support of its Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. On the Petition Date, the Debtors urged this Court to approve one of the most expensive postpetition financing arrangements in the history of the Bankruptcy Code. The Debtors did so notwithstanding the fact that they had more than one billion dollars of cash on hand and possessed significant unencumbered assets, which they could have used to access sources of liquidity on either a consensual or non-consensual basis. The Debtors justified the relief that they sought on the basis that the DIP Financing, along with the Pre-Petition Lenders' consent to use their alleged cash collateral, would provide the necessary funding for them to pursue an extended operational and financial restructuring that would operate for the benefit of their creditors.[3] The Debtors also subsequently assured the Court that the DIP Lenders would not be permitted to dictate the economic outcome of these Cases. The record of these Cases, including the relief requested in the Motion, proves these statements to be false.

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1 Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bidding Procedures (as defined in the Motion), and the Final DIP Order (as defined in the Motion), as applicable.

2 All other relief requested in the Motion will be considered at a subsequent hearing, if at all. Accordingly, the Committee reserves all rights with respect to such relief and the matters relating thereto.

3 As stated by counsel for the Debtors at the first day hearing, the Pre-Petition Lenders "agreed to a very important financing package for this company that will give it the runway it needs to develop a new business plan, that will be a downsized business plan, and deal with the many challenges that Your Honor undoubtedly is aware that [the Debtors] face." (Aug. 4, 2015 Hr'g Tr. at 13:11-24.)

2. Other than the Pre-Petition Lenders, however, the Debtors have not used any of the seven months since the Petition Date to engage with key stakeholders on the terms of the yet-to-be-disclosed "Chapter 11 Plan" that will soon be proposed by the Debtors and that is the subject of the undisclosed Plan Structure Agreement (the "PSA"). Tellingly, although the PSA exists and generally outlines the construct of such Chapter 11 Plan, the Debtors have neither shared its terms with the Court nor sought approval of its terms.[4] The Debtors instead seek backdoor approval of the PSA through DIP Amendment No. 5, which incorporates certain key components of the PSA into new and existing DIP Milestones. This process will enable the DIP Lenders to use the DIP Milestones to, by threat of an Event of Default under the DIP Credit Agreement, enforce the terms of the PSA, thereby maximizing their recoveries as Pre-Petition Lenders.

3. The reason for the Debtors' chosen approach is obvious: if the Debtors were to publicly disclose the terms of the PSA or the Chapter 11 Plan meaningfully in advance of the hearing on the Bidding Procedures and DIP Amendment No. 5, the Court and all of the Debtors' other stakeholders would see that the Bidding Procedures, DIP Amendment No. 5 and the other relief requested by the Motion operate to benefit only the DIP Lenders in their capacity as Pre-Petition Lenders. Specifically, although the Debtors assert that the relief requested is designed to maximize the value of their estates, such relief requires the Debtors to agree to certain so-called "settlements" acknowledging that the Pre-Petition Lenders' claims and liens are of such sizeable

[4] Although the Committee received a copy of the "agreed" PSA from counsel to the DIP Lenders on January 23, 2016, the PSA has not been filed with the Court or otherwise made generally available to parties in interest. In addition, as of the date hereof, the Debtors and DIP Lenders have not agreed to, and the Debtors have not filed, the Stalking Horse APA or the Chapter 11 Plan, each of which was required to have been done under the DIP Milestones as established or modified by DIP Amendment No. 5.

amount and broad scope that the Debtors' other stakeholders will be left with nothing and which liens and claims will form the basis of the Pre-Petition Lenders' proposed Stalking Horse Credit Bid even as to assets that were unencumbered as of the Petition Date.

4. Moreover, in the event that the Pre-Petition Lenders are not the successful bidders on those assets, the Pre-Petition Lenders will still receive the benefit of their "settlements" with the Debtors as a *de facto* break-up fee and, to the extent that the Stalking Horse Credit Bid is rendered ineffective because the Court does not approve those settlements, the DIP Lenders will have the ability to assert an Event of Default under the DIP Credit Agreement.

5. The various components of the PSA transfer all of the value of the Debtors' substantial unencumbered assets to the Pre-Petition Lenders as follows:

1) Purported Unencumbered Asset Settlement: The Debtors assert that the "Unencumbered Asset Settlement" will "settle" their "dispute" with the Pre-Petition Lenders as to which of the Debtors' assets were unencumbered as of the Petition Date. The schedule of "Unencumbered Assets" related to such "settlement" is materially under-inclusive in that it fails to include assets of substantial value that were unencumbered as of the Petition Date. Moreover, such "settlement" would inappropriately limit the rights of parties in interest to be heard as to the issues that the Debtors intend it to resolve, particularly the Committee. Notably, the Debtors did not consult the Committee before agreeing to such "settlement," notwithstanding that the Committee's professionals had been working to identify and preserve unencumbered assets for months. Such "settlement" is one-sided and cannot be approved pursuant to Federal Rule of Bankruptcy Procedure 9019. The ability to identify and preserve unencumbered assets is critical to maximizing the value of the estates and achieving recoveries for unsecured creditors. The Debtors should not be permitted to eliminate the prospects of those recoveries. Instead, the Committee respectfully submits that it should be granted standing to pursue the appropriate causes of action to determine which estate assets are encumbered by the Pre-Petition Lenders' liens and claims.

2) Purported Diminution Claim Allowance Settlement: The Debtors assert that the "Diminution Claim Allowance Settlement" will "settle" their "dispute" with the Pre-Petition Lenders with respect to the methodology for calculating the Pre-Petition Lender's Diminution Claim, which under the Bidding Procedures proposed by the Debtors, is to be used to credit bid for any assets purchased by the Pre-Petition Lenders that are

Unencumbered Assets under the Unencumbered Asset Settlement. Such "settlement" is one-sided and cannot be approved pursuant to Federal Rule of Bankruptcy Procedure 9019. The allowance of the Diminution Claim at an outsized amount under the "settled" methodology will hinder the ability of unsecured creditors to realize a recovery in these Cases. Moreover, the Diminution Claim will be credit bid for the "agreed" Unencumbered Assets to effect a sale that does not return cash to the Debtors' estates.

3) Bidding Procedures: The proposed Bidding Procedures set forth an accelerated timeline for the sale of the Debtors' most valuable assets. The proposed Bidding Procedures also permit the Pre-Petition Lenders, as the Stalking Horse Bidder, to credit bid for Unencumbered Assets prior to approval of either of the Purported Settlements described above. In addition, the Bidding Procedures do not require the Stalking Horse Bidder to allocate or otherwise break out its $500 million credit bid, either between encumbered and unencumbered assets or among the various operating assets it is purchasing. The Stalking Horse Bid thus fails to serve its primary purpose—to set a floor on the value of the various assets on which potential bidders may bid. The effect of these features of the Bidding Procedures, as well as others, is to chill potential bidding.[5] As a result, the Bidding Procedures are not designed to maximize value and should not be approved absent the modifications identified herein.[6]

4) DIP Amendment No. 5: By DIP Amendment No. 5, the Debtors propose to modify the DIP Credit Agreement by adding new DIP Milestones and tightening others, the satisfaction of which is uncertain and beyond the Debtors' control but which will result in an Event of Default under the DIP Credit Agreement if not achieved. The Debtors need not subject themselves to such additional burdens as there has been no Event of Default under the DIP Credit Agreement. The new DIP Milestones, even if achieved, offer no benefit to the estates. The Committee believes that, in particular, the DIP Milestones requiring approval of the Purported Settlements are unlikely to be met and, absent satisfaction of such Milestones, the Debtors will find themselves in default. Further, DIP Amendment No. 5 is inappropriate because it requires the Debtors to file a plan "in form and substance reasonably satisfactory" to the DIP Lenders by February 21, 2016, without any limitation as to whether the DIP Lenders must assess such plan in their capacity as DIP Lenders and not in their capacity as Pre-Petition Lenders. This is an abdication by the

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5 Exhibits A and B to this Objection include certain modifications to the proposed Bidding Procedures Order and Bidding Procedures, respectively.

6 In addition, the Debtors and DIP Lenders have not yet agreed to, and therefore have not yet disclosed the Stalking Horse APA, thereby limiting the ability of parties in interest to evaluate the proposed transaction.

Debtors of their fiduciary duties to other stakeholders. Accordingly, DIP Amendment No. 5 should not be approved by the Court.

5) Chapter 11 Plan: Upon information and belief, the Chapter 11 Plan will first provide for the satisfaction of the DIP Financing, certain prepetition secured claims, administrative expense claims and priority claims, from "agreed" Unencumbered Assets and then, after "agreed" Unencumbered Assets have been exhausted, from Encumbered Assets. This minimizes, rather than maximizes, the value of the Debtors' estates and is yet another mechanism whereby the Debtors are permitting the DIP Lenders to (a) foist all of the Debtors' expenditures on unsecured creditors and (b) take all of the value of the Debtors' most valuable assets for themselves on account of their prepetition claims, regardless of whether such value is attributable to unencumbered assets.

6. DIP Amendment No. 5 confers no identifiable benefit on the Debtors' estates and, if approved, will commit the Debtors to a value minimizing path. It will require the Debtors to not only request, but also obtain the Court's approval of the key components of the PSA on a piecemeal basis, thereby enabling the DIP Lenders to assert leverage over the Debtors if any DIP Milestone is not met, including if the Court determines that one or both of the Purported Settlements (as defined below) cannot be approved. If the Debtors believe that the Purported Settlements and other components of the PSA maximize the value of their estates, then the Debtors should seek approval of such transactions without agreeing to impose upon themselves and junior stakeholders the risk of an Event of Default under the DIP Credit Agreement if the relevant DIP Milestones cannot be met. The DIP Lenders are substantially oversecured by the Debtors' cash alone and have no legitimate need for additional protections or other concessions. In this context, it is clear that DIP Amendment No. 5 does not benefit the Debtors estates, but instead benefits the DIP Lenders on account of their prepetition claims. Accordingly, DIP Amendment No. 5 should not be approved.

7. The Bidding Procedures are flawed in their own right as they are not designed to maximize value for the Debtors' estates. Instead, the Bidding Procedures, will minimize the

prospects for a competitive auction, chill bidding, and generally lead to an outcome that is beneficial only to the Pre-Petition Lenders:

1) the Debtors' proposed timeline is severely constrained and not designed to promote a robust Auction process;

2) the Bidding Procedures will cause substantial confusion among potential bidders by, among other things, permitting the Pre-Petition Lenders to credit bid for the so-called "Reserve Assets" (e.g., the Debtors' key assets) prior to any determination by this Court that they have valid liens (prepetition or otherwise), without providing credit support for such credit bid during the pendency of any appeal;

3) the Stalking Horse Bid does not allocate its proposed purchase price among various asset groups;

4) the Bidding Procedures do not meaningfully disclose details regarding the rules for and conduct of the Auction;

5) the Bidding Procedures grant the Stalking Horse Bidder a right to "match" bids or alternative transactions proposed by Qualified Bidders; and

6) the Debtors do not permit the Committee to be involved in the sale process in any meaningful manner.[7]

8. As the Committee has stated previously, it has no objection to and in fact would support a swift resolution of these Cases, including one that is predicated upon a sale process under section 363 of the Bankruptcy Code. Any such exit, however, must be effected pursuant to a fair and equitable process that is designed to maximize the value of the Debtors' estates for all of the Debtors' stakeholders. It should not involve "settlements" whereby the Debtors seek to silence the constituencies that are not the beneficiaries of those "settlements." It should also not involve a sale pursuant to bidding procedures that will chill bidding and otherwise not maximize value for the Debtors' estates. For the reasons stated in greater detail below, DIP Amendment

[7] In addition to the reasons enumerated here, the Committee has several other concerns with respect to the Bidding Procedures, which are reflected in the redlines to the Bidding Procedures Order and the Bidding Procedures, attached hereto as Exhibits A and B, respectively.

No. 5 and the Bidding Procedures proposed by the Debtors do not provide for a fair and equitable process. Accordingly, the Court should not approve either DIP Amendment No. 5 or, absent the modifications requested in this Objection, the Bidding Procedures.

BACKGROUND

A. DIP Financing

9. At the outset of these cases, the Debtors argued that the DIP Financing was required to pursue a restructuring with an extended runway that would benefit all of their stakeholders. In exchange for the extended runway that they and the DIP Lenders advertised to the Court, the Debtors ultimately provided the DIP Lenders and Pre-Petition Lenders with numerous control rights and a substantial adequate protection package. The Final DIP Order authorized, among other things:

1) First Out Facility: A term loan facility in the amount of $300 million, a portion of which was used to fund a cash collateralized letter of credit facility.

2) Second Out Facility: A facility for letters of credit issued to extend, renew or replace the approximately $192 million of Existing R/C Letters of Credit.

3) Bonding Accommodation: An accommodation facility for certain bonding requests of up to $100 million, subject to potential increases.

10. The DIP Lenders are the lenders and issuers of letters of credit under the First Out Facility. The First Out Facility is governed by the DIP Credit Agreement, which includes bankruptcy-related case milestones (the "DIP Milestones") relating to, among other things, delivery of the Debtors' business plan to the DIP Lenders, entry into a PSA "in form and substance acceptable to" the DIP Lenders and Pre-Petition Lenders, negotiations with representatives of the Debtors' employees and retirees under section 1113 and 1114 of the Bankruptcy Code, and filing of a reorganization plan that is "acceptable" to the DIP and Pre-Petition Lenders. (See DIP Credit Agreement § 5.17.) The DIP Credit Agreement provides that

an Event of Default occurs thereunder if any DIP Milestone is not met. (See DIP Credit Agreement § 8.01(d).)

11. The Final DIP Order gives the Pre-Petition Lenders a broad and comprehensive adequate protection package, which includes, among other components, the following:

Provision of Final DIP Order	Description
Cross-Collateralization Liens (Final DIP Order ¶ 18(a))	The Final DIP Order grants to the Pre-Petition Lenders (subject to the limitations imposed by Paragraph 20(c) of the Final DIP Order) Cross-Collateralization Liens on all prepetition and postpetition property of the Debtors, whether encumbered or unencumbered as of the Petition Date, excluding any Excluded Assets (as defined in the First Out DIP Credit Agreement). The Cross-Collateralization Liens secure a portion of the prepetition debt of the Pre-Petition Secured Parties (such portion, the "Cross-Collateralization Amount"). The Cross-Collateralization Amount is only a positive amount in the context of a down-side scenario for the Pre-Petition Secured Parties.
Adequate Protection Liens (Final DIP Order ¶¶ 15(a), 17(a))	The Final DIP Order grants to the Pre-Petition Lenders (subject to the limitations imposed by Paragraph 20(c) of the Final DIP Order) Adequate Protection Liens on all of the Collateral (as defined in the Final DIP Order), which does not include any Excluded Assets (as defined in the First Out DIP Credit Agreement).[8] The Adequate Protection Claims secure the Adequate Protection Obligations, which are equal in amount to "the aggregate diminution in the value of their respective interests in the Pre-Petition Collateral."

[8] The term "Excluded Assets" is defined to include, among other things, and subject to certain exceptions "any assets to the extent that and for so long as the grant of a security interest therein would ***violate applicable law*** or any organizational documents ***or any contractual or lease provisions or give another party any rights of termination or acceleration*** . . . ." (DIP Credit Agreement § 1.01.) Relatedly, paragraph 20(c) of the Final DIP Order provides for a similar limitation on the grant of liens thereunder.

Credit Bidding Rights (Final DIP Order ¶ 29(b))	The Final DIP Order provides that, subject to the satisfaction of the obligations under the DIP Financing, the Pre-Petition Lenders shall have the right to "credit bid" (subject to the right of any party in interest, including the Committee, to challenge the validity and extent of, and to seek to avoid, any purported liens), as provided for in section 363(k) of the Bankruptcy Code, the full amount of their allowed pre-petition claims for (i) Senior Lender Collateral and (ii) the Collateral (but with respect thereto solely to the extent of the value of their Adequate Protection Liens).
Adequate Protection Payments (Final DIP Order ¶ 15(d))	The Final DIP Order provides that the Debtors shall make certain adequate protection payments to the Pre-Petition Lenders, which include payment of postpetition interest (which is subject to recharacterization upon any determination that the Pre-Petition Lenders are undersecured as of the Petition Date) and payment of certain of their expenses.

B. DIP Amendment No. 3

12. On November 3, 2015, the Debtors filed the Initial DIP Amendment Motion,[9] by which they sought approval of Amendment No. 3 ("DIP Amendment No. 3").[10] DIP Amendment No. 3, among other things, amended the DIP Credit Agreement to impose additional DIP Milestones on the Debtors and modify certain existing DIP Milestones. One new DIP Milestone required that, by January 8, 2016, the Debtors must "enter into a restructuring support agreement with the Required Lenders and the Administrative Agent, in form and substance satisfactory to the Required Lenders and the Administrative Agent" (the "RSA Milestone"). The Committee objected, asserting that, among other things, the RSA Milestone would ultimately force the Debtors to pursue a chapter 11 plan, the terms of which would be dictated by the DIP Lenders, given the requirement that the RSA be "in form and substance satisfactory to the

9 *Motion of the Debtors for Supplemental Order, Pursuant to 11 U.S.C. §§ 105, 363 and 364, Authorizing Amendment to the DIP Credit Agreement for Increased Letter of Credit Commitments and Payment of Related Fees* [Docket No. 804] (the "Initial DIP Amendment Motion").

10 On September 18, 2015, the Debtors entered into Amendment No. 2 to the First Out DIP Credit Agreement, which provided for an extension of the DIP Milestone relating to entry of the final cash management order. (See Initial DIP Amendment Motion ¶ 8.)

Required Lenders and the Administrative Agent." Absent the DIP Lenders' agreement on a plan, the DIP Lenders would have been able to call an Event of Default under the DIP Credit Agreement.[11]

13. The Debtors responded by stating that "[n]othing in [DIP] Amendment No. 3 cedes control of these cases to the DIP Lenders or reflects anything other than a good faith effort to move these cases forward without delay and maximize value for all creditors." (DIP Amendment Reply ¶ 7.)[12] The DIP Agent also assured the Court that this was "not an abdication of control by the Debtors or a power grab by the DIP Lenders." (DIP Agent Reply ¶ 4.)[13]

14. After substantial negotiations with both the Debtors and DIP Agent, the Committee resolved its objection upon an agreement to modify Section 5.17(c) of the DIP Credit Agreement (as modified, the "PSA DIP Milestone") in the following relevant respects:

1) ***First***, the PSA DIP Milestone would require that the PSA be "in form and substance acceptable to the [DIP] Lenders ***acting in a commercially reasonable manner***" and provide that "withholding consent to a PSA on the basis of a determination of encumbered and unencumbered assets inconsistent with any order of the Bankruptcy Court shall be commercially unreasonable . . . ." (See DIP Credit Agreement § 5.17(c) (emphasis added).)

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11 See *Objection of Official Committee of Unsecured Creditors to (I) Motion of the Debtors for Supplemental Order, Pursuant to 11 U.S.C. §§ 105, 363 and 364, Authorizing Amendment to the DIP Credit Agreement for Increased Letter of Credit Commitments and Payment of Related Fees and (II) Motion of the Debtors for an Order Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* [Docket No. 913] (the "Committee DIP Amendment Objection").

12 See *Omnibus Reply In Support of: (I) Motion of the Debtors for Supplemental Order, Pursuant to 11 U.S.C. §§ 105, 363 and 364, Authorizing Amendment to the DIP Credit Agreement for Increased Letter of Credit Commitments and Payment of Related Fees; and (II) Motion of the Debtors for an Order Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* [Docket No. 918] (the "DIP Amendment Reply").

13 See *Omnibus Reply of the Administrative Agent for the Pre-Petition and Debtor-in-Possession Credit Facilities to the Objection of the Unsecured Creditors' Committee to the Debtors' Motion for Supplemental Order, Pursuant to 11 U.S.C. §§ 105, 363 and 364, Authorizing Amendment to the DIP Credit Agreement for Increased Letter of Credit Commitments and Payment of Related Fees* [Docket No. 917] (the "DIP Agent Reply").

2) ***Second***, the PSA DIP Milestone would be amended to provide that, to the extent the PSA set forth a timeline for filing a chapter 11 plan and disclosure statement, the Debtors' "failure to meet any such deadlines" would not constitute an Event of Default under the DIP Credit Agreement "***absent further approval of the Bankruptcy Court*** . . . ." (See id. (emphasis added).)[14]

15. Indeed, at the Committee's request, at the hearing on the Initial DIP Amendment Motion, Debtors' counsel made clear on the record that, "[i]f the Court determines what is encumbered and what is unencumbered, it would be unreasonable for the [DIP Lenders] to insist on a different structure for the plan structure agreement" and "[t]he structure for the PSA] would have to rely on what the Court determined." (Nov. 17, 2015 Hr'g Tr. at 15:14-19.) Debtors' counsel reassured the Court that "failure to meet any deadline that's in this PSA document will not be a default on the DIP unless we bring it to Your Honor and you approve it. We're not going to be able to create a DIP default by private agreement without coming to Your Honor." (Id. at 16:14-18.) Based on the Debtors' and DIP Agent's representations, and the negotiated modifications to DIP Amendment No. 3, the Committee agreed to withdraw its objection to the Initial DIP Amendment Motion.

16. The Debtors now seek approval of DIP Amendment No. 5, which contemplates additional and tighter DIP Milestones relating to the PSA, based on a theory that the failure to agree to such milestones would somehow constitute a default.

C. Status of Challenge Period Pursuant to Final DIP Order

17. As the Court is aware, since it was formed, the Committee has expressed its view that hundreds of millions of dollars of the Debtors' assets were unencumbered as of the Petition Date. The Committee and its professionals have worked diligently to identify assets that were,

[14] In addition, the PSA DIP Milestone was, among other things, extended two weeks to January 22, 2016.

as of the Petition Date, unencumbered or subject to liens that may be challenged or avoided. As a result of these efforts, and an agreed schedule, on February 15, 2016, less than two weeks after the Debtors filed the Motion, the Committee filed a *Notice of Intent To Pursue Claims* [Docket No. 1529] (the "Challenge Notice"), which sets forth the results of its analysis.

18. Based on the Committee's investigation, the Debtors own 5,065 parcels of real estate and are party to 2,162 real estate leases. Of these assets, at least 3,125 parcels of owned real estate (covering over 170,000 acres of land) and 1,610 leases (or 74% of the total number of leases) are unencumbered. Accordingly, the Committee anticipates that a material portion of the real estate and leases included in the Reserve Price Assets, once specifically identified, will be unencumbered as of the Petition Date. In addition, the Reserve Price Assets will include a significant amount of unencumbered working capital required to operate the mining complexes.

19. To the extent that the Committee is unable to consensually resolve its disputes with respect to the assets identified in the Challenge Notice, it intends to pursue appropriate relief before this Court. This is entirely consistent with the process contemplated by the Final DIP Order and the process that is undertaken in many large chapter 11 cases.

D. Plan Structure Agreement

20. The Debtors and the DIP Lenders have agreed to the PSA, which is dated as of January 22, 2016. Although the Debtors have not filed the PSA, nor are they seeking approval of its terms, the PSA contemplates approval of, among other things, two "settlements" (the

"Purported Settlements") and DIP Amendment No. 5. Each of these components is described below.[15]

(i) Purported Settlements Under PSA

21. By the Motion, the Debtors seek approval of the Purported Settlements – namely, the Unencumbered Asset Settlement and the Diminution Claim Allowance Settlement.[16] The Purported Settlements serve as a mechanism to permit the Pre-Petition Lenders to credit bid for any Reserve Price Assets that were unencumbered as of the Petition Date, prior to any determination of the extent of the Pre-Petition Lenders' liens and the amount of any Diminution Claim. Importantly, as discussed below, although the Debtors do not seek approval of these Purported Settlements until a later hearing, DIP Amendment No. 5 adds a new DIP Milestone, which provides that an Event of Default will occur if the Court does not approve the Purported Settlements. The Committee believes that this DIP Milestone is unachievable, given that each Purported Settlement cannot be approved by the Court.

22. Unencumbered Asset Settlement. The Unencumbered Asset Settlement is described by the Debtors as an agreement between the Debtors and the Pre-Petition Lenders that settles any dispute with the Pre-Petition Lenders as to which of the Debtors' assets were unencumbered by the Pre-Petition Lenders' liens as of the Petition Date or subject to unperfected liens. Exhibit G to the Motion represents, according to the Debtors, "[a] summary of the

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15 The Debtors state in the Motion that "[t]he overall agreement on an approach to a restructuring was documented in the PSA as of January 22, 2016, as required by Section 5.17(c) of the First Out DIP Credit Agreement." (Motion ¶ 6.) Further, on January 23, 2016, counsel to the DIP Agent transmitted by email to counsel to the Committee (with counsel to the Debtors copied) a copy of the PSA, stating "[a]ttached is the PSA as agreed to between the Debtors and the Required Lenders." (Burke Decl. Ex. C.)

16 The Committee intends to object to the Purported Settlements at the appropriate time when the merits of such Purported Settlements and any related issues can be fully briefed and considered by the Court.

Unencumbered Assets as agreed by the Debtors and the Pre-Petition Lenders" (the assets on such summary, the "Unencumbered Assets"). (Motion ¶ 61.) Further, the "Debtors and Pre-Petition Lenders agree that all remaining assets as of the Petition Date (together, the "Encumbered Assets") were and are encumbered by the Pre-Petition Senior Liens." (Id.)[17]

23. The Motion and Bidding Procedures contemplate that the hearing on the Unencumbered Asset Settlement will be the Sale Hearing. Because the Stalking Horse Bid is premised on the Court approving the Unencumbered Asset Settlement, no one (including the Debtors) will know until the Sale Hearing whether the Stalking Horse Bid is operative.

24. The Debtors did not consult with the Committee before they agreed to the Unencumbered Asset Settlement, notwithstanding that the Debtors were aware that the Committee's advisors had been working to identify unencumbered assets and assets subject to unperfected liens for months and that such investigation would soon be complete.[18] In fact, the Challenge Period expires on March 1, 2016.

25. Diminution Claim Allowance Settlement. The Debtors state that the Diminution Claim Allowance Settlement settles any dispute with the Pre-Petition Lenders with respect to the methodology for calculating the Pre-Petition Lenders' Diminution Claim. The "agreed" methodology is set forth in Exhibit H to the Motion and provides, in general terms, that any use of Encumbered Cash (other than to make adequate protection payments to the Pre-Petition

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17 The Debtors provide no indication in the Motion as to what they believe the value of the Unencumbered Assets is as of today or what such value will be upon the effective date of any chapter 11 plan.

18 As discussed below, this appears to be because the Unencumbered Asset Settlement is intended to strip the Committee of its right to be heard on these issues. (See Burke Decl. Ex. D (Counsel for the DIP Agent stating, in response to receiving counsel for the Challenge Notice from counsel for the Committee: "If the committee believes that settlement to be outside of the range of reasonableness, we are happy to address any objections to the settlement. But there is no separate process that is any longer appropriate.")

Lenders) will be counted dollar-for-dollar toward the Pre-Petition Lenders' alleged Diminution Claim. (See Motion ¶ 69.) Importantly, the Bidding Procedures contemplate that the Diminution Claim can be used to credit bid for any assets purchased by the Pre-Petition Lenders that are treated as unencumbered under the Unencumbered Asset Settlement.

26. The Debtors do not provide any accounting as to what they believe the amount of the Diminution Claim would be if calculated today, at the Sale Hearing or upon their expected effective date of the Chapter 11 Plan contemplated by the PSA. [redacted] In addition, the Motion and Bidding Procedures contemplate that the hearing on the Diminution Claim Allowance Settlement will be the Sale Hearing. As a result of this scheduling, no one (including the Debtors) can know until the Sale Hearing whether the Stalking Horse Bidder will actually be capable of credit bidding on any Unencumbered Assets.[19] It is therefore possible that there will be an auction at which the Pre-Petition Lenders are the Successful Bidder and the Court will determine that the Pre-Petition Lenders' allowed Diminution Claim and Adequate Protection Liens are insufficient to credit bid for the assets subject to the Stalking Horse Bid. This is the epitome of bidding with "funny money" and should not be countenanced.

(ii) DIP Amendment No. 5

27. DIP Amendment No. 5 modifies certain of the DIP Milestones presently included in, and adds additional DIP Milestones to, the DIP Credit Agreement, as follows:

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19 Seemingly acknowledging this uncertainty, the PSA blindly mandates that the amount of the Diminution Claim must exceed the value of the Unencumbered Assets included in the Reserve Price Assets.

DIP Milestone	Original Date	Proposed Date	Nature of Modification
File Chapter 11 Plan and Disclosure Statement	May 31, 2016	February 21, 2016	***Reduces*** time period available to Debtors related to applicable DIP Milestone ***by over three months***.
Obtain Court orders approving Bidding Procedures and DIP Amendment No. 5	None	February 25, 2016 (subject to Court availability)	***Adds*** new DIP Milestone.
File motion to approve Disclosure Statement and solicitation procedures	None	March 7, 2016	***Adds*** new DIP Milestone.
Reach agreement or file motions with respect to Labor/Benefit Savings (as defined in First Out DIP Credit Agreement)	March 5, 2016	March 21, 2016	Nominally extends time period related to applicable DIP Milestone by approximately two weeks; ***but see below regarding reduction of time period available to Debtors for entry of related Court order***.
Sale Hearing and approval of the Purported Settlements as part of any Stalking Horse Sale Order or in a separate Settlement Order provided that the Stalking Horse APA has not been terminated as a result of a breach thereof by the Stalking Horse Bidder	None	April 12, 2016 (subject to Court availability)	***Adds*** new DIP Milestone.
Obtain Court orders with respect to Labor/Benefit Savings, if necessary	June 20, 2016	May 10, 2016	***Reduces*** time period available to Debtors related to applicable DIP Milestone ***by over one month***.
Effective date of Chapter 11 Plan	August 27, 2016 (assuming plan filed May 03, 2016)[20]	June 30, 2015	Effectively, ***reduces*** time period available to Debtors related to applicable DIP Milestone ***by over two months***.

(See DIP Amendment No. 5 at § 2.)

28. In addition, DIP Amendment No. 5 also provides for a waiver of any Default or Event of Default that may have occurred pursuant to the PSA DIP Milestone. (See id.)

[20] DIP Milestone had previously related to the confirmation of a plan rather than an effective date.

29. Importantly, DIP Amendment No. 5 does more than simply set or modify the timeline for the Debtors' Cases. It operates as a backdoor mechanism to obtain Court approval of the Debtors' obligations under the PSA by (i) creating DIP Milestones requiring the Court to approve the Purported Settlements and (ii) creating and modifying other DIP Milestones requiring the Debtors to file, and the Court to confirm, a plan of reorganization that must be "in form and substance reasonably acceptable to the [DIP] Lenders." (Id. §§ 5.17(d), (h).) Once (and if) DIP Amendment No. 5 is approved, the DIP Lenders will effectively be daring the Court to deny approval of the Purported Settlements or confirmation of the Chapter 11 Plan, which the Court has not yet even seen, thereby risking that the DIP Lenders seek to exercise remedies. This type of threat is not fair to the Court or parties in interest and should not be tolerated.

OBJECTION

A. DIP Amendment No. 5 Cannot Be Approved

(i) No Justification Exists for Debtors Agreeing to Imposition of New Default Triggers to DIP Credit Agreement, Particularly Those that So Substantially Benefit Pre-Petition Lenders

30. DIP Amendment No. 5 cannot be approved because, for the reasons stated below, the Debtors have not demonstrated its entire fairness to their estates. Here, the circumstances require the Debtors to do so.[21] In particular, the recently approved KEIP provides for payments of bonuses at the target level to KEIP participants upon the confirmation of a chapter 11 plan or sale of substantially all of the profitable assets of the Debtors, regardless of whether such

[21] See, e.g., Weinberger v. UOP, Inc., 457 A.2d 701, 710 (Del. 1983), on remand at, 1985 Del. Ch. Lexis 378 (Del. Ch. Jan. 30, 1985), aff'd, 497 A.2d 792 (Del. 1985) ("When directors of a Delaware corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and the most scrupulous inherent fairness of the bargain."); Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 362 (Del. 1993) ("Classic examples of director self-interest in a business transaction involve either a director appearing on both sides of a transaction or a director receiving a personal benefit from a transaction not received by the shareholders generally.").

transaction confers any benefit on the Debtors' estates. The Debtors' management, who have guided the Debtors toward their current path, are KEIP participants and therefore have a pecuniary interest that may diverge from those of the Debtors' estates, including general unsecured creditors. Indeed, the dynamics in these Cases appear to have resulted in a relationship between the Debtors and the DIP Lenders that did not foster arm's-length negotiations with respect to the relief sought in the Motion. To the contrary, the Debtors' negotiations regarding the Purported Settlements and Stalking Horse Bid, which relate in part to the allowed amount and the extent of the DIP Lenders' prepetition secured claims against the Debtors, have not been adversarial. [redacted]

31. Even if the Court does not require the Debtors to prove the "entire fairness" of DIP Amendment No. 5, it cannot be approved as it does not reflect a sound exercise of business judgment and does not benefit the Debtors' estates. No Event of Default presently exists under the DIP Credit Agreement. Even if such an Event of Default were extant, it would not justify the substantial limitations that the Debtors are subjected to by DIP Amendment No. 5.[22] The imposition of new and tighter DIP Milestones by DIP Amendment No. 5 cannot credibly be said to benefit the Debtors, despite the Debtors' assertion that the new DIP Milestones will "assist the

22 [redacted]

Debtors in concluding these cases." (Motion ¶ 85.)[23] Absent these new DIP Milestones, the Debtors are free to pursue whatever path they believe is in the best interests of their estates. The new DIP Milestones, however, limit the Debtors' ability to pursue such a path as they are instead binding them to a predetermined one through the threat of an Event of Default under the DIP Credit Agreement, as proposed to be amended.

32. The Debtors state that the new DIP Milestones "were negotiated with the DIP Lenders and the Pre-Petition Lenders as an integral part of (a) reaching agreement on the Agreed Business Plan and the PSA as required by the DIP Credit Agreement; and (b) achieving the [Purported] Settlements . . . ." (Motion ¶ 29.) The Purported Settlements, however, do not benefit the Debtors' estates because, by such "settlements," the Debtors concede that the Pre-Petition Lenders have sizable liens and claims and then acknowledge that those liens and claims can be given back to them for the Debtors' core assets, many of which were unencumbered as of the Petition Date. Further, even if the Purported Settlements were not flawed, neither the Court nor any party in interest can discern whether there is any benefit to the Debtors' estates from DIP Amendment No. 5 because the Debtors and the DIP Lenders have neither reached an agreement on nor filed either the Stalking Horse APA or the Chapter 11 Plan.

33. Here, the Debtors' agreement to DIP Amendment No. 5, and its imposition of new and tighter DIP Milestones, is not a sound exercise of the Debtors' business judgment. This arrangement, especially in the absence of any identifiable corresponding benefit for their estates, is not only not a sound exercise of the Debtors' business judgment, it is reckless. The

[23] While the Debtors also reference ongoing cash losses and market conditions as a basis for asserting that the new and tighter DIP Milestones are appropriate, the Debtors provide no meaningful explanation as to how such cash losses will be mitigated by an exit from bankruptcy, particularly an exit from bankruptcy that involves a potential sale of the Debtors' most valuable assets for no cash consideration in return.

satisfaction of the new DIP Milestones generally require either the agreement of non-Debtors (including the DIP Lenders) or will require the Court to make certain findings of fact and conclusions of law, thereby rendering it impossible for the Debtors to be certain that they can satisfy any of the new DIP Milestones. [redacted]

34. Whether applying the business judgment or "entire fairness" standard, it is clear that DIP Amendment No. 5 should not be approved. Most troubling, the changes contemplated by DIP Amendment No. 5 would hand over whatever case control the Debtors retain to the DIP Lenders by agreeing to the new and tighter DIP Milestones. It is widely accepted that a postpetition financing arrangement may not be so favorable to the lender so as to result in the Bankruptcy Code protections benefiting only that lender. See In re Mid-State Raceway, Inc., 323 B.R. 40, 59 (Bankr. N.D.N.Y. 2005) ("[B]ankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender."); In re Tenney Vill. Co., Inc., 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (denying proposed financing facility that would

"pervert the reorganization[] process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of [a single creditor] and the Debtor's principals who guaranteed its debt."); Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.), 86 B.R. 393, 402 (Bankr. E.D. Pa. 1988) (rejecting postpetition financing arrangement where lenders acted as "puppeteer of a marionette-debtor").

35. Here, the proposed transaction requires the Debtors to pursue an undisclosed chapter 11 plan that must be acceptable to the DIP Lenders on a truncated timeline with additional interim DIP Milestones. Approving DIP Amendment No. 5 would vest the DIP Lenders with a veto right over the Chapter 11 Plan on account of their prepetition claims, as well as provide them with new opportunities to assert that an Event of Default has occurred due to the failure to meet the now even more numerous DIP Milestones. Also troubling is that if the Court determines that the Purported Settlements cannot be approved or are otherwise inappropriate, the Debtors will be faced with an Event of Default under the DIP Credit Agreement, through the New Case Milestones, and thus faced with a foreclosure by the DIP Lenders.

36. In short, there does not appear to be any business justification for the Debtors agreeing to additional, more restrictive DIP Milestones. Yet, through DIP Amendment No. 5, the Debtors have essentially agreed to lock themselves into the highly unfavorable Purported Settlements, as well as a Chapter 11 Plan that must, with almost no qualification whatsoever, be "in form and substance reasonably acceptable to the DIP Lenders." (DIP Amendment No. 5 § 2(d).) In short, the Debtors are violating their fiduciary duties and abdicating control of the Cases to the DIP Lenders.

(ii) DIP Milestones Relating to Purported Settlements Are Not Achievable

37. As described above, the Motion seeks an order approving the Purported Settlements by April 12, 2016. Pursuant to the new DIP Milestones, the failure to timely obtain

such order would constitute an Event of Default under the DIP Credit Agreement. Despite the Debtors' assertions, these new DIP Milestones are simply not achievable because, among other reasons, the Purported Settlements do not fall above the lowest point in the range of reasonableness and thus are not capable of being approved.

38. As an initial matter, it is inappropriate for the Debtors, acting at the behest of the Pre-Petition Lenders, to make approval of the Purported Settlements an affirmative covenant (i.e., through the new DIP Milestones) under the DIP Credit Agreement. On the one hand, if the Debtors are successful in obtaining approval of the Purported Settlements, they will have succeeded in locking themselves into unfavorable positions with respect to issues relating to the Unencumbered Assets and the Diminution Claim. On the other hand, if the Purported Settlements are successfully challenged, an Event of Default under the DIP Credit Agreement will occur, thus allowing the DIP Lenders to exercise remedies against the Debtors' estates to the detriment of all other stakeholders. Thus, the DIP Lenders win no matter what. All of this is proposed notwithstanding the representations made by the Debtors to the Court at the hearing on the Initial DIP Amendment Motion that they would not be put in such a position. (See supra. ¶ 14.)

a. New DIP Milestone Relating to Unencumbered Asset Settlement Should Not Be Approved

39. In order for the Court to assess whether to approve a proposed "settlement" under Rule 9019 of the Federal Rules of Bankruptcy Procedure, there must be an actual "compromise or settlement" over which the Court has jurisdiction and which is justiciable. See FED. R. BANKR. P. 9019(a). The Unencumbered Asset Settlement at issue here is not a settlement. The assets listed on Exhibit G to the Motion are assets as to which there is ***no*** dispute over whether or not the asset is encumbered. The Committee, however, believes Exhibit G is woefully

incomplete with respect to the Debtors' unencumbered assets. In fact, the Challenge Notice identifies substantially more assets that are unencumbered or subject to liens that may be subject to challenge or avoidance than were listed on Exhibit G. As such, the Unencumbered Asset Settlement reflects no settlement at all. Rather, it is another example of the Pre-Petition Lenders' exertion of control over the Debtors.

40. Even assuming that the Unencumbered Asset Settlement is a settlement capable of being approved, the Debtors are not the appropriate party to enter into the Unencumbered Asset Settlement, or otherwise settle any determination of which assets are encumbered or unencumbered. The Challenge Period (as defined in the Final DIP Order) provides the Committee and other parties in interest an opportunity to raise challenges to, among other things, (a) the validity, enforceability, priority or extent of the Stipulated Debt or the Stipulated Security Interests (each as defined in the Final DIP Order), or (b) otherwise assert an action in connection with matters related to the Existing Credit Documents, the Existing Second Lien Indentures Documents, the Stipulated Debt, the Senior Lender Collateral, and the Second Priority Collateral (each as defined in the Final DIP Order). Further, pursuant to the Challenge Notice, the Committee put parties on notice of its intention to seek standing to pursue claims that the Debtors purport to settle under the Unencumbered Asset Settlement. Thus, absent the consent of the Committee, it is simply not appropriate for the Debtors to attempt to unilaterally settle the issues addressed by the Challenge Notice by entering into the Unencumbered Asset Settlement. See, e.g., In re Exide Techs., 303 B.R. 48 (Bankr. D. Del. 2003) (denying confirmation of plan that included settlement of claims that were subject to adversary proceeding initiated by creditors' committee); In re Matco Elecs. Group, 287 B.R. 68, 78 (Bankr. N.D.N.Y. 2002) (denying debtors' motion to approve settlement because debtors failed to establish settlement

was fair and equitable, noting that "[p]erhaps most telling is the fact that the Committee had no part in negotiating the Settlement Agreement, yet ***it is the claims it has asserted on behalf of the Debtors . . . that are being released***" (emphasis added)).

41. Finally, the Unencumbered Asset Settlement directly contravenes the Debtors' representations to the Court on November 17, 2015, as noted above, and section 5.17(c) of the DIP Credit Agreement, which provides that "withholding consent to a PSA on the basis of a determination of encumbered and unencumbered assets inconsistent with any order of the Bankruptcy Court shall be commercially unreasonable." (DIP Credit Agreement § 5.17(c).) Under the proposed DIP Amendment, however, failure to obtain a Court order approving the Unencumbered Asset Settlement will constitute a breach of a New Case Milestone and thus an Event of Default under the DIP Credit Agreement. The Court should not permit the Debtors to renege on a key representation made to the Court.

b. New DIP Milestone Relating to Diminution Claim Allowance Settlement Should Not Be Approved

42. The Diminution Claim Allowance Settlement is so one-sided as to be of no benefit to the estates. It provides that the Pre-Petition Lenders' Diminution Claim will be calculated solely with reference to the Debtors' use of Encumbered Cash. It generally provides that the Debtors' use of Encumbered Cash (other than to make adequate protection payments to the Pre-Petition Lenders) will be counted dollar-for-dollar (i.e., ***100%***) toward the Pre-Petition Lenders' asserted Diminution Claim. The relevance of the Diminution Claim to the Bidding Procedures is that it serves as a mechanism manufactured in connection with the PSA to enable the Pre-Petition Lenders to credit bid for assets not subject to prepetition liens.

43. The Committee intends to object to the Diminution Claim Allowance Settlement at the appropriate time when its merits can be fully considered by the Court on an appropriate

briefing schedule. However, for the purpose of evaluating the DIP Amendment, the Committee highlights two critical flaws with respect to the proposed methodology. First, by not requiring any valuation of the aggregate value of the Pre-Petition Lenders' interest in the prepetition collateral, the proposed methodology ignores a defense available to the Debtors that the Court should apply a foreclosure valuation standard to such aggregate interest for the purpose of valuing it as of the Petition Date.[24] Second, by calculating the Diminution Claim solely with reference to the use of Encumbered Cash, and counting such use dollar-for-dollar to the Diminution Claim, it ignores any corresponding benefit to the value of the Pre-Petition Lenders' non-cash collateral that would otherwise offset any diminution resulting from use of Unencumbered Cash.[25]

44. In considering whether to approve DIP Amendment No. 5, the Court should take into account that, if it ultimately concludes that the Diminution Claim Allowance Settlement should not be approved, the Pre-Petition Lenders might assert that an Event of Default has occurred under the DIP Credit Agreement and seek to take enforcement actions. The Debtors should not risk finding themselves (and, by extension, their stakeholders) in such an untenable position. Equally important, the DIP Milestone that requires approval of the Diminution Claim

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[24] Further, even if the Court determined that a fair market valuation standard should apply as of the Petition Date, the Pre-Petition Lenders would be required to prove diminution from the aggregate value of their assets as of the Petition Date, which value would not include value resulting from the months of work done in these Cases since the Petition Date. See Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital, LLC), 501 B.R. 549, 597 (Bankr. S.D.N.Y. 2013) ("Simply put, the Court cannot accept that the value of the JSN Collateral on the Effective Date does not exceed the value of their collateral on the Petition Date, even after the expenditure of the JSNs' cash collateral. . . . Through the settlements and consents achieved over many months, with great effort and expense, the Debtors successfully closed the sales of most of their assets on very favorable terms. The JSN and all estate creditors will benefit from this accomplishment.").

[25] In this regard, the Committee notes that much of the Debtors' use of cash in these Cases has been approved by the Court on the basis that such use will benefit creditors and maximize value to the Debtors' estates.

Allowance Settlement inappropriately pressures the Court (and parties in interest) to accede to the Diminution Claim Allowance Settlement regardless of their views on its merits.

(iii) DIP Amendment (Whether Viewed Alone or with Other Elements of PSA) Constitutes Invalid Sub Rosa Plan

45. Contrary to the Debtors' representations at the February 9, 2016 hearing, the PSA is not simply a "roadmap" pursuant to which the Debtors will pursue, and the Pre-Petition Lenders will support, a common goal of emerging from chapter 11 and a general restructuring plan. Feb. 9, 2016 Hr'g Tr. at 7:20-21. Instead, through DIP Amendment No. 5, the Debtors agree to a predetermined course leading to an inescapable outcome that will benefit only the Pre-Petition Lenders and which follows a rigid timeline with potentially severe consequences associated with the failure to achieve such timeline – all without the substantive and procedural safeguards required under section 1129 of the Bankruptcy Code. Thus, DIP Amendment No. 5, whether viewed alone or with the other elements of the PSA, such as the Bidding Procedures, constitutes an impermissible *sub rosa* plan and cannot be approved on this basis.

46. The law is clear – "[t]he debtor and the [b]ankruptcy [c]ourt should not be able to shortcircuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* . . ." Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.), 700 F.2d 935, 940 (5th Cir. 1983). Thus, "[a] settlement which has the effect of dictating the terms of the debtor's plan of reorganization prior to the confirmation process cannot not be approved." Official Comm. of Unsecured Creditors of Tower Auto. v. Debtors & Debtors in Possession (In re Tower Auto., Inc.), 241 F.R.D. 162, 168 (S.D.N.Y. 2006); see also In re On-Site Sourcing, Inc., 412 B.R. 817 (Bankr. E.D. Va. 2009) (approving 363 sale but excising certain sale conditions, including release of key employees and

payments to proposed general unsecured creditors trust, as such provisions were part of *sub rosa* plan).

47. Among the concerns voiced by courts when invalidating *sub rosa* plans is their potential to "circumvent[] key features of the Chapter 11 process, which afford debt and equity holders the opportunity to vote on a proposed plan of reorganization after receiving meaningful information." Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC), 576 F.3d 108, 114 n.5 (2d Cir. 2009), *cert. granted, judgment vacated on other grounds sub nom,* Ctr. for Auto Safety v. Chrysler LLC, 557 U.S. 960 (2009), *judgment vacated,* 592 F.3d 370 (2d Cir. 2010) (finding that sale of substantially all of debtor's assets did not constitute a "'*sub rosa* plan' in the Braniff sense because it [did] not specifically 'dictate' or 'arrange' *ex ante,* by contract, the terms of any subsequent plan" (576 F.3d 108, 117 n.9)). In addition, courts fear that "one class of creditors may strong-arm the debtor-in-possession, and bypass the requirements of Chapter 11 [under a sale or similar transaction] to cash out quickly at the expense of other stakeholders, in a proceeding that amounts to a reorganization in all but name, achieved by stealth and momentum." Id. at 116.

48. All of the concerns discussed above underlie the Committee's objection to DIP Amendment No. 5 and the PSA. The effect of burdening the DIP Credit Agreement with new and tighter DIP Milestones to implement the PSA is to bind the Debtors to a blind pursuit of the Purported Settlements and Chapter 11 Plan, which must be "reasonably satisfactory in form and substance to the DIP Lenders." In doing so, it deprives other stakeholders of the opportunity to participate meaningfully in the chapter 11 process. Much like the transactions in Braniff Airways and On-Site Sourcing, DIP Amendment No. 5 and the Purported Settlements have the effect of dictating the rights of the Debtors' creditors and other stakeholders outside of "'the

carefully crafted scheme' for creditor enfranchisement." On-Site Sourcing, 412 B.R. at 826. The Purported Settlements would, if approved, provide the Pre-Petition Lenders with claims and liens far exceeding their actual legal entitlements and would do so regardless of whether the Stalking Horse Bidder is the ultimate purchaser of the Debtors' most valuable assets.

49. Furthermore, the proposed new DIP Milestones require that the Court approve the Purported Settlements by April 12, 2016. Such new DIP Milestones are likely to be missed as the Purported Settlements attempt to definitively resolve issues that may be subject to Committee challenge and are otherwise undetermined and, in any event, should not be approved by the Court due to their various deficiencies. As a result, by imbedding these likely unachievable PSA components in the DIP Credit Agreement through DIP Amendment No. 5, the Debtors are exposed to a real and significant risk that the DIP Lenders will seek to extract concessions from them on account of their prepetition claims through manufactured or real disputes relating to potential Events of Default under the DIP Credit Agreement.

50. In any of the potential scenarios discussed above, the end result of DIP Amendment No. 5 will be that these Cases will inure to the sole benefit of the Pre-Petition Lenders and result in a highly unfavorable outcome for all the other stakeholders. As such, DIP Amendment No. 5, whether viewed alone or together with the other components of the PSA, is an impermissible *sub rosa* plan.

B. Court Should Not Approve Bidding Procedures Absent Significant Modification

51. While the Committee does not oppose an orderly and fair sale process, it is clear that the Bidding Procedures, as currently constructed, will minimize the prospects of a competitive auction, chill bidding, and lead to an outcome that is beneficial to only the Pre-Petition Lenders. (See Declaration of Leon Szlezinger ("Szlezinger Decl.") ¶¶ 9-11, 17.) The

overriding goal of any proposed asset sale pursuant to section 363 of the Bankruptcy Code is to maximize the proceeds received by a debtor's estate. See In re Free Lance-Star Publ'g Co., 512 B.R. 798, 805 (Bankr. E.D. Va. 2014) (noting that maximizing value debtors might be able to realize from sale of their assets is an important policy advanced by Bankruptcy Code); In re Metaldyne Corp., 409 B.R. 661, 668 (Bankr. S.D.N.Y. 2009) ("It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (internal citations and quotations omitted)). Consistent with such goal, courts have stated that the "purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate." In re Edwards, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); see also In re Metaldyne Corp., 409 B.R. at 667-668 (debtors have fiduciary duty to establish bidding procedures and sale process that will "maximize value to the estate"). In approving bidding procedures, courts are thus provided with "ample latitude to strike a satisfactory balance between the relevant factors of fairness, finality, integrity, and maximization of assets." Wintz v. Am. Freightways (In re Wintz Co.), 219 F.3d 807, 812 (8th Cir. 2000); see also In re Edwards, 228 B.R. at 561 (courts must weigh finality and regularity of proceedings against counterweight of "the ubiquitous desire of the unsecured creditors, and a primary objective of the Code, to enhance the value of the estate at hand").

52. The principle guiding courts in their evaluation of the aforementioned factors is at all times fairness to all the parties. See Hr'g Tr. at 132:23-133:5, In re Am. Safety Razor Co., LLC, Case No. 10-12351 (MFW) (Bankr. D. Del. Sept. 30, 2010) [Docket No. 318] ("I don't think, as the debtors suggest, that my consideration of bid procedures is based on the business judgment rule. I need not accept the debtors' business judgment with respect to process. The

Bankruptcy Code and Rules and the process under the Bankruptcy Code are all matters . . . for the Court's determination as to what is fair and reasonable. In fact, I think that's my only role in this case: to determine what is fair ***for all the parties***." (emphasis added)).

53. It is within the Court's authority to condition approval of bidding procedures on the removal of certain unacceptable provisions. See In re Am. Safety Razor Co., LLC, 2010 WL 7427451, Case No.10-12351 (MFW) (Bankr. D. Del. Oct. 6, 2010) (denying approval of bidding procedure provisions relating to qualified bidder selection process, due diligence rights, good faith deposits, and certain auction procedures in determining what was "fair and reasonable"); In re Jon J. Peterson, Inc., 411 B.R. 131, 136 (Bankr. W.D.N.Y. 2009) (denying debtor's motion to approve bidding procedures on "notions of fairness and equity" and conditioning approval of bidding procedures on proposed breakup fee being limited to $6,000); In re Yellowstone Mt. Club, LLC, 2009 Bankr. LEXIS 4462, at *14 (Bankr. D. Mont. Feb. 18, 2009) (denying debtors' proposed bidding procedures that did "not encourage a process whereby the Debtors find the best offer for the assets" because they did not encourage third-party bids, favored DIP lender, and lacked transparency and flexibility); In re President Casinos, Inc., 314 B.R. 784 (Bankr. E.D. Mo. 2004) (denying debtors' proposed bidding procedures on grounds that it would not enhance bid process and may in fact chill bidder interest).

54. Given the failure by the Debtors to act in the interests of all creditors, and the tight level of control being exerted by the Pre-Petition Lenders over the Debtors,[26] the Court should assess the propriety of the Bidding Procedures with a jaundiced eye. Indeed, given the

26 [redacted]

Debtors' inability to negotiate with their lenders from a level playing field, the Court must step in and independently determine what is "fair and reasonable." When so analyzed, the Bidding Procedures should not be approved as currently contemplated for the following reasons:

1) Constrained timeline: The timeline proposed by the Bidding Procedures is severely constrained, especially when compared with recent coal cases such as Patriot Coal and Walter Energy, and not optimally designed to promote a robust auction that will maximize the value of the estates' assets;

2) Limitation of credit bid and provision of credit support: The Pre-Petition Lenders should be able to advance their credit bid only after this Court has made a determination as to both of the Purported Settlements and then only after providing credit support for any credit bid on account of (i) assets the liens upon which are subject to an ongoing dispute or challenge, including by appeal of the Unencumbered Asset Settlement, and (ii) any portion of the Diminution Claim that is subject to an appeal after this Court has rules upon the Diminution Claim Allowance Settlement (collectively, the "Disputed Claims/Liens");

3) Allocation of credit bid: The Stalking Horse Bid does not ascribe value to specific assets or categories of assets or identify which assets are encumbered by the Pre-Petition Lenders' liens under Existing Credit Documents, and thereby fails to establish a floor for competitive bidding;

4) Auction rules: The Bidding Procedures must be revised to require the Committee's approval with respect to the auction procedures being imposed on Qualified Bidders, which have not yet been disclosed;

5) Matching right: The Stalking Horse Bidder's right to "match" bids or alternative transactions proposed by other Qualified Bidders must be stricken; and

6) Other provisions: Certain other provisions in the Bidding Procedures have the effect of hindering a competitive bidding process or otherwise chilling bidding. In addition, the Debtors' failure to involve the Committee in the sale process in any meaningful manner and to provide in a timely manner certain key information that is necessary for parties to properly evaluate whether to make a bid must be remedied. (See Exhibits A and B generally.)

55. In sum, it is clear that the proposed Bidding Procedures are riddled with fatal flaws that are entirely inconsistent with a successful auction and sale process. Constraints must be imposed on the parameters of the credit bid, as well as the Bidding Procedures themselves, to

ensure that bids are not chilled, a transparent and robust auction is conducted, and the value of the Assets are maximized for the benefit of ***all*** of the Debtors' stakeholders.

(i) Timeline Set Forth in Bidding Procedures Should Be Modified To Prevent Chilling of Bids

56. The Debtors have proposed an extremely aggressive schedule that will discourage meaningful participation by other Potential Bidders. From the time the Bidding Procedures Order is entered to the time the Sale Hearing is conducted, the Debtors propose a sale process that stands to last just approximately one-and-a-half months. Yet, as of the time of the filing of the Motion, no confidential information memorandum had been prepared or circulated by the Debtors' advisors to Potential Bidders to assist them in their evaluation of the Debtors' Assets. Likewise, the Debtors' latest financial projections had not been disseminated to and minimal progress has been made with respect to Potential Bidders. In short, given the lack of progress in marketing the Debtors' Reserve Price Assets to date, the complicated nature of the Debtors' business, and the lack of crucial documents in the dataroom, if the proposed timeline of the Debtors was upheld, there would be little time for the Debtors to properly market, and Potential Bidders to evaluate, the Debtors' Reserve Price Assets before preliminary indications of interest and bids become due. (See Szlezinger Decl. ¶¶ 12-15.) In addition, Potential Bidders will not have had sufficient time to analyze the relevant regulatory issues and consider how they will need to address such issues in the context of their bid. Finally, given that the Debtors delayed the hearing by over a week, there might be some confusion as to which, if any, dates in the Bidding Procedures will also be extended, thus potentially further chilling bidding.

57. No other recent sale processes in the coal industry have been conducted on such an accelerated timeline. Specifically, the chart set forth below provides the timelines approved in In re Patriot Coal Corporation, No. 15-32450 (KLP) (Bankr. E.D. Va. 2015) and In re Walter

Energy, Inc., No. 15-02741 (TOM) (Bankr. N.D. Ala. 2015), both of which are cases involving smaller (in the case of Walter Energy, much smaller) enterprises, as measured by coal in reserves, as compared against those proposed by the Debtors in these Cases.

Important Dates	Alpha Natural Resources (3.6 billion tons in reserves)[27]	Patriot Coal (1.4 billion tons in reserves)[28]	Walter Energy (396 million tons in reserves)[29]
Bidding Procedure Motion Filing	February 8, 2016	June 2, 2015	November 5, 2015
Preliminary Indication of Interest Deadline	February 29, 2016 (21 days from the Motion Filing) (Motion ¶ 19) (Deadline has passed)	None specified	None Specified
Qualified Bid Deadline	March 28, 2016 (49 days from the Motion Filing) (Motion ¶ 16)	September 4, 2015 (94 days from the Bidding Procedure Motion Filing) (Bidding Procedures Order ¶ 3)	January 4, 2016 (60 days from the Bidding Procedure Motion Filing) (Bidding Procedures Order ¶ 10)
Auction Date	March 31, 2016 (52 days from the Motion Filing) (Motion ¶ 16)	September 9, 2015 (99 days from the Bidding Procedure Motion Filing) (Bidding Procedures Order ¶ 4)	January 5, 2016 (61 days from the Bidding Procedure Motion Filing) (Bidding Procedures Order ¶ 20)
Sale Approval Hearing	April 12, 2016 (64 days from the Motion Filing) (Motion ¶ 16)	September 10, 2015 (100 days from the Bidding Procedure Motion Filing) (Approved Bidding Procedures at 13)	January 6, 2016 (62 days from the Bidding Procedure Motion Filing) (Bidding Procedures Order ¶ 16)
Estimated Sale Transaction Closing Date	June 30, 2016 (143 days from the Motion Filing) (Motion ¶ 86)	October 9, 2015 (129 days from the Bidding Procedure Motion Filing)	February 29, 2016, which may be extended up to 30 days solely for purpose of obtaining

27 See *Declaration of Philip J. Cavatoni, Executive Vice President & Chief Financial and Strategy Officer of Debtor Alpha Natural Resources, Inc., In Support of First Day Pleadings of Debtors and Debtors In Possession* [Docket No. 6].

28 See *Declaration of Ray Dombrowski, Chief Restructuring Officer of Patriot Coal Corporation, et al., In Support of First Day Motions* [Docket No. 22], Case No. 15-32450 (KLP) (Bankr. E.D. Va. May 12, 2015).

29 See *Declaration of William G. Harvey in Support of First Day Motions* [Docket No. 3], Case No. 15-02741 (TOM) (Bankr. N.D. Ala. July 15, 2015).

Important Dates	Alpha Natural Resources (3.6 billion tons in reserves)[27]	Patriot Coal (1.4 billion tons in reserves)[28]	Walter Energy (396 million tons in reserves)[29]
		(Approved Bidding Procedures at 14)	regulatory approvals. (116 to 146 days from Bidding Procedure Motion Filing) (Bidding Procedures Order § (r))

58. As illustrated above in the cases of Patriot Coal and Walter Energy, at least two months were provided to conduct a meaningful sale process in severely distressed situations but considerably smaller cases than these Cases. (See Szlezinger Decl. ¶ 16.) In addition, in Walter Energy, the assets were heavily marketed prior to the filing of the bidding procedures motion and even prior to the commencement of Walter Energy's chapter 11 cases. (See Walter Energy Bidding Procedures Motion ¶¶ 12-14.) Neither the Debtors nor the Pre-Petition Lenders have been able to cogently explain the necessity for acting in such a hasty manner when such hastiness produces an environment that can only serve to chill bidding. See In re Fisker Auto. Holdings, Inc., 510 B.R. 55, 60 (Bankr. D. Del. 2014), *appeal denied by,* Hybrid Tech Holdings, LLC v. Official Comm. of Unsecured Creditors of Fisker Auto. Holdings, Inc. (In re Fisker Auto. Holdings), No. 14-CV-99 (GMS), 2014 U.S. Dist. LEXIS 15497 (D. Del. Feb. 7, 2014) ("Neither Debtors nor [the secured creditor], when the Court asked, ever provided the Court with a satisfactory reason why the sale of the non-operating Debtors required such speed."). While the Debtors generically reference cash losses as a basis for such an expedited timeline, they provide no meaningful explanation as to how such cash losses will be ameliorated by an exit from bankruptcy. Accordingly, the Committee proposes the following revised timeline by which to conduct the bidding and auction process.

Important Dates	Alpha Natural Resources	Committee Proposal
Date by Which Contact Parties Will Be Contacted	N/A	March 7, 2016
Date by Which Information Package Shall Be Distributed	N/A	March 7, 2016
Objection Deadline to Cure Costs	March 11, 2016	March 18, 2016
Preliminary Indication of Interest Deadline	February 29, 2016	March 25, 2016
Objection Deadline to Settlements	N/A	April 21, 2016
Hearing on Purported Settlements	April 12, 2016	April 28, 2016
Objection Deadline to Stalking Horse APA, Stalking Horse Sale Order, form APA and form Sale Order	March 21, 2016	May 2, 2016
Qualified Bid Deadline	March 28, 2016	May 9, 2015
Auction	March 31, 2016	May 11, 2016
Sale Hearing	April 12, 2016	May 18, 2016

(ii) Pre-Petition Lenders' Credit Bid Should Be Limited to Certain Collateral and Credit Support Should Be Provided

59. Insofar as the Bidding Procedures permit the Stalking Horse Bidder to credit bid the Pre-Petition Lenders' claims without limitation, they must be denied. In support of the Stalking Horse Bid, the Debtors assert that "the Pre-Petition Lenders have the express right to credit bid the full amount of their allowed prepetition claims under the Pre-Petition Credit Agreement,"[30] and that this "credit bid right expressly provides for bidding on assets serving as collateral under the Existing Credit Documents ***or*** collateral supporting the Pre-Petition Lenders'

30 The Debtors correctly note that under paragraph 4(a) of the Final DIP Order, the Pre-Petition Lenders' claims under the Pre-Petition Credit Agreement have been allowed in an amount in excess of $1 billion, subject to certain challenge rights of the Committee. (See Motion ¶ 48 n.22.)

Diminution Claim (up to the value of that claim)." (See Motion ¶ 48 (emphasis in original).) The Debtors are mistaken on both the facts and the law.

60. As a threshold matter, the text of section 363(k) of the Bankruptcy Code provides that only a secured creditor with an "allowed" claim is entitled to credit bid. See 11 U.S.C. § 363(k); see also In re RML Dev., Inc., 528 B.R. 150, 154 (Bankr. W.D. Tenn. 2014) (limiting credit bid to uncontested portion of claim and stating that "[o]nly an allowed claim under § 502 is entitled to 'credit bid' at § 363(b) sale" (internal citation omitted)); Official Comm. of Unsecured Creditors v. Tennenbaum Capital Partners (In re Radnor Holdings Corp.), 353 B.R. 820, 826-27 (Bankr. D. Del. 2006) (ordering trial on merits of complaint challenging extent to which defendant's proof of claim should be allowed and holding that defendants would be authorized to credit bid any allowed claim that survived adjudication of complaint). The Debtors' auction process, in which the Pre-Petition Lenders can credit bid using prepetition liens that are subject to dispute and using the Diminution Claim, the amount of which is undetermined, is therefore fatally flawed because they will be entitled to bid before any court has ruled on the merits of their prepetition liens and Diminution Claim. This is the epitome of bidding with "funny" money.

61. Further, the Final DIP Order provides, in relevant part, that "the full amount of allowed claims in respect of the Pre-Petition Credit Agreement Debt then outstanding may be used to "credit bid" for the assets and property of the Debtors . . . ***as provided for in section 363(k) of the Bankruptcy Code***." (Final DIP Order ¶ 29(b) (emphasis added).) Thus, any credit bid submitted by the Pre-Petition Lenders is subject to the strictures of section 363(k) of the Bankruptcy Code, which allows courts to limit credit bidding for "cause." 11 U.S.C. § 363(k). Courts, including this Court, have found "cause" to restrict credit bids, where a portion, or all, of

the secured creditor's claim or lien is in dispute. See, e.g., In re Free Lance-Star Publ'g Co., 512 B.R. at 801 (finding that secured creditor could not bid claim against assets on which it lacked valid lien); In re Fisker Auto. Holdings, Inc., 510 B.R. 55 (limiting secured creditor's right to credit bid to $25 million because amount of secured claim was unclear); In re Daufuskie Island Props., LLC, 441 B.R. 60, 64 (Bankr. D. S.C. 2010) (precluding the mortgagee from credit bidding its asserted claim because it was disputed); Nat'l Bank of Commerce of El Dorado v. McMullan (In re McMullan), 196 B.R. 818, 835 (Bankr. W.D. Ark. 1996) (denying mortgagee right to credit bid "for cause," when validity of its liens was unclear based on perfection issues).

62. Notwithstanding the text of the Bankruptcy Code and overwhelming decisional authority, the Pre-Petition Lenders, with the Debtors' support, are seeking to credit bid $500 million, which may be increased up to an as of yet undisclosed credit bid amount, for the Reserve Price Assets, without acknowledging that their liens on certain Reserve Price Assets may be and are subject to challenge and that their Diminution Claim is undetermined and, therefore, it is unclear to what extent, if at all, then will be able to credit bid on the unencumbered assets – like PLR – which they wish to acquire.

63. The Court should: (a) decline to permit such credit bid until it has ruled on the Purported Settlements; (b) require the Stalking Horse Bidder to credit bid only on the Assets upon which there are valid, undisputed liens with a valid, liquidated Diminution Claim; and (c) pending the conclusion of any appeal of the Purported Settlements, require the Stalking Horse Bidder to provide credit support for (as discussed, infra. ¶ 65) any credit bid on account of liens that are subject to dispute or any of the Diminution Claim that is subject to dispute. This way, if the Pre-Petition Lenders are proven wrong, and their liens and Diminution Claim are insufficient to support their credit bid, the Debtors' estates will be able to rely upon the Pre-Petition Lenders'

credit support for payment. In the alternative, the Court should require that the bidding and auction process be delayed until all of the Pre-Petition Lenders' liens and their Diminution Claim are determined on a final basis, including on appeal.

64. The relief sought by the Committee applies to the following group of assets: (a) assets set forth on Exhibit G to the Motion that both the Debtors and the Pre-Petition Lenders agree are unencumbered, by definition, cannot and do not serve as collateral to secure any of the Pre-Petition Lenders' claims; (b) assets on the schedules to the Committee's Challenge Notice that are subject to dispute by the Committee; and (c) certain of the Reserve Price Assets that are not encumbered by ***either*** prepetition liens ***or*** the Senior Lender Adequate Protection Liens because they constitute "Excluded Assets" under both the Pre-Petition Credit Agreement and the DIP Credit Agreement, and therefore cannot serve as the basis for ***any*** credit bid. See In re Fisker Auto. Holdings, Inc., 510 B.R. at 61 ("The law leaves no doubt that the holder of a lien the validity of which has not been determined, as here, may not bid its lien." (*citing* In re Daufuskie Island Props., LLC, 441 B.R. 60, 64 (Bankr. D.S.C. 2010)).[31]

65. At its base, the Court is faced with two alternatives: (a) either denying the credit bid outright, until such time as all of the aforementioned disputes have been finally determined by an appellate court, or (b) delaying the Auction until the Court has ruled on the Purported Settlements and compelling the Pre-Petition Lenders to provide credit support for their bid. The latter approach allows the sale process to continue forward while placing appellate risk where it

[31] Based on the Committee's investigation, the Reserve Price Assets (subject to the proposed credit bid), include certain leases that qualify as "Excluded Assets" under the DIP Credit Agreement and, as such, are not subject to Adequate Protection Liens. Furthermore, the Committee anticipates the quantity of leases that qualify as Excluded Assets will increase substantially once the Debtors disclose which of their approximately 2,800 unencumbered leases are subject to the proposed credit bid.

rightfully belongs. Requiring credit support by way of requiring the Pre-Petition Lenders to (x) pay a portion of the bid in cash, (y) deposit cash in escrow, or (z) post an irrevocable letter of credit for such Disputed Claims/Liens, each in an amount equal to the aggregate value of such Disputed Claims/Liens subject to a credit bid is well established in decisional authority. See, e.g., In re River Road Hotel Partners, LLC, No. 09-B-30029, 2010 WL 6634603, at *2 (Bankr. N.D. Ill. Oct. 5, 2010) ("[C]ourts have required secured creditors to put cash in escrow, pay a portion of the bid in cash, or furnish a letter of credit when the amount and validity of an alleged senior lien is in dispute."); In re Octagon Roofing, 123 B.R. 583, 592 (Bankr. N.D. Ill. 1991) (requiring secured creditor to post irrevocable letter of credit in the event challenge to creditor's claim prevailed and credit bid proved more than secured claim); In re Diebart Bancroft, 1993 WL 21423, at *5 (E.D. La. Jan. 26, 1993) ("In this case, there was cause shown [to limit credit bidding under section 363(k)]: namely, the need for cash in escrow to satisfy the lien dispute."). Failure to require such credit support leaves the Debtors' estates exposed to the real risk that the Pre-Petition Lenders will not pay the full purchase price for the assets they seek to acquire.

(iii) Pre-Petition Lenders' Credit Bid Should Expressly Ascribe Value to Each Reserve Price Asset To Be Purchased and Identify Whether Such Asset Is Encumbered

66. The Bidding Procedures state that the Stalking Horse Bid "will serve as a floor bid for the Reserve Price Assets in the aggregate" and rightly state that the Debtors will accept bids for either all of the Reserve Price Assets or for groups of such Assets to the extent that a bidder is uninterested in buying all of the Assets. (Bidding Procedures § 2.) However, the Bidding Procedures do not require the Stalking Horse Bidder to provide any allocation of its $500 million purchase price among the various assets it seeks to acquire. In short, the Debtors will be unable to perform an "apples to apples" comparison if bids come in for less than all the Reserve Price Assets and this undermines the whole purpose behind a stalking horse bid.

67. Indeed, by the Debtors' own admission, the purpose of the Stalking Horse Bid is to "set a floor" for the sale of the Assets. (Motion ¶ 82.) Indeed, courts have recognized that the purpose of a stalking horse bid is to ***facilitate*** competition. See, e.g., Reagan v. Wetzel (In re Reagan), 403 B.R. 614, 618 n.3 (B.A.P. 8th Cir. 2009), *aff'd*, 374 F. App'x 683 (8 Cir. 2010) ("The purpose of a stalking horse bid is merely to 'set the floor' on the auction price. . . . Stalking horse bids may generate interest in the assets and create a sense of confidence in the value of the assets among prospective buyers who might assume that a willing buyer has conducted due diligence."); In re Nortel Networks Inc., No. 09-10138 (KG), 2011 WL 1661524, at *2 (Bankr. D. Del. May 2, 2011) (finding that stalking horse agreement will "enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors' estates"); Official Comm. of Unsecured Creditors v. Interforum Holding LLC, No. 11-CV-219, 2011 WL 2671254, at *1 n.1 (E.D. Wis. July 7, 2011) ("The goal of an asset sale in the bankruptcy context is to maximize the recovery of value for the bankruptcy estate. To that end, the purpose of a 'stalking horse' bid or offer is to establish a framework for competitive bidding and to facilitate a realization of that value."). The goal is not to guarantee that "bidding will be frozen" as a result of actions undertaken by the Stalking Horse Bidder and the Debtors. In re Fisker Auto. Holdings, Inc., 510 B.R. at 60.

68. In this case, however, the Stalking Horse Bid, as currently constructed, achieves precisely the opposite effect. By declining to require that the Stalking Horse Bidder allocate value on an asset-by-asset basis, or even on a category-by-category basis, the Debtors make it impossible for prospective bidders to make an "apples to apples" comparison with respect to any of the Assets, thus potentially ***chilling*** competition. Without the ability to properly evaluate the Stalking Horse Bid, prospective bidders are unlikely to submit competing bids that maximize

value and, instead, may submit bids only on a piecemeal basis, thus making it more difficult for the Debtors to evaluate competing bids. (See Szlezinger Decl. ¶ 18.) [redacted]

69. Thus, the Court should require the Stalking Horse Bidder to provide, no later than one business day after entry of the Bidding Procedures Order, an allocation of its credit bid with respect to: (i) the Alpha Coal West mine complexes in Wyoming, (ii) the business of Debtor Pennsylvania Land Resources Holding Company, LLC ("PLR"), (iii) each of the McClure, Nicholas, and Toms Creek mine complexes in West Virginia and Virginia, (iv) each of the coal operations and reserves located in Pennsylvania, including the Cumberland mine complex, the Emerald mine complex, the Freeport reserves, and the Sewickley reserves, (v) the Debtors' interest in Dominion Terminal Associates, and (vi) certain other designated assets, including certain working capital. In addition, such allocation must identify the aggregate value of the encumbered and unencumbered assets within each of the above categories.

(iv) Consent Rights to Auction Procedures

70. The Debtors have not identified how they intend to conduct the Auction. The Debtors instead vaguely rely on the generic boilerplate of "[a]fter consultation with the Consultation Parties, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding Process," "[t]he rules of the Auction will be announced on the record at the outset of the Auction," as well as "[t]he Debtors will announce the bidding increments for bids (the "Minimum Overbid") and other auction rules at the outset of the Auction with respect to each of the Applicable Assets." (Bidding Procedures § 10.) The Committee does not contest the fact that it is standard to provide

debtors with the necessary flexibility to conduct an auction. However, in the complex environment represented by the Debtors' Cases and the motion pending before the Court, it is critical to show all Potential Bidders that an even playing field is being imposed. The best manner to do so is to provide independent oversight with respect to the Debtors' ability to propose and modify such rules. The Committee is a fiduciary and, by giving the Committee consent rights, it grants an independent fiduciary the ability to ensure that the rules are designed to maximize recoveries and are thus fair and impartial. In addition, the Debtors should also be required to announce the Minimum Overbids at least one business day in advance of any Auction and such overbids must be acceptable to the Committee. (See Szlezinger Decl. ¶ 21.) Again, this will provide comfort to prospective bidders that the overbids have been set appropriately.

(v) Matching Right in Bidding Procedures Must Be Removed

71. Despite the bid protections already afforded the Stalking Horse Bidder, the Debtors are permitting the Stalking Horse Bidder to match bids made, and alternative transactions proposed, by any other Qualified Bidder. (Bidding Procedures § 10.) Indeed, before determining whether a Qualified Bidder (other than the Stalking Horse Bidder) is the Successful Bidder with respect to any Reserve Price Asset, the Debtors must notify the Stalking Horse Bidder of the applicable competing bid and inform the Stalking Horse Bidder of the changes required to make the Stalking Horse Bid the Successful Bid, upon which the Stalking Horse Bidder will have an opportunity to modify its bid to become the highest or otherwise best bid. (Id.) At its core, the matching right allows the Stalking Horse Bid to remain the highest or best bid by simply matching and not exceeding other bids. (See Bidding Procedures at § 10.) The matching provision also requires the Debtors to "inform" the Stalking Horse Bidder of what it takes to become the then highest or best bid. (See id.) The matching provision cannot stand. It subverts the purpose of an auction, which is to maximize value.

72. Indeed, the "matching" right provided for in the Bidding Procedures is confusing and, at best, ill-defined, as it does not specify when or how many times such matching right may be used and it is unclear which parties may avail themselves of such right. While the matching right is framed in the Bidding Procedures as a right that is given to the Stalking Horse Bidder, the Debtors have not articulated why this matching right is necessary or conducive to a competitive and open auction process [redacted] Notwithstanding the lack of justification therefor, this matching right strongly signals to Potential Bidders that the Auction is intended to favor the Pre-Petition Lenders, does not encourage higher or otherwise better bids by the Stalking Horse Bidder, and thus, will only serve to chill bidding. (See Szlezinger Decl. ¶ 21.) Accordingly, the matching provision must be stricken in its entirety.

(vi) Other Necessary Modifications to Bidding Procedures

73. The Committee revised the Bidding Procedures Order and Bidding Procedures in a manner designed to maximize the value of the estates' Assets and to be fair to all parties affected by such Bidding Procedures. Such comments are set forth in the redlines of the Bidding Procedures Order and Bidding Procedures, which are attached hereto as Exhibits A and B, respectively.

74. As the Court will see in the respective redline versions, the Committee's comments generally fall into one of four categories:

1) Unfair and opaque procedures that hinder a competitive bidding process and chill bidding;

2) Constrained timeline that chills bidding (as discussed in further detail above);

3) Lack of critical documents, including most egregiously, the Stalking Horse APA and its attendant schedules, and insufficient time to review same; and

4) Lack of meaningful opportunity for the estates' remaining fiduciary, the Committee, to participate in the sale process, including by being given consent rights.

75. Each of these changes is necessary and geared toward the goal of fostering a robust and competitive auction that maximizes the value of the assets being sold. (See Szlezinger Decl. ¶ 22.) The Committee respectfully submits that that the Court should not allow the Debtors to "[create] the perfect storm" that chills bidding, In re Free Lance-Star Publ'g Co., 512 B.R. at 807, and "short-circuit[s] the bankruptcy process," In re Fisker Auto. Holdings, Inc., 510 B.R. at 61, all in the name of turning over the going concern assets of the Debtors to the Pre-Petition Lenders in a manner that would not be permissible outside the bankruptcy process (if even permitted therein).

76. For all of the foregoing reasons, the Bidding Procedures should not be approved without the modifications requested above.

RESERVATION OF RIGHTS

77. The Committee reserves the right to supplement this Objection.

CONCLUSION

78. For the reasons set forth above, the Committee respectfully requests that the Court deny the Debtors' request for approval of DIP Amendment No. 5 and should only approve the Bidding Procedures subject significant modifications, including as set forth in Exhibits A and B to this Objection.

Dated: February 29, 2016
Richmond, Virginia

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Exhibit A

MILBANK COMMENTS 2/29/16

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	Chapter 11
Alpha Natural Resources, Inc., et al.,	Case No. 15-33896 (KRH)
Debtors.	(Jointly Administered)

SECOND ORDER ESTABLISHING BIDDING AND SALE PROCEDURES FOR THE POTENTIAL SALE OF CERTAIN MINING PROPERTIES AND RELATED ASSETS

This matter coming before the Court on the *Debtors' Omnibus Motion for Entry of: (I) an Order Establishing Bidding and Sale Procedures for the Potential Sale of Certain Mining Properties and Related Assets; (II) One or More Orders Approving the Sale of Such Assets; (III) an Order Approving Settlements Related to Unencumbered Assets and the Pre-Petition Lenders' Diminution Claims; and (IV) an Order Approving Amendments to Certain Case Milestones in Connection with the DIP Credit Agreement* (Docket No. ____) (the "Motion"),[1] filed by the ~~above-captioned~~**above-captioned** debtors and debtors in possession (collectively, the "Debtors"), seeking, pursuant to sections 105, 363 and 364 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules"), an order (i) authorizing and approving the procedures that are attached hereto as Annex 1[2] and incorporated herein by reference (the "Bidding Procedures") for the

[1] Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion, or the Bidding Procedures, as applicable.

[2] **[Note to Debtors: Need to also attach the Stalking Horse asset schedule referenced in the Bidding Procedures, which asset schedule shall ascribe value to certain Reserve Price Assets as discussed therein.]**

marketing and sale of certain of the Debtors' Assets (each, a "Sale Transaction"), (ii) scheduling an Auction and a Sale Hearing in connection with the Sale Transactions, (iii) approving the form and manner of notice of the Auction and the Sale Hearing and (iv) approving procedures for the assumption and assignment of Executory Contracts, including the determination of Cure Costs, pursuant to section 365 of the Bankruptcy Code (the "Contract Procedures"); the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the "Bidding Procedures Hearing"); and the Court having considered the statements of counsel and the evidence presented at the Bidding Procedures Hearing;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). The statutory predicates for the relief granted herein are 11 U.S.C. §§ 105, 363 and 365; Bankruptcy Rules 2002, 6004 and 6006; and Local Rule 6004-2. Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (1) the Bidding Procedures, (2) the Contract Procedures and the form and manner of notice of the Auction and the Sale Hearing.

C. The Bidding Procedures and the Contract Procedures are reasonable and appropriate.

D. The proposed notice of the Auction, the Sale Hearing, the Bidding Procedures and the proposed treatment of Assumed and Assigned Agreements, as set forth in the Motion and this Order, is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice thereof, and no other or further notice shall be required in connection with these matters or the proposed Sale Transactions.

E. Good and sufficient notice of the relief sought in the Motion and granted herein has been given under the circumstances, and no further notice of such matters is required. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion and granted herein was afforded to all interested persons and entities.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for Assets. As such, the Bidding Procedures are supported by, and constitute a proper exercise of, the Debtors' sound business judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.

MILBANK COMMENTS 2/29/16

2. ~~All objections to the entry of this Order or to the relief provided herein, that have not been withdrawn with prejudice, waived, resolved or settled are hereby denied and overruled on the merits with prejudice; provided, however, that nothing~~**Nothing** in this Order shall prejudice the right of any party to object to approval of any sale contemplated under this Order at the Sale Hearing or the Settlements on any ~~applicable~~ ground.

3. The Bidding Procedures, attached hereto as Annex 1, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Assets under the terms thereof. The Debtors and their professionals and agents are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. In connection with the Bidding Procedures, the Stalking Horse Bid shall be the lead bid for the Reserve Price Assets.

4. The Court shall conduct the hearing on the Settlements on April 28, 2016 at _____ (prevailing Eastern Time) or as soon thereafter as counsel and interested parties may be heard, at which time the Court shall consider approval of the Settlements.

5. All objections to approval of the Settlements must be in writing, state the basis of such objection with specificity and be filed with this Court and served so as to be received by the following parties on or before April 21, 2016 (the "Settlements Objection Deadline"): (a) the Debtors, Alpha Natural Resources, Inc., One Alpha Place, P.O. Box 16429, Bristol, Virginia 24209 (Attn: Mark Manno, Esq., General Counsel); (b) Debtors' counsel, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Carl E. Black, Esq.) and Jones Day, 1420 Peachtree St. NE, Suite 800,

Atlanta, Georgia 30309 (Attn: Jeffrey B. Ellman, Esq.); (c) Debtors' co-counsel, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 (Attn: Tyler P. Brown, Esq.); (d) co-counsel to the Official Committee of Unsecured Creditors, (i) Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, New York 10005 (Attn: Evan R. Fleck, Esq. and Eric K. Stodola, Esq.) and (ii) Sands Anderson PC, 1111 East Main Street (23219), P.O. Box 1998, Richmond, Virginia 23218 (Attn: William A. Gray, Esq.); (e) co-counsel to Citibank, N.A. and Citibank North America, Inc., as administrative and collateral agents under the Debtors' postpetition credit facilities and prepetition first lien credit facility, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attn: Damian S. Schaible, Esq. and Damon P. Meyer, Esq.) and (ii) McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219 (Attn: Dion W. Hayes, Esq., Sarah B. Boehm, Esq. and K. Elizabeth Sieg, Esq.); (f) co-counsel to the *ad hoc* group of second lien noteholders, (i) Kirkland & Ellis LLP, 601 Lexington Ave., New York, New York, 10022 (Attn: Stephen E. Hessler, Esq.) and (ii) Kutak Rock LLP, 1111 East Main Street, Suite 800, Richmond, Virginia 23219 (Attn: Michael A. Condyles); and (g) any other parties entitled to notice under the case management procedures approved by the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111).

6. ~~4.~~ The deadline for submitting a Qualified Bid for any Asset or set of Assets shall be ~~March 28~~**May 9**, 2016 at 5:00 p.m., prevailing Eastern Time (the "Bid Deadline"). The Bid Deadline may be modified as set forth in the Bidding Procedures.

7. ~~5.~~ Any Auction, if necessary, shall take place at offices of the Debtors' counsel, Jones Day, at 222 East 41st Street, New York, New York 10017, at 10:00 a.m. (prevailing Eastern Time) on ~~March 31~~**May 11**, 2016, or such other time and place as the Debtors, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, may notify Qualified Bidders who have submitted Qualified Bids. The Auction shall be conducted ~~openly and shall be transcribed~~ as described in greater detail in the Bidding Procedures **and be transcribed**. As described in the Bidding Procedures, the Debtors may designate**, after consultation with counsel to the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors' Committee"),** a Successful Bidder for certain Assets without conducting an Auction. The Auction may be rescheduled**, with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned,** as set forth in the Bidding Procedures.

8. ~~6. At the request of the Debtors, each~~**Each** bidder participating at the Auction ~~shall be required to~~**, including the Stalking Horse Bidder through the Stalking Horse APA, must** confirm in writing, that (a) it has not engaged **and will not engage** in any conduct of the type described in section 363(n) of the Bankruptcy Code with respect to the Bidding Process, which would cause any sale to be subject to avoidance under, or otherwise violate, that section; and (b) its bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

9. ~~7.~~ The Court shall conduct the initial Sale Hearing on ~~**[April ____]**~~**May 18**, 2016 at _____ (prevailing Eastern Time) or as soon thereafter as counsel and

interested parties may be heard, at which time the Court shall consider approval of the Sale Transactions to the Successful Bidder(s) and the entry of the Sale Order(s).

10. ~~8.~~ The Sale Hearing for some or all of the Assets may be adjourned or rescheduled by the Debtors in their discretion (after consultation with the Consultation Parties**, except any Consultation Party Bidder and with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned**) without notice or with limited and shortened notice to parties, including by (a) an announcement of such adjournment at the Sale Hearing or at an Auction or (b) the filing of a notice of adjournment with the Court prior to the commencement of the Sale Hearing (which may be included in a hearing agenda letter).

11. ~~9.~~ Within ~~ten~~**two** business days after entry of this Order,[~~2~~3] the Debtors shall serve the proposed Auction and Hearing Notice substantially in the form attached to the Motion as Exhibit C by first-class mail, postage prepaid upon the following parties (collectively, the "Notice Parties"): (a) the U.S. Trustee; (b) counsel to the Creditors' **Committee**; (c) counsel to the DIP Agents; (d) counsel to the Pre-Petition Agent; (e) counsel to the *ad hoc* group of Second Lien Noteholders; (f) counsel to Wilmington Trust, National Association, as indenture trustee for the Debtors' second lien notes; (g) the attorneys general for each of the States in which the Assets are located; (h) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (i) the United

[~~2~~3] In addition, within ~~ten~~**three** business days after the Debtors add any Assets to the Asset Schedule, the Debtors shall file a copy of the revised Asset Schedule (the "Revised Asset Schedule") and, if necessary, an updated Permit Schedule (as defined below) and shall serve the Revised Asset Schedule and any updated Permit Schedule on the Notice Parties (along with the Auction and Hearing Notice if not previously served on such party).

States Environmental Protection Agency and applicable environmental regulators in the States in which the Assets are located; (j) all sureties that have issued bonds relating to the Assets; (k) the Pension Benefit Guaranty Corporation; (l) counsel to the official committee of retirees; (m) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (n) all parties that are known or reasonably believed to have expressed an interest in acquiring the Assets; (o) all parties that are known or reasonably believed by the Debtors to have asserted any lien, encumbrance, claim or other interest in the Assets; (p) all other governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to any Sale Transaction; (q) all non-Debtor parties to the Assumed and Assigned Agreements; and (r) all other parties identified by the Debtors as having a particular interest in the Assets.

12. ~~10.~~ Within ~~ten~~**two** business days of the entry of this Order~~ or as soon as thereafter as practicable~~, the Debtors shall (a) cause the Publication Notice substantially in the form attached to the Motion as Exhibit D to be published for one day in the national edition of *USA Today* and (b) post the notice on the Restructuring Website. The Debtors are authorized to revise the Publication Notice as necessary or appropriate to prepare the notice for publication.

13. ~~11.~~ No later than ~~**[March ____],** 2016~~**three business days after entry of this Order**, the Debtors shall file**, after consultation with counsel to the Creditors' Committee with respect to the form thereof,** the Form APA and the Form Sale Order with the Court. The Debtors reserve the right to amend or modify these forms or otherwise negotiate changes

with potential purchasers**, in each case, after consultation with counsel to the Creditors' Committee**.

14. ~~12. If~~**If, after consultation with counsel to the Creditors' Committee,** the Debtors modify the Asset Schedule (either to add or remove Assets), the Debtors will promptly file such modified Asset Schedule with the Court. The Prior Assets may be sold under the Bidding Procedures approved hereby~~,~~ **or** under the Prior Bidding Procedures ~~or otherwise outside of such procedures~~.

15. ~~13.~~ All general objections to approval of the Sale Transactions, including the sale of the Debtors' assets free and clear of liens, claims, encumbrances and interests pursuant to section 363(f) of the Bankruptcy Code, the Form APA, the Form Sale Order, the Stalking Horse APA and the Stalking Horse Sale Order and the Settlements, must be in writing, state the basis of such objection with specificity and be filed with this Court and served so as to be received by **the** following parties on or before ~~March 21~~**May 2**, 2016 (the "Objection Deadline"):[~~3~~4] (a) the Debtors, Alpha Natural Resources, Inc., One Alpha Place, P.O. Box 16429, Bristol, Virginia 24209 (Attn: Mark Manno, Esq., General Counsel); (b) Debtors' counsel, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Carl E. Black, Esq.) and Jones Day, 1420 Peachtree St. NE, Suite 800, Atlanta, Georgia 30309 (Attn: Jeffrey B. Ellman, Esq.); (c) Debtors' co-counsel, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 (Attn: Tyler P. Brown, Esq.); (d) co-counsel to the Official Committee of Unsecured Creditors, (i) Milbank, Tweed,

[~~3~~4] The Objection Deadline solely with respect to Assets added to the Revised Asset Schedule will be the later of ~~March 21~~**May 2**, 2016 and seven business days after filing and service of the Revised Asset Schedule.

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Hadley & McCloy LLP, 28 Liberty Street, New York, New York 10005 (Attn: Evan R. Fleck, Esq. and Eric K. Stodola, Esq.) and (ii) Sands Anderson PC, 1111 East Main Street (23219), P.O. Box 1998, Richmond, Virginia 23218 (Attn: William A. Gray, Esq.); (e) co-counsel to Citibank, N.A. and Citibank North America, Inc., as administrative and collateral agents under the Debtors' postpetition credit facilities and prepetition first lien credit facility, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attn: Damian S. Schaible, Esq. and Damon P. Meyer, Esq.) and (ii) McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219 (Attn: Dion W. Hayes, Esq., Sarah B. Boehm, Esq. and K. Elizabeth Sieg, Esq.); (f) ~~co-counsel~~**co-counsel** to the *ad hoc* group of second lien noteholders, (i) ~~Kirland~~**Kirkland** & Ellis LLP, 601 Lexington Ave., New York, New York, 10022 (Attn: Stephen E. Hessler, Esq.) and (ii) Kutak Rock LLP, 1111 East Main Street, Suite 800, Richmond, Virginia 23219 (Attn: Michael A. Condyles); and (g) any other parties entitled to notice under the case management procedures approved by the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111). For the avoidance of doubt, all objections to the Stalking Horse APA, the Stalking Horse Sale Order and the Settlements must be filed by the Objection Deadline.

16. ~~14.~~ Following the designation of a Successful Bid, the Debtors shall file a notice of the Successful Bid, along with copies of the proposed APA and Sale Order, marked to show changes, if any, from the form documents previously filed with the Court (or, in the case of a Successful Bid by the Stalking Horse Bidder, showing changes from the Stalking Horse APA and Stalking Horse Sale Order) (a "Notice of Successful Bid"). A Notice of Successful Bid shall be filed not less than five business days before the Sale Hearing and shall be served by overnight mail, hand delivery or electronic mail on (a) the U.S. Trustee;

(b) each of the Consultation Parties; (c) the Potential Bidders; (d) any party that previously had filed an objection to the proposed sale; (e) the attorneys general for each of the States in which the applicable Assets are located; (f) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (g) the United States Environmental Protection Agency and applicable environmental regulators in the States in which the relevant Assets are located; (h) all sureties that have issued bonds relating to the applicable Assets; (i) the Pension Benefit Guaranty Corporation; (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (k) all parties that are known or reasonably believed by the Debtors to have asserted any lien, encumbrance, claim or other interest in the applicable Assets; (l) all other governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the particular Sale Transaction; and (m) all non-Debtor parties to the applicable Assumed and Assigned Agreements.

17. ~~15.~~ The deadline for objecting to approval of the proposed Sale Transaction(s) solely for any additional issues raised by the Notice of Successful Bid (i.e., by the revised APA and proposed Sale Order, and including any revised Stalking Horse APA of the Stalking Horse Bidder) shall be ~~the earlier of (a) five business days after the filing and service of Notice of Successful Bid and (b)~~ two business days before a Sale Hearing (the "Supplemental Objection Deadline").

~~16. A party that fails to timely file an objection to any potential or proposed sale by the Objection Deadline or the Supplemental Objection Deadline, as applicable, shall be (a) forever barred from asserting any objection to entry of the Sale Order or consummation of the~~

~~applicable Sale Transactions, and (b) deemed to have consented to entry of the Sale Order and consummation of the Sale Transactions, without limitation, for purposes of section 363(f) of the Bankruptcy Code.~~

18. ~~17.~~ As soon as practicable, but no later than ~~ten~~**three** business days following entry of this Order, the Debtors shall file a list of mining permits associated with each of the Assets on the Asset Schedule (the "Permit Schedule"). The Permit Schedule (a) may be amended or supplemented by the Debtors from time to time**, after consultation with counsel to the Creditors' Committee,** and (b) shall be amended or supplemented, as necessary, within ~~ten~~**two** business days after any modification to the Asset Schedule.

19. ~~18.~~ As soon as practicable, but no later than ~~ten~~**three** business days following entry of this Order, the Debtors shall file a schedule of cure obligations (the "Cure Schedule") for Executory Contracts that they have identified**, after consultation with counsel to the Creditors' Committee,** as potential Assumed and Assigned Agreements. The Cure Schedule shall include: (a) a summary description of each Executory Contract that may be assumed and assigned to a potential buyer; and (b) the amount, if any, the Debtors believe would be necessary to cure defaults under such agreements pursuant to sections 365(b)(1) and 365(f)(2)(A) of the Bankruptcy Code (the "Cure Costs"). Listing an Executory Contract on the Cure Schedule does not mean that the Successful Bidder ultimately will identify such agreement as an Assumed and Assigned Agreement in an APA. In addition, inclusion of any document in the Cure Schedule does not constitute, and is not deemed to be, a determination or admission by the Debtors or any Successful Bidder that such document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Cure Schedule

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(a) may be amended or supplemented by the Debtors from time to time**, after consultation with counsel to the Creditors' Committee,** and (b) shall be amended or supplemented, as necessary, within ~~ten~~**two** business days after any modification to the Asset Schedule.

20. ~~19.~~ The Debtors shall serve a copy of the relevant portion of the Cure Schedule, together with the Assumption and Assignment Notice in substantially the form attached to the Motion as Exhibit B, on each of the nondebtor counterparties to the agreements listed on the Cure Schedule, and their counsel of record in these cases, by first class mail on the date that the Cure Schedule is filed with the Court. If the Debtors amend the Cure Schedule (e.g., to add additional Executory Contracts when the Asset Schedule is updated), the Debtors shall serve **a** copy of the relevant portion of the amended Cure Schedule, together with the Assumption and Assignment Notice, on each of the nondebtor counterparties to the agreements listed on the amended Cure Schedule, and their counsel of record in these cases, by first class mail.

21. ~~20.~~ Objections to the Cure Costs set forth in the Cure Schedule, or the assumption and assignment of the Assumed and Assigned Agreements, must be in writing, state the basis of such objection with specificity and be filed with the Court, and be actually received by the Debtors' counsel on or before the later of (a) March ~~11~~**18**, 2016 and (b) ten business days after service of the Assumption and Assignment Notice.

22. ~~21.~~ Unless a nondebtor party to an Assumed and Assigned Agreement has timely and properly filed and served an objection to the assumption and assignment of its Assumed and Assigned Agreement or the Cure Costs, the Cure Costs set forth in the Cure Schedule shall be binding upon the nondebtor parties to the Assumed and Assigned

Agreements for all purposes in these chapter 11 cases and shall constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed and Assigned Agreements (unless a portion of such costs are paid or satisfied in any manner, in which case the Cure Costs shall be reduced). In addition, absent a timely and properly filed and served objection, all nondebtor counterparties to Assumed and Assigned Agreements shall (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assumed and Assigned Agreements, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; and (b) be forever barred, estopped and permanently enjoined from asserting or claiming against the Debtors, any Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed and Assigned Agreement or that there is any objection or defense to the assumption and assignment of such Assumed and Assigned Agreement.

23. ~~22.~~ A nondebtor counterparty to any Assumed and Assigned Agreement that previously was assumed by an order of the Court must file and serve a timely objection if it objects to the assignment of its Assumed and Assigned Agreements to the Stalking Horse Bidder or another Successful Bidder.

24. ~~23.~~ If a nondebtor counterparty to an Assumed and Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Amounts (the "Disputed Cure Amounts"), then (a) to the extent that the parties (including, if applicable, a Successful Bidder) are able to consensually resolve the Disputed Cure Amounts prior to the Sale

Hearing, the Debtors shall promptly provide the Consultation Parties **(except any Consultation Party Bidder)** with notice and an opportunity to object to such proposed resolution; or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing or any of the Consultation Parties **(except any Consultation Party Bidder)** raise an objection, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount shall be determined (a) at the Sale Hearing; or (b) at such other **later** date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of an Assumed and Assigned Agreement shall be heard at the Sale Hearing.

25. ~~24.~~ The deadline for parties to object solely to the assignment of the Assumed and Assigned Agreements to a particular Successful Bidder as identified in a Notice of Successful Bid (including on the basis of adequate assurance of future performance as required by section 365(f)(2)(B) of the Bankruptcy Code) shall be the earlier of (a) five business days after the filing and service of the Notice of Successful Bid and (b) two business days before the commencement of the Sale Hearing.

26. ~~25.~~ Notwithstanding anything to the contrary in the Motion or the Bidding Procedures, counsel or financial advisors for the United Mine Workers of America (the "UMWA") shall be deemed one of the Consultation Parties solely with respect to any Assets (whether currently included on or added to the Asset Schedule) only to the extent such Assets consist of mining properties, reserves and/or related preparation plants (a) at which there are employees represented by the UMWA; (b) where a collective bargaining agreement with the UMWA remains in effect; or (c) that are covered by the July 2011 Memoranda of

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Understanding regarding Job Opportunities between certain Debtors and the UMWA (collectively, the "Consultation Properties"); provided, however that nothing in this Order shall be construed as an admission by any party with respect to the existence, scope or enforceability of any statutory or contractual rights or obligations with respect to any such Assets, nor prejudice any party from asserting any arguments or defenses with respect to any such statutory or contractual rights or obligations with respect to such Assets in any future proceedings.

27. ~~26.~~ The form of the Assumption and Assignment Notice, the Auction and Hearing Notice and the Publication Notice attached to the Motion as Exhibits B, C and D, respectively, and the manner of service or publication described herein (a) are hereby approved in all respects and (b) are determined to be appropriate and sufficient for all purposes. The Debtors shall be permitted to make nonsubstantive revisions to the Auction and Hearing Notice, the Publication Notice and the Assumption and Assignment Notice, consistent with the Bidding Procedures and this Order.

28. ~~27.~~ No other or further notice of the Motion, this Order, the Bidding Procedures, the sale of the Assets, the Auction, the Successful Bidders, the assumption and assignment of Executory Contracts or the Sale Hearing shall be required.

29. ~~28.~~ All parties (whether or not Qualified Bidders) that participate in the Bidding Process (including any Auction) shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale Transactions) to the extent that it is later determined that the Court, absent consent of the

parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

30. ~~29.~~ Nothing in this Order, the Bidding Procedures or the participation of any party, including the DIP Agents, the DIP Lenders or any Pre-Petition Secured Parties (each as defined in the DIP Order and collectively, the "Lender Parties"), in the bidding process, shall be deemed a waiver of (a) any rights and remedies of such party under the DIP Order or the DIP Credit Agreements (as defined in the DIP Order) or any documents or orders relating thereto (together, the "DIP Documents") or any rights and remedies of such party under the DIP Documents or the DIP Order, as applicable; or (b) any right of such party to dispute the validity or priority of any lien, claim, encumbrance or other interest.

31. ~~30.~~ Nothing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any surety has or may have under applicable bankruptcy and non-bankruptcy law under any indemnity agreements, surety bonds or related agreements or any letters of credit relating thereto, or any rights, remedies or defenses of the Debtors with respect thereto.

32. ~~31.~~ Nothing in this Order or the Bidding Procedures is intended or shall be construed to alter or relieve the Debtors or any proposed assignee of any of the Assumed and Assigned Agreements of any rights or obligations under section 365 of the Bankruptcy Code. Likewise, nothing in this Order or the Bidding Procedures shall be deemed a waiver of any

rights or remedies of any of the Counterparties (as defined in the Bidding Procedures) or the Debtors pursuant to section 365 of the Bankruptcy Code.

33. ~~32.~~ The Debtors are authorized to proceed with the sales hereunder without complying with any state or local bulk transfer laws or requirements.

34. ~~33.~~ This Order shall be immediately effective and enforceable upon its entry, and nothing in Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014 (to the extent applicable) shall cause a stay hereof.

35. To the extent any provisions of this Order are inconsistent with either the Bidding Procedures or the Stalking Horse APA, the terms of this Order shall control. To the extent any provisions of the Bidding Procedures are inconsistent with the Stalking Horse APA, the terms of the Bidding Procedures shall control.

36. Notwithstanding any provisions to the contrary in the Stalking Horse APA or Stalking Horse Bid, any exclusivity, "no shop," or other provision in the Stalking Horse APA or Stalking Horse Bid that purports to limit the Debtors' ability to market the Assets shall be null and void. For the avoidance of doubt, the marketing process shall be governed solely by this Order and the Bidding Procedures.

37. Notwithstanding any provisions to the contrary in this Order or the Bidding Procedures, the rights of the Creditors' Committee to petition the Court to extend the dates set forth in the Bidding Procedures and this Order shall be fully preserved.

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38. ~~34.~~ The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation, interpretation or enforcement of this Order.

Dated: _____, 2016
Richmond, Virginia

_____
UNITED STATES BANKRUPTCY JUDGE

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WE ASK FOR THIS:
Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
J R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
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Attorneys for the Debtors
and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

Exhibit B

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Justin F. Paget (VSB No. 77979)

Attorneys for Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	Chapter 11
Alpha Natural Resources, Inc., et al.,	Case No. 15-33896 (KRH)
Debtors.	(Jointly Administered)

BIDDING PROCEDURES FOR THE SALE OF CERTAIN OF THE DEBTORS' MINING ASSETS[1]

By motion dated February 8, 2016 (Docket No.___) (the "Motion"), Alpha Natural Resources, Inc. and its affiliated debtors in the above-captioned cases, each as a debtor-in- possession (collectively, the "Debtors"), sought, among other things, approval of the process and procedures for soliciting bids for and obtaining approval of the sale of certain of the Debtors' mining properties, assets and related infrastructure as described in more detail on the attached **Annex A** (together, as amended, modified or supplemented from time to time, the "Assets"). The schedule of Assets attached as Annex A (the "Asset Schedule") may be modified from time to time**, after consultation with counsel to the Creditors' Committee**

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order (as defined below).

(as defined below), to remove or add Assets, as described below. **[**For the avoidance of doubt, the Assets include the executory contracts and unexpired leases related thereto.**]**[2]

On **[**_____], 2016, the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court") entered an order (Docket No.___) (the "Bidding Procedures Order") that, among other things, authorizes the Debtors to solicit bids in respect of the Assets through the procedures described below (the "Bidding Procedures") and to seek approval of one or more Successful Bids (as defined below) by the Bankruptcy Court at one or more hearings, with such hearing initially scheduled for [_____].m. (prevailing Eastern Time) on ~~**[April _____]**~~**May 18, 2016** before the Honorable Kevin R. Huennekens (each, a "Sale Hearing").

Previously, on November 6, 2015, the Bankruptcy Court entered an order (Docket No. 855) (the "Prior Bidding Procedures Order") approving bidding and sale procedures (the "Prior Bidding Procedures") for other mining assets of the Debtors, as described in Annex 1 to the Prior Bidding Procedures Order, and as amended by the *Notice of Filing of Modified Asset Schedule* (Docket No. 985) and the *Second Notice of Filing of Modified Asset Schedule in Connection with Bidding Procedures* (Docket No. 1011) (collectively, the "Prior Assets"). Any Prior Assets not sold under the Prior Bidding Procedures Order also may be included as Assets hereunder~~.~~[2]**, after consultation with counsel to the Creditors' Committee; *provided, however, that* such Prior Assets must be added to the Asset Schedule.**

Certain of the Assets (the "Reserve Price Assets") are subject to a stalking horse credit bid by a newly formed entity (the "Stalking Horse Bidder") that will be owned by the Debtors' first lien prepetition lenders (the "Pre-Petition Lenders"), on behalf of the Pre-Petition Lenders. The Reserve Price Assets are (a) all assets (including, but not be limited to, all mineral rights, fixed and mobile equipment and logistics assets) used or held for use primarily in connection with (i) the Alpha Coal West mine complexes in Wyoming, (ii) the Debtors' Pennsylvania Land Resources natural gas business ("PLR") in the Marcellus Shale in southwestern Pennsylvania, and (iii) the McClure, Nicholas and Toms Creek mine complexes in West Virginia and Virginia, (b) all coal operations and reserves located in Pennsylvania, including the Cumberland mine complex, the Emerald mine complex, the Freeport reserves, the Sewickley reserves and all assets used or held for use primarily in connection therewith, including all logistics-related assets, (c) the Debtors' interest in Dominion Terminal Associates and (d) certain other designated assets, including certain working capital. The Reserve Price Assets are designated on the Asset Schedule and are described in greater detail in the asset purchase agreement filed with the Bankruptcy Court

[2] **[Note to Debtors: The executory contracts and unexpired leases should also be listed on the schedule.]**

[2] ~~The Prior Assets also may be sold under the Prior Bidding Procedures or otherwise outside of the procedures set forth herein.~~

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(Docket No.___) (the "Stalking Horse APA"),[3] which shall be filed within two business days of entry of the Bidding Procedures Order. The Stalking Horse Bidder has agreed to purchase the Reserve Price Assets for a credit bid of $500,000,000[4] (the "Reserve Price") on the terms and along with the other consideration (including assumption of liabilities) set forth in the Stalking Horse APA. Notwithstanding the foregoing and for the avoidance of doubt, any party may bid for any or all of the Assets on the Asset Schedule (as may be amended or modified from time to time in accordance with the Bidding Procedures).

1. **Important Dates and Contact Information**

As further described below in connection with the Bidding Procedures, the Debtors will take the following steps, as applicable:

(a) assist Potential Bidders (as defined below) in conducting their respective due diligence investigations and accept nonbinding Preliminary Indications of Interest (as defined below) on or before ~~February 29~~March 25, 2016 at 5:00 p.m. (prevailing Eastern Time) (the "PII Deadline");

(b) accept Qualified Bids (as defined below) until the deadline for receipt of Qualified Bids, which is ~~March 28~~May 9, 2016 at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline");

(c) after consultation with (i) the counsel or financial advisors to the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors' Committee"); (ii) counsel or financial advisors to the DIP Agents (as defined in the DIP Order);[5] (iii) counsel

[3] The summary of the Reserve Price Assets included herein is provided for convenience and is qualified in its entirety by the description of the Reserve Price Assets contained in the Stalking Horse APA.

[4] The Stalking Horse Bidder shall file a schedule within one business day of entry of the Bidding Procedures Order ascribing value to at least each of the following categories of Assets (in each case identifying the aggregate value of the encumbered and unencumbered assets within each category): (i) the Alpha Coal West mine complexes in Wyoming, (ii) the business of Debtor PLR, (iii) the McClure, Nicholas, and Toms Creek mine complexes in West Virginia and Virginia, (iv) all coal operations and reserves located in Pennsylvania, including the Cumberland mine complex, the Emerald mine complex, the Freeport reserves, and the Sewickley reserves, (v) the Debtors' interest in Dominion Terminal Associates, and (vi) certain other designated assets, including certain working capital.

[5] The term "DIP Order" means, collectively: (a) the *Final Order (I) Authorizing Debtors (A) to Obtain Post- Petition Financing Pursuant to Authorizing (A) Authorizing The Debtors To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre- Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b),* entered on September 17, 2015 (Docket No. 465); (b) the *Supplemental DIP Financing Order Authorizing, Pursuant to 11 U.S.C. §§ 105, 363 and 364, (I) Amendment to the DIP Financing and (II) Waiver of Bankruptcy Rule 6004(h) Stay* (Docket No. 973); (c) the *Second Supplemental DIP Financing Order Authorizing, Pursuant to 11 U.S.C. §§ 105, 363 and 364, (I) Amendment to the DIP Financing*

or financial advisors to the Pre-Petition Agent (as defined in the DIP Order); (iv) counsel or financial advisors to the *ad hoc* group of Second Lien Noteholders (as defined in the DIP Order); (v) counsel to Wilmington Trust, National Association, as indenture trustee for the Debtors' second lien notes (the "Indenture Trustee"); and (vi) counsel or financial advisor for the United Mine Workers of America ("UMWA"), but only in connection with the sale of any Consultation Properties (as defined in the Bidding Procedures Order) (collectively, such advisors, the "Consultation Parties"), evaluate bids and negotiate with bidders to obtain the highest or best bid for the Assets;[~~5~~6] *provided that* such consultation is subject in each case to paragraph 17 below;

(d) if more than one Qualified Bid is received for a particular Asset or group of Assets, ~~or if~~ the Debtors ~~otherwise determine, after consultation with the Consultation Parties, that it would promote the sale process,~~**shall** conduct an auction (the "Auction") to begin at 10:00 a.m. (prevailing Eastern Time) on ~~March 31~~**May 11, 2016** (the "Auction Date"); and

(e) after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, select the Successful Bidders (as defined below) for each of the relevant Assets (at the conclusion of the Auction, if any, or earlier if no Auction is needed) and seek approval of the Successful Bids for such Assets at a Sale Hearing.

Information, bids and other correspondence that must be provided to the Debtors under these Bidding Procedures must be delivered to the following parties (collectively, the "Notice Parties"): (i) the Debtors, Alpha Natural Resources, Inc., One Alpha Place, P.O. Box 16429, Bristol, Virginia 24209 (Attn: Mark Manno, Esq., General Counsel), email: mmanno@alphanr.com; (ii) counsel to the Debtors, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 (Attn: Carl E. Black, Esq.), email: ceblack@jonesday.com; and Jones Day, 1420 Peachtree St. NE, Suite 800, Atlanta, Georgia 30309 (Attn: Jeffrey B. Ellman, Esq.), email jbellman@jonesday.com; (iii) co-counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 (Attn: Tyler P. Brown, Esq.), email: tpbrown@hunton.com; ~~and~~ (iv) the Debtors' investment banker, Rothschild, Inc. ("Rothschild"), 1251 Avenue of the Americas, 33rd Floor, New York, New York 10020 (Attn: Homer Parkhill), email: homer.parkhill@rothschild.com~~.~~**; (v) counsel to the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, New York 10005 (Attn: Evan R. Fleck, Esq.), email: efleck@milbank.com;**

and (II) Waiver of Bankruptcy Rule 6004(h) Stay (Docket No.___) and (d) any supplemental final order subsequently entered by the Bankruptcy Court authorizing the Debtors to continue to use cash collateral and obtain postpetition financing under any section of the Bankruptcy Code.

[~~5~~6] All such consultation shall be done on a confidential basis and**, except as to the Creditors' Committee and its counsel and advisors,** subject to appropriate confidentiality arrangements **reasonably** satisfactory to the Debtors.

(vi) investment banker to the Creditors' Committee, Jefferies LLC, 520 Madison Avenue, 7th Floor, New York, New York 10022 (Attn: Leon Szlezinger), email: lszlezinger@jefferies.com; and (vii) financial advisor to the Creditors' Committee, Protiviti Inc., 1051 East Cary Street, Suite 602, Richmond, Virginia 23219 (Attn: Guy A. Davis), email: guy.davis@protiviti.com.

2. **Pre-Petition Lenders' Credit Bid**

The Pre-Petition Lenders, through the Stalking Horse Bidder, have made a credit bid (the "Stalking Horse Bid") and agreed to serve as the stalking horse bidder for the Reserve Price Assets on the terms set forth in the Stalking Horse APA and the proposed form of sale order attached thereto (the "Stalking Horse Sale Order"). The Stalking Horse Bid will serve as a floor bid for the Reserve Price Assets in the aggregate~~,[6] with the credit bid in the amount of the Reserve Price being treated as the equivalent of a cash bid~~**; *provided, however, that* in no event shall the Auction occur prior to a decision by the Bankruptcy Court on the Settlements; *provided, further, that* in the event of any appeal of a decision of the Bankruptcy Court with respect to the Settlements (as defined and described in the Motion), the Stalking Horse Bidder shall provide credit support that is in form, substance, and amount reasonably acceptable to the Creditors' Committee, which credit support shall be available until the conclusion of any such appeal, for any credit bid on account of (a) any Assets listed on the schedules to the Creditors' Committee's *Notice of Intention To Pursue Claims* [Docket No. 1529] (the "Challenge Notice"), solely on account of those Assets that are subject to the appeal, and (b) any Diminution Claim (as defined in the Motion) secured by any Senior Lender Adequate Protection Lien (as defined in the DIP Order) provided pursuant to paragraph 15 of the DIP Order, solely on account of any portion of such Diminution Claim that is subject to the appeal; *provided, further, that* the Stalking Horse Bidder shall not be permitted to submit a credit bid on account of (x) any Reserve Price Assets that are listed on Exhibit G to the Motion (unless the Stalking Horse Bidder is bidding on such Assets with the Diminution Claim), or (y) any Diminution Claim in excess of the amount allowed by the Bankruptcy Court**. The Stalking Horse APA does not include any break-up fee or similar bid protections **and may not be amended or modified to do so**.

All bids must identify any Assets that are subject to each such bid, and must identify the value ascribed to each Asset. Notwithstanding the foregoing, the Stalking Horse Bidder shall file a schedule within one business day of entry of the Bidding Procedures Order identifying the value ascribed to at least each of the following categories of Assets (in each case identifying the aggregate value of the encumbered and unencumbered assets within each category): (i) the Alpha Coal West mine complexes in Wyoming, (ii) the business of Debtor PLR, (iii) the McClure, Nicholas, and Toms Creek mine complexes in West Virginia and Virginia, (iv) all coal operations and reserves

~~[6] The Stalking Horse Bid does not establish individual reserve prices for any individual Reserve Price Asset; however, the parties reserve the right to modify the Stalking Horse Bid to do so.~~

located in Pennsylvania, including the Cumberland mine complex, the Emerald mine complex, the Freeport reserves, and the Sewickley reserves, (v) the Debtors' interest in Dominion Terminal Associates, and (vi) certain other designated assets, including certain working capital.

Bidders are encouraged to provide higher and better bids on all of the Reserve Price Assets as a group; however, the Debtors will consider bids on individual Reserve Price Assets (e.g., to determine if a collection of such bids may be combined to outbid the Stalking Horse Bid or otherwise whether **one or more of** such individual bids may enhance value to the Debtors' estates as compared to the Stalking Horse Bid), *provided that* the Debtors reserve the right in their discretion (after consultation with the Consultation Parties**, except any Consultation Party Bidder**) to determine whether it is in the best interests of their estates to pursue either the Stalking Horse Bid for all Reserve Price Assets or a bid or bids for ~~any~~**some or all** of the Reserve Price Assets.[7] After consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors reserve the right to negotiate modifications to the Stalking Horse Bid **and the Stalking Horse APA** as they determine appropriate to promote the Bidding Process (as defined below).

The Reserve Price Assets are identified on the Asset Schedule. Assets that are not Reserve Price Assets (collectively, the "Remaining Assets") are not subject to any credit bid.

Liens senior to the liens under the Pre-Petition Credit Agreement, including, for the avoidance of doubt, those granted pursuant to that certain Superpriority Secured Debtor-in- Possession Credit Agreement dated as of August 6, 2015 among Alpha Natural Resources, Inc., Citibank, N.A., as administrative agent, Citigroup Global Markets Inc., as sole lead arranger and book manager, and the lenders and issuing banks party thereto (as amended, supplemented or modified from time to time, the "DIP Credit Agreement") and the DIP Order (such liens, the "DIP Facility Liens") shall continue in force until the obligations under the DIP Credit Agreement are indefeasibly paid in full. To the extent that a Successful Bid for any Reserve Price Assets is a bid other than the Stalking Horse Bid and the Bankruptcy Court enters an order approving a sale to such party, **all liens, mortgages, deeds of trust, pledges, or other security interests on such Reserve Price Assets, including** the DIP Facility Liens**,** shall be released with respect to the Reserve Price Assets that are sold and shall attach to any proceeds of the Reserve Price Assets (including, but not limited to, any cash proceeds from such a sale).

3. **Marketing Process**

The Debtors, working with Rothschild and after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, have developed a list of parties that the Debtors believe may be interested in, and that the Debtors reasonably believe

[7] **For the avoidance of doubt, any party may bid for any or all of the Assets on the Asset Schedule (as may be amended or modified from time to time in accordance with the Bidding Procedures).**

would have the financial resources to consummate, a sale transaction for some or all of the Assets (each, individually, a "Contact Party" and, collectively, the "Contact Parties"). The Debtors and Rothschild have contacted or will**, by March 7, 2016,** contact the Contact Parties to explore their interest in pursuing a purchase of all or some of the Assets. The Contact Parties may include parties that the Debtors or their advisors previously have contacted regarding a transaction (including as part of the Prior Bidding Procedures), regardless of whether such parties expressed any interest at such time in pursuing a transaction. The Debtors will continue to discuss the marketing process with the applicable Consultation Parties **(except any Consultation Party Bidder)** and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute to each Contact Party and any other interested party or potential bidder an "Information Package," consisting of: (a) a cover letter; (b) a copy of these Bidding Procedures and the Bid Procedures Order; (c) a copy of a Confidentiality Agreement (as defined below), if one has not previously been executed (e.g., in connection with the Prior Bidding Procedures); (d) copies of the Stalking Horse APA, a form Asset Purchase Agreement based on the form of the Stalking Horse APA (an "APA") and form of sale order (a "Sale Order");[~~7~~8] and (d) such other materials as the Debtors and Rothschild deem appropriate under the circumstances, including, but not limited to, preliminary "teaser" information appropriate to enable each Contact Party or other potential bidder to identify and make an initial evaluation of the Assets**; *provided that* such Information Package shall be distributed to counsel to the Creditors' Committee by March 7, 2016**.

The Creditors' Committee and any bidder for any of the Assets shall be permitted to communicate with each other with respect to any matter, notwithstanding any provision in any confidentiality agreement to the contrary.

4. **Participation Requirements**

Potential Bidders

To participate in the bidding process, each interested person or entity must execute a confidentiality agreement in form and substance **reasonably** satisfactory to the Debtors**, but only if one has not been previously executed** (each, a "Confidentiality Agreement"), at which point such party will be deemed a "Potential Bidder" and the Debtors

[~~7~~8] The Debtors may propose**, after consultation with counsel to the Creditors' Committee,** alternate versions of the APA for different types of Assets. The forms of APA and Sale Order may be used**, after consultation with counsel to the Creditors' Committee,** to bid on either Reserve Price Assets or any Remaining Assets. The forms of APA and Sale Order are **to be** based on the Stalking Horse APA and Stalking Horse Sale Order, but incorporate certain changes such as eliminating or modifying terms that are specific to the Stalking Horse Bidder (e.g., relating to credit bidding). The Debtors also may provide**, after consultation with counsel to the Creditors' Committee,** forms of ancillary transaction documents~~,~~ including documents that could be used for alternate transaction structures (such as for a joint venture arrangement for PLR).

will deliver to such Potential Bidder access to the Debtors' confidential electronic data room concerning the Assets (the "Data Room").[89] At the Debtors' discretion, **after consultation with counsel to the Creditors' Committee,** a Potential Bidder's access to the Data Room and other due diligence materials will terminate if they fail to deliver an acceptable Preliminary Indication of Interest on or before the PII Deadline. The Debtors also will provide access to the Data Room to counsel and financial advisors to the Creditors' Committee, the DIP Agents, the Pre-Petition Agent, the *ad hoc* group of Second Lien Noteholders and the Indenture Trustee, subject to confidentiality arrangements with those parties.

Preliminary Indications of Interest

To continue to participate in the bidding process, a Potential Bidder must provide a nonbinding written proposal (a "Preliminary Indication of Interest") that includes the following:

(a) a preliminary indication of the Assets on which the Potential Bidder intends to bid, identifying in particular each Asset that the Potential Bidder may seek to purchase~~;~~**, and the value ascribed to each Asset; *provided that* such preliminary indication shall not preclude the Potential Bidder from ultimately bidding on additional or a different set of Assets;**

(b) the proposed purchase price or price range for such Assets, including the potential forms of consideration and any debt or equity financing that the Potential Bidder expects to use to consummate the sale, in each case allocated to each applicable Asset as identified on the Asset Schedule (including by allocating potential consideration between any Reserve Price Assets and any Remaining Assets);

(c) with respect to the purchase of PLR in particular, any alternative transaction structures (such as a joint venture) that may be proposed and the total consideration and form of consideration that would be delivered in such a transaction;

(d) any anticipated regulatory approvals required to close the proposed sale transaction (the "Sale Transaction") and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(e) the nature and extent of additional due diligence the Potential Bidder wishes to conduct;

[89] The Stalking Horse Bidder already is subject to confidentiality restrictions and need not sign an additional Confidentiality Agreement.

(f) evidence of the Potential Bidder's operational ability and financial capacity to consummate its proposal; and

(g) any additional information reasonably requested by the Debtors regarding such Potential Bidder or its proposal.

Each Preliminary Indication of Interest shall be submitted via email and actually received by the Notice Parties on or before the PII Deadline. The Debtors will provide copies of Preliminary Indications of Interest they receive to the Consultation Parties **(except any Consultation Party Bidder)** within one business day after receipt. After consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors may agree in their discretion to accept Preliminary Indications of Interest after the PII Deadline.

5. **Due Diligence**

Until the Bid Deadline, in addition to access to the Data Room, the Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors determine to be reasonable in the circumstances, subject to the restrictions set forth in such Potential Bidder's Confidentiality Agreement and this paragraph. All additional due diligence requests must be directed to Matthew Chou or Gideon Volschenk of Rothschild at matthew.chou@rothschild.com or gideon.volschenk@rothschild.com. The Debtors, with the assistance of Rothschild, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders, which may include site visits or management presentations. If any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, subject to any confidentiality issues related to the material, the Debtors will simultaneously provide access to such materials to all Potential Bidders in the Data Room. It is expected that Potential Bidders will complete due diligence in connection with the Assets prior to the Bid Deadline and, in any event, no Qualified Bid (as defined below) may be subject to any closing condition relating to completion of or review of additional due diligence or financing contingencies.

Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if: (a) the Potential Bidder does not become a Qualified Bidder during the period commencing on the Bid Deadline and concluding on the Auction Date; (b) the Potential Bidder violates its Confidentiality Agreement; or (c) after consultation with the Consultation Parties~~,~~ **(except any Consultation Party Bidder),** the bidding process is terminated with respect to the applicable Asset(s), including upon the Debtors designating a Successful Bidder (as defined below) for the Assets. Except as provided herein with respect to access to the Data Room, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Assets to any party. In addition, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors may limit access to sensitive business information to any Potential Bidder who is a competitor of the Debtor or an affiliate **of** any such competitor (including by imposing additional terms, conditions and limitations on such materials).

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6. **Qualified Bids**

Minimum Bid Requirements

A "Qualified Bid" in respect of any of the Assets is a written proposal from a Potential Bidder that, at a minimum includes the following (the "Minimum Bid Requirements"):

(a) identifies the legal name of the Potential Bidder (including any direct or indirect equity holders or other financial backers, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale Transaction)~~;~~**, the type of entity or entities constituting the Potential Bidder, when such entity or entities were formed, and the jurisdiction of formation;**[10]

(b) **provides the organizational documents of the Potential Bidder;**[11]

(c) ~~(b)~~ provides that the Potential Bidder offers to purchase the Assets or a portion thereof at the purchase price and upon the terms and conditions set forth in a copy of the APA and the Sale Order enclosed therewith, marked to show any proposed amendments and modifications (collectively, the "Marked Agreements"), and includes a clean copy of the proposed APA signed by a duly authorized representative of the Potential Bidder; provided that if any alternate structures are proposed (such as a joint venture arrangement for PLR), proposed **signed** definitive documentation of such transaction also must be provided (including with respect to any alternate forms of consideration);

(d) ~~(c)~~ if a Potential Bidder seeks to buy all or a portion of more than one Asset as listed on the Asset Schedule, identifies the allocation of the proposed purchase price to each Asset or portion thereof (including an allocation of the purchase price between any Reserve Price Assets and any Remaining Assets included in the bid) and states the willingness of the Potential Bidder to purchase each Asset or portion thereof separately from any other Assets that are part of its bid;

(e) ~~(d)~~ states that all necessary filings under applicable regulatory, antitrust and other laws or regulations will be made, pursuant to the terms and conditions in the Marked Agreements or other bid documents

[10] **Upon entry of the Bidding Procedures Order, such information with respect to the Stalking Horse Bidder shall be provided to the Consultation Parties (except any Consultation Party Bidder).**

[11] **Upon entry of the Bidding Procedures Order, such information with respect to the Stalking Horse Bidder shall be provided to the Consultation Parties (except any Consultation Party Bidder).**

(collectively, the "Bid Documents"), and that payment of the fees associated with such filings will be made by the Potential Bidder; ***provided that*** **such requirement shall also apply to the Stalking Horse Bidder;**

(f) ~~(e)~~ identifies all executory contracts and unexpired leases to be assumed and/or assigned in connection with the proposed Sale Transaction, states that all cure costs related thereto will be paid by the Potential Bidder and provides evidence satisfactory to the Debtors of the Potential Bidder's ability to provide adequate assurance of future performance of such agreements (the "Adequate Assurance Documents");

(g) ~~(f)~~ is formal, binding and unconditional (except for those conditions expressly set forth in the Marked Agreements), is not subject to any due diligence and is irrevocable until the earlier of ~~June 30~~**August 15**, 2016 and the first business day following the closing of the Sale Transaction;

(h) ~~(g)~~ provides written evidence of available cash, a commitment for financing (not subject to any conditions other than those expressly set forth in the applicable Bid Documents) or such other evidence of ability to consummate the transaction contemplated by the Bid Documents (and, as applicable, such additional Adequate Assurance Documents with respect to executory contracts, unexpired leases and other obligations to be assumed and/or assigned to the Potential Bidder in such Sale Transaction) as the Debtors may reasonably request;

(i) ~~(h)~~ for the purchase of any coal mining properties, the bid (i) contemplates that the Potential Bidder will (A) take transfer of, or obtain overlapping permits with respect to, the Debtors' applicable mining permits and (B) replace the Debtors' financial assurance/reclamation surety bonds that are associated with such permits, and (ii) provides evidence demonstrating to the Debtors that the Potential Bidder (A) is capable of taking transfer of such permits or obtaining such overlapping permits (including verification that the Potential Bidder is not "permit blocked" under the federal Surface Mining Control and Reclamation Act by application of the federal Applicant Violator System or will not be "permit blocked" as of the time of transfer or issuance)~~9~~**12** and (B) has or will have sufficient financial resources necessary to obtain or replace any financial

~~9~~**12** Any verification provided pursuant to this subsection is solely for the benefit of the Debtors and their estates, and nothing in any verification is intended to or will affect any rights of a state or governmental entity with respect to permitting issues.

assurance/reclamation surety bonds that are associated with such permits (the "Bonding Assurance Documents");

(j) ~~(i)~~ includes a commitment to close the Sale Transaction contemplated by the bid as promptly as possible;

(k) ~~(j)~~ does not entitle such Potential Bidder to a breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes an express waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for any of the Assets;

(l) ~~(k)~~ is accompanied by the Good Faith Deposit (as defined below) in immediately available funds;

(m) ~~(l)~~ with respect to a bid for any portion or all of the Reserve Price Assets, such bid is determined by the Debtors (after consultation with the Consultation Parties**, except any Consultation Party Bidder**) to be higher or better than the terms of the Stalking Horse APA, either separately or combined with other bids, and also taking into account the conditions set forth in the Marked Agreements; *provided that* any bid for all of the Reserve Price Assets must be for at least the Reserve Price~~.~~**;**

(n) ~~(m)~~ includes an acknowledgment that the Sale Transaction will be on an "as is, where is" basis and without representations or warranties of any kind by the Debtors, their agents or the Debtors' chapter 11 estates, except and solely to the extent expressly set forth in the final APA and Sale Order presented for approval by the Bankruptcy Court;

(o) ~~(n)~~ includes an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Assets that are the subject of the Auction prior to making its bid, that it has relied solely upon its own independent review and investigation in making its bid, and that it did not rely on the completeness of any information provided in connection with the Auction or its bid;

(p) ~~(o)~~ includes an acknowledgment that the Potential Bidder has not engaged in any collusion with respect to the Bidding Process and its bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder **for some or all of the Assets; *provided that* this requirement shall not prevent Potential Bidders from joining with other Potential Bidders to submit joint bids for some or all of the Assets**; and

(q) ~~(p)~~ is received by the Bid Deadline.

Additional Supporting Information

At the Debtors' request, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, prior to, on or after the Bid Deadline, a Potential Bidder must accompany or support its bid with, as applicable: (a) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (b) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements or regulations; (c) if the purchase price includes non-cash consideration (other than the assumption of liabilities), an analysis in reasonable detail of the value of the non-cash consideration ~~(it being understood that a credit bid under section 363(k) of the Bankruptcy Code will be treated as cash)~~; and (d) other documentation as requested by the Debtors (the foregoing, together with the Minimum Bid Requirements, the "Bid Materials").

By submitting a bid, a Potential Bidder authorizes the Debtors to (a) provide the Marked Agreements and other Bid Materials to the Consultation Parties **(except any Consultation Party Bidder)** on a confidential basis and (b) provide the Adequate Assurance Documents and the Bonding Assurance Documents to any counterparties to executory contracts or unexpired leases proposed to be assumed and/or assigned (the "Counterparties") and any sureties providing bonding for any permits proposed to be transferred (the "Sureties"), *provided that* the Adequate Assurance Documents and the Bonding Assurance Documents shall be in a form that may be presented in the Bankruptcy Court at any Sale Hearing.

The Stalking Horse Bid Is a Qualified Bid

Notwithstanding the requirements set forth above, the Stalking Horse Bid shall be deemed a Qualified Bid for the Reserve Price Assets for all purposes hereunder without any further action by the Stalking Horse Bidder, the Pre-Petition Agent or the Pre-Petition Lenders, and the Stalking Horse Bidder shall be deemed a Qualified Bidder on behalf of the Pre-Petition Lenders. If the Debtors receive one or more Qualified Bids with respect to any Reserve Price Asset, the Stalking Horse Bidder may submit one or more separate credit-bids for any of the other Reserve Price Assets (including a mark-up of the Stalking Horse APA and Stalking Horse Sale Order) and any such credit-bids shall be deemed Qualified Bids hereunder (and, with respect to any such bid, the Stalking Horse Bidder will be deemed to be a Qualified Bidder)~~, *provided*~~**; *provided, however, that* in no event shall the Auction occur prior to a decision by the Bankruptcy Court on the Settlements; *provided, further, that* in the event of any appeal of a decision of the Bankruptcy Court with respect to the Settlements, the Stalking Horse Bidder shall provide credit support that is in form, substance, and amount reasonably acceptable to the Creditors' Committee, which credit support shall be available until the conclusion of any such appeal, for any credit bid on account of (a) any Assets listed on the Challenge Notice, solely on account of those Assets that are subject to the appeal, and (b) any Diminution Claim (as defined in the Motion) secured by any Senior Lender Adequate Protection Lien (as defined in the DIP Order) provided pursuant to paragraph 15 of the DIP Order, solely on account of any**

portion of such Diminution Claim that is subject to the appeal; *provided, further, that* the Stalking Horse Bidder shall not be permitted to submit a credit bid on account of (x) any Reserve Price Assets that are listed on Exhibit G to the Motion (unless the Stalking Horse Bidder is bidding on such Assets with the Diminution Claim), or (y) any Diminution Claim in excess of the amount allowed by the Bankruptcy Court; *provided, further,* *that* the Debtors are under no obligation to accept any such Qualified Bid or designate ~~such~~ any such bid the Successful Bid for any Assets.

Considerations in Comparing and Valuing Bids

In addition, in determining whether the terms of the bid or bids for any portion of the Assets are materially more burdensome or conditional than the terms of another bid, and in valuing any bids, the Debtors may take into consideration**, after consultation with counsel to the Creditors' Committee**:

(a) the purchase price, and whether the bid or bids includes a non-cash instrument or similar consideration that is not freely marketable;

(b) the overall value to be provided to the Debtors**' estates** under the bid, including the net economic effect upon the Debtors' estates;

(c) indemnification and other provisions;

(d) the ability to obtain any and all necessary antitrust or other applicable regulatory approvals for the proposed Sale Transaction;

(e) other contingencies and the ability to close the proposed Sale Transaction on a basis acceptable to the Debtors, and any incremental costs to the Debtors as a result of potential closing delays;

(f) whether a bid on a collection of Assets (such as the Stalking Horse Bid for the Reserve Price Assets) is more beneficial to the Debtors' estates than individual bids on smaller groups of Assets (either separately or collectively), or *vice versa*; and

(g) any other factors that the Debtors, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, may deem relevant.

Bid Deposit

A Potential Bidder must deposit with the Debtors a cash deposit equal to either (a) 10% of the cash consideration payable at closing pursuant to the applicable Bid Documents, with a minimum deposit of $100,000 and a maximum of $5,000,000, or (b) such other higher or lower amount as may be agreed upon by the Debtors after consultation with the Consultation Parties (**except any Consultation Party Bidder) and with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned (**any such deposit, a "Good Faith Deposit").

The Good Faith Deposit must be made by wire transfer and will be held by the Debtors in a segregated bank account established and maintained in accordance with the DIP Order. For the avoidance of doubt, the Stalking Horse Bidder is not required to provide a Good Faith Deposit on account of the Stalking Horse Bid or any other bid submitted by the Stalking Horse Bidder.

Determination of Qualified Bids

If a bid is received and, in the Debtors' judgment, it is not clear to the Debtors whether the bid is a Qualified Bid, the Debtors ~~may~~**shall** consult with the Potential Bidder and seek additional information in an effort to establish whether or not a bid is a Qualified Bid, or to address any deficiencies in the bid. ~~No later than one business day after the Bid Deadline, the~~**The** Debtors shall provide copies of all bids received by the Debtors **contemporaneously** to each of the Consultation Parties **(except any Consultation Party Bidder)**.

The Debtors, ~~in their discretion and~~ after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, will determine whether a bid received from a Potential Bidder for any of the Assets will constitute a Qualified Bid and whether a Potential Bidder that submits such a bid will be considered a "Qualified Bidder." The Debtors will determine which bids are Qualified Bids as promptly as reasonably practicable. After consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors may determine that a bid is a Qualified Bid despite a failure to comply fully with each of the Minimum Bid Requirements. Further, after consultation with the Consultation Parties **(except any Consultation Party Bidder)** and subject to the terms of the Stalking Horse Bid with respect to the Reserve Price Assets, the Debtors, in their judgment~~,~~ may withdraw some or all of the Assets from the sale process at any time before entry of an order approving a sale of the Assets to a Qualified Bidder.

In determining if a bid is a Qualified Bid, the Debtors ~~may~~**shall** consider (after consultation with the Consultation Parties**, except any Consultation Party Bidder**) whether individual bids on certain Assets are sufficient to overcome the bids on larger groups of Assets (such as the Stalking Horse Bid for the Reserve Price Assets).

~~Notwithstanding anything in these Bidding Procedures or the Bidding Procedures Order any additional credit bid or cash bid from the DIP Agents, the DIP Lenders (as defined in the DIP Order) or the Pre-Petition Secured Parties (as defined in the DIP Order) for any of the Remaining Assets shall be a Qualified Bid to the extent such bid is received prior to any Auction or the designation of a Successful Bid with respect to the applicable Remaining Assets and complies with the applicable terms of the DIP Order, the other DIP Documents (as defined in the DIP Order), the Existing Secured Agreement (as defined in the DIP Order) and the ICA (as defined in the DIP Order). Such additional credit bid or cash bid may be submitted at any time prior to the designation of the Successful Bid for such Remaining Assets. In addition, the~~**The** Stalking Horse Bidder may increase the credit bid in the Stalking Horse Bid at any time after the entry of the Bidding Procedures Order and prior to the ~~designation of the Successful Bid~~**Auction**. Any additional or modified credit bid from the DIP Agents, the DIP Lenders or the Pre-Petition Secured Parties shall be

~~treated as the equivalent of a cash bid in the same amount and shall be~~ afforded the same rights as if it were the Stalking Horse Bid under these Bidding Procedures~~.~~**; *provided, however, that* in no event shall the Auction occur prior to a decision by the Bankruptcy Court on the Settlements; *provided, further, that* in the event of any appeal of a decision of the Bankruptcy Court with respect to the Settlements, the Stalking Horse Bidder shall provide credit support that is in form, substance, and amount reasonably acceptable to the Creditors' Committee, which credit support shall be available until the conclusion of any such appeal, for any credit bid on account of (a) any Assets listed on the Challenge Notice, solely on account of those Assets that are subject to the appeal, and (b) any Diminution Claim (as defined in the Motion) secured by any Senior Lender Adequate Protection Lien** (as defined in the DIP Order) **provided pursuant to paragraph 15 of the DIP Order, solely on account of any portion of such Diminution Claim that is subject to the appeal; *provided, further, that* the Stalking Horse Bidder shall not be permitted to submit a credit bid on account of (x) any Reserve Price Assets that are listed on Exhibit G to the Motion (unless the Stalking Horse Bidder is bidding on such Assets with the Diminution Claim), or (y) any Diminution Claim in excess of the amount allowed by the Bankruptcy Court.**

Within one business day of any bid (other than the Stalking Horse Bid) being designated as a Qualified Bid, the Debtors shall give written notice (by electronic mail where possible) to the Counterparties and the Sureties (or their respective counsel of record in these cases) of (a) the identity of any Qualified Bidder seeking to take an assignment of applicable executory contracts or unexpired leases or transfer of applicable permits; and (b) copies of the Adequate Assurance Documents and Bonding Assurance Documents, which shall include, to the fullest extent possible, all information received by the Debtors constituting the Adequate Assurance Documents and the Bonding Assurance Documents. Nothing in the Bidding Procedures Order or these Bidding Procedures shall prejudice the rights of any of the Counterparties or the Sureties to request additional information from the Debtors following receipt of the Adequate Assurance Documents and the Bonding Assurance Documents.

Additional Requirements

The Debtors reserve the right, after consultation with the Consultation Parties~~,~~ ~~to impose~~ **(except any Consultation Party Bidder), to impose, with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned,** additional terms and conditions with respect to Qualified Bidders (other than the Stalking Horse Bidder) not otherwise inconsistent with these Bidding Procedures.

7. **Bid Deadline**

A Potential Bidder that desires to make a bid must deliver written and electronic copies of its bid in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to the Notice Parties so as to be received no later than the Bid Deadline of ~~**March 28**~~**May 9, 2016 at 5:00 p.m.** (prevailing Eastern Time).

8. **Determination by the Debtors**

The Bidding Procedures as described herein are calculated to obtain the highest and/or best offer or group of offers for the Assets, taking into account (as applicable) whether any bid for a group of Assets is more beneficial to the Debtors' estates than one or more bids for individual Assets. The Debtors will**, after consultation with counsel to the Creditors' Committee,** (a) determine, with the assistance of their advisors, and after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, whether any person or entity is a Qualified Bidder, (b) receive bids from Qualified Bidders, (c) evaluate and negotiate such bids and (d) conduct any Auction (clauses (a) through (d) and paragraph 1 above, collectively, the "Bidding Process"). Neither the Debtors nor any of their representatives will be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity who is not a Consultation Party or a Qualified Bidder or who does not comply with the requirements set forth herein.

9. **Baseline Bid; Treatment of Assets Subject to Only One Qualified Bid**

Only Qualified Bidders and other Potential Bidders who submit requested Bid Materials and are invited by the Debtors, in their discretion **and after consultation with counsel to the Creditors' Committee**, to participate in an Auction, are eligible to participate in the Auction. The Debtors, after consultation with the applicable Consultation Parties **(except any Consultation Party Bidder)**, will select what they determine to be the highest and/or best Qualified Bid or combination of bids that together constitute a Qualified Bid for any portion of the Assets (the "Baseline Bid(s)") to serve as the starting point at the Auction taking into account all relevant considerations, including the financial condition of the applicable bidder and certainty of closing, as described above. Different Assets as identified on the Asset Schedule or other subsets of the Assets or combinations thereof (a) may be subject to separate bidding at the Auction; or (b) in the Debtors' discretion, **after consultation with counsel to the Creditors' Committee,** may be scheduled for Auction on different dates, as described below.

If only one Qualified Bid is received for any particular set of Assets, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors ~~in their discretion~~ may either designate such Qualified Bid to be the Successful Bid (as defined below) for such Assets without conducting the Auction with respect to such Assets or submit the Assets at issue to an Auction, with other Potential Bidders invited to participate.

10. **Auction**

If at least two Qualified Bids in respect of any of the Assets (in whole or in part) are received by the Bid Deadline, the Debtors will conduct an Auction for such Assets upon which multiple bids were received; *provided*, *however*, *that* if a Qualified Bid ~~includes~~**consists exclusively of** Assets not covered by any other Qualified Bids (a "Unique Bid") and other bidders do not express an interest in purchasing the additional Assets included in the Unique Bid, the Debtors may determine, after consultation with the

Consultation Parties **(except any Consultation Party Bidder)**, to designate the Unique Bid as the Successful Bid for the applicable Assets and not conduct an Auction for such Assets.

Time, Place and Conduct of an Auction

Any Auction will take place at the offices of the Debtors' counsel, Jones Day, at 222 East 41st Street, New York, New York 10017, at 10:00 a.m. (prevailing Eastern Time) on the Auction Date, or such other time and place as the Debtors, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, may notify Qualified Bidders who have submitted Qualified Bids. After consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors may schedule Auctions for certain Assets on alternate days before or after the original Auction Date. Only a Qualified Bidder or a Potential Bidder invited by the Debtors to participate at the Auction will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose after consultation with the Consultation Parties **(except any Consultation Party Bidder)**. A reasonable number (as determined by the Debtors) of representatives of the Qualified Bidders, Potential Bidders invited to participate and each Consultation Party will be permitted to attend and observe the Auction**; *provided, however, that* such limitation shall not extend to the Creditors' Committee or any of its representatives**. The Debtors may permit other attendees at the Auction in their discretion. A transcript of the Auction proceedings will be created.

If no Qualified Bids (other than the Stalking Horse Bid) for any of the Reserve Price Assets are received, the Auction for the Reserve Price Assets will be cancelled and the Stalking Horse Bid will be designated the Successful Bid for the Reserve Price Assets.

No Collusion/Good Faith

~~At the request of the Debtors, each~~**Each** bidder participating in the Auction will be required to confirm, in writing, that: (a) it has not engaged in any conduct of the type described in section 363(n) of the Bankruptcy Code with respect to the Bidding Process, which would cause any sale to be subject to avoidance under, or otherwise violate, that section; and (b) its bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Rules of the Auction

After consultation with the Consultation Parties **(except any Consultation Party Bidder) and with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned**, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding Process, including one or more adjournments of the Auction. The rules of the Auction will be announced on the record at the outset of the Auction.

Bidding at an Auction

At the Auction, participants will be permitted to increase their bids and improve their terms; provided that any such increased or improved bid or combination of bids must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for any part of the Assets will start at the purchase price and terms proposed in the applicable Baseline Bid(s). The Debtors**, with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned,** will announce the bidding increments for bids (~~the~~**each such bidding increment, a** "Minimum Overbid") ~~and other auction rules at the outset~~**at least one business day prior to the start** of the Auction with respect to each of the applicable Assets. **For the avoidance of doubt, the Debtors may announce different Minimum Overbids at each round of bidding and for different Assets or groups of Assets.**

For the avoidance of doubt, the Stalking Horse Bidder, on behalf of the Pre-Petition Lenders, is entitled to increase the Stalking Horse Bid on any Reserve Price Asset at the Auction by bidding cash or cash equivalents (or other forms of consideration) or by credit bidding all or a portion of the Pre-Petition Lenders' allowed claims, as permitted by the DIP Order and the Bidding Procedures Order~~. For the further avoidance of doubt, any increase of the Stalking Horse Bid in the form of a credit bid shall be treated as if it were made in cash or cash equivalents for the purpose of comparing such increased bid to any other Qualified Bid.~~**; *provided, however, that* in no event shall the Auction occur prior to a decision by the Bankruptcy Court on the Settlements; *provided, further, that* in the event of any appeal of a decision of the Bankruptcy Court with respect to the Settlements, the Stalking Horse Bidder shall provide credit support that is in form, substance, and amount reasonably acceptable to the Creditors' Committee, which credit support shall be available until the conclusion of any such appeal, for any credit bid on account of (a) any Assets listed on the Challenge Notice, solely on account of those Assets that are subject to the appeal, and (b) any Diminution Claim (as defined in the Motion) secured by any Senior Lender Adequate Protection Lien (as defined in the DIP Order) provided pursuant to paragraph 15 of the DIP Order, solely on account of any portion of such Diminution Claim that is subject to the appeal; *provided, further, that* the Stalking Horse Bidder shall not be permitted to submit a credit bid on account of (x) any Reserve Price Assets that are listed on Exhibit G to the Motion (unless the Stalking Horse Bidder is bidding on such Assets with the Diminution Claim), or (y) any Diminution Claim in excess of the amount allowed by the Bankruptcy Court.**

Notwithstanding anything herein to the contrary, the Debtors will conduct the Auction on an open basis and shall not require any Qualified Bidders submit their last and final bids on a "blind" basis. ~~As such, in the Auction process, the Stalking Horse Bidder shall have the right, but not the obligation, in its sole and absolute discretion, to match bids made and alternative transactions proposed by any other Qualified Bidder. Before determining that a bidder other than the Stalking Horse Bidder is the Successful Bidder with respect to any Reserve Price Asset, the Debtors shall notify the Stalking Horse Bidder of their intent to make such a determination, shall disclose to the Stalking Horse Bidder the applicable competing bid, and shall in good faith inform the Stalking Horse Bidder of the minimum changes required such that the Debtors would consider such modified Stalking Horse Bid, in the exercise of their good faith business judgment, the highest or otherwise best offer with~~

~~respect to the applicable Reserve Price Asset. If the Stalking Horse Bidder determines to modify its bid to become the highest or otherwise best bid in the judgment of the Debtors with respect to a Reserve Price Asset, any competing bidder will be given a similar opportunity to modify its bid, with this back and forth process continuing until there is a Successful Bidder.~~

Right to Reject Bids

The Debtors, after consulting with the Consultation Parties **(except any Consultation Party Bidder)**, reserve the right to and may reject at any time before entry of the final Sale Order any bid (other than the Stalking Horse Bid, which may be terminated only as set forth in the Stalking Horse APA) that, in the Debtors' judgment, is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures**,** or the terms and conditions of the Sale Transaction; or (c) contrary to the best interests of the Debtors and their estates.

Designation of Successful Bid and Next Best Bid

Prior to the conclusion of the Auction ~~and~~**,** after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors will: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer or collection of offers in respect of the Assets (the "Successful Bid(s)"); and (c) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the "Successful Bidder(s)") and the amount and other material terms of the Successful Bid(s). ~~Absent irregularities in the conduct of the Auction or reasonable and material confusion during the bidding, each as determined by the Bankruptcy Court, the Debtors will not consider bids made after the Auction has been closed.~~ In determining a Successful Bid, the Debtors may consider whether individual Qualified Bids on certain Assets represent a higher or better bid for the estates as compared to Qualified Bids on larger groups of Assets (such as the Stalking Horse Bid for the Reserve Price Assets). **For the avoidance of doubt, the Debtors may decline to sell some or any of the Assets if they determine, after consultation with counsel to the Creditors' Committee, that selling a particular Asset(s) is not in the best interests of the Debtors' estates.**

After determining the Successful Bid(s) for the Assets, the Debtors ~~may~~**shall** determine, in their reasonable business judgment, after consultation with the Consultation Parties **(except any Consultation Party Bidder)**, which Qualified Bid(s**) (including, without limitation, the Stalking Horse Bid**) are the next best bids for the Assets (the "Next Best Bid(s)").

For the avoidance of doubt, ~~consistent with paragraph 17 below, if the Stalking Horse Bidder is a participant at any Auction on account of the Stalking Horse Bid,~~ the Debtors ~~will~~**shall** not consult ~~regarding the evaluation or designation of Successful Bids that in whole or in part bid on any Reserve Price Assets~~ with the Stalking Horse Bidder, the First

Lien Agent, the Pre-Petition Lenders, the DIP Agents or the DIP Lenders regarding the evaluation or designation of **any bids** that in whole or in part bid on any Reserve Price Assets**, except with respect to Assets for which a prior Consultation Party Bidder is no longer pursuing a bid**.

Sale Hearing; Special Procedures if Pre-Petition Lenders Are Successful Bidders

At the Sale Hearing, the Debtors will present the Successful Bid(s) to the Bankruptcy Court for approval. Following the entry of the Sale Order(s), the Debtors will proceed to close the Sale Transaction(s) upon the satisfaction or waiver of all applicable conditions precedent to closing.

11. **Acceptance of Successful Bids**

Debtors' Acceptance Conditioned on Court Approval

The Debtors presently intend to consummate the Sale Transaction(s) with the Successful Bidder(s); however, the Debtors' presentation of the Successful Bid(s) to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such bid(s). The Debtors will be deemed to have accepted a Successful Bid only when an APA therefor has been executed and such bid has been approved by the Bankruptcy Court by entry of the applicable Sale Order (including the Stalking Horse Sale Order).

Remedies on Successful Bidder's Breach

If a failure to consummate the transaction is the result of a breach by a Successful Bidder of the applicable Successful Bid contract, the Debtors may retain the Good Faith Deposit of such Successful Bidder and reserve the right to seek, in addition to the Good Faith Deposit, specific performance, as well as any and all available additional damages from such Successful Bidder.

For the avoidance of doubt, notwithstanding anything to the contrary herein, the Debtors' remedies with respect to a breach by the Stalking Horse Bidder of the Stalking Horse APA are limited to the rights enumerated in the Stalking Horse APA.

Next Highest Bidder

If a Successful Bidder does not close the applicable Sale Transaction contemplated by the applicable Successful Bid by the date agreed to by the Debtors and such Successful Bidder, then the Debtors will be authorized, but not required~~,~~ to close**, after consultation with counsel to the Creditors' Committee,** with the party **(such party, the "Next Highest Bidder")** that submitted the applicable Next Best Bid, pursuant to the applicable Sale Order.

12. **Modification of Bidding Procedures**

After consultation with the Consultation Parties **(except any Consultation Party Bidder)**, the Debtors**, with the prior written consent of counsel to the Creditors'**

Committee, which consent shall not be unreasonably withheld, delayed, or conditioned, may amend these Bidding Procedures or the Bidding Process at any time, and from time to time, in any manner that they determine in good faith will best promote the goals of the Bidding Process and discharge the Debtors' fiduciary duties; *provided that* any material modifications to the Bidding Procedures shall require the consent of the Stalking Horse Bidder, which consent may not be unreasonably withheld**, conditioned, or delayed**.

Notwithstanding the foregoing, the Debtors may not amend these Bidding Procedures or the Bidding Process to (a) reduce or otherwise modify the rights granted to the Stalking Horse Bidder hereunder, affect the Stalking Horse Bid or alter the Stalking Horse Bidder's rights under the Stalking Horse APA, in each case without the consent of the Stalking Horse Bidder; (b) reduce or otherwise modify their obligations to consult with any Consultation Party **or obtain the requisite consent of counsel to the Creditors' Committee,** without the consent of such Consultation Party **or counsel to the Creditors' Committee, as applicable,** or further Bankruptcy Court order; (c) reduce or modify their obligations to provide Adequate Assurance Documents or Bonding Assurance Documents to the Counterparties and Sureties without the consent of such Counterparties or Sureties or further Bankruptcy Court order; (d) reduce the amount of time available to parties to object under the Bidding Procedures without the consent of the affected parties or a further Bankruptcy Court order; or (e) delete or otherwise remove this sentence from the Bidding Procedures.

13. **Modification of Asset Schedule; Permits and Contracts**

At any time in the marketing and bidding process ~~and~~**,** after consultation with the applicable Consultation Parties **(except any Consultation Party Bidder),** and subject to the terms of the Stalking Horse APA with respect to the Reserve Price Assets, the Debtors may remove Assets from or add Assets to the Asset Schedule by filing an updated Asset Schedule with the Bankruptcy Court and serving the updated Asset Schedule on the Potential Bidders and, in the Debtors' discretion, any additional Contact Parties.

In addition, pursuant to the ~~Bid~~**Bidding** Procedures Order, the Debtors shall file**, within three business days of entry of the Bidding Procedures Order,** (a) a list of mining permits associated with each of the Assets on the Asset Schedule and **(b)** a schedule of executory contracts and unexpired leases related to the Assets on the Asset Schedule and related cure costs**; *provided that* the Debtors shall describe the permits, executory contracts, or unexpired leases (as applicable) in sufficient detail to permit a Potential Bidder to match such permits, executory contracts, or unexpired leases (as applicable) to the relevant Asset**. These schedules: (a) may be amended or supplemented by the Debtors from time to time**, after consultation with counsel to the Creditors' Committee**; and (b) will be amended or supplemented by the Debtors, as necessary, within ~~ten~~**two** business days after any modification to the Asset Schedule.

14. **"As Is, Where Is;" Free and Clear of Liens, Claims, Interests and Encumbrances**

Any Sale Transaction will be on an "as is, where is" basis and without representations or warranties of any kind by the Debtors, their agents or the Debtors'

chapter 11 estates, except and solely to the extent expressly set forth in the final Asset Purchase Agreement approved by the Bankruptcy Court. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets that are the subject of the Auction prior to making its bid, that it has relied solely upon its own independent review and investigation in making its bid and that it did not rely on the completeness of any information provided in connection with the Auction or its bid. Except as otherwise provided in the final agreement approved by the Bankruptcy Court, the Debtors will seek authority to sell all of their right, title and interest in and to the Assets free and clear of all liens, claims (as such term is defined in section 101(5) of the Bankruptcy Code), interests and encumbrances (collectively, "Liens") to the extent permitted by law, with any Liens to attach to the proceeds of the Sale Transaction as provided in the final Sale Order. The Debtors note that, through the sale approval process, parties in interest may assert that some obligations are not subject to a free and clear order.

15. **Notice of Successful Bid, Sale Hearing and Sale Order; Objections; Adjournments**

Following the designation of a Successful Bid, the Debtors will file a notice of the Successful Bid, along with copies of the proposed APA and Sale Order or any other relevant transaction documents (as applicable), marked to show changes from the form documents previously filed with the Bankruptcy Court (or, in the case of a Successful Bid by the Stalking Horse Bidder, showing changes from the Stalking Horse APA and Stalking Horse Sale Order) (a "Notice of Successful Bid"). A Notice of Successful Bid shall be filed not less than five business days before the Sale Hearing. The Debtors will serve the Notice of Successful Bid as set forth in the Bid Procedures Order.

Any objections to the approval of such Sale Transaction shall be filed (a) no later than ~~[March 21]~~**May 2, 2016** (the "Objection Deadline") for all objections to the potential Sale Transactions and the terms contained in (as applicable) the Stalking Horse APA, the Stalking Horse Sale Order, the forms of APA and Sale Order (and any other transaction documents) filed with the Bankruptcy Court and (b) by ~~the earlier of (i) five business days after the filing and service of Notice of Successful Bid and (ii)~~ two business days before a Sale Hearing solely for any additional issues raised by the Notice of Successful Bid (i.e., the revised forms of APA and proposed Sale Order). Objections to the proposed assumption and assignment of Executory Contracts and related Cure Amounts will be subject to the separate procedures set forth in the Bid Procedures Order. The Stalking Horse Sale Order also incorporates certain Settlements as defined and described in the Motion. For the avoidance of doubt, all objections to the ~~Stalking Horse APA, the Stalking Horse Sale Order and the~~ Settlements must be filed by ~~the Objection Deadline.~~**seven calendar days prior to the hearing on the Settlements, which shall be held on April 28, 2016; *provided that* in no event shall the Auction occur prior to a decision by the Bankruptcy Court on the Settlements; *provided, however, that* in the event of any appeal of a decision of the Bankruptcy Code with respect to the Settlements**, the Stalking Horse Bidder shall **provide credit support that is in form, substance, and amount reasonably acceptable to the Creditors' Committee, which credit support shall be available until the conclusion of such appeal, for any credit bid on account of (a) any Assets listed on the Challenge**

Notice, solely on account of those Assets that are subject to the appeal, and (b) any Diminution Claim (as defined in the Motion) secured by any Senior Lender Adequate Protection Lien (as defined in the DIP Order) **provided pursuant to paragraph 15 of the DIP Order, solely on account of any portion of such Diminution Claim that is subject to the appeal; *provided, further, that* the Stalking Horse Bidder shall not be permitted to submit a credit bid on account of (x) any Reserve Price Assets that are listed on Exhibit G to the Motion (unless** the Stalking Horse Bidder is **bidding on such Assets with the Diminution Claim), or (y) any Diminution Claim in excess of the amount allowed by the Bankruptcy Court.**

At the Sale Hearing, the Debtors will seek the entry of one or multiple Sale Orders, *inter alia*, authorizing and approving the sale of all or some of the Assets, to the Successful Bidder(s) pursuant to the terms and conditions set forth in the Successful Bid(s), with such modifications as may be negotiated by the parties.

The Sale Hearing for some or all of the Assets may be adjourned or rescheduled by the Debtors in their discretion (after consultation with the Consultation Parties**, except any Consultation Party Bidder, and with the prior written consent of counsel to the Creditors' Committee, which consent shall not be unreasonably withheld, delayed, or conditioned**) without notice or with limited and shortened notice to parties, including by (a) an announcement of such adjournment at the Sale Hearing or at an Auction or (b) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing (which may be included in a hearing agenda letter). At the request of a Successful Bidder, the Sale Hearing may be incorporated into the hearing on confirmation of a chapter 11 plan.

16. **Return of Good Faith Deposit**

The Good Faith Deposits will be held in escrow by the Debtors and, while held in escrow, will not become property of the Debtors' bankruptcy estates unless released from escrow pursuant to further order of the Bankruptcy Court or upon a breach of the **applicable Successful Bid contract** by a Successful Bidder as described in paragraph 11 above. The Debtors will retain the Good Faith Deposits of the Successful Bidder(s) **and the Next Highest Bidder** until the closing of the Sale Transaction(s) unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned on the ~~earlier of July 15, 2016 and the third~~ business day following the ~~closing~~**conclusion** of the ~~Sale Transaction.[10]~~ **Auction.[13]** At the closing of the Sale Transaction contemplated by the Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit (not including interest accrued thereon) against the cash purchase price,

~~[10] The Debtors will promptly return the Good Faith Deposit provided by any party that is not designated to be a Qualified Bidder.~~

[13] The Debtors will promptly return the Good Faith Deposit provided by any party that is not designated to be a Qualified Bidder.

or the return of the Good Faith Deposit, as applicable. Upon the return of the Good Faith Deposits, their respective owners will receive any and all interest that has accrued thereon.

17. **Consultation Party Bidder Matters**

In addition to the other terms set forth above with respect to the Stalking Horse Bid, if (a) any member of the Creditors' Committee or an affiliate thereof or (b) any of the Debtors' prepetition or postpetition secured lenders submits a ~~Qualified Bid~~**bid** (each individual party submitting such a ~~Qualified Bid~~**bid** along with its counsel and other advisors, a "Consultation Party Bidder"), advisors to the Creditors' Committee, the DIP Agents, the Pre-Petition Agent or the Second Lien Noteholders, the Indenture Trustee or the UMWA, as applicable, must not provide any material, nonpublic information to such Consultation Party Bidder regarding competing bids for any part of the Assets for which the Consultation Party Bidder has submitted a Qualified Bid. In addition, the Debtors will not consult with such Consultation Party Bidder under the Bidding Procedures or otherwise if the Consultation Party Bidder is an active bidder with respect to the Assets for which the Consultation Party Bidder has submitted a ~~Qualified Bid~~**bid** (or any procedures that impact the bidding on such Assets), but the Debtors shall consult with the Consultation Party Bidder to the extent required herein solely with respect to bids on any Assets for which the Consultation Party Bidder has not submitted a bid and for Assets for which a prior Consultation Party Bidder is no longer actively pursuing a bid. With respect to the Stalking Horse Bid, the term "Consultation Party Bidder" shall include the Stalking Horse Bidder, the Pre-Petition Agent, the Pre-Petition Lenders, the DIP Lenders and the DIP Agents.

18. **Other Stalking Horse Bids**

The Debtors reserve the right, in an exercise of their business judgment and after consultation with the applicable Consultation Parties~~,~~ **(except any Consultation Party Bidder)** to identify a bid submitted by a Potential Bidder with respect to any Asset that it is not a Reserve Price Asset as a "stalking horse bid" and to seek Bankruptcy Court approval of bid protections with respect to such bid.