

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION**

IN RE:

CHAPTER 11

FORTRESS RESOURCES, LLC
d/b/a McCoy Elkhorn Coal Company

CASE NO. 15-70730

DEBTOR

**ORDER (A) AUTHORIZING SALE OF ASSETS OF DEBTOR TO
QUEST ENERGY INC., FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES PURSUANT TO 11 U.S.C. SECTIONS 363(b) AND (f);
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO
11 U.S.C. SECTION 365; (C) ESTABLISHING CURE AMOUNTS; AND
(D) WAIVING THE STAY IMPOSED BY FED. R. BANKR. P. 6004(h) AND 6006(d)**

This matter having come before the Court on the Motion for Entry of an Order (A) Authorizing Sale of Substantially All Debtor's Assets of Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Section 363(b) and (f); and (B) Waiving the Stay Imposed by Fed. R. Bankr. P. 6004(h) [Doc 201] (the "Sale Motion") filed by Fortress Resources, LLC in this case (the "Debtor"); and it appearing that proper notice of the Sale Motion was given in accordance with the Order (A) Approving Bidding Procedures and Related Deadlines; (B) Scheduling Date and Time for Sale Hearing; (C) Approving Form and Manner of Notice of Same; and (D) Approving Form and Manner of Notice of Proposed Assumption and Assignment or Rejection of Certain Executory Contracts and/or Unexpired Leases and Related Cure Claims; and (E) Approving Shortened Notice and Expedited Hearing on the Same [Doc 251] (the "Bidding Procedures Order"); and it appearing that the relief sought by the Debtor is necessary and in the best interest of the Debtor, its Estate, and other parties in interest; and it further appearing that any timely objections being hereby overruled, and the Court having reviewed the record, and having considered same;

THE COURT HEREBY FINDS AND DETERMINES, as follows:

A. The Court has jurisdiction over this case, the Sale Motion and the proposed sale of the Debtor's assets (the "Assets") pursuant to 28 U.S.C. §§ 157 and 1334 and Fed. R. Bankr. P. 5005. Venue in this district for this Chapter 11 case and the Sale Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). The statutory predicates for relief sought herein include 11 U.S.C. §§ 105(a), 363(b), (f) and (m), and 365, Fed. R. Bankr. P. 2002, 6004, and 6006, and other applicable law.

B. Proper, timely, adequate, and sufficient notice of the sales proposed in the Sale Motion has been provided in accordance with 11 U.S.C. §§ 102(1), and 363(b) and Fed. R. Bankr. P. 2002, 6004, and 9014, including to all parties to executory contracts or unexpired leases and to creditors who have asserted or who could assert Liens and Claims (as hereinafter defined), and in substantial compliance with the Bidding Procedures Order. Such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Sale Motion, the hearing to consider the Sale Motion (the "Sale Hearing"), and/or the sale of the Assets shall be required.

C. As selected in accordance with the Bidding Procedures Order, Quest Energy Inc. (the "Purchaser") is the successful bidder for the sale (the "Sale") of the Assets (the "Purchased Assets") in the Asset Purchase Agreement (the "APA") and the associated documents and instruments, including the Assignment and Assumption of Assumed Contracts Agreement, the Assignment and Assumption of Leases Agreement, the Bill of Sale, the Interim Operating and Permits Agreement, and each other document, agreement or instrument executed and delivered in connection herewith (collectively, the "Transaction Documents"). For the avoidance of doubt, the Purchased Assets includes the Contracts and Leases (as defined below).

D. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, and the rights of third parties to submit higher or otherwise better offers for all or any portion of the Assets at the Auction in accordance with the Bidding Procedures Order approved by this Court, has been afforded to all interested persons and entities.

E. The Purchased Assets are property of the Debtor's bankruptcy estate within the meaning of 11 U.S.C. § 541, and upon entry of this Order, the Debtor will have the power to convey, assign and transfer the Purchased Assets to the Purchaser. All consideration provided by the Purchaser to the Debtor, and all rights, title and interest therein shall be freely assignable by the Debtor, in its sole discretion, without further order of this Court.

F. The Debtor has faithfully exercised its duties in considering all offers and bids, in consultation with the Consulting Parties throughout the sale and bidding process, and in ultimately determining that the Sale of the Purchased Assets to the Purchaser represents the highest and best value to the Debtor's estate.

G. The Debtor has demonstrated both (i) good, sufficient, and sound business purposes and justification, and (ii) compelling circumstances for the Sale of the Purchased Assets to the Purchaser pursuant to 11 U.S.C. § 363. Such justification and compelling circumstances include, but are not limited to, the fact that (a) the Purchaser's bid constitutes the highest and best offer for the Purchased Assets; and (b) consummation of the Sale of the Purchased Assets presents the best opportunity to realize the highest value for the Purchased Assets and avoid potential decline and devaluation thereof, relieves the Estate of significant liabilities including certain administrative claims and statutory obligations, and assures the reclamation of the properties by the transfer of permits and associated reclamation and environmental obligations to the Purchaser in an orderly and timely manner.

H. After consideration of the circumstances described in the Sale Motion and at the Sale Hearing, the Court has determined that the proposed Sale to the Purchaser pursuant to the APA and other documents represents the best opportunity for the Debtor's estate to realize the greatest value for the Purchased Assets and will provide a greater recovery for the Debtor's creditors than would be provided by any other practical alternative method.

I. In accordance with the Bidding Procedures, the Purchaser's bid to purchase the Purchased Assets represents the highest and best bid received by the Debtor after a period in which third parties had adequate opportunity to seek information and enter into negotiations and auction with the Debtor concerning a sale of its Assets that maximizes recovery to the Debtor's estate and creditors.

J. The consideration obtained for the Purchased Assets from the Purchaser is fair and reasonable, represents the highest and best offer for the Purchased Assets, and is in the best interests of the Debtor, its creditors, and its estate. The cash purchase price combined with the assumption of liabilities constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets.

K. The purchase terms, as set forth in this Order, the APA and the Transaction Documents, are fair and reasonable under the circumstances of this Chapter 11 case and this proceeding and are in accordance with current market standards. The Purchaser is a purchaser in good faith with respect to the Purchased Assets, as that term is used in 11 U.S.C. § 363(m). The APA and this Order were negotiated, proposed, and entered into by the Debtor and the Purchaser in good faith, from arm's-length bargaining positions, and without collusion. The Purchaser is not connected to or in any way related to the Debtor. The sale process conducted pursuant to the Bidding Procedures Order was non-collusive, fair, and reasonable, and it was conducted openly and in good faith. The Purchaser is entitled to the protections of 11 U.S.C. § 363(m) with respect to the Purchased Assets. The Sale of the Purchased Assets to the Purchaser is a sale in good faith within

the meaning of 11 U.S.C. § 363(m). The Purchaser and the Debtor have not engaged in any conduct that would cause or permit the Sale or the APA to be avoided. The Purchaser is not an “insider” of any of the Debtor, as that term is defined in 11 U.S.C. § 101.

L. The Debtor may sell the Purchased Assets free and clear of all Liens and Claims (as defined below) because, in each case, one or more of the standards set forth in 11 U.S.C. §§ 363(f)(1) - (5) have been satisfied. All holders of Liens and Claims (as defined below) and all parties who did not object to the Sale Motion are deemed to have consented to the Sale pursuant to 11 U.S.C. § 363(f)(2).

M. As a condition to purchasing the Purchased Assets, the Purchaser requires that: (a) the Purchased Assets be sold free and clear of all Liens and Claims, and (b) the Purchaser have no liability whatsoever for any pre-closing obligations unless expressly assumed pursuant to this Order and the APA. The Purchaser would not enter into the APA or consummate the Sale, thus adversely affecting the estate, if the Sale was not free and clear of all Liens and Claims (as defined below) or if the Purchaser was or would be liable for any obligations of or claims (as defined in 11 U.S.C. § 101(5)) against the Debtor other than any liabilities expressly assumed in this Order.

N. Any of the executory contracts and unexpired leases that the Purchaser has agreed to purchase, be assigned and assume, and which are in default at the time of the Sale, shall be cured by the Purchaser as provided in the APA or as otherwise agreed to by the Purchaser and the non-debtor parties to those contracts and leases. All other requirements and conditions under 11 U.S.C. § 365 for the assumption of the executory contracts and unexpired leases by the Debtor and for the Debtor’s assignment of said contracts and leases to the Purchaser have been satisfied.

O. The Debtor has full power and authority to execute and deliver the Purchased Assets, the APA, the Transaction Documents and any other documents necessary or appropriate to consummate the Sale of the Purchased Assets as contemplated under the APA. All actions contemplated by the APA have been duly and validly authorized by all necessary action of the

Debtor. No further consents or approvals are required for the Debtor to consummate the transactions contemplated by this Order, the APA or the Transaction Documents, except as otherwise set forth herein and in the APA.

P. An injunction against the creditors and third parties pursuing any Liens and Claims (as hereinafter defined) is necessary to induce the Purchaser to close the Sale under the APA. Therefore, the issuance of such an injunction is necessary to avoid irreparable injury to the Debtor's estate and will benefit all creditors.

Q. The Purchaser is not a mere continuation of the Debtor:

i. The Sale is not being entered into fraudulently. The Sale has been properly noticed in accordance with the approved Bidding Procedures Order.

ii. The Purchaser is not holding itself out to the public as a continuation of the Debtor.

iii. The Purchaser (a) is not, as a result of any action taken in connection with the purchase of the Purchased Assets or otherwise, successor to the Debtor (other than with respect to any obligations arising under the executory contracts and unexpired leased purchased by the Purchaser from and after the Closing); and (b) has not, de facto or otherwise, merged or consolidated with or into the Debtor.

iv. The Sale does not amount to a consolidation, merger, or de facto merger of the Purchaser and the Debtor.

v. The Purchaser is not merely a continuation of the Debtor, there is not substantial continuity between the Purchaser and the Debtor, and there is no continuity of enterprise between the Debtor and the Purchaser.

R. The transfer of the Purchased Assets to the Purchaser is or will be a valid, legal, and effective transfer of the Purchased Assets and will vest the Purchaser with all right, title, and interest of the Debtor in and to the Purchased Assets, free and clear of all Liens and Claims (as defined below).

S. All findings of fact and conclusions of law announced by this Court at the Sale Hearing in relation to the Sale Motion are incorporated herein by reference as though fully set forth

in this Order.

IT IS HEREBY ORDERED, as follows:

1. The Sale of the Purchased Assets is APPROVED as set forth herein.
2. Any objections to the Sale that have not been withdrawn, waived, or resolved, and all reservation of rights included in such objections, are hereby OVERRULED on the merits.
3. Any objections to the assumption and assignment of the executory contracts and unexpired leases (each individually, a “Contract” or a “Lease,” and collectively, the “Contracts and Leases”) or the proposed Cure Amounts set forth on Schedules 2.01(a) and 2.01(e) of the APA that have not been withdrawn, waived, or resolved, and all reservations of rights included in such objections are hereby OVERRULED on the merits. All objections to the assumption and assignment of the Contracts and Leases and/or the proposed Cure Amounts that were not timely filed be, and are hereby, forever barred.
4. The APA and all other transactions contemplated therein are hereby APPROVED, and the Debtor and its professionals are authorized, empowered, and directed to perform their obligations under the APA and to take such actions as are necessary or appropriate to effectuate the terms of the APA and this Order. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA and the Transaction Documents be authorized and approved in their entirety. In the event of any inconsistency between the terms of the APA or the Transaction Documents and this Order, the terms of this Order shall control. Further, for the avoidance of doubt, the APA and the Transaction Documents are hereby modified to provide that:
 - a. Notwithstanding section 2.02(f) of the APA or anything else in the Transaction Documents, all Avoidance Actions and other claims or causes of action belonging to the Debtor and/or the Debtor's bankruptcy estate, whether under chapter 5 of the Bankruptcy Code or other applicable law are included in the definition of Excluded Assets (referenced in the APA) and shall be available for the benefit of the

Debtor's general unsecured creditors and the fees and costs of investigating, commencing and prosecuting the same; and

- b. Notwithstanding section 2.02(f) of the APA or anything else in the Transaction Documents, all Avoidance Actions and other claims or causes of action belonging to the Debtor and the Debtor's bankruptcy estate, whether under chapter 5 of the Bankruptcy Code or otherwise shall be Excluded Assets (as defined in the APA) and shall be available for the benefit of the Debtor's general unsecured creditors; and
- c. Notwithstanding section 7.05 of the APA or anything else in the Transaction Documents, neither the Debtor nor any other party in interests admits that the Debtor has any liability under the WARN Act, and all parties reserve all of their right and arguments with respect thereto.
- d. To the extent any other assets that were carved out of the collateral of Callidus for the benefit the general unsecured creditors in earlier orders of this Court, such asset are Excluded Assets; provided, however, that the Debtor's sale to Purchaser shall include (1) the 2015 Home trailer, Model 716HT, Vin -0072, and (2) that certain real property identified in Deed Book 1026, Page 468 of the Pike County Clerk's Office, and identified as Map ID # FR-1 to the attachment to Schedule A of the Debtor's bankruptcy petition.
- e. Notwithstanding anything to the contrary in the APA or related documents, the Debtor's D&O insurance (and related rights) shall be an Excluded Asset and shall remain with the Debtor and its bankruptcy estate or an assignee of the same, subject to further order of this Court.
- f. Notwithstanding anything to the contrary in the APA or related documents, Purchaser shall reasonably cooperate with the Creditors Committee appointed in this case or any other person or party who holds the right to commence and prosecute Avoidance Actions and other causes of action belonging to the Debtor and/or the Debtor's bankruptcy estate (or an assignee of the same) with respect to the exchange of information necessary for the latter to investigate and prosecute such claims. Such cooperation includes, without limitation, preserving the Debtor's books and records that comprise a portion of the Purchased Assets for a period not longer than 18 months from the date of this order and making such records available for inspection within ten (10) days of any request to do so or as otherwise ordered by a court of competent jurisdiction.
- g. Notwithstanding the anything to the contrary in the APA or the Transaction Documents, Purchaser shall be responsible for, and pay for, all costs to maintain the Assets described in the APA on or after 12:01 a.m. on Sunday, February 14, 2016.

5. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), upon the closing of the Sale of the Purchased Assets (the “Closing”), the Sale will be a legal, valid, and effective sale, assignment, and transfer of the Purchased Assets to the Purchaser of same and shall vest the Purchaser with good and marketable title to the Purchased Assets free and clear of: (i) any mortgage, lien (as such term is defined in 11 U.S.C. § 101(37) including any mechanic’s, materialman’s, statutory, and any other consensual or non-consensual lien), security interest, charge, hypothecation, deed of trust, pledge, right of use, first offer or refusal, easement, servitude, restrictive covenant, lease, sublease, covenant, right of way, option, restriction (including, without limitation, any restriction on transfer or on the use, voting, receipt of income or other rights or exercise of any attributes of ownership), conditional sale or other title retention agreements, interest, encroachment, or encumbrance of any kind, or claim (as that term is defined in 11 U.S.C. § 101(5)) and including, without limitation, any claim against the Purchaser and/or any of the assets or properties of the Purchaser (including, without limitation, the Purchased Assets) based on a theory of successor liability, alter-ego, or any similar theory of liability) (all of the foregoing collectively referred to as “Liens”), and (ii) any debt, liability, or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and all costs and expenses relating thereto (all of the foregoing collectively referred to as “Claims”); provided, however, Liens and Claims shall not include any liens or liabilities that the Purchaser is expressly assuming under the APA as part of the consideration for the transaction, the overriding royalty and other interests reserved by the Debtor under the APA as part of the consideration for the transaction and security therefor (collectively, the “Assumed Liabilities”), which shall be the Purchaser’s obligation. The Liens and Claims, and expressly including all cash collateral carve-out claims/liens and surcharge claims for the benefit of the estate, shall attach to the proceeds of the Sale, which proceeds shall expressly include each item constituting the Transaction Documents (the “Sale Proceeds”) with the

same validity, enforceability, priority, force, and effect that they now have as against the Purchased Assets, subject to the rights, claims, defenses, and objections of all interested parties with respect to such Liens and Claims, including rights of the Debtor's estate under Chapter 5 of the Bankruptcy Code, all such issues to be reserved for further Orders of the Court.

6. As of the Closing, all persons and entities holding Liens and/or Claims and their respective successors and assigns, are hereby forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Liens and Claims of any kind and nature against the Purchaser, the Purchased Assets, or any other assets or properties of the Purchaser.

7. On and after the Closing, the Purchaser will not assume, be liable for, have any responsibility for, or otherwise become obligated in respect of any liabilities or any other obligations of the Debtor except that Purchaser shall assume and have all liability and responsibility for the Assumed Liabilities.

8. The Purchaser shall not have any liability arising from or under, relating to, or in connection with the Liens or Claims, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, except for the Assumed Liabilities.

9. The Contracts and Leases set forth on Schedules 2.01(a) and 2.01(e) of the APA are either (i) executory contracts or unexpired leases under 11 U.S.C. § 365(a) which may be assumed by the Debtor and assigned to the Purchaser pursuant to the provisions of 11 U.S.C. § 365(f)(2), or (ii) non-executory contracts that may otherwise be assigned to the Purchaser according to their terms and applicable law. At the Closing of the Sale the Debtor is authorized to assume (to the extent not already assumed) and assign the Contracts and Leases to the Purchaser, subject to the terms of the APA, which shall vest the Purchaser with all right, title and interest in and to the Contracts and Leases, effective as of the Closing Date, and the Estates shall be relieved of any further obligations or liabilities associated therewith. All such Cure Amount payments shall be paid in connection with

the Closing or as otherwise agreed between Purchaser and the non-debtor party to the related Contract or Lease, directly from the Purchaser to the appropriate cure claimant, and shall (a) effect a cure of all defaults existing under the related Contract or Lease at the time of the Closing, (b) compensate for any actual pecuniary loss to such non-debtor party to the Contract or Lease resulting from such default, and (c) together with the assumption of the Contracts and Leases by the Purchaser, constitute adequate assurance of future performance by the Purchaser under the Contracts and Leases. For the avoidance of doubt, the Cure Amounts do not include, and the Debtor shall not be deemed to have satisfied, any obligation to pay any unmined mineral tax that has accrued but is not yet due and payable under any Contract or Lease. Pursuant to 11 U.S.C. § 365(f), the Debtor is authorized to take all steps necessary to assign said Contracts and Leases to the Purchaser. This assignment shall not constitute a default under the Contracts and Leases, and neither the Debtor nor the Purchaser shall have any further liabilities to the non-debtor parties to the Contracts and Leases, other than the Purchaser's obligations under those Contracts and Leases arising from and after the Closing.

10. All Sale Proceeds attributable to the Cash Purchase Price for Sale of the Assets to the Purchaser shall be paid to the Debtor until further orders of this Court. The Debtor shall hold such Sale Proceeds in Debtor's Counsel's escrow account and shall not use or otherwise distribute those proceeds without further order of this Court after notice and a hearing.

11. All parties and/or entities asserting Liens and Claims against the Purchased Assets are hereby permanently enjoined and precluded from: (i) pursuing such Liens and Claims against the Purchased Assets, excluding the Sale Proceeds reserved herein; (ii) asserting, commencing, or continuing in any manner any action against the Purchaser or any director, officer, agent, representative, or employee of the Purchaser (save and except for any former or existing officer, director, or employee of the Debtor), (collectively, the "Protected Parties"), or against any Protected

Party's assets or properties on account of such Liens and Claims; (iii) the enforcement, attachment, collection, or recovery, by any manner or means, of any judgment, award, or decree or order against the Protected Parties or any assets or properties of the Protected Parties on account of such Liens and Claims; (iv) creating, perfecting, or enforcing any encumbrance of any kind against the Protected Parties or any properties or assets of the Protected Parties on account of such Liens and Claims; (v) asserting any setoff, right of subrogation or recoupment, or other affirmative defense of any kind against any obligations due to the Protected Parties on account of such Liens and Claims; (vi) taking any action, in any manner, in any place whatsoever, that does not conform to or comply with provisions of this Order or the APA; and (vii) asserting that, with respect to the Debtor, the Purchaser is a successor or successor-in-interest, pursuant to any other statutory or legal or equitable theory, including, without limitation, worker's compensation, occupational disease, pension and employee benefits, labor and employment, bulk sales or tax law obligations; provided, however, that the Purchaser shall not be relieved of liability with respect to obligations expressly assumed, created or agreed to by Purchaser pursuant to the APA or this Order or accruing under the Contracts and Leases from and after the Closing.

12. Each non-debtor party in interest to a Contract or Lease is hereby barred from asserting against the Debtor, the Purchaser, or the Assets any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

13. Each and every federal, state, and local governmental agency or department, subject to paragraph 25 below, is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by this Order and the APA, including, without limitation, documents and instruments for recording in any governmental agency or department required to transfer to the Purchaser: (i) ownership and/or development of the Purchased Assets and liens and security interests in the Purchased Assets in favor of the Debtor as contemplated

by the APA; (ii) the operations that are associated with the Purchased Assets; and, where applicable (iii) all licenses and permits for the operation of the Purchased Assets. Any filing officer is hereby ordered to accept filing of such documents and/or this Order in any record books requested without the need to determine whether such filing is proper or allowed under local or state law.

14. If any person or entity that has filed financing statements, mortgages, liens, lis pendens, or other documents evidencing Liens and Claims against the Purchased Assets sold pursuant to this Order shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims that the person or entity has with respect to such Purchased Assets, the Debtor, or the Purchaser after Closing, are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to such Purchased Assets. The obligation to record such instruments is governed by Paragraph 13 of this Order.

15. Any entities that are presently, or as of the Closing may be, in possession of any portion of the Purchased Assets sold pursuant to this Order are hereby directed to surrender possession of such Purchased Assets to the Purchaser on the date of the Closing.

16. The transfer of the Purchased Assets pursuant to this Order, the APA, and the Transaction Documents: (a) is a legal, valid, and effective transfer of the Purchased Assets from the Debtor to the Purchaser; (b) vests in the Purchaser all right, title, and interest of the Debtor and all other claimants or parties in interest in and to the Purchased Assets; and (c) constitutes a transfer for reasonably equivalent value and good and adequate consideration under the Bankruptcy Code and all other law applicable to such transfer. No other person, entity, or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtor's Estate than the Purchaser.

17. The transactions contemplated by this Order and the APA have been bargained for

and undertaken by the Purchaser and the Debtor at arm's length, without collusion, and in good faith within the meaning of 11 U.S.C. § 363(m). The Purchaser and the Debtor have not engaged in any conduct that would cause or permit this Order or the APA to be avoided.

18. Pursuant to 11 U.S.C. § 363(m), if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any obligation or right granted pursuant to the terms of this Order. Notwithstanding any reversal, modification, or *vacatur* of this Order, any actions taken by either the Purchaser or the Debtor pursuant to the terms of this Order prior to the effective date of any such reversal, modification, or *vacatur* shall be governed in all respects by the original provisions of this Order, the APA and/or the Transaction Documents, as the case may be.

19. Neither the Purchaser nor the Debtor have engaged in any conduct that would cause or permit the Sale, APA, and/or Transaction Documents to be avoided pursuant to 11 U.S.C. § 363(n).

20. The Debtor and its professionals be and hereby are authorized, empowered, and directed to take such actions as may be necessary to effectuate the terms of this Order and consummate the transaction, including release of the bond collateral as a part of effectuating the transfer of the permits and the re-bonding process with the Commonwealth of Kentucky.

21. The Debtor is hereby authorized, empowered, and directed to execute and deliver any and all instruments as may be required to effectuate the terms of the APA and this Order, including, but not limited to, executing or consenting to any Transaction Documents with the Purchaser. The APA, the Transaction Documents and any agreements, documents, or other instruments related to this Order or the transactions contemplated herein may be modified, amended, or supplemented by the parties thereto, in a writing signed by all parties, and in accordance with the terms thereof without

further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

22. The provisions of this Order and any actions taken pursuant hereto shall survive any conversion or dismissal of these bankruptcy cases and the entry of any other order which may be entered in these cases, including any order: (i) confirming any plan of reorganization; (ii) converting this case from Chapter 11 to Chapter 7; (iii) appointing a trustee or examiner; or (iv) dismissing this case. The terms and provisions of this Order, as well as the rights granted under the APA and the Transaction Documents, shall continue in full force and effect and shall be binding upon the Debtor and its respective affiliates, successors, assigns, any reorganized debtor, or Chapter 7 or 11 trustee applicable to the Debtor and its estate, or any person acting on the Debtor's behalf, notwithstanding any such conversion, dismissal, or order entry.

23. All of the transfers and other performance set forth in this Order, the APA and the Transaction Documents, together with the performance under all of the agreements identified herein to be executed and performed at Closing, are part of a single transaction such that the same is not subject to being avoided, rejected, or otherwise terminated or modified by a division or separate treatment of the various agreements or component transactions. Accordingly, the provisions of this Order are non-severable and mutually dependent.

24. The Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the APA and to resolve any dispute concerning this Order, the APA, disputes regarding the Purchased Assets, and/or the rights and duties of the parties hereunder or thereunder, or any issues relating solely to the APA and this Order, including, but not limited to, interpretation of the terms, conditions, and provisions hereof, and the status, nature, and extent of the Purchased Assets, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of Liens and Claims as set forth

herein.

25. Nothing in this Order or the APA releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability (including but not limited to for reclamation and mitigation and any associated long-term protection requirements) to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under police or regulatory law. Nothing in this Order or the APA divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

26. Purchaser shall obtain from the Debtor all books, records, files and papers, whether in hard copy or computer format, related to the Purchased Assets, including any information relating to any tax imposed on the Purchased Assets; provided, however, that the Debtor may retain copies of the same; and provided, further, however, that the Purchaser is not acquiring the computer servers, electronic mail records or financial records of the Debtor.

27. Pursuant to, and to the extent necessary under, Fed. R. Bankr. P., Rules 6004(h) and 6006(d), this Court hereby expressly finds and concludes that there is no just cause for delay in the implementation of this Order. This Order therefore shall not be stayed for fourteen days after its entry. Notwithstanding any provision of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure to the contrary, this Order shall be effective and enforceable immediately upon entry, and any stays thereof, including without limitation pursuant to Fed. R. Bankr. P., Rules 6004(h) and 6006(d), are hereby abrogated.

TENDERED BY:

BUNCH & BROCK

By: /s/ W. Thomas Bunch II
W. THOMAS BUNCH II
271 West Short Street, Suite 805
Lexington, Kentucky 40507-1217
(859) 254-5522
ATTORNEY FOR DEBTOR

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Tracey N. Wise
Bankruptcy Judge
Dated: Friday, February 12, 2016
(tnw)